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LEGAL MECHANISMS TO COMBAT TERRORISM

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

BILITY OF CIVIL AND CRIMINAL ACTIONS AGAINST YASSIR FAT'S PALESTINE LIBERATION ORGANIZATION [PLO]

APRIL 23, 1986

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LEGAL MECHANISMS TO COMBAT TERRORISM

WEDNESDAY, APRIL 23, 1986

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

The subcommittee met, pursuant to notice, at 10:16 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senators McConnell and Leahy.

Staff present: Joel S. Lisker, chief counsel and staff director; Richard D. Holcomb, general counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA, CHAIRMAN, SUBCOMMITTEE ON SECURITY AND TERRORISM

Senator DENTON. Good morning. This hearing will come to order.

The subcommittee is meeting today to receive testimony on legal mechanisms to combat terrorism. One recent mechanism offered is the Dole/Denton bill, S. 2335, which was introduced in the wake of our attack on Libya last week.

Specifically, this hearing will focus principally on what available civil and criminal actions should be taken against Yasser Arafat's Palestine Liberation Organization [PLO], which, by any measure, is an organization which sponsors and supports international terrorism on a global scale.

We will review the question of exerting legal authority of the United States to arrest and prosecute Arafat for his alleged complicity in the March 1973 murders in Khartoum, Sudan, of U.S. Ambassador Cleo Noel and Chargé d'Affaires G. Curtis Moore.

We will review the propriety of convening a special grand jury to investigate the pattern of PLO criminal and terrorism activity. We will review the status of existing laws which may be used to bring civil and criminal actions against the PLO, thereby curtailing its illegal activity.

We will review the need for legislation to give the Justice Department stronger weapons to fight terrorism and to give the victims of terrorism means by which they may attach the nearly $6 billion of PLO holdings in this country.

Having said this, I want to emphasize that just as the PLO has attempted to usurp the Palestinian cause from the Palestinian people and to pursue its grievances against Israel and its principal

ally, the United States, with terrorism, there does remain the legitimate issue of the Palestinian question which must be addressed.

This is because its outcome directly affects the future of several million Palestinians who have not followed Arafat and his cohorts in their rampage of violence. It is these people with whom we must be concerned and whose future must be considered if a lasting peace in the Middle East is ever to be achieved.

The subcommittee will also review the relative ease with which members of the PLO and other terrorist organizations and groups, such as the African National Congress [ANC] and the Southwest Africa People's Organization [SWAPO], are liberally granted visas to enter this country.

We will also examine the propriety and legality of permitting the PLO to maintain its information office here in Washington and to maintain its observer mission to the United Nations, as SWAPO, and as the ANC maintains an information office in New York City.

These latter two areas of inquiry are of particular importance if we are to be successful in preventing the PLO from building a terrorist infrastructure and from expanding their propaganda machine within our own country.

The witnesses at today's hearing will testify in panels. The first panel is comprised of two of my distinguished colleagues, Senators Charles E. Grassley and Frank R. Lautenberg, of Iowa and New Jersey, respectively. Senator Lautenberg has an urgent requirement and will testify first.

Representatives of the administration will testify in the second panel and will include Mark Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice; Lawrence Lippe, Chief, General Litigation and Legal Advice Section, Department of Justice; and Mary Mochary, Deputy Legal Adviser, Department of State.

The third and final panel is composed of distinguished attorneys, including Harris Weinstein, Esq., of the law firm of Covington & Burling; Irving B. Nathan, Esq., of the law firm of Arnold and Porter; John Norton Moore, Esq., a law professor at the University of Virginia School of Law and the chairman of the American Bar Association's Standing Committee on Law and National Security; and Clifford J. Zatz, Esq., of the law firm of Seifman, Semo, Slevin & Marcus.

Before calling on our first panel of witnesses, I would like to expand on the purpose of the hearing. In the past 20 years, the PLO has fashioned a cult of righteous violence and an ideology of terrorism.

Terrorism has not only been justified as a military necessity, but Arafat has usurped and insulted peace-loving Arabs by trying to portray terrorism as a way to reclaim Arab dignity.

But where is the dignity of taking innocent lives, whether it be the murder of Leon Klinghoffer aboard the *Achille Lauro,* the murder of 15 innocent bystanders in the Rome and Vienna airports, or the murder of five passengers aboard TWA flight 840, including an 8-month-old baby and a yet to be born child?

As then candidate Ronald Reagan stated on September 3, 1980:

> President Carter refuses to brand the PLO as a terrorist organization. I have no hesitation in doing so.

During the same campaign, our present Vice President George Bush noted:

> The PLO, and let there be no doubt about this, is nothing more or less than an international Ku Klux Klan, pledged to hatred, violence and the destruction of the values and free institutions we hold dear.

More recently, on April 8, 1986, Attorney General Edwin Meese declared:

> We know that various elements of the PLO and its allies and affiliates are in the thick of international terror, and the leader of the PLO, Yasser Arafat, must ultimately be held responsible for their actions.

Referring to the fight against terror, Mr. Meese stated: "You do not make real progress until you close in on the kingpin."

It is manifestly clear that Yasser Arafat is one of the kingpins of world terror. He is ultimately responsible for terrorism committed by Fatah, the main wing of the PLO, directed at Americans, Israelis, and other innocent citizens.

For example, according to the public record, Arafat's wing of the PLO and affiliated factions have been responsible for the murder of at least 32 Americans, the wounding of at least 38 Americans, and the kidnaping of at least 6 Americans.

Arafat is directly linked through his top aides to such major atrocities as the murder of U.S. Ambassador Cleo Noel, the *Achille Lauro* piracy, the murder of Leon Klinghoffer, and the terror campaign of the Black September. Black September is nothing more than a nom de guerre for the PLO.

In recent months, Arafat's anti-American threats have been explicit. On November 13, 1985, he stated: "We are on the threshold of a fierce battle, not an Israeli-Palestinian battle, but a Palestinian-United States battle." That is quoted from Al-Ahali, November 13, 1985.

This January, Arafat reasserted his hostile position on the United States: "The strategy should take into consideration that the enemy is the same, be he Israeli or the United States." That is from KUNA, January 3, 1986.

Terrorism lies at the core of Arafat's strategy. A recent report asserts that 13 of the 67 major acts of international Palestinian terrorism committed in 1985 were carried out by Arafat's Fatah. That is a conclusion reached by the New York Times, April 13, 1986.

Arafat continues to call for the destruction of Israel through terrorism. Recently, he reiterated these orders: "I do not simply want, I demand, more operations"—and he, in context, was talking about commando operations—"and more resistance against this occupation." That is from the Arab News, November 11, 1986.

Mr. Arafat is not interested in making peace, but continuing terror: "Palestine will not be regained through peaceful solutions or through the Israeli Labor Party, as some believe, but through fighting and Palestinian blood."

As President Reagan noted in a July 8, 1985, address to the ABA:

> We must act against the criminal menace of terrorism with the full weight of the law, both domestic and international. We will act to indict, apprehend, and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks.

Today's hearing will focus on how Arafat can be made accountable for his action, what the full weight of domestic and international law entails, and how this administration is using the full weight of its resources in the law.

Before calling on my colleagues for opening statements, I would like to place in the record a series of newspaper articles dealing with PLO-sponsored terrorism. Without objection, that shall be done.

[Newspaper articles submitted by Senator Denton follow:]

[From the Washington Post, Apr. 5, 1973]

ARAFAT IMPLICATED IN ENVOYS' DEATHS

(By David B. Ottaway)

Yasser Arafat, leader of the main Palestinian guerrilla organization, Fatah was in the Black September radio command center in Beirut when the message to execute three Western diplomats being held hostage in Khartoum was sent out last month, according to Western intelligence sources.

The sources said it was not clear whether Arafat personally or Salah Khalef, an extremist Fatah theoretician better known as Abu Iyad, gave the order to carry out the executions, using the code word "Cold River."

But they have reports that Arafat was present in the operations center when the message was sent and that he personally congratulated the guerrillas after the execution of the three diplomats, two Americans and a Belgian, was carried out.

"This is the first time that he [Arafat] has been clearly implicated in something like this," said one source.

Previously, the Sudanese minister of information, Omar Haj Mussa, had revealed that Arafat played a role in getting the Black September group to surrender in Khartoum to Sudanese authorities. Mussa declined to provide details.

According to one source, the U.S. Central Intelligence Agency monitored at least some of the communications between the operation's Beirut command center and the Saudi Arabian embassy in Khartoum where the hostages were being held. Arafat's voice was reportedly monitored and recorded.

But it was not clear from this source whether Arafat's voice was identified as the sender of the Cold River message or was only heard later congratulating the guerrillas and later during the negotiations leading to the surrender of the eight Black September terrorists.

The close ties between Black September and Fatah, long regarded as the "moderate" among the half dozen major Palestinian guerrilla groups, were disclosed recently in a confession by a top Fatah leader made to Jordanian authorities.

Mohamed Daoud Oudeh, who uses the cover name of Abou Daoud, told the Jordanians that Black September did not exist as an organization and that "all its activities were carried out by the intelligence branch of the Fatah guerrilla organization."

Daoud and 16 of his men were arrested in Jordan in February. According to his confession, the team was on a mission to kidnap Jordanian Cabinet ministers and bargain for the release of 40 imprisoned Palestinian guerrillas.

Daoud's confession, which revealed in great detail the training of Palestinians for terrorist operations, is generally regarded as authentic and accurate in Western intelligence circles.

Among other things, Daoud disclosed the key role played by Abu Iyad in planning various terrorist exploits, including the raid on the Israeli quarters at the Olympic Games in Munich last September. It resulted in the killing of 11 Israelis.

Daoud also revealed that he had received his intelligence and arms training in Cairo, where he took a nine-week course with nine other Palestinians.

Daoud's confession and the complications created for Fatah in its relations with Arab governments because of the Khartoum operations have reportedly led within the organization to a total reassessment of strategy.

Fatah has been busy since the Khartoum raid in early March patching up its relations with various Arab governments, including the Sudan.

A delegation from the Palestinian Liberation Organization, which Arafat also heads, recently visited Khartoum. After the visit, the Sudanese government issued a statement saying it had no evidence that the central Fatah organization was in-

volved in the operation and that it was only holding individual Fatah members, including the leader of the local office, responsible for the assassinations.

President Jaafar Nimeri has announced that the eight terrorists will go on trial and that they face the death penalty.

Sources here believe that the difficulties that have arisen for Fatah because of Khartoum and Daoud's confession may lead Arafat to separate more formally the organization's terrorist arm from its central body.

Because of the adverse reaction of many Arab governments in the Khartoum operation, the sources also express the belief that it is unlikely that Black September will soon strike again in another Arab country, except perhaps Jordan.

[From the Washington Star, Apr. 13, 1973]

PALESTINIANS LINKED TO BLACK SEPTEMBER

(By Oswald Johnston)

The State Department today charged that the Black September terrorist organization and the Palestine Liberation Organization—the main voice of Palestinian nationalism—were interconnected.

The statement by Charles W. Bray III, department spokesman, was the first public declaration by a U.S. government official that there is a link between the Black September and more "official" groups.

His remarks reflected the administration's continuing sensitivity over Arab charges of U.S. involvement in the Israeli commando raid on Lebanon Monday night.

Bray rejected as "ludicrous" and a "tissue of lies" a charge by Yasser Arafat, Palestinian leader, that the Israeli operation was directed by the State Department official in charge of the administration's anti-terrorism committee Armin Meyer.

Bray also dismissed as "unwelcome in this capital" an Arabic language broadcast over the official Soviet radio repeating the Palestinian allegation that the U.S. was involved in the raid.

A close interrelationship between Black September and Al Fatah, the Palestinian guerrilla organization which Arafat leads, has been claimed publicly by the Israelis since last summer. The linkage has been quietly accepted by U.S. intelligence since last September.

Bray seemed today to carry the accusation a step further by asserting Black September's connection with the general umbrella organization of Palestinian nationalists, PLO, of which Al Fatah is a part.

"We are satisfied of linkage between Black September and at least some of the leadership of the PLO," Bray said.

Bray's remarks today marked another stage in the American diplomatic counterattack against the Palestinian-led anti-American propaganda campaign which has swept the Middle East since Tuesday.

Seizing the forum of an emergency United Nations debate on the raid, U.S. representative John Scali told the Secretary Council last night that the Palestinian propaganda broadcasts of the past few days were utterly false.

Only a few hours earlier, Secretary of State William P. Rogers summoned representatives of the 13 Arab governments with missions in Washington to give them the same message: Stop helping to spread an accusation calculated to provoke violence against American officials, citizens and property in the Middle East.

By unofficial reckoning, the accusation has been beamed across the Arab world in nearly 50 separate radio broadcasts in the past three days.

It was first made over a clandestine shortwave Voice of Palestine broadcast, probably from southwestern Syria, midday Tuesday. It has been repeated by other shortwave broadcasts direct from Palestinian Fedayeen transmitters and by Voice of Palestine broadcasts over official government radio transmitters in Arab capitals from the Persian Gulf to halfway across North Africa.

Finally, and most seriously, in the view of officials in Washington, it has been repeated in news broadcasts over the government-controlled radio in Algiers, Amman, Baghdad, Beirut, Cairo, Damascus, Khartoum and Tripoli. Only in Amman and Beirut has the flat and categorical U.S. denial also been broadcast.

There is a danger however, that the UN debate which last night gave the United States an opportunity to proclaim its innocence in an international forum could end up driving Arab governments and Palestinian guerrillas still closer together politi-

cally and at the same time making U.S. and Israel interests appear identical in Arab eyes.

There is the likelihood that Scali, on firm orders from an administration dead set against yielding an inch to international terrorism, will veto any Security Council resolution condemning the Israeli raid without also condemning all terrorism, particularly the attempted murder of the Israeli ambassador to Cyprus by Palestinian guerrillas Monday, and the murder of two American diplomats by Black September terrorists in Khartoum last month.

It is by no means certain that Lebanon, which called for the U.N. session yesterday, wants to push for such a resolution. But UN debates on Israeli raids have had a habit of blaming the Israeli retaliation while ignoring the Arab provocation, and the United States may find itself in a difficult position when the issue comes to a vote.

The same dilemma, in simpler form, faced the United States last September when the Security Council was debating an Israeli raid into Lebanon that followed the Black September murder of the 11 Israeli athletes at the Munich Olympic games.

On that occasion, the U.S. veto of a resolution condemning Israel but not the Palestinians was a carefully staged dramatization of Nixon administration determination to oppose international terrorism. It was only the second American veto in the history of the U.N. and it took most Security Council members by surprise—especially American allies in western Europe and friendly Arab governments such as Lebanon.

This time, the situation is vastly more complicated and the consequences could have direct bearing on the deteriorating U.S. position in the Middle East.

The Khartoum murders made it abundantly clear that American officials abroad are a prime target for Palestinian terrorism. The repeated charges that the United States and Israel were partners in the Monday night raid in which three Palestinian leaders were assassinated in their homes, have drummed it into the heads of millions of Arabs that terrorism against U.S. citizens is a legitimate act of war.

A U.S. veto in the Security Council in favor of Israeli interests would only further emphasize this point.

The long roster of official radio broadcasts repeating the Palestinian accusations of U.S.-Israeli complicity has left a chilling example of the extent to which early revulsion among Arab governments to the Khartoum murders has worn off and been replaced by a willingness to support the most extreme acts in the name of Palestinian nationalism.

One of the broadcasts giving credence to accusation emanated from the Sudan's own Radio Omdurman late Tuesday afternoon. It quoted an Al Fatah propaganda statement that "the three resistance leaders were killed when enemy forces attacked their homes, supported by U.S. intelligence men in Beirut."

In the immediate aftermath of the Khartoum murders Sudanese officials led by President Jaafar Al Numeiri, denounced the Black September killers as criminals and explicitly connected them with Al Fatah, the most prominent of the "official" Palestinian organizations.

The Black September-Fatah link was repeated in speeches and editorials in the Sudanese government controlled press. More important, it was reinforced by information that Sudanese authorities—in a rare show of cooperation—secretly turned over to U.S. officials.

This information included transcripts of three clandestine shortwave broadcasts from Fatah headquarters in Beirut.

None of these broadcasts was monitored by U.S. intelligence, and their authenticity is questioned by some informed sources in Washington. Nevertheless, it is understood that the Sudanese were anxious to press their case against Fatah in the Arab world and that they turned over similar information to the Lebanese government.

Within a few weeks of the March 1 murders, however, Sudanese anxiety to prosecute the Black September killers seemed to wane. By March 22, Numeiri was receiving a Fatah delegation in Khartoum and, in effect, absolved the organization's leadership of any part in the murders.

Shortly before Monday's Israeli raid, a State Department official surveying the situation remarked gloomily that, if anything, the Palestinians seemed more unified than ever in the aftermath of Khartoum, and the Arab governments more intimidated than ever into support of Palestinian extremism.

Meanwhile, Defense Minister Moshe Dayan warned Lebanon that Israel would continue to hold it responsible for Arab guerrilla activity originating from its territory.

He said Israel did not intend in the future to act only against individual terrorists as it did when it killed the three guerrilla leaders in the Beirut raid.

"We cannot free Lebanon of its responsibility as a state for actions of the terrorists running their operations from its territory, and we don't intend to act against terrorists only on a personal basis," he said in a state television interview today.

This implied that if Lebanon continues to harbor the Black September terrorist headquarters, Israel may attack its small northern neighbor directly, and not limit itself to guerrilla targets.

Dayan noted that thousands of Arabs in the Israeli-occupied territory had mourned the three men's deaths and had published eulogies for them in the local Arab press.

"The military government could have stopped this," he said, "but it did not prevent these expressions of solidarity with the terrorists."

[From the Wall Street Journal, June 21, 1985]

NEW ENVOY TO U.N. HAS LONG ADVOCATED GOING UNDERGROUND

(By Robert S. Greenberger)

In 1973, when the Palestinian Liberation Organization killed two American diplomats in the Sudan, then Secretary of State Henry Kissinger dispatched Mr. Walters to tell the PLO such actions wouldn't be tolerated.

The secret meeting with the PLO eventually was held in a palace in Morocco, whose ruler, King Hassan, has been a Walters friend since World War II.

[From the Ministry of Foreign Affairs, Jerusalem, 1985]

THE THREAT OF PLO TERRORISM

Deception: Arafat denied all connection with the seizure of the Saudi Arabian Embassy in Khartoum in March 1973 and the murder of the US Ambassador, the US Chargé d'Affaires and the Belgian Chargé d'Affaires.

Fact: It turned out that the deed had been done by a "Black September" gang, and that the order to kill the diplomats had been phoned to the terrorists personally by Yasser Arafat.

[From the Washington Post, Oct. 19, 1985]

ISRAEL SAYS PLO BEHIND TERROR SURGE

DOCUMENT LAYS OUT INTELLIGENCE REPORTS

(By William Claiborne)

JERUSALEM, Oct. 18.—The Israeli government today launched a campaign intended to demonstrate through selective release of classified intelligence that a recent surge in terrorist activity was ordered by top Palestine Liberation Organization officials in Jordan after the start of the joint Jordanian-PLO peace initiative early this year.

The campaign, which Foreign Ministry officials say is intended to prove that PLO Chairman Yasser Arafat never accepted the premise of the peace initiative upon which he agreed with Jordan's King Hussein, is based on a long paper containing what is said to be previously undisclosed detail about PLO operations in Jordan's capital, Amman.

Although much of the intelligence is fragmented and would prove little more than that the PLO has not abandoned its armed struggle against Israel, the document illustrates Israel's formidable surveillance capability and its apparent ease in reaching into the heart of a hostile Arab capital to monitor an enemy's secret movements.

A senior Foreign Ministry offical said the document was drafted to counter suggestions by Middle Eastern leaders such as Egyptian President Hosni Mubarak that Arafat had abandoned the armed struggle against Israel in pursuit of a comprehensive peace through a joint Jordanian-Palestinian initiative.

The document says that since the Feb. 11 signing of the Hussein-Arafat agreement, 380 terror attacks or attempted attacks have been launched against Israel, resulting in 19 deaths and over 100 persons wounded.

Under questioning, a Foreign Ministry official said the total number of attacks included those "planned" and discovered later by intelligence agencies, but never attempted.

The paper, in draft form in Hebrew, contains operational details about the PLO that the Foreign Ministry said it plans to translate and distribute worldwide in its effort to exclude Arafat and the PLO from the peace process. The final draft is to be released Sunday. Foreign Ministry sources said it was held up by Israel's military censor, who made extensive deletions.

[From the Palm Beach Jewish World, Nov. 27, 1985]

JUSTICE DEPARTMENT IS CONSIDERING INDICTING PLO CHIEF YASSER ARAFAT

ISRAELI AND U.S. INTELLIGENCE SOURCES HAVE GATHERED EVIDENCE PROVING THAT ARAFAT ORDERED THE KILLING IN 1973 OF AMERICAN AMBASSADOR CLEO NOEL

(By Edwin Black)

Reached over the past weekend in New York, Ambassador Walters denied that he had personal knowledge of the tape. "I did not hear it and wouldn't have known what I was hearing if I did because I do not speak Arabic," he declared. But he added, "I heard people say they heard it (the tape) . . . this was common knowledge at the time among all sorts of people in the government." Walters indicated he meant government people not limited to the intelligence community.

Walters added his firm declaration that he had no personal knowledge that the US had possession of the tape, but conceded that "There was talk at the time (1973) that this tape existed."

The measure of America's assurance that Arafat was personally involved might be gauged by the fact that just after the massacre, Walters himself was personally dispatched by Secretary of State Henry Kissinger to meet with the PLO in Morrocco. "I spoke to a very senior PLO guy, but not Arafat directly," says Walters. The message: "Stop killing Americans or there would be serious consequences." Sources indicate that the CIA was prepared to begin a campaign of attacks against PLO facilities.

[From the Washington Jewish Week, Nov. 28, 1985]

MEESE PONDERS WARRANT FOR ARAFAT

(By David Silverberg)

U.S. administration officials are debating whether to issue a warrant for the arrest of Palestine Liberation Organization chief Yasser Arafat for the 1973 murder of U.S. Ambassador to Sudan Cleo Noel and U.S. Charge d'Affaires George Moore, according to reliable sources.

The renewed interest in the murder is sparked by recently uncovered additional evidence indicating that the order for the murder came directly from Arafat. Also murdered was Belgian diplomat Guy Eid.

One piece of evidence was contained in an Israeli "white paper" revealing previously concealed intelligence information and which charged that "the order to kill the diplomats had been phoned to the terrorists personally by Yasser Arafat." No source for the information was given, though the document referred to information obtained from "captured terrorists."

Another new piece of evidence was ventured by U.S. Ambassador to the United Nations Vernon Walters, who told some close associates last month that he had heard tapes in the possession of the United States in which Arafat spoke the code words ordering the assassination.

The murders were carried out by Black September, a PLO terrorist unit which Arafat denied was under his control. However, evidence of an Arafat connection began mounting immediately after the incident and investigations by both The New York Times and London's Sunday Times indicated that the operation was controlled from Beirut.

According to a reliable source, the public evidence indicating Arafat's connection was passed from the Heritage Foundation to Meese by former U.S. Ambassador to the UN Security Council Charles Lichtenstein.

Lichtenstein refuses to comment on the case and says that all conversations he has with Meese are "privileged."

The current arguments within the administration over whether to prosecute Arafat deal with jurisdiction—not with the evidence itself. Proponents are arguing that the "Law of Nations" holds that any assaults on diplomats constitute a crime and the United States has the jurisdiction to prosecute regardless of where the crime occurs. The proper jurisdiction, according to this argument, is Washington, D.C., district court.

In a separate but related development, the American Jewish Congress has put together a background paper on Arafat's complicity in the Achille Lauro hijacking. Written by Phil Baum, AJC associate executive director, and Rafi Danziger and distributed by the National Jewish Community Relations Advisory Council, the paper discounts PLO arguments of non-complicity and agrees with the contention of The Wall Street Journal that there is a "direct line from the PLO to Mr. Arafat to Mr. Abbas to the hijackers of the Achille Lauro to the murder of Leon Klinghoffer."

[From the Los Angeles Times, Dec. 15, 1985]

INDICT ARAFAT

U.S. LAW CAN PROSECUTE TERRORISTS AND SQUELCH TERRORISM

(By Neil C. Livingstone and Terrell E. Arnold)

To the category of meaningless gestures, add the United Nations' condemnation this week of international terrorism.

After more than a decade of debate, the chief sponsors of world terrorism joined with its victims to declare all acts of terrorism as criminal. The resolution contained a definition of terrorism only slightly less ambiguous than the genealogy of a barn full of cats, and lacks any sanctions or enforcement mechanisms to dissuade nations from using terrorism to achieve their national objectives. It will not save one life or prevent one attack, and is a reminder of the frustrations associated with trying to use law to combat international terrorism.

Nations victimized by terrorism have increasingly resorted to the use of force, whatever the risk, to combat terrorism. However, while the judicious use of force may be the best answer in some situations, we cannot afford to give up on efforts to find appropriate legal mechanisms to secure the extradition and prosecution of terrorists who commit crimes abroad against the citizens and interests of our nation. What is needed are more imaginative applications of the law to the problem.

Now comes news of an effort under way in Washington to seek the indictment of Yasser Arafat in conjunction with the brutal murders of U.S. Ambassador Cleo Noel, Charge d'Affaires G. Curtis Moore and Belgian diplomat Guy Eid in Khartoum, Sudan, in 1973.

While the Palestine Liberation Organization's "Black September" was implicated at the time, Arafat's role was a source of controversy. Now, new information has surfaced suggesting that the whole operation was planned with his knowledge and direction, and that he personally gave the order to shoot the three hostages. In addition to various State Department cables that seem to confirm Arafat's role, the U.S. government is reported to have on tape an interception of the telephone conversation between the PLO chieftain and the killers. Armed with this and additional information, a coalition of groups led by former Deputy U.N. Ambassador Charles M. Lichenstein recently contacted Atty. Gen. Edwin Meese III to press for Arafat's indictment. Word from the Justice Department is that the matter is still under active consideration and that Meese has not yet made up his mind.

Any effort to reopen the case raises a number of sensitive legal and political issues. There are those at the State Department and elsewhere in the U.S. government, including friends of the slain Americans, who harbor no love for Arafat but nonetheless maintain that he is the least of many evils. They do not believe that any positive good could be achieved by further weakening him, thereby strengthening his more radical rivals for leadership of the PLO.

Moreover, there are serious questions relating both to jurisdiction and evidence that must be settled before any indictment could be handed down. For example, even if the existence of the tape of Arafat ordering the numbers can be confirmed and the text of it made public, it must be established that the voice on the tape belongs, beyond any reasonable doubt, to Arafat. The question of jurisdiction may be easier to overcome. A federal court has held that crimes against the law of nations

are "punishable under American law regardless of the nationality of the victims or the geographic location of the crimes." A federal statute was enacted in 1976 asserting U.S. government jurisdiction in crimes against internationally protected persons, and the legislative history of the act suggests that Congress intended that the statute could be applied retroactively.

Terrorism threatens not only U.S. foreign policy but also what the noted British historian and civil servant Harold Nicholson called "the diplomatic method"—the set of practices and procedures governing relations between nations that has evolved over the centuries. The ancient Greeks were the first to recognize that an orderly international system must be governed by universally established and recognized principles, the most important being diplomatic immunity—the inviolability of diplomatic persons. Lately, terrorist attacks on diplomats and embassies have reached epidemic proportions. Over the past 15 years, diplomats from 113 nations have been targets of terrorism in 128 different countries. This makes international cooperation and understanding more difficult, not to mention the corrosive impact it has on the morale and effectiveness of the Foreign Service.

The United States has enjoyed little success in bringing to justice those responsible for the deaths of American diplomats and citizens abroad. It is time to reverse this trend. Recent legal action against terrorists involved in the hijacking of TWA flight 847 and the Achille Lauro, and Mrs. Leon Klinghoffer's civil suit against the PLO, represent the opening of a new front in the war against international terrorism. As President Reagan told the American Bar Assn. in July: "We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks."

Such a strategy not only reaffirms this nation's belief in the rule of law; it also is a clear signal to the world of our commitment to seeing that justice is done and that terrorists do not go unpunished. Arrest warrants will deny terrorist mobility and access to international support, unless they want to run the risk of capture and extradition by a friendly power. Most of all, outstanding criminal indictments represent a real obstacle when organizations like the PLO seek diplomatic recognition and media approval, because they strip away what is often a carefully cultivated facade of respectability and expose them as the criminal gangs that they really are.

If Arafat is guilty of masterminding the Khartoum murders, he must be made to answer for it. An indictment of Arafat would not represent an indictment of the whole Palestinian people, but it would be a recognition that law must prevail over violence in the modern world, and that Palestinian interests are best served by people who understand this.

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A United Nations Assessment Project Study

December 17, 1985

THE PLO'S VALUABLE ALLY: THE UNITED NATIONS

INTRODUCTION

Only the threat that Ronald Reagan would boycott the United Nation's 40th anniversary General Assembly session this fall finally persuaded supporters of the Palestine Liberation Organization to drop their demands that PLO chief Yassir Arafat be invited to address the U.N. Yet General Assembly President Jaime de Pinies of Spain made it clear that the PLO is welcome to speak to the General Assembly at any time.[1] Indeed, the history of the past decade reveals that the PLO may be more welcome at the General Assembly podium than is the U.S.

Almost the entire United Nations system, in fact, has become a valuable PLO ally. It has official observer status throughout the system, including the specialized agencies. And just as if it were a member state, the PLO maintains an official mission at 115 East 65th Street in Manhattan and participates in Security Council debates. The U.N. Department of Public Information distributes pro-PLO papers and booklets reaching journalists, academics, and nongovernmental organizations (NGOs) throughout the world. Pro-PLO displays and posters grace the lobbies and libraries of U.N. buildings in New York and across the globe. This material is coordinated and sometimes written by the pro-PLO members of the U.N. Secretariat in the Division of Palestinian Rights.

Inside the U.N. Secretariat, the PLO has significant impact on personnel matters and on critical policy decisions. And from its U.N.

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1. The New York Times, October 15, 1985.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

base of operations, the PLO enjoys access to the American press and espionage opportunities within the U.S.

The U.S. Congress long has chafed at and opposed the PLO's prominence at the U.N. A 1979 U.S. law attempted to cut off American funding for PLO activities.[2] It requires the State Department to withhold the U.S. contribution to the U.N. budget (25 percent) for all U.N. activities that benefit the PLO.[2] The trouble is that the State Department has been reluctant to enforce this law. It reads its mandate very narrowly and finds every possible loophole to permit continued U.S. funding of U.N.-related PLO activities.[3] The State Department does not even conduct vigorous research to determine the extent of such activities. And according to telephone calls to the State Department, in the absence of written documents, the State Department has thus far withheld funding from only three of the many U.N. agencies and committees that support PLO activities.

This lapse of responsibility has come to the attention of Congress. Senator Arlen Specter (R-PA) has asked for a General Accounting Office investigation of PLO activities in the U.N., and Congressman Jack Kemp (R-NY) is looking into how much the State Department has been withholding from the U.N. and why the sum is not higher. Senator Frank Lautenberg (D-NJ) has recently offered an amendment to the Commerce, Justice, and State Department appropriations bill requiring the U.S. to withhold its portion of every U.N. activity that benefits the PLO in any way.

It is not enough, however, to withhold pro-PLO funds from the U.N. budget. The State Department also should enforce the 1947 U.N. Headquarters Agreement, codified in U.S. law as P.L. 357, which allows the U.S., as host to the U.N., to expel the foreign PLO representatives in this country. And the U.S. should look into the possibility of closing down the PLO mission in New York as well as the PLO's Washington bureau, the Palestine Information Office with its two separate D.C. locations.

Today the PLO is a divided, crippled movement. It is kept alive by heavy Soviet subsidies, terrorist activities, and to a great extent, the legitimacy conferred on it by its privileged role at the U.N. This despite its open vow and campaign to destroy Israel, a U.N.

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2. Updated as Public Law 98-164, November 22, 1983.

3. See Juliana Geran Pilon, "Blinking at the Law, the State Department Helps the PLO," Heritage Foundation Executive Memorandum No. 20, April 19, 1983. The present counsel to the International Organizations Bureau, Ted Borek, has failed to return phone calls from The Heritage Foundation to question him about his reasons for reportedly advising in favor of a narrow reading of the congressional mandate.

member. For the U.N. to shield and promote the PLO violates the U.N. Charter.

The U.S. should not be an accomplice to this. The President and Congress should instruct the State Department to begin enforcing rigorously the law banning U.S. funding of PLO activities. The President and Congress should call for a thorough U.S. investigation of the PLO role at the U.N. and of its advantageous uses of the U.N. With the findings of such an inquiry, the President and Congress should devise new policies to limit PLO exploitation of the U.N.

THE PLO IN THE U.N.

The U.N.'s endorsement of national liberation movements (NLMs), the blanket under which the PLO claims legitimacy, dates at least as far back as December 20, 1965, when the Soviet-backed General Assembly Resolution 2105(XX) recognized "the legitimacy of the struggle by the peoples under colonial rule to exercise their right of self-determination and independance, and invite(d) all states to provide material and moral assistance to the NLMs in colonial territories." This was followed on December 15, 1970, by Resolution 2708(XXV), an endorsement of using "all the necessary means at their disposal" to achieve their ends. These resolutions provide official encouragement to extremists and terrorists, in particular the PLO, to read the U.N. Charter as legitimizing their use of force. The culmination was the glaring double standard Resolution 3103 of December 13, 1973, which declared that "armed conflicts involving the struggle of peoples against colonial and racist regimes are to be regarded as international armed conflicts" while the use of mercenaries by legitimate governments against NLMs is "considered to be a criminal act." This is in effect an endorsement of the "armed struggle" perpetrated by NLMs--even if it should involve terrorism--while resistance organized against them is condemned as illegitimate.

The cause of the PLO and NLMs in general was further enhanced by the U.N.'s definition of aggression contained in Resolution 3314 of December 14, 1974.[4] This effectively exculpates terror-violence from any liability when employed on behalf of self-determination movements or against colonial and racist regimes.[5] The resolution was adopted

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4. For an analysis of the negotiations leading to the definition, see Julius Stone, Aggression and World Order: A Critique of U.N. Theories of Aggression (Westport, Connecticut: Greenwood Press, 1976).

5. See Robert A. Friedlander, "Dialogue: The Legal Status of the PLO," Journal of International Law and Policy, Vol. 10, 1981, p. 228.

less than one month after Arafat addressed the General Assembly. There he boasted of the PLO's[6] determination to establish a Palestinian state in the place of Israel,[7] in line with the Palestinian National Charter Article 19 which states: "the partition of Palestine in 1947 and the establishment of the state of Israel are entirely illegal, regardless of the passage of time." In his speech, Arafat attacked Zionist "barbarism," Zionist "racism," and its "terrorism." He accused the U.N. of partitioning "what it had no right to divide--an indivisible homeland," the homeland that should be ruled by the PLO.

On November 22, 1974, the PLO was awarded "permanent observer" status at the U.N. by Resolution 3237. Britain's representative emphasized that his government considered the U.N.'s move to be "a fundamental departure from [previous] practice," that brings into question "the nature of the U.N. as it has hitherto been accepted."[8]

Resolution 3236(XXIX), meanwhile, asked the U.N. Secretary General "to establish contacts with the PLO," and instructed the Secretariat to promote the PLO goals adopted by the General Assembly. It is this resolution to which the Secretariat's Department of Public Information and other agencies point to justify their overtly pro-PLO activities.

The U.N. promotion of the PLO accelerated with the creation of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (Palestine Committee for short) by Resolution 3376 on November 13, 1975. Though allegedly impartial, the Committee in practice is a platform for pro-PLO statements. Committee Rapporteur Victor J. Gauci, the Permanent Representative of Malta to the U.N., admitted to The Heritage Foundation that the Committee is "fully supportive of the PLO and its goals." The U.N. Secretariat services the Committee through the Division of Palestinian Rights established on December 7, 1977, which produces "reports" and coordinates nongovernmental organization activities sympathetic to the PLO. These activities are enhanced by the U.N. Department of Public Information. On December 7, 1978, General Assembly Resolution 33/28 C requested the Secretary General to "ensure" that the U.N.'s DPI provide "full cooperation with the [Division]."

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6. U.N. Document A/PV.2282.

7. The complete text of the Charter is reprinted in J. N. Moore, ed., The Arab-Israeli Conflict: Readings and Documents (Princeton, New Jersey: Princeton University Press, 1974).

8. U.N. Document A/PV.2296, pp. 23-25.

Involving the U.N. Secretariat in the promotion of the PLO seriously compromises the ideal of an international civil service. Says Charles William Maynes, Assistant Secretary of State in the Carter Administration: "The U.S. should...be prepared to suspend its membership in bodies where the membership succeeds in diverting the institutional mechanism to favor one cause over the other."[9]

In the past decade, the PLO has reaped increasing support from the U.N. and its specialized agencies through conferences, publications, and a barrage of anti-Israeli General Assembly resolutions. Thomas Franck, Director of the Center for International Studies at New York University School of Law, notes that this violates the U.N. Charter. He writes: "The Assembly thus gave its imprimatur to a movement that seeks the destruction of a member state."[10]

Perhaps the U.N.'s most valuable boost to the PLO occurred December 4, 1975, when the PLO was invited to participate in Security Council debates relating to Israeli attacks directed at Palestinian camps suspected of being terrorist bases. The invitation referred to Rule 37, rather than Rule 39. This was very significant for it conferred upon the PLO the aura of being a legitimate state. The reason: Rule 37 covers U.N. member states, while Rule 39 applies to "other persons." The President of the Security Council, at that time the British Ambassador, warned that this would "constitute an undesirable and unnecessary departure from the established practice of the Security Council."[11]

On January 12, 1976, the PLO once again was invited to participate in Security Council debates as a member state. Professor Leon Gross of Tufts University explains that these invitations directly violated Article 27 of the U.N. Charter. This Article, writes Gross, is "an essential condition of U.S. and Soviet membership in the U.N. If that condition is eroded, the continued membership of the U.S., at any rate, may well become doubtful."[12]

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9. Charles W. Maynes, "U.S. Power and Influence in the U.N. in the 80s," in Toby T. Gati, The U.S., the U.N. and the Management of Global Change (New York: New York University Press, 1983), p. 338.

10. Thomas M. Franck, Nation Against Nation: What Happened to the U.N. Dream and What the U.S. Can Do About It (Oxford: Oxford University Press, 1985), p. 219.

11. U.N. Document S/PV.1859, December 4, 1975.

12. Leon Gross, "Voting in the Security Council and the PLO," American Journal of International Law, Vol. 70, 1976, pp. 470-491.

U.N. BUDGETARY SUPPORT OF THE PLO

U.N. budgetary support of the PLO pervades much of the U.N. system. It involves overall policy making, human rights investigations, conferences, films, and a host of other activities that create a kind of "megaphone" for PLO arguments. Among the most important U.N. activities helping the PLO are:

Palestine Committee: Budget for Biennium 1984-1985: $78,300.

Currently composed of 23 member states and chaired by Senegalese Ambassador Massamba Sarre, the Palestine Committee publishes reports on "The Question of Palestine," organizes conferences throughout the world, and meets with foreign ministers. The PLO is much more than a permanent observer in the Committee's work; it makes proposals and writes drafts of resolutions, which become General Assembly resolutions on the Middle East. The most active Committee participants are its two Vice Chairmen, Cuba's Oscar Oramas Oliva and Afghanistan's Mohammed Farid Zarif. Committee Rapporteur Victor J. Gauci of Malta told The Heritage Foundation that the Committee considers the PLO the legitimate representative of the Palestinian people no matter what changes may take place within the PLO itself. Gauci revealed that Western Europe is a main target of his Committee's efforts. His reason: "The Europeans will then persuade the U.S. The Americans cannot remain isolated, they will have to give in." Since 1983, the Committee has been concentrating on gathering support for an international conference on the Middle East which would involve the PLO. The U.S. withholds from the U.N. budget the equivalent of 25 percent of the amount spent by the Committee.

The Division for Palestinian Rights: Budget for Biennium 1984-1985: $2,290,800.

The Palestine Committee's logistical support within the Secretariat is provided by the Division for Palestinian Rights. Its pamphlets on the Middle East all support the PLO. Chief of the Division Yogaraj Yogasundram of Sri Lanka says that his staff merely follows the guidance of the General Assembly resolutions that declare the PLO the legitimate representative of the Palestinian people. As such, says Yogasundram, the Division is mandated to promote PLO aims. The Division publishes a monthly bulletin and widely disseminates Arafat's speeches. The U.S. withholds the equivalent of 25 percent of the amount spent by the Division.

Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: Budget for Biennium 1984-1985: $283,300.

The General Assembly established this Special Committee in 1968 through Resolution 2443(XXIII), which already had concluded that

Israel was violating Palestinians' rights. The "investigation," therefore, hardly has been impartial. Arguing that the resolution had been motivated exclusively by political and propaganda considerations, Israel has refused to cooperate with this Committee. The results therefore are based on interviews in neighboring states and newspaper reports--all of limited investigative value.

Yet the U.S. has failed to withhold its funding of the Special Committee.

Permanent Sovereignty Over National Resources in Judea, Samaria, and Gaza: Budget for Biennium 1984-1985: $83,800.

In 1972, the General Assembly requested the Secretary General to look at "the resources exploited by the Israeli colonies and the Israeli-imposed regulations and policies hampering the economic development of occupied Palestinian and other Arab territories." For this purpose, the U.N. Second Committee recommended that "field experts" be hired to prove the foregone conclusion of the investigation. This now is an annual exercise, which relies heavily on PLO sources of information. Complains Israel Eliashiv, the Israeli representative to the U.N. Fifth Committee, an economic issue thus is turned into a political one. The report, for example, ignores significant developments in agriculture in the Israeli-occupied territories and the relatively high living standard of Arabs there. The resolution calling for this report, 39/442, takes an extremely negative approach toward Israel's activities in the territories prior to examination of the facts.

The U.S. has failed to withhold any funds provided to the consultants involved in the report.

Living Conditions of the Palestinian People: Budget for Biennium 1984-1985: $70,300.

The most recent Secretary General's Report on this topic, A/40/373 of June 14, 1985, was in response to Resolution 39/169 of 1984 calling for an examination of "the deterioration of the economic and social conditions of the Palestinian people." The report, according to impartial experts, is biased and distorts data and statistics to indict Israel. Serious examination of the statistics reveals, moreover, that conditions of Palestinians in the occupied territories not only have not deteriorated but have improved since Israel took control in 1967. Yet this unbalanced report continues to aid the PLO's campaign at the U.N.

The U.S. has not withheld any of the report's funding.

Department of Public Information ("Question of Palestine"-related activities): Budget for Biennium 1984-1985: $513,900.

The DPI has conducted many programs and media-related activities on the question of Palestine through articles, press releases, newsletters, and pamphlets, particularly since 1982. Then in 1983, Resolution 38/58E, and in 1984, Resolution 39/49C instructed the DPI to cooperate and coordinate its activities with the Palestine Committee.

Resolution 38/58E requested the DPI to disseminate all information on the activities of the U.N. relating to Palestine, expand publications and audio-visual coverage of those activities, and publish newsletters and articles on what the resolution called "Israeli violations of the human rights of the Arab inhabitants of the occupied territories, and organize fact-finding missions to the area for journalists."

DPI also was told to disseminate information on the results of the International Conference on the Question of Palestine. DPI published a newsletter on the Conference in Arabic, English, French, and Spanish. A pamphlet containing the Geneva Declaration on Palestine and resolutions subsequently adopted by the General Assembly was issued in all the official U.N. languages. This year, DPI has published a booklet on the work of the Special Committee to Investigate Israeli Practices and plans also to publish a booklet entitled "Highlights of U.N. Activities on the Question of Palestine." It also intends to produce a short film on Palestine. DPI radio news broadcasts on the question of Palestine, meanwhile, were expanded in 1984 and 1985.[13] The U.S. withholds the equivalent of 25 percent spent by the DPI on the "Question of Palestine"-related activities.

U.N. Information Centers: Budget for Biennium 1984-1985: $24.5 million.

The PLO's message is broadcast throughout the world by the DPI via its U.N. Information Centers in 67 countries. These centers publicize each November 29 as the International Day of Solidarity with the Palestinian People. Under instructions from the General Assembly, DPI gives this day "the highest priority." The DPI's Mahmoud El-Said refuses to disclose the contents of the official reports on the DPI November 29 activities.

In Washington, D.C., the U.N. Information Center disseminates Palestine Committee films. The Palestine Information Office in

13. U.N. Document A/AC. 198/85.

Washington may also use the services of the U.N. Information Center, particularly the films, for its own propaganda purposes.[14] Other probable Washington users of DPI films are the Palestine Congress of North America, established in 1979 to serve as an umbrella group for more than 50 North American-based, pro-PLO organizations, the American Friends Service Committee (well known as pro-PLO), and various pro-PLO campus groups, especially at George Washington University. When Congressman Jack Kemp (R-NY) requested information on the use of DPI films on the Middle East, he was refused.

The U.S. does not withhold any funding of U.N. Information Centers. It is not clear how much of the Centers' funding is spent on "The Question of Palestine" activities, given their secrecy.

The Department for Technical Cooperation for Development: Budget for Biennium 1984-1985: $132,600.

This Department of the U.N. Secretariat has hired "consultants and general temporary assistance pertaining to the sovereignty over resources of the occupied Arab territories." This funding is a means of channeling aid to pro-PLO activists. It is mandated by the same resolution as the report regarding the permanent sovereignty over national resources in the occupied territories.[15]

The U.S. does not withhold funding for this activity.

Covering up U.N. outlays that help the PLO is so widespread that sketching a complete picture of the U.N.'s PLO activities is virtually impossible. Palestine Division Director Yogasundram admits, for example, that the entire Department of Conference Services provides various kinds of help to PLO conferences and seminars. The cost of sending delegates to Palestine Committee conferences, meanwhile, can be easily disguised as an expense not related to PLO activities. This is clear from the March 26, 1985, Summary Record of the Palestine Committee meeting held on March 21. It states that "because of financial constraints, representatives of the German Democratic Republic, Pakistan, Tunisia, and Yugoslavia, could attend the Asian Seminar (on Palestine) as members of the delegations of other U.N. committees, such as the Council for Namibia, the Special Committee on Decolonization, and the Special Committee Against Apartheid." The

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14. The PIO, funded by the PLO to the tune of about $200,000 per year, circulates PLO propaganda materials to U.S. government officials, has sponsored a weekly radio program, and gives frequent interviews to the media, including NBC's "Today Show," Cable News Network, National Public Radio, and others. It has offices at 818 18th Street, N.W., and 1337 22nd Street, N.W.

15. See U.N. Document A/C.5/38147.

documents state that "their costs should be charged against the budgets of those committees"--and not to any cost center linked to the PLO.[16]

In sum, with the exception of the Palestine Committee, the Palestine Division, and the Department of Public Information, the U.S. State Department has failed to withhold funding from U.N. agencies that support PLO-related activities--at least as far as can be determined from telephone communications with the State Department in the absence of written documentation.

THE PLO MISSION AT THE U.N. AND THE PLO PRESENCE IN THE U.N.

While the Department of State has stopped short of declaring the PLO to be a terrorist organization, Robert B. Oakley, Acting Ambassador at Large for Counterterrorism, told The Heritage Foundation that the State Department is "on a de facto 'special look-out'" in the case of any PLO member who applies for a visa to come to the U.S., "because so many PLO members turn out to be terrorists." Given the nature of the PLO, which has never renounced terrorism, the U.S. now should consider ordering that the PLO Mission in New York be closed.

The 1947 Headquarters Agreement between the U.S. and the U.N., codified as U.S. law P.L. 357 in 1947, states that "nothing in the Agreement shall be construed as in any way diminishing, abridging, or weakening the right of the U.S. to safeguard its own security." The roles of the PLO and Yassir Arafat in terrorist activities clearly are a threat to the security of the U.S. and its citizens. The murder of Leon Klinghoffer in the Achille Lauro hijacking confirms this--as do many other incidents.

The inherent foreign affairs power of the President under the Constitution, moreover, allows Ronald Reagan to close not only the PLO's observer mission to the U.N. but also the Palestine Information Offices in Washington. Whether any PLO offices' staffers are American citizens has no bearing on this.[17]

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16. U.N. Document A/AC.1931/SR.115, p. 4.

17. While the Constitution protects freedom of speech and of assembly, there is no unlimited right to work for, or make contracts with, a foreign entity. The right of the federal government to control commercial dealings with foreign parties was established in 1936 by the Supreme Court. See U.S. vs. Curtis-Wright Corporation, 299 U.S. 304 57 S.Ct. 216 81 L.Ed. (1936).

The 1947 Headquarters Agreement also gives the U.S. the right to regulate the activities of PLO members working for the U.N. Secretariat. It is difficult, however, to determine who in the Secretariat is a member of the PLO. Zehdi Terzi, the PLO's representative, told The Heritage Foundation that "members of the PLO fill the quotas of other Arab nations, such as Jordan." This matter merits further inquiry.

THE U.N. AS A MEGAPHONE FOR THE PLO

Media

The Division for Palestinian Rights in the Secretariat organizes meetings of journalists in cooperation with the DPI. A team of ten prominent journalists and media representatives from around the world visited Tunisia, Egypt, Jordan, and Syria from April 23 to May 11, 1984, to be educated on "The Palestine Question." The regional seminars for journalists on the question of Palestine were organized on June 4-7, 1984, in Vienna, Austria, where seventeen European journalists representing the press, radio, and television media participated. Fourteen journalists from various African nations participated in another seminar held at Arusha, Tanzania, August 28-31, 1984.

On February 5-8, 1985, a conference was held for journalists in the North American-Caribbean region at Bridgetown, Barbados, and another for Asian journalists, in Jakarta, Indonesia, from May 7-10, 1985. Latin American journalists met June 10-13 in Georgetown, Guyana.

At the Georgetown media seminar, for example, Yassir Arafat reiterated the PLO's determination to continue its "struggle and resistance to the hostile policies of Israel and the U.S."[18] At the same seminar, Rashleigh Jackson, Guyana's Minister for Foreign Affairs, stated that the seminar was part of a program of action drawn up by the Palestine Committee, thereby assisting "in the overall coordination of the strategies of the supports of the Palestinian cause all over the world." Israel was invited to participate in these media seminars but refused, not wishing to legitimize them.

The impact of all these activities is difficult to assess but cannot be denied. According to Tommy Koh, Singapore's Ambassador to the U.S. and its former U.N. representative, "If you were in Asia or Africa or Latin America 15 years ago and you asked people about the Palestinians, everyone looked puzzled. Today, students,

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18. Division for Palestinian Rights, Vol. VIII, Bulletin No. 6, June 1985.

intellectuals, and political activists in every country know about the Palestinian cause and sympathize with it. That's the result largely of the U.N. People are always underestimating the importance of the U.N. in altering perceptions."[19] Ambassador Koh told The Heritage Foundation that the PLO has virtually won the propaganda game in the U.N., which provides one-sided information on the Middle East.

Ambassador Koh also noted that he was appalled by the way the Western media covered the 1982 war in Lebanon. At a State Department conference on December 10, 1984, dealing particularly with the impact of the 1975 "Zionism is racism" Resolution, Ambassador Koh cited the West German press, which actually equated the Israeli's behavior in the 1982 war with the Nazis. This never would have happened, charged Koh,

> ...had the ground for such a comparison not been carefully prepared years ago by the United Nations when it equated Zionism with Racism. The corrupt arithmetic of the General Assembly has indeed become the "conventional wisdom" of international society--or at least of that part of international society which likes to think of itself as "enlightened" and "progressive." I believe, therefore, that I am justified in concluding that the impact of the Zionism as racism resolution has been enormous, and that, by serving to legitimize anti-Semitism, it continues to pose a major threat to the survival of Israel and the Jewish people.

Nongovernmental Organizations

The mobilization of U.N.-based nongovernmental organizations (NGOs) is one of the most significant recent successes in the PLO's effort to use the U.N. American NGOs seem particularly gullible. The U.N. and NGO Activities on the Question of Palestine, published by the Division for Palestinian Rights, outlines the spectrum of such activities. At the July 10-12, 1985, meeting of NGOs in New York, for example, PLO representative Terzi urged "consciousness raising" techniques such as polls and surveys to promote American identification with the Palestinian cause as defined by the PLO.

In 1983, the International Conference on Palestine held in Geneva extended invitations only to NGOs that were supportive of the PLO. By excluding some NGOs for political reasons, this conference violated Article 71 of the U.N. Charter.[20] In the aftermath of the

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19. The New York Times Magazine, September 16, 1984, p. 62.

20. For a detailed analysis of this episode, see Harris O. Schoenberg's forthcoming book, A Mandate for Terror: The U.N. and the PLO (New York: Steimatzki Publishing Company).

conference, there has been accelerated NGO activity throughout the world on behalf of the PLO.

A number of Soviet-linked NGOs play an active role in coordinating pro-PLO activities. Among them are the World Peace Council, the Women's International Democratic Federation, the World Federation of Democratic Youth, the International Organization of Journalists, the International Association of Democratic Lawyers, and the Christian Peace Conference. The Afro-Asian People's Solidarity Organization is particularly active.

CONCLUSION

The U.N. provides the PLO with financial support. More important, the U.N. anoints the PLO with legitimacy. Conferences, seminars, and meetings produce countless papers which are translated in many languages, broadcast, and distributed to opinion makers throughout the world. Palestine Committee members lobby inside the U.N. with foreign ministers and other dignitaries on behalf of the PLO. And nongovernmental organizations affiliated with the U.N. further disseminate the PLO's message. The U.N. Secretariat, through the Department of Public Information and the Palestine Division, produce films and pamphlets promoting the PLO. No matter that this violates the Charter's provision that the Secretariat be impartial--as well as the Charter provision that the integrity of member states (in this case, Israel) should not be compromised by actions of the U.N.

The U.S. at last should take strong measures to stop the U.N. from being exploited by the PLO. Specifically:

o The State Department should enforce vigorously current law requiring that the U.S. withhold its portion of all U.N. funds that support activities benefiting the PLO. This should include, for example, the expenses of the Special Committee to Investigate Israeli Practices, funds for consultants "investigating" the conditions of Palestinians in the territories of the West Bank and Gaza, and other hidden expenses.

o The U.S. should consider closing the PLO Observer Mission in New York City and the Palestine Information Offices in Washington, D.C.

o In conformity with Senate Joint Resolution 98 passed on August 15, 1985, which urges the U.S. Representative to the U.N. "to take all appropriate actions necessary to erase" the "Zionism is racism" resolution, the U.S. should seek to rescind the resolution in the General Assembly by requesting another vote to that effect.

o The U.S. Congress should hold hearings to determine the extent of PLO activities in the U.N.

o The State Department should enforce vigorously the amendment to the State Department appropriations bill introduced by Senator Nancy Kassebaum (R-KS) requiring the U.N. to introduce weighted voting on budgetary matters or else reduce the U.S. contribution to the U.N. to 20 percent. This measure also would allow greater U.S. leverage on the U.N. budget.

o The U.S. Congress should require General Accounting Office investigations as a prerequisite of further U.S. funding for the U.N. The U.S. should demand, for example that the DPI disclose information regarding the activities of U.N. Information Centers on issues related to the Middle East.

o The State Department should declare the PLO "a terrorist organization."

Juliana Geran Pilon, Ph.D.
Senior Policy Analyst

The Washington Times

DECEMBER 18, 1985

Meese may consider indictment of Arafat

By Bill Kritzberg
THE WASHINGTON TIMES

Attorney General Edwin Meese will receive evidence this week on which to decide whether Yasser Arafat, the leader of the Palestine Liberation Organization, can be indicted for the 1973 slaying of the American ambassador in Sudan.

Such an indictment of the PLO chairman on murder charges would be unprecedented. Those close to the investigation say the issue is so fraught with political risks that there will be no indictment.

The evidence on which the investigation was based was supplied to the Justice Department by Charles Lichtenstein, the former U.S. ambassador to the United Nations.

The Justice Department's criminal division has been asked to prepare a report evaluating evidence that Mr. Arafat ordered the execution of the late Cleo Noel, U.S. ambassador to the Sudan.

Mr. Noel, U.S. Charge d'Affaires George C. Moore and Belgian diplomat Guy Eid, were shot down when a group of eight terrorists seized hostages at the Saudi Arabian Embassy in the Sudanese capital.

According to Mr. Lichtenstein, the current U.S. ambassador to the United Nations, Vernon Walters, has said that many people spoke to Mr. Walters at the time of the assassination and told him that the U.S. government possessed a recording of Mr. Arafat ordering the executions.

At the time of the killings, Mr. Walters was deputy director of the Central Intelligence Agency. Mr. Walters was not available for comment yesterday and has been reported elsewhere to have made similar comments.

Mr. Lichtenstein expressed skepticism about the potential indictment of Mr. Arafat. "The probability is that the government will do nothing." But he said that he hoped that despite the political obstacles the government would indict.

At the time of the killings there were press reports that Mr. Arafat had spoken by radio phone from his headquarters in Beirut and was present when the order was given. These reports did not confirm outright whether Mr. Arafat had personally given the order.

As to the existence of the alleged tape recording of Mr. Arafat's conversation, Mr. Lichtenstein said that "all I have is evidence that such evidence exists." This is the evidence that is crucial to Mr. Meese's determination.

Robert Friedlander, an aide to Senator Orrin Hatch, Utah Republican, says there is enough circumstantial evidence in State Department cables, "some released, some still secret," to establish the probable cause necessary to indict the Palestinian leader.

But Mr. Friedlander said that even if the Justice Department established that such a case exists, it would be "a political matter, a diplomatic matter" as much as one of criminal law.

Another important issue in the case is whether the United States has legal jurisdiction in the matter. Mr. Friedlander says the jurisdiction issue appears to be of secondary importance because Mr. Noel was an ambassador and the issue, therefore, appears to fall within the purview of U.S. authority.

Political pressure has been mounting in favor of the indictment in recent days. Sen. William L. Armstrong and Sen. Charles E. Grassley, Republicans from Colorado and Iowa, respectively, have recently written the Justice Department urging the attorney general to determine whether criminal charges can be brought against Mr. Arafat.

Moreover, two major Jewish organization, the American-Israel Public Affairs Committee and the National Jewish Coalition, have urged Mr. Meese to indict Mr. Arafat.

THE NEW REPUBLIC
DECEMBER 30, 1985

A warrant for the PLO chief?

ARRESTING ARAFAT

JUST WHEN the Reagan administration thought it had hit upon a relatively painless approach to the problem of international terrorism, it finds itself juggling a hot potato. The new approach consists of treating terrorism as simple criminality and pursuing terrorists with the instruments of law enforcement. The hot potato is the proposal now bouncing around somewhere between the State and Justice departments to seek the arrest of Yasir Arafat.

There is considerable circumstantial evidence that Arafat was complicit in the hijacking of the *Achille Lauro*: he supplies funds to Abul Abbas's Palestine Liberation Front, and he conferred with PLF leaders several times during the weeks that the hijacking was being prepared. But this is not the crime for which the U.S. government is considering trying to arrest him. Instead, the State Department is reexamining the case of the murder of two American diplomats in Khartoum in 1973.

The reexamination has been spurred both by the new interest in using legal instruments against terrorism and by revelations that U.S. intelligence possesses a taped intercept of Arafat personally ordering the Khartoum murders. U.S. ambassador to the United Nations Vernon Walters recently confirmed in an interview with journalist Edwin Black that when he was deputy director of the CIA in 1973 he had been told of the existence of such a tape. Although he had not heard the tape himself (Arabic being one of those languages that the multilingual Walters does *not* speak), he said that the existence of the tape "was common knowledge at the time among all sorts of people in the government."

A warrant for Arafat is not likely to lead to his arrest. It would serve, though, to keep him out of the United States, and thus away from the U.N. In theory, it could also keep him out of countries that have extradition treaties with the United States, although judging from Italy's refusal to hold Abbas—a much smaller fish—it is hard to imagine that many of our allies would arrest Arafat on our behalf. The more important consequences would be symbolic. A warrant would signal the end of the notion that Arafat can be transformed into a genuine peacemaker. And because it would dismay some U.S. allies, it would show that the administration is willing to incur diplomatic costs in the interests of a serious counterterrorist policy.

THE KILLINGS in Khartoum occurred after eight terrorists seized hostages at a reception at the Saudi Arabian Embassy. The eight, who identified themselves as members of "Black September," demanded the release from prison of Sirhan Sirhan, the Baader-Meinhof gang, and a group of Fatah members being held in Jordan. When their demands were not met, the terrorists selected the three Westerners among the hostages—U.S. Ambassador Cleo Noel, Charge d'Affaires George C. Moore, and Belgian diplomat Guy Eid—and methodically machine-gunned them after first allowing them to write farewell notes to their families and then beating them.

A day later, the terrorists surrendered to Sudanese authorities after a lengthy round of transoceanic communications involving, among others, Arafat and the vice president of Sudan. Sudanese President Gaafar Mohammed Nimeiri, who took the operation as a galling affront to Sudanese dignity, went public at once with evidence showing that it had been run out of the Khartoum office of Fatah. The top Fatah official in Khartoum had fled for Libya the morning after the seizure, leaving behind in his desk drawer a written copy of the plans for the operation. His number two led the assault on the embassy.

It also soon emerged in numerous news reports that the command center for the operation was in Beirut, whence were transmitted both the order to kill the three diplomats and the subsequent order to surrender. Indeed, according to the Sudanese government, when the "executions" were not carried out promptly on deadline, a prodding message was transmitted: "What are you waiting for?"

A month later the *Washington Post* reported that Arafat "was in the Black September radio command center in Beirut when the message to execute three Western diplomats . . . was sent out last month, according to western intelligence sources." The *Post* reported that "Arafat's voice was reportedly monitored and recorded." The *Post* said that according to its sources it was unclear whether Arafat himself, or his deputy, Abu Iyad, "gave the order to carry out the executions. . . . But they have reports that Arafat was present in the operations center when the message was sent and that he personally congratulated the guerrillas after the execution. . . ."

The story, which was denied by a spokesman for Arafat, made less impact then than it might today because Arafat had yet to achieve the kind of respectability that he enjoyed after 1974, when the Arab League declared the PLO "the sole legitimate representative" of the Palestinian people and when Arafat made his triumphant appearance at the U.N. General Assembly.

And, in the avalanche of news on the Watergate scandals, the Arafat/Khartoum story was largely forgotten un-

til this year when the Reagan administration announced its new antiterrorism strategy, a strategy that at first seemed little more than a face-saving gesture. The administration hardly seemed serious when it announced after this summer's TWA hijacking that it had identified the individual perpetrators and was taking a warrant for their arrest. After all, any extradition request to Lebanon would have to be addressed to that nation's justice minister, Nabih Berri, the very man who had negotiated on behalf of the hijackers. But a few months later, when U.S. jets intercepted the four *Achille Lauro* hijackers over the Mediterranean and the U.S. government sought to secure custody from Italy of Abul Abbas, the policy began to look more substantial.

That, and rumors about the existence of the Arafat tape, about which Ambassador Walters subsequently confirmed his secondhand knowledge, inspired Charles Lichenstein, who served as a deputy U.S. representative to the U.N. under Jeane Kirkpatrick, to press the administration for legal action. Lichenstein, now a senior fellow at the Heritage Foundation, says, "Yasir Arafat is a criminal under both international law and U.S. law, and I believe he should be both identified and dealt with as a criminal."

The Justice Department says only that it has the matter "under review." Lichenstein, who has been pressing the matter for weeks, says that though he "remain[s] hopeful" about governmental action, "I'm not holding my breath." The Justice Department will not only evaluate the strength of the legal case against Arafat, it will also solicit the views of the State Department, whose Near East Bureau is sure to oppose action against Arafat. The bureau, which has day-to-day management of the American-sponsored Middle East peace process, has been working on the assumption that Arafat and the PLO must eventually play a part in it.

Lichenstein urges that if the case against Arafat is legally sound, the administration should pursue it "on principle." But he also denies that a conflict exists between the demands of principle and those of diplomacy. He acknowledges that the governments of Jordan and Egypt demand a role for the PLO in the peace process, but he says that those governments need "to come to grips with the fact that Arafat is a terrorist," and that even if Arafat wished to, "he cannot deliver the PLO" on behalf of peace. The PLO, he says, "is not the key to peace, but the greatest obstacle to it."

In a recent interview with *Insight* magazine, Arafat, with customary exaggeration, said about the Israeli raid on his Tunis headquarters, "I can't forget that the American administration, the American president himself declared his blessing to kill me." The question Lichenstein is raising is whether the president should forget that Arafat himself declared his blessing, and more, on the killing of two American diplomats.

JOSHUA MURAVCHIK

Joshua Muravchik is a fellow in residence at the Washington Institute for Near East Policy.

The Washington Times

JANUARY 2, 1986

DRAWING THE LINE

PAUL GREENBERG

One of these days the world is going to have enough — of 11-year-old girls slaughtered in airports, of 69-year-old stroke victims in wheelchairs shot full of holes and tossed overboard, and of all the other glorious victories of Palestinian heroes.

One of these days the world is going to have enough of the solemn idiocies mouthed at the United Nations in defense of such crimes, and of the excuses for not taking stronger action murmured within European chancelleries and the American State Department.

One of these days the world will cease to tolerate the oh-so-reasonable ways of disguising bloody madness as some kind of holy cause, and murder as a regrettable but understandable — meaning tolerable — incident.

One of these days the United States may issue a warrant not just for the arrest of an underling like Mohammed "Abu" Abbas, the hero of the *Achille Lauro* affair, but for his boss — Yasser Arafat. One of these days that well-known visage may be featured not at papal audiences and other international receptions but on wanted posters.

Specifically, Yasser Arafat should be arrested in connection with the murder of Ambassador Cleo Noel, Charge d'Affaires G. Curtis Moore, and Guy Eid, a Belgian envoy, at Khartoum in 1973, by Black September, one of the numerous subsections of the Palestine Liquidation Organization. The PLO's terrorist-in-chief should have been nabbed in connection with these murders the moment he stepped on the tarmac to attend a meeting of the United Nations shortly thereafter. Instead, he was lionized at the U.N., that theater of the absurd where the terrorists are honored and the victims assailed.

One of these days the evidence implicating the Palestine Liquidation Organization and specifically its chairman in those murders may come out in a court of law. The State Department cables indicating that the seizure of the embassy at Khartoum was planned and carried out at Yasser Arafat's direction, a transcript of the telephone conversations between the killers and their leader... all the evidence indicates that Yasser Arafat himself gave the order to kill those three hostages at Khartoum. He certainly deserves his day in court. So does the world.

One of these days the world will mobilize the legal machinery already in place to defend innocents like Natasha Simpson, 11, and Leon Klinghoffer, 69, and all the others slain over the years. Leon Klinghoffer's widow now has filed a civil suit against the PLO, a welcome move in the absence of any action where there should have been a lot — in this country's criminal courts. Perhaps most useful of all, a criminal warrant against its leader would strip away the facade of respectability that the Palestine Liquidation Organization hides behind.

Why chase after the small fry but let the big fish go?

One of these days European nations may no longer recognize the PLO as some kind of legitimate political organization and grant it diplomatic privileges — even to the point of allowing someone like Mohammed "Abu" Abbas safe passage in the aftermath of the act of piracy he seems to have masterminded. Instead, countries like Italy will see the PLO for what it is and break relations.

The PLO and its apologists claim that its crimes are the doing of lone crazies with no tie to distinguished statesmen like Messrs. Arafat and Abbas. But one of these days the world may wake up.

One of these days nations that grant terrorists refuge and even training — Libya, Syria, and Iran, to start with — will be quarantined by the civilized world and the decent opinion of mankind: no trade, no aid, no excuses.

These latest massacres at Rome and Vienna are no isolated incidents; they're not one of a kind but part of an all-too-familiar pattern that goes back decades — to raids on Israeli settlements, buses, and, yes, schools and nurseries; to the hijackings of airliners and murders of Olympic athletes. This long, bloody record will continue until one of these days, when the world has had enough and takes action and treats murder as murder, not as just another regrettable-but-understandable incident. Otherwise, what happened at Rome and Vienna will fade with the screams of the dying, and be followed by still other horrors.

One of these days the world will have to make a choice between terrorism and its own safety and self-respect, for the list of victims goes far beyond their families or countries.

One of these days the world will have to make a choice between terrorism and its own safety and self-respect, for the list of victims goes far beyond their immediate families or their countries. It includes the law of nations. The modern world seems to have forgotten what was clear enough to the ancient Greeks. In the words of Euripides:

Know you are bound to help all who are wronged.

Bound to constrain all who destroy the law.

What else holds state to state save this alone,

That each one honors the great laws of right.

Surely it is not considerations of Realpolitik or narrow definitions of national interest that in the end hold the world together; too often, they have only divided and destroyed. There must be something else, and Euripides defined it as well as anyone: the great laws of right, without which civilization, too, is slaughtered. That's something the great nations, always jockeying for position and favor, seem to have forgotten. Instead of sending out orders and troops, they send cursory statements of regret ... and await the next outrage, which is sure to come, given an absence of meaningful action.

Do you think the State Department has a standard form for such murderous occasions, so its spokesmen need only fill in the blanks with the names of the latest victims? It was a great day when, in the wake of the *Achille Lauro*, the United States dispatched not a note of protest but the U.S. Navy. If only that were the rule and not the growing exception.

One of these days the civilized world will have enough and fight back — together.

Maybe.

Paul Greenberg is editorial page editor of the Pine Bluff (Ark.) Commercial *and a nationally syndicated columnist.*

The Washington Post

January 3, 1986

Charles Krauthammer

Arafat's Children

Fifteen innocents died in Palestinian terror attacks on Rome and Vienna airports last week. Who killed them?

Yasser Arafat undoubtedly did not order these attacks. Abu Nidal, leader of a breakaway faction of the PLO, almost certainly did. Arafat has deplored the whole affair, and some, like the Austrian government, made absolving him their first post-massacre order of business.

It won't wash. It is time, after two decades of Palestinian terror, for Palestinian leaders to take responsibility—"credit" they used to call it in the days when they openly embraced terror—for the monsters they have created.

In its 20 years, the PLO fashioned a cult of righteous violence, an ideology of terror. Terror was not only justified as a military necessity but glorified as a reclamation of Arab dignity. Attacks on civilians were accorded the language of war. Victims were called "targets," killers "commandos," murder "an operation." All was reported in a "communiqué." Indeed, Arafat's greatest achievement—to the sorrow of his suffering people, his only achievement—is to have made terror respectable. He brought it to Western capitals, where it earned acquiescence, to the podium of the U.N., where it drew applause, and to young Palestinians, where it shaped the imagination of a generation.

Now, it seems, Arafat has had enough. He now declares, before the right audience, that he wants to turn the terror off. But he can't. Barbarism springs up again in Rome and Vienna, and Arafat now piously deplores it.

But after all, who are these new young killers if not his disciples, determined to follow his original gospel, not his late revisionism? From whom, after all, did the PLO "splinter groups" learn to hijack and murder? Where does Abu Nidal, once the PLO's man in Baghdad, now carrier of the tradition that Arafat has wearied of, come from—if not from the cult of terror that Arafat developed over two decades?

At every level, Arafat's new found renunciation of terror rings hollow. First of all, in large part, the renunciation is a lie. The PLO denied involvement in the Achille Lauro affair and the murder of three middle-aged Israelis on a yacht in Larnaca, Cyprus. Like the "Black September" Munich Olympics massacre (also reputedly and conveniently carried out by a PLO "offshoot"), these attacks were, in fact, directed by Arafat's PLO.

Moreover, Arafat makes clear that his nonterrorism stance, such as it is, is just a tactic. Terror has now become a diplomatic inconvenience. But there is no repudiation of terror in principle. No condemnation of past terrorist acts. No theory to explain why the murder of innocents is wrong, rather than just bad public relations.

How can there be? Arafat's post-Achille Lauro "Cairo declaration" opposes terrorist attacks—except if they take place in Israel. The wrongness of terror is purely a matter of geography, not morality. If so, if forswearing terror is a matter of tactics, not principle, then it is inevitable that other Palestinians will come to different tactical conclusions. They evidently did in Rome and Vienna.

The sanctity of life is not a major PLO theme. Farouk Kaddoumi, Arafat's "foreign minister," spoke last month at a U.N. lunch attended by the U.N. secretary general. He said this of Leon Klinghoffer: "Perhaps it might be his wife [who] pushed him over into the sea to have the insurance. Nobody even had the evidence that he was killed." What are the murderers of Vienna and Rome responding to if not a lifetime of such lessons in cynicism?

Lessons thoroughly learned all over the Arab world. Last October an Egyptian policeman opened fire on Israelis vacationing in the Sinai. He murdered seven, including four children. An Egyptian court sentenced him to life imprisonment. The Egyptian opposition held large demonstrations calling for the release of the "hero of Suez." The National Assembly of Kuwait—"moderate" Kuwait—demanded that he be not just freed but honored for having "restored to the Arab people some of its dignity."

To call the murders at Rome and Vienna senseless is mere intellectual laziness. They were not. In a political culture where the existence of Israel is in itself an act of aggression, and the murder of Israeli children is a restoration of national dignity, what happened at Rome and Vienna is perfectly logical. When one of the surviving Vienna terrorists was asked why he attacked so many innocent people, he had his answer: "Because it is Israel. We kill Israel." QED.

Only a few years ago Arafat took "credit" for such acts. Even now, so long as they take place in Israel, he still takes credit. Today, however, regarding murder in Rome and Vienna, he plays the innocent. He is too modest. He deserves the credit here, too. That the godfather of modern terrorism may now equivocate on the subject is a diplomatic nicety. It is also a historical irrelevancy. His work is done. His children carry on.

The Washington Times

FRIDAY, FEBRUARY 7, 1986 / PAGE 9A

Meese decision awaited on indictment of Arafat

By Bill Kritzberg
THE WASHINGTON TIMES

Attorney General Edwin Meese is expected to decide soon whether to seek an indictment against Palestine Liberation Organization chief Yasser Arafat for his alleged role in the 1973 deaths of three diplomats in Khartoum.

The Department of Justice's criminal division has been investigating charges that Mr. Arafat ordered the assassination of U.S. Ambassador to the Sudan Cleo Noel in 1973, as well as those of U.S. Charges D'Affaires George C. Moore and Belgian diplomat Guy Eid. The three were shot when terrorists seized hostages at the Saudi Arabian Embassy in the Sudanese capital.

Pressure has been mounting on Capitol Hill for action in recent weeks. Roughly a third of the members of the Senate have signed a letter urging Mr. Meese to speed up the investigation. Support for the letter has been gathering daily and the letter is expected to be sent to the attorney general next week.

The letter says in part that the allegations against Mr. Arafat "leave little doubt that a warrant for Arafat's arrest should be issued and a criminal indictment filed against him."

The signatories include Sens. Paul Laxalt of Nevada and Orrin Hatch of Utah, both Republicans, and Democratic Sens. Edward Kennedy of Massachusetts and Carl Levin of Michigan.

Groups urging the indictment include the American-Israel Public Affairs Committee and the National Jewish Coalition. They believe that certain administration officials, worried about the diplomatic fallout on the peace process in the Middle East, are trying to pressure the Justice Department to drop the investigation.

The letter addresses this issue of political pressure, saying, in part, "to allow other factors to enter into this decision is to make a mockery of our laws and our stated commitment to eradicate terrorism."

The Senate letter quotes a speech last July by President Reagan, who said, "We will seek to indict, apprehend and prosecute" terrorists.

Earlier this week, Attorney General Meese was quoted as saying, "We will be making a decision [on the matter] soon." A spokesman for the attorney general said Wednesday the Arafat investigation was under active consideration but refused to comment on the timing of a final decision.

While the issue of Mr. Arafat's indictment was being examined here, reports from the Jordanian capital indicate that Mr. Arafat has handed King Hussein three new proposals on the Palestinian right to self-determination. Proposals were submitted to help pave the way for an international conference on the Middle East.

Hani El Hassan, Mr. Arafat's political adviser, said the PLO chief submitted the proposals to King Hussein at a meeting Wednesday, and that both Jordan and Egypt were now in touch with the United States to try to work out a compromise formula based on this new initiative.

He said the proposals were aimed at directing the focus of any international conference on the Palestinian people's rights in general, rather than treating the issue strictly as a refugee problem.

The PLO has rejected the U.S. demand that it recognize United Nations Resolution 242 prior to any international conference, arguing that it treats the Palestinian issue only as a refugee problem. The resolution also implicitly recognizes Israel.

Mr. El Hassan also said U.S. State Department adviser Wat Cluverius, who is in Amman, was following the discussions closely and had "made contact with different parties."

This story is based in part on wire service reports.

The Washington Post

THURSDAY, FEBRUARY 13, 1986

Senators Urge U.S. to Indict Arafat in Diplomats' Deaths

By Howard Kurtz
Washington Post Staff Writer

Forty-four senators asked Attorney General Edwin Meese III yesterday to consider indictment of Palestine Liberation Organization chairman Yasser Arafat for the murders of two U.S. diplomats on May 2, 1973.

However, senior Justice Department officials have tentatively concluded no prosecution should be brought because the United States does not have legal jurisdiction to indict Arafat in the case, according to department sources. They said no final decision has been made.

According to a letter to Meese from Sens. Frank R. Lautenberg (D-N.J.) and Charles E. Grassley (R-Iowa), evidence collected by the Justice Department indicates that Arafat may have ordered the killings of Cleo Noel, U.S. ambassador to the Sudan, and Charge d'Affaires G. Curtis Moore.

The department's criminal division has been examining charges that Arafat ordered the assassinations. Some Jewish organizations have urged an indictment.

But department sources said officials have concluded that the United States probably lacks legal authority to indict Arafat for acts committed in another country. While laws passed over the last decade have increased the department's authority to prosecute terrorist killings of Americans abroad, the sources said, officials determined that they could not apply those laws retroactively to the 1973 murders.

Noel, Moore and Belgian diplomat Guy Eid were shot to death by eight terrorists who seized the Saudi Arabian Embassy in the Sudanese capital, Khartoum. The terrorists, calling for release of Robert F. Kennedy's killer, Sirhan Sirhan, later surrendered and were identified as members of Black September, a PLO fringe group.

In a letter signed by 42 colleagues, Lautenberg and Grassley cited newspaper reports alleging that Arafat was in the Black September radio command center in Beirut when the killings were ordered. Although the senators said it remains unclear whether Arafat instructed the terrorists by radio, the newspaper reports said he offered congratulations after the executions.

The senators also cited reports that U.S. officials have a copy of a tape recording in which Arafat or someone in the PLO command post ordered the murders by radio. "These allegations, if substantiated, leave little doubt that a warrant for Arafat's arrest should be issued," they said.

But department sources said officials there have been unable to confirm the tape's existence.

The Washington Post

Tuesday, April 22, 1986

Prosecution Of Arafat Rejected

Insufficient Evidence, Justice Dept. Says

By Howard Kurtz
Washington Post Staff Writer

The Justice Department notified Congress yesterday that it does not plan to seek prosecution of Palestine Liberation Organization chairman Yasser Arafat for the murders of two U.S. diplomats on May 2, 1973.

Forty-four senators asked the department in February to consider such a prosecution, but Assistant Attorney General John R. Bolton told them in a letter that Arafat could not be prosecuted because the United States lacks legal jurisdiction and sufficient evidence.

While laws passed over the last decade have increased the department's authority to prosecute terrorist killings of Americans abroad, Bolton told the senators that applying those laws retroactively to the 1973 murders would violate the Constitution.

Without those laws, Bolton wrote, "There is no statutory authority upon which to predicate a prosecution such as the one you suggest."

The Senate letter, initiated by Sens. Frank R. Lautenberg (D-N.J.) and Charles E. Grassley (R-Iowa), said evidence indicated that Arafat may have ordered the killings of Cleo Noel, U.S. ambassador to the Sudan, and charge d'affaires G. Curtis Moore.

They were shot to death by eight terrorists, who were identified as members of the PLO fringe group Black September and who seized the Saudi Arabian Embassy in the Sudanese capital, Khartoum.

Bolton said that "although much has been alleged about evidence implicating Arafat . . . the evidence currently available from key departments and agencies within our government and from other sources is insufficient for prosecutive purposes."

Even if a case could be brought, he said, "critical national security information would be irreparably compromised if we disclosed during litigation the nature of our searches for evidence."

Lautenberg and Grassley issued a statement which said that "a strong argument could be made that the department had jurisdiction to go after Arafat if it had the political will."

THE SUN

BALTIMORE, MARYLAND

TUESDAY, APRIL 22, 1986

U.S. won't seek to indict Arafat for Sudan killings

WASHINGTON (AP) — The Reagan administration has decided against seeking the indictment of Palestine Liberation Organization Chairman Yasser Arafat in connection with the 1973 slayings of two U.S. diplomats in the Sudan, the Justice Department disclosed yesterday.

In a letter to the U.S. Senate, the department said that it would be unconstitutional to seek the indictment of the PLO chief because the law providing for federal criminal liability for the murder of U.S. diplomats abroad was not passed until 1976.

The Constitution prohibits applying a law to conduct which was not criminal before enactment of a statute.

"We have concluded with regret that the United States does not have legal jurisdiction to prosecute any person for these crimes," said the 1½-page letter.

In addition, it said, "the evidence currently available from key departments and agencies within our government and from other sources is insufficient for prosecutive purposes."

Forty-four senators asked Attorney General Edwin W. Meese III Feb. 12 to consider indicting Mr. Arafat for the slayings of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore.

The senators have cited numerous published reports that Mr. Arafat was in the Black September radio command center in Beirut, Lebanon, when the killings were ordered. The reports have said that U.S. officials have a copy of a tape recording in which Mr. Arafat or someone in the PLO command post ordered the killings.

The Justice Department letter does not refer to any tape recording, but it does say that "critical national security information would be irreparably compromised if we disclosed, during litigation, the nature of our searches for evidence."

DISPOSITION:

MEESE: NO INDICTMENT AGAINST ARAFAT

(By LORI SANTOS)

WASHINGTON (UPI) _ Attorney General Edwin Meese has decided the United States does not have the authority or enough evidence to seek an indictment of PLO chief Yasser Arafat for the 1973 murders of two U.S. diplomats in the Sudan.

Despite recent claims by President Reagan and Meese that the administration will vigorously "seek to indict, apprehend and prosecute" terrorists, spokesman John Russell said Meese decided not to ask a grand jury to charge Arafat because U.S. laws at the time were not applicable and officials "could not locate" a key piece of evidence allegedly linking him to the deaths.

Sen. Frank Lautenberg, D-N.J., one of 45 senators who had urged Meese to seek the indictment, said he was disappointed by the decision Monday, and that the Justice Department's investigation was "inexcusable."

The department had been investigating charges that the Palestine Liberation Organization chief ordered the deaths of Cleo Noel, the U.S. ambassador to the Sudan, George Moore, the U.S. charge d'affaires, and Belgian diplomat Guy Eid.

The three were shot by terrorists who seized hostages at the Saudi Arabian Embassy in the Sudanese capital of Khartoum.

In a letter sent to senators, John R. Bolton, assistant attorney general, said, "After a careful review of material submitted to the Department of Justice on this tragic incident and as a result of extensive legal and factual research ... we have concluded with regret that the United States does not have legal jurisdiction to prosecute any person for these crimes."

Bolton said U.S. laws that now could be applied to prosecute Arafat for the murder of U.S. citizens abroad were not in effect at the time, and retroactive application would violate the ex post facto clause in the Constitution.

Russell said department officials also "could not locate" a crucial piece of evidence _ a tape recording of Arafat allegedly making a telephone call from his Beirut headquarters to give the command to execute the diplomats.

"The evidence currently available from key departments and agencies within our government and from other sources is insufficient for prosecutive purposes," Bolton said.

Russell said the department could not find a copy or transcript of the tape that reportedly recorded Arafat telephoning a terrorist at the embassy and telling him "Cold River" _ the command to execute the hostages.

At the time of the shootings, it was reported the Sudanese government turned the "Cold River" tape over to the United States, and there were charges of a cover-up by the CIA and U.S. officials.

Lautenberg said, "A strong argument can be made that the department had jurisdiction to go after Arafat if it had the political will.

"And the Justice Department's failure to make an exhaustive search for evidence of Arafat's complicity in the 1973 murders is inexcusable."

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Senator DENTON. I now call on the Honorable Frank R. Lautenberg, U.S. Senator from New Jersey.

Welcome.

STATEMENT OF A PANEL CONSISTING OF HON. FRANK LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY; AND HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator LAUTENBERG. Thank you, Mr. Chairman. I commend you for holding this hearing, and also for your vigorous stand against terrorism. I am grateful that I have the opportunity to share this panel with my distinguished colleague, Senator Grassley, with whom I have been working very closely on this particular matter.

Terrorism is emerging as the scourge of the 1980's. With Americans increasingly victimized by terror, the search for an adequate response intensifies. No single strategy, including a legal approach, can wipe terrorism from the face of this Earth.

Military retaliation could be an appropriate and effective response to terrorism, as we have seen in the last week. I supported the President's decision to strike back at Libya for the murder and injury of innocent Americans.

But the military approach cannot be used in every instance, nor should it be used indiscriminately. Economic action must be attempted in concert with other countries to be effective. It often fails, unfortunately, due to a lack of response from our allies.

Mr. Chairman, I support legal action against terrorism, wherever possible. Use of our legal arsenal requires minimal cooperation from our allies and is nonviolent. The legal system can be directed precisely at those involved in terrorist activity.

Today, I would like to address three ways in which our legal system can be used in the fight against terrorism. First, we can make clear our commitment to vigorously prosecute all terrorists whenever they commit crimes against Americans.

Second, we can use the power of RICO to prosecute terrorist organizations through their leadership. Third, we can deny terrorist organizations a base in this country by requiring them to register under criminal laws which disclose their activities.

First, I would like to address our commitment to prosecute terrorists under existing criminal law. President Reagan has supported the vigorous use of legal remedies against terrorists.

In address to the American Bar Association he said, and I quote:

> We must act against the criminal menace of terrorism with the full weight of the law, both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks.

But in my view, the Justice Department failed to make good on that promise when it did not pursue an indictment of Yasser Arafat for the murder of two American diplomats in the Sudan in 1973.

Senator Grassley and I, along with 42 other Senators, urged the Justice Department to give the investigation of Arafat for these murders the highest priority, and to indict him if the evidence of his involvement were found.

But the Justice Department decided not to pursue Arafat for these crimes. It cited a 1976 law giving our courts clear authority to prosecute terrorists for the murder of U.S. diplomats abroad, but it argued that applying the 1976 law retroactively to a 1973 crime would violate the ex post facto clause of the Constitution.

I disagree. A strong legal argument can be made that this law gives us the authority to go after Arafat, if we only had the political will. The ex post facto clause was designed to prevent a person from being charged with a crime which he did not know was criminal at the time of the act. It assures the accused fair warning of the criminality of his act.

But no one can seriously pretend that Yasser Arafat lacked fair warning that his actions were criminal when done. Murder has been a crime for thousands of years all over the world. So the ex post facto clause was simply a convenient escape hatch for those who chose not to prosecute Yasser Arafat.

The Justice Department's admitted failure to make an exhaustive search for evidence of Arafat's complicity in the 1973 murders is equally inexcusable. The Justice Department's explanation for this failure was that it must use its resources for investigations of more recent terrorist attacks.

Does the Justice Department truly believe that a 13-year-old murder is less deserving of prosecution than one committed last year? Our legal system does not see it that way. That is why there is no statute of limitations in the prosecution of murder.

More important, Attorney General Meese has said:

> Various elements of the PLO and its affiliates are in the thick of international terror. The leader of the PLO, Yasser Arafat, must ultimately be held responsible for their actions.

If this failure to prosecute is really a problem of insufficient resources, as Justice suggests, there is an easy solution. I doubt that there is a single Member of Congress who would not approve additional funding or additional personnel for the Justice Department to prosecute the murder of Americans.

Mr. Chairman, it is critical that this decision not set a precedent for turning our backs on the prosecution of terrorists. Indictments can send a potent message to terrorists that we intend to go after those who murder our citizens in cold blood. No terrorist should escape prosecution because of his political connections.

Now, let me turn to another law that can be used to prosecute terrorist organizations. That law is the Federal Racketeering-Influenced and Corrupt Organizations statute, called RICO.

A RICO prosecution allows a prosecutor to focus on the overall makeup, methods, and functions of a particular criminal organization. Under RICO, the prosecution can focus on an organization's leadership to demonstrate the leadership's use of criminal activities to further the organization's purpose.

RICO makes it illegal for a person or a group associated with an enterprise to participate in the enterprise through a pattern of racketeering. Under RICO, a pattern of racketeering is simply the commission of a series of crimes, like any murder, kidnaping, arson, or threats of those crimes.

The PLO's long association with kidnaping and murder of innocents easily qualifies as a pattern of racketeering. RICO violators can be imprisoned for 20 years, assessed large fines, and be required to forfeit all proceeds of illegal activities. The Government can also seek to dissolve the organization or to limit its activities.

A successful criminal prosecution could take a lot of the wind out of the PLO. And, you can be sure, it would significantly interfere with its terrorist activities. RICO is a familiar tool to U.S. prosecutors. It has been used by the Federal Government against terrorist organizations in the United States.

RICO ought to be carefully considered for use in the legal fight against terror.

Yet another way to ferret out terrorism is to use our laws to keep track of organizations that can be a base for terrorist activity here in America. Many people are unaware that the PLO has had an information office right here in the capital since 1978.

The office is registered with the Justice Department under the Foreign Agents Registration Act, but it has failed to register under section 2386 of the Criminal Code, known as the Voorhis Act.

The Voorhis Act requires organizations to register separately with the Attorney General if one of their purposes is the seizure or overthrow of a government by the use of force, violence, military measures, or threats.

Now, the Palestinian National Covenant, reaffirmed every year since 1968, states that the armed struggle is the only way to destroy Israel and so liberate Palestine.

In its foreign agent registration statement, the Palestine information office admits that it is financially supported by the PLO, to the tune of $280,000 a year. Therefore, it is under foreign control for the purposes of the statute, and it can be assumed to subscribe to the aims of the organization that supports it.

Registration under the Voorhis Act would require a detailed statement of the assets of each part of the organization and how they were acquired, and a detailed description of the organization's activities.

The fear that this Washington office could be used as a base for terror is not farfetched. According to the New York Times, PLO offices in 18 non-Communist countries are now under close scrutiny by European intelligence and security officials to ensure that they do not serve as terrorist bases. Although their self-described purposes are cultural, political, and educational.

But according to the Director General of the Israeli Foreign Ministry, people attached to the PLO offices in Europe were preparing a support structure for terrorist operations.

They recruited, they rented safe houses, they provided identity documents, chose potential targets, and collected operational intelligence. With such questions about the PLO offices in Europe, can the PLO office in Washington be so different?

It, too, says its purpose is cultural, educational, and political, like the suspected European offices. Its former head, Haptem Hassein, is a member of the PLO executive committee.

So we should not take that chance. The office should register under the law or pay the penalty. I urge the Justice Department to

pursue this issue with the Palestine Information Office in Washington.

I have outlined some of the legal tools already in our antiterror arsenal. In the future, we must use the law to fight those who operate outside of it.

I appreciate, Mr. Chairman and members of the committee, this opportunity to express my views. I ask that a copy of the letter that Senator Grassley and I and 43 other Senators wrote to the Attorney General on the matter of the investigation of Yasser Arafat for the murder of the American diplomats, along with a copy of the Justice Department's response, be included in the record of this hearing.

Senator DENTON. Without objection, it is so ordered.

[Senator Lautenberg's submissions for the record follow:]

FRANK R. LAUTENBERG
NEW JERSEY

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United States Senate

WASHINGTON, D.C. 20510

February 12, 1986

The Honorable
Edwin Meese III
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

We understand that the Department of Justice has received information linking PLO leader Yasser Arafat to the brutal 1973 slaying of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore in Khartoum, Sudan.

The material is reported to include various State Department cables that may confirm Arafat's role in the murders. It is also reported to include an assertion that the U.S. government has a tape recording of an intercepted message in which Arafat allegedly ordered the assassination of Ambassador Noel and Charge d'Affaires Moore, who were taken hostage when Palestinian terrorists seized the Saudi Arabian Embassy in Khartoum in March 2, 1973.

As you know, press reports indicate that the eight terrorists involved in the incident identified themselves as members of Black September. They demanded the release from prison of Sirhan Sirhan, the Baader-Meinhof gang, and a group of Fatah members being held in Jordan.

Press reports indicate that when their demands were not met, the terrorists selected the three Westerners among the hostages -- U.S Ambassador Cleo Noel, Charge d'Affaires G. Curtis Moore, and Belgian diplomat Guy Eid, and machine-gunned them after first allowing them to write farewell notes to their families and then beating them. A day later, the terrorists surrendered to Sudanese authorities after a lengthy round of transoceanic communications involving, among others, Arafat and the Vice President of Sudan.

Press reports indicate that Sudanese President Gaafar Mohammed Nimeiri went public at once with evidence showing that the operation had been run out of the Khartoum office of Fatah. One month after the slayings, the Washington Post reported that according to Western intelligence sources, Arafat was in the Black September radio command center in Beirut when the message to execute three Western diplomats was sent out. The Post also

reported that Arafat's voice was monitored and recorded. Although according to the Post's sources, it was unclear if Arafat himself or his deputy gave the order to carry out the executions, Arafat reportedly was present in the operations center when the message was sent and personally congratulated the guerillas after the execution.

These allegations, if substantiated, leave little doubt that a warrant for Arafat's arrest should be issued, and a criminal indictment filed against him. To allow other factors to enter into this decision is to make a mockery of our laws and our stated commitment to eradicate terrorism. As President Reagan told an American Bar Association convention this July, "we will seek to indict, apprehend, and prosecute" terrorists.

We understand that this matter is presently under review at the Justice Department. We urge the Justice Department to assign the highest priority to completing this review, and to issue an indictment of Yasser Arafat if the evidence so warrants. We would also ask that you keep us advised of the progress of your investigation.

Sincerely,

CHARLES E. GRASSLEY

FRANK R. LAUTENBERG

PAUL LAXALT

EDWARD M. KENNEDY

ORRIN G. HATCH

PATRICK J. LEAHY

STEVEN D. SYMMS

DENNIS DeCONCINI

PAUL SIMON

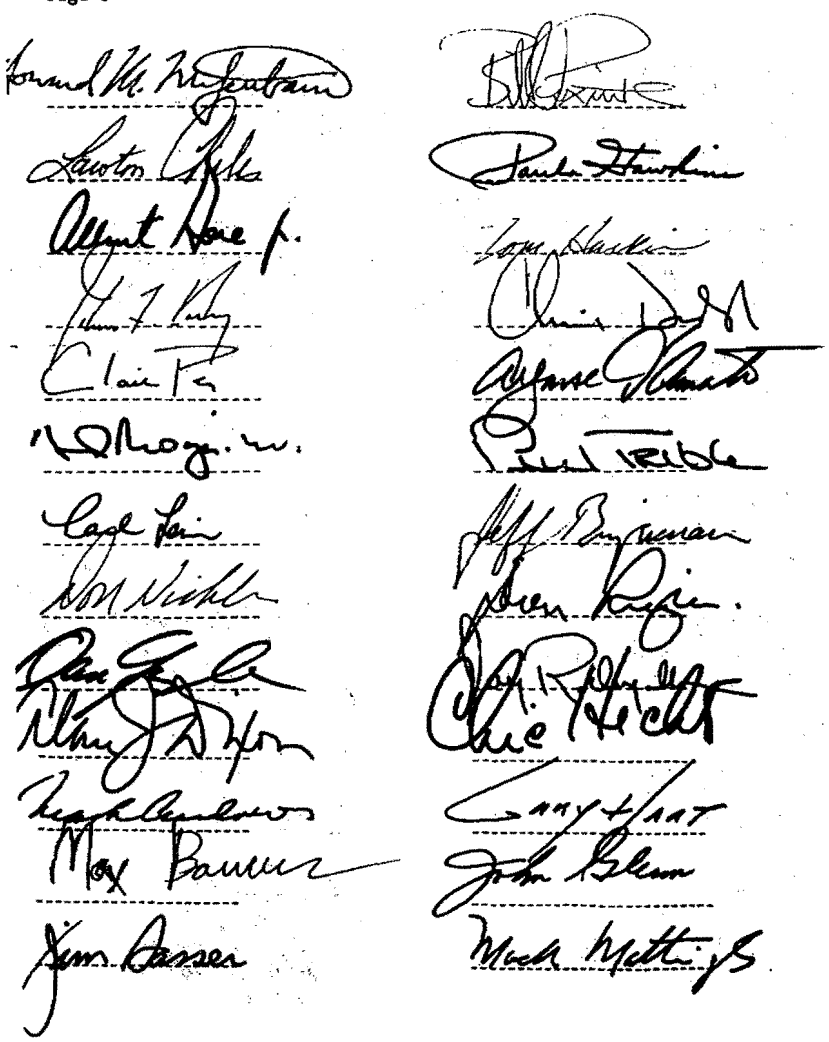
MITCH McCONNELL

JEREMIAH DENTON

JOHN P. EAST

JOSEPH R. BIDEN

ALAN CRANSTON



The Honorable Edwin Meese, III
February 12, 1986
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[Arlen Specter] [Frank H. Murkowski]

[Strom Thurmond]

[Paul Sarbanes]

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WASHINGTON, D.C. 20510

February 12, 1986

The Honorable
Edwin Meese III
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to enclose a number of memoranda that have been provided to my office that may be helpful to you in your consideration of a criminal action against Yasser Arafat.

I have enclosed a copy of a January 31, 1986 memorandum prepared by attorneys Harris Weinstein and others at the law firm of Covington and Burling on a pro bono basis. This memorandum concludes that the ex post facto clause of the Constitution does not bar prosecution for the murder of Ambassador Noel and Charge D'Affaires G. Curtis Moore under 18 U.S.C. § 1116.

I have also enclosed a January 13, 1986 memorandum, with an attachment, prepared by Irvin Nathan of the law firm of Arnold and Porter which concludes that the federal Racketeer Influenced and Corrupt Organizations statute ("RICO"), 18 U.S.C. § 1961, might allow an indictment related to the Noel and Moore murders even if the ex post facto clause were found to bar prosecution under 18 U.S.C. § 1116.

Finally, I have enclosed a copy of a memorandum prepared by Robert L. Weinberg, Co-Chair of the Commission on Law and Social Action of the American Jewish Congress, National Capital Region, which further reinforces the value of a grand jury investigation to ferret out facts relating the criminal responsibility under U.S. law of the PLO and its leadership for the Achille Lauro hijacking as well as the Noel murder and other terrorist actions.

I hope that you will review these memoranda carefully prior to deciding whether or not to seek a criminal indictment of Yasser Arafat. Please keep me informed of the status of your investigation.

Sincerely,

Frank R. Lautenberg

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United States Senate

WASHINGTON, D.C. 20510

March 20, 1986

The Honorable
Edwin Meese, III
Department of Justice
Washington, D.C. 20530

Dear Attorney General Meese:

We are writing to follow up on the letter, signed by 43 of our colleagues, urging you to assign the highest priority to investigating the case against Yasser Arafat for the murder of Ambassador Noel and Charge d'Affaires Moore.

We would like to bring to your attention several pieces of information in connection with your investigation of PLO Yasser Arafat's involvement in the murder of Ambassador Noel and Charge D'Affaires Curtis Moore. This information suggests that the Justice Department should make an exhaustive effort to locate all evidence connecting Yasser Arafat to this crime.

First, we have enclosed a copy of the August 1975 document "Decisionmaking, Bargaining, and Resources(U)". On page 94 of that document, the authors state, in reference to the murders in Khartoum, Sudan, " In fact, it is known that Salah Khalaf, the leader of the BSO, was responsible for this mission. Moreoever, it was approved of by Yasir Arafat, chairman of the PLO and head of Fatah." A footnote to that sentence states," Arafat's subsequent denial of participation in the operation must be noted. However, reports implicating him have continued to emerge and probably carry more weight than his denial." Interviewing the authors of this report as to the sources and bases for these conclusions would undoubtedly shed further light on this investigation.

Second, we understand that the Department of Justice has not yet located the tape reported to contain Yasser Arafat or his deputy saying the code word that signalled the terrorists to murder Noel and Moore. However, since references to the existence of such tapes in books, newspapers, and a State Department cable strongly suggest that such a tape exists, it would be helpful to know the Justice Department's plans for seeking it.

Specifically, David Ottoway wrote in the Washington Post on April 5, 1973 that "according to one source, the U.S. Central Intelligence Agency monitored at least some of the communications between the operation's Beruit command center and the Saudi Arabian embassy in Khartoum..." Oswald Johnston reported in the Washington Star on April 15, 1973 that "The Sudanese last month secretly furnished U.S. intelligence with transcriptions of three monitored shortwave broadcasts from the Fatah operations center in Beirut to the Khartoum operatives. In one of them, the voices of both Arafat and Khalef were distinguishable, Sudanese authorities have reportedly told the Americans."

Edward F. Mickolus of the CIA reported in Transnational Terrorism: A Chronology of Events (Westport,Connecticut: Greenwood Press, 1980) on page 377 that, "Members of Israeli intelligence managed to monitor the ultra high-frequency shortwave that the terrorists were using to keep in touch with their leaders at headquarters." Further, Michael Bar-Zohar and Eitan Haber report on page 166 of The Quest for the Red Prince that the terrorists brought with them "A powerful wireless transceiver" to communicate with PLO headquarters in Beirut.

A secret cable from the U.S. embassy in Khartoum to the Secretary of State dated March 7, 1973, and released on July 3, 1980 reports that "Embassy ... has obtained ... recitation of communications(based on tapes) between Al Fatah Radio in Beirut to terrorists at Saudi Embassy in Khartoum."

Finally, a June 17, 1974 story in the Chicago Sun-Times by Thomas B. Ross implicates the U.S. government in the destruction of cables bearing on these murders. The article, a copy of which we have enclosed, quotes reliable sources as stating that the State Department security office discovered the destruction of cables dealing with the Sudan murders, and that order to destroy the cables could only have come from a high level in the State Department or the White House. We would like to know if the Justice Department has come across any evidence of such destruction, whether it has investigated that destruction, and if so, what the results of that investigation are.

The report which we have provided, the references to the tape which we have cited, and the suggestion of willful U.S. government destruction of evidence suggests that no less than an exhaustive search for the tape and other evidence linking Yasser Arafat to this crime would be appropriate. Please keep us informed of the progress of your efforts to locate this evidence.

Sincerely,

Chuck Grassley
CHARLES E. GRASSLEY

Frank R. Lautenberg
FRANK R. LAUTENBERG

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

21 APR 1986

Honorable Frank R. Lautenberg
United States Senate
Washington, D. C. 20510

Dear Senator Lautenberg:

Thank you for your letter of February 12, 1986 urging the Department of Justice to seek indictment of Yassir Arafat for the brutal murders of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore committed in the Sudan in 1973 by members of the terrorist Black September Organization, an arm of the Palestine Liberation Organization. We share your concern for the well-being of American diplomats abroad and your revulsion for these unmitigated atrocities. After careful review of materials submitted to the Department of Justice concerning this tragic incident and as a result of extensive legal and factual research, however, we have concluded with regret that the United States does not have legal jurisdiction to prosecute any person for these crimes.

Congress did not provide federal criminal liability for the murder of United States diplomats abroad until 1976, when amendments to 18 U.S.C. § 1116 created the offenses of murder and manslaughter of internationally protected persons. We have determined, after exhaustive research on the subject, that retroactive application of § 1116 as the basis for indicting Arafat for the 1973 murders of Ambassador Noel and Charge d'Affaires Moore would violate the ex post facto clause found in Article I, Section 9 of the United States Constitution. This clause prohibits applying a law to conduct not criminal before enactment of a statute. Without being able to resort to 18 U.S.C. § 1116, there is no statutory authority upon which to predicate a prosecution such as the one you suggest. The attached memorandum sets forth in detail the legal analysis supporting this conclusion.

Notwithstanding our legal analysis, we reviewed the evidence available to determine if admissible evidence existed that might support such an indictment. Although much has been alleged about evidence implicating Arafat in planning the takeover of the Saudi Arabian Embassy and directing the terrorists to murder Ambassador Noel and Charge d'Affaires Moore, the evidence currently available from key departments and agencies within our government and from other sources is insufficient for prosecutive purposes.

In view of our legal conclusion that there is a U.S. Constitutional prohibition against indicting anyone for these murders, undertaking an exhaustive global search for additional detailed evidence of Arafat's complicity in the 1973 murders would divert precious investigative resources which we must devote to locating and apprehending those responsible for terrorist attacks in cases where we do have jurisdiction. Moreover, it is significant that critical national security information would be irreparably compromised if we disclosed, during litigation, the nature of our searches for evidence. The Department needs to utilize its resources for present investigations of recent terrorist attacks. Some of the key ones are:

- June 1985 hijacking of TWA 847
- October 1985 piracy of the Achille-Lauro
- November 1985 hijacking of Egyptair 648
- April 1986 bombing of TWA 840

Although criminal jurisdiction to bring cases against terrorists who attack abroad has greatly expanded over recent years, there is presently still a gap in the criminal law. We have no jurisdiction when a terrorist kills or seriously injures an American not a protected person under existing federal law, such as the five Americans gunned down at the Rome airport in December 1985. The Senate is to be commended for its overwhelming bipartisan support (92-0) of S. 1429, a bill which would close that gap. We hope that the House of Representatives passes this much needed legislation.

Sincerely,

John R. Bolton
Assistant Attorney General

Memorandum

Subject	Prosecution of Yassir Arafat for the 1973 Murders of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore in Khartoum, Sudan	Date	April 17, 1986 LL:JEG:ttj
To	Victoria Toensing Deputy Assistant Attorney General Criminal Division	From	Lawrence Lippe, Chief General Litigation and Legal Advice Section Criminal Division

In December 1985, you requested that we review material made available to the Department and determine whether the Department should seek indictment of Yassir Arafat for his alleged role in the March 1973 murders of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore committed by Black September Organization terrorists at the Saudi Arabian Embassy in Khartoum. This memorandum updates a previous analysis submitted to you on January 9, 1986 and addresses all significant legal arguments proposed to the Department to date. Upon full consideration of the available facts and relevant legal theories, we conclude there is no basis for asserting United States jurisdiction over Yassir Arafat for these murders even assuming there were credible evidence of his responsibility for the crime. The murders of these diplomats occurred in 1973, before the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons became operative and before Congress enacted amendments to 18 U.S.C. § 1116 creating federal criminal liability for the killing of United States diplomats abroad. Indictment of Arafat in the United States for the 1973 murders requires a statutory basis for the assertion of extraterritorial jurisdiction. Aside from an unconstitutionally retroactive application of 18 U.S.C. § 1116 as amended, no such statutory basis existed in 1973, the time of the murders. Thus, if an indictment were sought against Arafat for these particular crimes it is our opinion a court would dismiss it for violating the ex post facto clause of the U.S. Constitution. 1/

1/ Article I, section 9, clause 3 of the Constitution states, "No Bill of Attainder or ex post facto Law shall be passed."

I. Factual Background

On March 1, 1973, following a reception at the Saudi Arabian Embassy in Khartoum, Ambassador Noel, Charge d'Affaires Moore and Belgian diplomat Guy Eid were taken hostage, along with other dignitaries, by eight members of Black September, a unit of the PLO. Among others, the terrorists demanded the release of Sirhan Sirhan and Black September leader Abu Douad, then imprisoned in Jordan. Noel, Moore, and Eid were isolated from the other hostages and the terrorists threatened to kill them if their demands were not met. After some unsuccessful negotiation efforts, at approximately 9:00 p.m. Khartoum time, Noel, Moore and Eid were taken to a room on a lower floor of the Embassy where each was brutally murdered and mutilated. After receiving a final radio instruction, the terrorists announced that their mission was completed and they surrendered to Sudanese authorities.

II. Discussion

It has been asserted that Yassir Arafat can be prosecuted in the United States as a co-conspirator in the 1973 murders under international legal principles and domestic law. While principles of international law have been incorporated into United States law, this does not mean that acts considered crimes under international law by some nations are prosecutable in the United States absent some statutory authority. 2/

Federal courts other than the Supreme Court are tribunals of limited jurisdiction created by Congress pursuant to the Constitution. See U.S. CONST. art. III, § 1; Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978); Palmore v. United States, 411 U.S. 389, 401 (1973). Federal courts are empowered to hear only matters Congress has entrusted to them by statute. Kline v. Burke Construction Co., 260 U.S. 226, 234

2/ Although one of the international legal principles upon which a nation may be able to assert extraterritorial jurisdiction is the "passive personality" principle which creates jurisdiction based solely upon the nationality of the victim, this principle has not been generally accepted in this country as a sufficient predicate for asserting extraterritorial jurisdiction in the absence of other evidence of a United States interest in the offense committed. See, e.g., United States v. Marino-Garcia, 679 F.2d 1373, 1381 n.15 (11th Cir. 1982), cert. denied sub nom. Pauth-Arzuza v. United States, 459 U.S. 1114 (1983); United States v. Layton, 509 F. Supp. 212, 216 n.5 (N.D. Cal. 1981), appeal dismissed, 645 F.2d 681 (9th Cir.), cert. denied, 452 U.S. 972 (1981).

(1922); Commodity Futures Trading Comm'n v. Nahas, 738 F.2d 487, 492 (D.C. Cir. 1984); Hubbard v. Ammerman, 465 F.2d 1169, 1176 (5th Cir. 1972), cert. denied, 410 U.S. 910 (1973). In the absence of express constitutional or Congressional authority, federal court jurisdiction will not be presumed. Dracos v. Hellenic Lines, Ltd., 762 F.2d 348, 350 (4th Cir. 1985); People of State of California ex rel. Younger v. Andrus, 608 F.2d 1247, 1249 (9th Cir. 1979) (per curiam); Commercial Security Bank v. Walker Bank & Trust Co., 456 F.2d 1352, 1355 (10th Cir. 1972). Moreover, Congress can withhold from federal courts jurisdiction over a class of cases even though the judicial power of the United States as described in Article III, section 2 of the Constitution includes authority over such cases. Palmore v. United States, 411 U.S. at 401; Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850); Marshall v. Gibson's Products, Inc. of Plano, 584 F.2d 668, 672 (5th Cir. 1978).

There is no federal general common law, Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938), and no common law crimes are cognizable in federal courts. Donnelley v. United States, 276 U.S. 505, 511 (1928) ("regard is always to be had to the familiar rule that one may not be punished for crime against the United States unless the facts shown plainly and unmistakably constitute an offense within the meaning of an Act of Congress."); United States v. Eaton, 144 U.S. 677, 687 (1872) (citing cases); United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32, 34 (1812) ("The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offense."). Thus, the prosecution of Arafat for the 1973 Khartoum murders requires the existence of federal criminal statutes prohibiting these offenses. 3/

3/ Citation of civil cases such as Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984) and Von Dardel v. Union of Soviet Socialist Republics, 623 F. Supp. 246 (D.D.C. 1985) to promote a criminal prosecution based solely upon the law of nations is disingenuous. First, in each of those cases, there was a statute upon which the litigation was based: the Alien Tort Claims Act, 28 U.S.C. § 1350. Second, particularly in the Tel-Oren case, there is ample support for the conclusion that this Department could not prosecute Arafat for acting in violation of the law of nations or treaties. The court in Tel-Oren upheld dismissal of the suit, brought by survivors and representatives of persons murdered by terrorists in Israel, for lack of subject matter jurisdiction. In separate concurring opinions, Judge Edwards and Judge Bork acknowledged that the law of nations permits countries to meet international obligations as they will and that municipal law must be consulted to discern in what manner international obligations

(Footnote Continued)

Article I, section 8 of the Constitution clearly grants Congress the power "to define and punish . . . offenses against the law of Nations." Although Congress has thus been empowered to punish international crimes, existing legislation demonstrates that Congress has selectively exercised its power to extend United States jurisdiction to criminal acts that occur outside this country. The authority to prosecute in the United States those responsible for killing American diplomats abroad has only existed since 1976, when Congress enacted amendments to 18 U.S.C. § 1116. Therefore, while the United States has long had a criminal statute against attacks on diplomatic officers, there has only recently been jurisdiction to prosecute extraterritorial attacks on American diplomats. 4/

It has been asserted the existence of drafts of two international conventions in the early 1970's demonstrates that protection of diplomats was a cognizable obligation under

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(Footnote Continued)
have been undertaken. 726 F.2d at 778, 811, 822. Moreover, the court reaffirmed that treaties are not self-executing, but rather require implementing legislation to be passed in each signatory state before international obligations can be assumed. Id. at 809-10. Finally, and perhaps most significantly, the concurring opinions in Tel-Oren agree that the PLO as an entity is not a subject of international law duties because it is not a recognized state and does not act under color of any recognized state's law. Id. at 791-92, 803-07. As Judge Bork observed, a finding that the PLO should, as a non-state, be held to the duties imposed by customary international law governing the conduct of belligerent nations "would establish a new principle of international law." Id. at 806. Thus, neither the conduct of Arafat nor any member of the PLO would be cognizable as a violation of customary international law, treaties, conventions or other international agreements.

To the extent that the Von Dardel opinion mentions the possibility that the Soviet Union violated 18 U.S.C. § 1116 if Swedish diplomat Raoul Wallenberg is no longer alive, this would only be true if Wallenberg died after 1976, when the statute was amended to cover internationally protected persons. The Von Dardel court's discussion of § 1116 is quite brief and is in no way dispositive of the suit filed on behalf of Wallenberg seeking civil relief from the Soviet Union.

4/ Respublica v. DeLongchamps, 1 U.S. (Dall.) 111 (1784) does not support an opposing argument in this context, for in that case, the crime against a French diplomat occurred in the United States and consequently, there was no issue as to whether the American court had jurisdiction to punish an offense "against the law of nations."

international law at the time that Ambassador Noel and Charge d'Affaires Moore were killed. Yet, the United States did not even sign the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons until December 28, 1973, more than nine months after the murders in Khartoum. In fact, the United States did not become a party to either this Convention or the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance until the instruments of ratification were deposited after 18 U.S.C. § 1116 was amended in 1976. Section 1116 was specifically amended to criminalize attacks on internationally protected persons, including American diplomats abroad, so that the United States would be able to discharge the obligations of these international conventions before becoming bound by them. See House Report No. 94-1614, 94th Cong., 2d Sess. at 3. 5/ Thus, it was more

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5/ The legislative history of 18 U.S.C. § 1116 nowhere suggests that it was intended to apply retroactively. If anything, the amendments to this statute were passed in response to the growing problem of terrorist attacks that continued to be unaddressed by domestic legislation during the early 1970's. The statement of State Department Legal Adviser Monroe Leigh on its face fully supports the latter proposition rather than any intention to apply the amendments retroactively. Leigh expressly conceded that under law existing before enactment of the amendments, the United States did not have jurisdiction to try the foreign assassins of American diplomats in Lebanon. In response to a request from the subcommittee to explain the difference between "internationally protected persons" and "foreign officials," Leigh stated:

> foreign officials is the term we used in the present law which applied to officials who were foreign to the United States. The use of the term internationally protected persons covers diplomats outside their own territory wherever they may be in the world, and so in that way we acquire a jurisdictional basis and we define a crime which we can punish in the Unites States.
>
> If an American diplomat is attacked abroad, this gives us a basis in the United States for taking action if we find the perpetrator of that crime within the United States.

Internationally Protected Persons Bills, Unsworn Declaration Bills: Hearing Before the Subcommittee on Criminal Justice of

(Footnote Continued)

than three years after the Khartoum murders that international conventions reflecting any multi-national commitment to protect diplomats were consummated and adopted by the United States.

(Footnote Continued)
the Committee on the Judiciary House of Representatives, 94th Cong., 2d Sess. 23 (1976) (hereafter "Hearing") (Statement of Monroe Leigh) (emphasis added). A few minutes later, Congressman Hungate, Deputy Assistant Attorney General Waldman and Leigh had the following colloquy:

> Mr. HUNGATE. Let's take the recent Lebanese tragedy just for an example. What would be different under this law as compared to existing law?
>
> Mr. WALDMAN. In terms of punishing the perpetrators -- of course the act is aimed at deterring. In the case of an act already perpetrated it would make it easier, one would assume, to insure justice was done. If we could not get the individual extradited from the country in which the act was committed it would be obligated to insure that some appropriate action were taken against him in the jurisdiction in which he was found.
>
> Mr. HUNGATE. In the instant case would the perpetrators' actions constitute an offense against the law of Lebanon?
>
> Mr. LEIGH. Certainly we would assume so. The difficulty is that, under our present law, we would not have jurisdiction to try the foreign assassins of Ambassador Meloy and Counselor Waring, even if they were found in the the territory of the United States. We would only be able to punish perpetrators of this type of act if it had been against a foreign official in the United States, since the present law defines a "foreign official" as a "person of foreign nationality," who is in the United States on official business. Family members are also covered under the present law.
>
> The new definition of internationally protected person would include Frank Meloy since he was a U.S. official serving outside of his own country. He becomes, from the point of view of this proposed legislation and from the point of view of the Convention, an internationally protected person. So if it happened that the perpetrators of that event were apprehended in the United States, this statute would provide a jurisdictional basis to try them for

(Footnote Continued)

The only statute pertinent to the prosecution of Yassir Arafat would be 18 U.S.C. § 1116 as amended. The 1976 amendments to § 1116 established special protection for American diplomatic personnel abroad and established extraterritorial jurisdiction in the courts of the United States to prosecute those responsible for the killing of American diplomats wherever the crime occurs if the offender is found in the United States. Arafat could not be prosecuted for his role in the 1973 murders on the basis of § 1116 as amended without violating the ex post facto clause of the Constitution. The 1976 amendments to § 1116 created substantive changes in the law by enlarging the class of persons protected against deadly assaults and the type of assaults subject to prosecution under the laws of the United States. 6/ While the murder of American diplomats abroad is a condemnable act, it was not in 1973 a prosecutable crime in the United States. Insofar as a prosecution of Yassir Arafat for the Khartoum murders in violation of § 1116 would amount to punishing him for acts not punishable under law at the time they were committed, the prosecution clearly would be unconstitutional. Weaver v. Graham, 450 U.S. at 28; United States ex rel. Forman v. McCall, 709 F.2d 852, 856 (3d Cir. 1983) (court focuses on law in

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(Footnote Continued)
the offense of murder. We could not do that under the existing law.

Hearing at 25 (emphasis added). It is apparent, in context, that this colloquy referred to the 1975 Meloy and Waring assassinations solely for the purpose of evaluating the application of § 1116 as amended in the event that such a crime occurred after the passage of the amendments. The discussion does not manifest Congressional intent to apply § 1116 retroactively and at no time during the hearing did any Member of Congress recommend or endorse the idea of retroactive application.

Rather than enforcing preexisting obligations assumed under the aforementioned treaties, Congress and Legal Adviser Leigh agreed at the hearing that the 1976 amendments to the statute created the domestic law required to enable the United States to assume such international legal obligations. Id. at 9, 11, 34-35. Further, had Congress intended that the statute be applied retroactively, that intent would have been unavailing, for such application of this type of statute is precluded by the ex post facto clause of the Constitution. See textual discussion infra.

6/ See Weaver v. Graham, 450 U.S. 24, 29 n. 12 (1981) (alteration of a substantive right is a violation of ex post facto clause and such alteration is not merely procedural even if statute takes a seemingly procedural form).

effect at time of offense); United States v. Juvenile, 599 F. Supp. 1126, 1131-32 (D. Ore. 1984) (retrospective establishment of federal jurisdiction held a violation of ex post facto clause, citing Putty v. United States, 220 F.2d 473 (9th Cir. 1955). 7/

It has been suggested that creating United States jurisdiction over extraterritorial offenses does not violate the ex post facto clause in this case. However, none of the cases support this assertion. For example, in Dobbert v. Florida, 432 U.S. 282 (1977), the defendant had committed murder in Florida when Florida law provided for the death penalty according to a procedure later held to be unconstitutional. The defendant was later sentenced under a newly enacted constitutionally valid death penalty statute. The Supreme Court held that the sentencing was valid, given the fact that the defendant was on notice at the time of the offense that Florida had a death penalty for murder. Thus, the newly enacted statute did not create a new offense or subject the defendant to added culpability for the crime. Unlike in Dobbert, the prosecution of Arafat in the United States for 1973 murders of American diplomats abroad would subject Arafat to criminal liability for extraterritorial acts that were not punishable in the United States, no matter how heinous.

7/ Cook v. United States, 138 U.S. 157 (1891), is inapposite. In Cook, defendants had committed murder on U.S. territory in July, 1888, in violation of a federal statute in force at that time which prohibited and punished murder in locations "under the exclusive jurisdiction of the United States." Id. at 166. The murder, however, had been committed on public lands which had not been designated as part of any particular judicial district for purposes of prosecution. On March 1, 1889, Congress enacted a law placing those lands in the judicial jurisdiction of the Eastern District of Texas. The Court held that retroactive application of the 1889 statute to prosecute the Cook defendants in Texas did not violate the ex post facto clause because this law did not change the elements of an offense or the amount of punishment but merely subjected a defendant to trial in a particular judicial district for established crimes against the United States. See id. at 183. The 1889 statute did not create the crime of murder on federal property but simply established venue for prosecution in a specific court. Unlike in Cook, a prosecution against Arafat would require retroactive application of a statute that not only established venue in the United States but created for the first time a federal crime of extraterritorial murder of U.S. diplomats. Under the Cook analysis, such a retroactive application of § 1116 would clearly violate the ex post facto clause. Id.

We also reject the misplaced argument that refusal to prosecute Arafat under 18 U.S.C. § 1116 as amended would require the Department to modify its litigating position regarding the ex post facto clause as expressed in The Matter of the Extradition of John Demjanjuk, 612 F. Supp. 544 (N.D. Ohio 1985). Demjanjuk, adjudicated a Nazi war criminal living in the United States, claimed he was not extraditable to Israel because the Israeli statute that was the basis of the extradition request violated the ex post facto clause. The Israeli statute was enacted specifically to punish Nazis and Nazi collaborators for their crimes of genocide. The district court quickly dispensed with Demjanjuk's contention by noting that it did not have jurisdiction to scrutinize Israeli criminal procedure on the basis of American constitutional guarantees. 612 F. Supp. at 567 n.21. The Demjanjuk court reasoned that due process rights cannot be extended extraterritorially and that the court is "bound by the existence of an extradition treaty to assume that the trial will be fair." Id., quoting Glucksman v. Henkel, 221 U.S. 508, 512 (1911). 8/

8/ Though not explicitly argued before the Sixth Circuit, this point was reaffirmed by the appellate court when Demjanjuk appealed from the denial of a petition for writ of habeas corpus. Demjanjuk v. Petrovsky, 776 F.2d, 571, 583 (6th Cir. 1985).

Having determined that it had no jurisdiction to consider whether the Israeli law violated this American constitutional guarantee, the district court in Demjanjuk nevertheless noted, "without deciding, that in all likelihood, the Israeli statute would not be a constitutionally prohibited ex post facto law." 612 F. Supp. at 568 n.21. The district court cited Calder v. Bull, 3 U.S. (Dall.) 386 (1798) and Cook v. United States, 138 U.S. 157 as support for this comment. These citations are rather peculiar, given the fact that Calder concerned a law affecting probate proceedings and Cook concerned creating a forum for trial of recognized criminal conduct. The specific page cited in the Calder opinion sets forth the rule of law that the prohibition against passage of ex post facto laws only applies to criminal laws and not civil laws affecting citizens in their property or contractual rights. According to the Calder court, the ex post facto prohibition was intended to govern "[e]very law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action; . . . [e]very law that aggravates a crime, or makes it greater than it was, when committed; . . . [e]very law that alters the legal rules of evidence, when committed; . . . [e]very law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offenses, in

(Footnote Continued)

Although irrelevant to the ex post facto issue under the United States Constitution, the Demjanjuk court's consideration of retroactivity in the context of international law merits note and demonstrates the substantial differences between the Demajanjuk situation and the Khartoum murders in that context. The Demjanjuk court determined that the Israeli statute was not impermissibly retroactive under international law because it did not create a new crime, but simply provided a new forum for the trial of persons for conduct previously recognized as criminal. 612 F. Supp. at 567. The court noted that the offenses with which Demjanjuk was charged were criminal at the time they were committed, since the murder of defenseless civilians during war was illegal under the Hague Conventions of 1899 and 1907, both recognized and binding upon the United States, Germany and "all civilized nations" years before World War II atrocities occurred. Id. Thus, unlike the international conventions to protect diplomats, discussed supra, that were under consideration and not yet ratified when the 1973 Khartoum murders occurred, conventions protecting civilians during wartime clearly established the illegality of the conduct of Nazi war criminals and put the offenders on notice of their culpability in the eyes of the signatory nations at the time the genocide was committed.

III. Conclusion

For the foregoing reasons, we conclude that the indictment of Arafat for the 1973 Khartoum murders under current law would be dismissed by a court as unconstitutional. Therefore, further action to investigate or prosecute these crimes would be futile.

(Footnote Continued)
order to convict the offender." (emphasis in text). The page cited in Cook states that a law that simply provides a forum in a particular district for the trial of a defendant and does not "touch the offence nor change the punishment therefor" is not an ex post facto law. Thus, according to the analysis cited in Calder and Cook, the Israeli law regarding Nazis and Nazi collaborators may well be considered an ex post facto law under our Constitution since the Israeli law, at a minimum, inflicts additional punishment for crimes that predated its enactment.

Senator DENTON. I want to acknowledge the impetus and background contained in the letter which you composed and 43 of us signed. It served as a basis for the Subcommittee on Security and Terrorism calling this hearing.

We have had many other hearings, including our very first one, in which the PLO was very plainly identified in the manner which my opening statement and yours indicated. But the specific charge which you want investigated, the murder of Ambassador Noel and Chargé dAffaires Moore, was a result of the letter which you originated and we all signed. I want to express our appreciation to you for that initiative.

Thank you very much. I understand you have an engagement, and we appreciate your statement this morning.

Senator LAUTENBERG. Thank you very much.

Senator DENTON. I note the arrival sequentially of my colleague from Kentucky, Senator Mitch McConnell, and my distinguished ranking minority member of this subcommittee, Senator Pat Leahy, of Vermont, who has worked with us for so many years on this.

We value them both, and I must now ask Senator Leahy if he cares to make an opening statement before Senator Grassley makes his.

Senator LEAHY. No, Mr. Chairman. I know Senator Grassley is also on a tight schedule and I will put my statement in the record.

I just want to say that I think once again you have picked a very timely and extremely important subject for the hearing.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Mr. Chairman, I am very pleased that you have called this hearing. The President's air strike against Libya last week was a drastic but necessary response to repeated terrorist attacks against innocent Americans. But military force will not end terrorism, nor is it a substitute for a comprehensive counterterrorism policy.

As one who has often urged this administration to develop such a policy, I want to be sure the President has other options than military force to combat terrorism.

We must continue to pressure our allies to join us in imposing economic sanctions against states that sponsor terrorism.

And, most importantly for this hearing, we need the criminal statutes to prosecute in U.S. courts terrorists who attack our citizens and diplomats abroad.

Two years ago, Mr. Chairman, we worked together to successfully include the hostage-taking amendments in the Omnibus Crime Act. This year, we worked on amendments to Senator Specter's Terrorist Prosecution Act, which provides for the prosecution in the United States of persons who commit terrorist acts against American citizens abroad.

For years we have known that the PLO, under the leadership of Yasser Arafat, has committed terrorist acts that have killed Americans. But only recently have we begun to take a hard look at how we can fight back. Last week we showed that we will use military force if we have to. Today we will examine what legal mechanisms exist to help us refrain from having to use force in the future.

After reading the memoranda of a number of today's witnesses, I have some serious questions about the chances of successfully prosecuting Arafat in the United States for a crime that occurred 13 years ago, even if we were somehow able to get him here.

But I welcome the chance to explore this issue.

If there is a gap in our criminal law which the Terrorist Prosecution Act won't fill, we need to know that.

If there is credible evidence that Arafat ordered these murders, the American people should be informed of any unclassified evidence, whether or not the evidence is admissible in court and whether or not we can bring Arafat to justice.

I am sure that no matter what this hearing reveals, the American people will welcome any steps we take to ensure that future crimes like those don't go unpunished simply because we lack the laws to prosecute them.

Senator, DENTON. Thank you.

Senator McConnell.

Senator MCCONNELL. Mr. Chairman, I also have an opening statement which I will just insert in the record and not unduly delay matters.

Senator DENTON. Without objection.

[The prepared statement of Senator McConnell follows:]

PREPARED STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Mr. Chairman, I first want to commend you for the dedication with which you have pursued the problem of terrorism, in this country and abroad, and for the leadership you have provided in the Senate in the effort to eradicate terrorism and the tragic consequences of it.

In the year and a half I have been a member of this subcommittee and of the Select Committee on Intelligence, I have been continually disturbed by what I have come to realize is the systematic and growing support for terrorists and their tactics by various governments. This State-sponsored terrorism is particularly disturbing, because while governments that engage in it purport to adhere to international law, they in fact encourage and finance anarchy.

There are a variety of organizations that have long been the direct perpetrators of terrorism, among them the Palestine Liberation Organization. While ostensibly dedicated to the establishment of a Palestinian homeland, they more closely resemble, as you, Mr. Chairman, so accurately pointed out, an international Ku Klux Klan. The PLO has long been engaged in terrorist acts, but it is not alone, for there are other factions in the Middle East and elsewhere that are even more ruthless.

As I believe we will learn today, for some time there have been some significant gaps in the legal fabric we have had in place to combat the work of terrorists. It was not until 1976 that we declared the murder of American diplomats abroad to be a punishable offense, with the amendment of 18 U.S.C. 1116. And it is still not a crime punishable in the United States under American law to murder or assault ordinary American citizens abroad. A bill to do just that, S. 1429, has passed the Senate, and I am pleased to have cosponsored it. It is my hope that that bill will soon become law, so that we will at least have removed the technical barriers to prosecution of international terrorists.

I would also like to point out, Mr. Chairman, that recently I was pleased to have urged Attorney General Meese to seek indictment of Yasser Arafat, head of the PLO, for the murder of Ambassador Cleo Noel and Charge d'Affaires G. Curtis Moore in the Sudan in 1973. Those crimes were examples of the kind of brazen terror these international criminals have engaged in with impunity, and for too long the United States failed to pursue the perpetrators. Mr. Arafat must ultimately bear responsibility for the conduct of his agents, and I would have liked to have seen the administration pursue the case with all due vigor. I was recently advised that application of 18 U.S.C. 1116, as amended in 1976, to the crimes committed in 1973 would constitute an ex post facto application of the law, in violation of the due process clause of the Constitution.

Finally, let me say that I believe we must recognize that the fight against terrorism must in some cases necessarily involve more than the mere reliance on statutes and notions of international law. I supported the President's decision recently to strike directly and forcefully at the Libyan terrorism apparatus and infrastructure. Similar measures may in the future be necessary, for terrorism is itself a denunciation of the law of international order.

I commend you again for your leadership, Mr. Chairman, and look forward to working with you and others dedicated to bringing this problem under control.

Senator MCCONNELL. I want to commend you for holding the hearing.

Senator DENTON. Thank you, Senator McConnell.

Welcome, Senator Grassley, and you may proceed with your statement.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you, Mr. Chairman, and I am sorry Senator Lautenberg had to go, but I want to thank him for inviting me to participate with him in this effort and to congratulate him for his leadership in this area and to thank him for that.

In addition to the usual thank you to you, Mr. Chairman, for holding this specific hearing, I think we ought to make note for the record here of the past several years; the fact that you have kept the issue of terrorism before the Senate through the work of your subcommittee.

I want to thank you for that long-term leadership in this area, and not just for holding this hearing. As important as this hearing is, it is probably more important the extent to which you have worked hard over the last several years to keep the issue before the Senate.

Senator DENTON. That is very gracious of you, Senator. If I may interrupt for a moment and acknowledge your work with Senator Lautenberg in bringing this particular matter to our attention, I neglected to mention that earlier and I want to thank you for that.

Senator GRASSLEY. Well, now, I particularly appreciate this hearing dealing with the use of legal mechanisms to combat terrorism. As has been indicated by you, Mr. Chairman, and by our colleague from New Jersey, the Justice Department just yesterday indicated its unwillingness to pursue one of the first good cases we have had before us, that being the indictment of Yasser Arafat for the murders of the Ambassador and the Chargé d'Affaires previously referred to.

It was back in February that we sent the letter already referred to, signed by 42 of our colleagues, indicating to the Justice Department the necessity for pursuing with vigor the investigation of Arafat's alleged participation in these murders.

We already have now in the record, thanks to Senator Lautenberg, the entire documentation that we submitted with that record, which basically the Department of Justice felt was not a good enough case.

The response that we received from the Department yesterday indicated that the refusal to go forward was based on the following assertions: one, lack of jurisdiction; two, insufficient evidence.

Mr. Chairman, I believe that this decision is flawed for a number of reasons, and I think that we will hear similar views from later panelists and from people whose legal expertise is certainly greater than mine and unquestioned from the standpoint of their established authority in this area.

The Justice Department devotes more than half of its response to establishing that the Federal courts cannot hear cases without a statute conferring jurisdiction. The Justice Department states that the Federal courts are courts of limited jurisdiction which do not have the ability to hear common-law criminal cases or cases based on international law without congressional approval of a statute conferring jurisdiction.

While this is accurate, Mr. Chairman, it is also irrelevant. The Constitution does indeed establish limited jurisdiction in the Feder-

al courts, and any attempt to bring a case without a congressional grant of jurisdiction would be illegitimate.

But we are not suggesting that the United States could charge Yasser Arafat with the 1973 murders without a statutory basis for jurisdiction. Quite to the contrary, in the Arafat case we have a statute which confers jurisdiction on the Federal courts to hear cases involving extraterritorial murder of internationally protected persons, and that is in 18 U.S.C. 1116, which is exactly what the Justice Department says is required.

Once a jurisdictional statute exists, the real question is whether that statute may be applied retroactively, and that is the ex post facto question. The ex post facto issue revolves around an accused person's right to fair warning and fair treatment.

Evidence from international law and other sources is quite relevant to establish this fair warning even if these sources are not codified in the Federal statute.

The Justice Department is implicitly arguing that there can be no warning for ex post facto purposes without a Federal statute—a position for which it, the Department of Justice, offers no evidence.

If one examines the purpose behind the ex post facto clause, it is apparent that the concept would be inapplicable in this situation. This position will be expanded in the testimony of later witnesses.

Mr. Chairman, I submit to this subcommittee that we have at hand the necessary elements to overcome the opposition of an ex post facto argument. We have statutory jurisdiction via section 1116, a contention which is supported by ample legal authority.

In addition, the murder of diplomatic personnel has been a violation of international law for years. These two elements combined should enable the Department of Justice to jump the ex post facto hurdle.

The Justice Department fails also to expand on its second contention that there is insufficient evidence to pursue this indictment.

It is difficult for this Senator to believe, what with all the reports that we have received that a tape recording exists containing Arafat's voice ordering the operation, that this evidence could go either unlocated or, once located, be inadmissible in a court.

The Justice Department fails to address itself to the facts raised in our letter citing the existence of such evidence. The Department does indicate that limited resources prevent it from further investigation.

If that is a problem, as Senator Lautenberg referred to, perhaps we could persuade our colleagues to increase the Department's resources.

Again, it is difficult for me to believe that resources are a problem in light of the Department of Justice's current budget request of a $1.5 billion increase.

Mr. Chairman, the reality of the situation is this: The PLO general command has claimed responsibility for approximately 150 terrorist attacks since February 11, 1985. President Reagan stated on June 8, 1985, before the American Bar Association:

> We must act against the criminal menace of terrorism with the full weight of law, both domestic and international. We will act to indict, apprehend and prosecute those who commit the kinds of atrocities the world has witnessed in recent weeks.

Mr. Chairman, you previously quoted Meese, and I want to emphasize, particularly since Senators McConnell and Leahy are here now—and this was stated just 2 weeks ago by Attorney General Meese:

> We know that various elements of the PLO and its allies and affiliates are in the thick of international terror, and the leader of the PLO, Yasser Arafat, must ultimately be held responsible for their actions.

Referring to the fight against terror, Meese went on to say—again, a quote that Senator Denton gave: "You do not make progress until you close in on the kingpins."

Yasser Arafat is indeed one of those kingpins. He makes his intentions known through statements such as the following—and, again, a familiar quote: "The Arab strategy should take into consideration that the enemy is the same, be it Israel or the United States." Going on to quote: "We are at the threshold of a fierce battle, not an Israeli-Palestinian battle, but a Palestinian-United States battle." That is Arafat speaking, who is ultimately responsible for terrorism committed by the main wing of the PLO.

Mr. Chairman, I commend the response that this administration has taken against Libya's dictator. However, in addition, we must focus our energies on other available courses of action—actions which, according to this administration, will be vigorously pursued.

In light of the solid legal foundation for an indictment, the refusal to issue one against this kingpin of terrorism very much undercuts our entire approach to insure the safety of our citizens.

Mr. Chairman, as a result of how I feel about this, I am going to urge the Justice Department to review the testimony at today's hearing and to reconsider its decision. If it persists in its position, then I would advocate a number of other avenues which would further the administration's goal of combating terrorism.

On January 15, 1986, Charles Redman reiterated the U.S. policy regarding visa denials to terrorists, and I quote:

> With a very narrow exception of those who espouse terrorism, the United States does not exclude aliens for purely ideological reasons.

This having been said, however, he says:

> Overriding national security concerns sometimes demand that we exclude a particular alien or class of aliens from the United States. For example, it has been United States policy, sanctioned by the Congress as recently as 1979, to deny visas to members of the PLO.
>
> Similarly, we will, as a matter of principle, exclude individuals who personally advocate terrorism or who we believe have participated in or supported terrorist activities.

Despite the encouraging policy statements made by successive administrations, enforcement of visa restrictions on PLO members has been inconsistent and has been deficient. The freedom to travel in the United States given to PLO members to engage in activities unrelated to the United Nations enhances the opportunity for terrorist activities in this country.

It has been documented that at least 11 PLO officials have entered the United States during this administration. Mr. Chairman, for the record, I want to submit that list of entries.

Senator GRASSLEY. Last, and in summary, I want to strongly suggest that the State Department review its procedures to insure that PLO members are not permitted in the United States.

I am sure my colleagues will suggest other courses of action in their testimony, and the Senator from New Jersey has already done that. I urge that we look carefully at all the options and move swiftly to enact legislation which will effectively combat PLO terrorism.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator Grassley. Without objection, the document to which you referred will be included in the record.

[The document submitted by Senator Grassley follows:]

CASES OF U.S. VISAS GRANTED TO OFFICIALS OF THE PLO DURING THE REAGAN ADMINISTRATION

NOVEMBER 1985

Shafiq al-Hout, a PLO leader, attended a conference of the Association of Arab American University Graduates in Chicago. His visa stipulated that he could not address the conference.

FEBRUARY 1984

Fatah Central Committee members Khaled el-Hassan and Hani el-Hassan accompanied King Hussein and President Mubarak to Washington. Hani el-Hassan is known for his comments after the Achille Lauro highjacking when he said that allegations of Leon Klinghoffer's murder were "lies." His brother Khaled has said that "there will be no existence for either the Palestinian people or for Israel unless one of them disappears . . . there will be no peaceful co-existence with Israel. The PLO has no right to discuss recognition with the enemy Zionist state."

APRIL 1983

PLO Executive Committee member Ahmed Abu Sitta was sent by Arafat to Washington to plead for U.S. recognition of the Palestinians' right to self-determination.

MARCH 1983

Issam Abdul-Hadi, president of the General Union of Palestinian Women, was granted a visa to travel in the United States on a speaking tour. As a PLO affiliate organization, U.S. immigration laws consider the woman's group as a proscribed organization.

JANUARY–FEBRUARY 1983

Noha Tadros, a senior member of the office of the Chairman of the PLO, apparently travelled with John Mroz to Washington on several occasions. She also apparently spent the summer in Washington.

DECEMBER 1982

Khaled el-Hassan, a member of the Fatah Central Committee, accompanied King Hussein to Washington.

OCTOBER 1982

Khaled el-Hassan travelled to Washington as an unofficial member of the Arab League delegation led by King Hassan of Morocco.

AUGUST 1982

Nabil Shaath, a senior member of the Palestine National Council, visited Washington.

JULY 1982

Khaled el-Hassan concluded his meetings in Washington.

AUGUST 1981

John Mroz told Arafat that "as a confidence building measure" Haig had personally decided to grant visas to Mahmoud Labadi, Arafat's spokesman, and Khaled Fahoum, chairman of the Palestine National Council.

AUGUST 1981

Khaled el-Hassan reportedly visited Washington and met with "three senior State Department officials."

JUNE 1981

Khaled el-Hassan visited Washington and met with U.S. officials.

Senator DENTON. In view of your interest and involvement in this matter, if you care to join the panel for the rest of the hearing, you are more than welcome.

Senator GRASSLEY. I cannot do that because of the free trade issue before the Senate Finance Committee, of which I am a member, but thank you very much.

Senator DENTON. Well, thank you for your useful testimony this morning, and congratulations on your previous work on this, Senator.

Senator GRASSLEY. Am I excused?

Senator DENTON. Yes.

Our second panel is Mr. Mark Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice, if you will come forward, Mr. Richard; Lawrence Lippe, Chief, General Litigation and Legal Advice Section, Department of Justice; and Mary Mochary, Deputy Legal Adviser, Department of State.

We will use the 10-minute rule; I will ask questions for 10 minutes and then rotate it to my colleagues after you have offered your opening statements. I shall ask for them in the order in which I called your names. First, Mr. Richard.

STATEMENT OF A PANEL CONSISTING OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY LAWRENCE LIPPE, CHIEF, GENERAL LITIGATION AND LEGAL ADVICE SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE; AND MARY V. MOCHARY, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Mr. RICHARD. Thank you, Senator. Senator, we have submitted for your consideration a prepared statement and I would suggest, if it is agreeable with you, that we submit it for the record, and I would merely summarize and highlight a relevant portion.

Senator DENTON. Thank you. Your full written statement shall be included in the record.

Mr. RICHARD. Thank you.

Mr. Chairman, members of the subcommittee, my name is Mark Richard. I am Deputy Assistant Attorney General of the Criminal Division of the Department of Justice. Deputy Assistant Attorney General Victoria Toensing, who has oversight responsibility for, among other areas, terrorism matters within the Criminal Division, is out of the country on business and therefore could not present the testimony. Therefore, I will be presenting the testimony on behalf of the Criminal Division of the Department of Justice.

With me is Lawrence Lippe, the Chief of the General Litigation and Legal Advice Section of the Criminal Division, which has line responsibility for terrorism matters.

I am pleased to be here today to discuss with you the existing legal mechanisms available to combat international terrorism, the use that the Department is making of the existing legal mechanisms to prosecute those responsible for several of the most recent tragic terrorist attacks against Americans, and some of the areas in which additional legislation is needed to close gaps in our jurisdiction to prosecute terrorist atrocities abroad.

In addition, I will discuss the Department's extensive consideration of reports that PLO leader Yasser Arafat was criminally responsible for the March 1973 seizure by members of the terrorist Black September organization of the Saudi Arabian Embassy in Khartoum, Sudan, and that he personally authorized the savage murders of our Ambassador, Cleo Noel; our Chargé d'Affaires, Curtis Moore; and Belgian diplomat Guy Eid.

The Department of Justice has received a number of letters calling for the indictment of Arafat for the 1973 slayings, and much has been stated about the existence of evidence that may implicate Arafat in the murders.

On the basis of such assertions, the Department conducted an extensive search both within our Government and from other sources to determine if admissible evidence is available to support criminal prosecution in this country.

Simultaneous with that search, the Department engaged in an exhaustive legal analysis to determine whether the United States has jurisdiction to prosecute Arafat or anyone else for these reprehensible acts.

Regretfully, we have concluded as a result of this analysis that there is no statutory authority upon which to predicate a prosecution in this country against any person for the 1973 murders of Ambassador Noel and Chargé d'Affaires Moore.

A Federal prosecution of Arafat for the murder of our diplomats could not be predicated upon any concept included in the law of nations in the absence of statutory authority for such a prosecution enacted by Congress.

While article I, section 8, of our Constitution grants Congress the power to define and punish offenses against the law of nations, Congress must exercise that power before there is jurisdiction to criminally prosecute an offense recognized under the law of nations.

Thus, even assuming that the murder of diplomats was an offense cognizable under the law of nations in 1973, the Federal courts of the United States could not exercise jurisdiction over such a prosecution in the absence of a statute prohibiting the crime.

The existence of drafts of two international conventions in the early 1970's does not demonstrate that the protection of diplomats was a cognizable obligation under international law at the time that Ambassador Noel and Chargé d'Affaires Moore were killed.

The United States did not even sign the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons until December 28, 1973, more than 9 months after the murders in Khartoum.

The United States did not become a party to either this convention or the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance until the instruments of ratification were deposited after 18 U.S.C. 1116 was amended in 1976.

Parenthetically, it should be noted that in the transmittal letter to the Senate for this bill, we stated that without this legislation, we could not fulfill our obligation under these conventions.

Thus, it was more than 3 years after the Khartoum murders that international conventions reflecting any multinational commitment to protect diplomats were consummated and adopted by the United States.

In 1973, there was no Federal criminal liability for the murder of U.S. diplomats abroad. It was not until 1976, when Congress amended section 1116, that such attacks on our diplomats abroad became a Federal crime.

The 1976 amendments to section 1116 created a major, substantive change in Federal law. They enlarged the class of persons protected against deadly assaults—a class that had previously been limited to foreign officials or foreign guests attacked while in the United States.

While the murder of American diplomats abroad undeniably was a condemnable act in 1973, it was not a prosecutable crime in the United States at the time and did not become one until 1976.

Prosecuting anyone in the United States for the 1973 Khartoum murders as a violation of section 1116, as amended, would amount to punishing persons for acts not punishable under our law at the time they were committed. Such a prosecution clearly, in our judgment, would violate the ex post facto clause found in the Constitution.

Moreover, there is no statutory authority besides section 1116 upon which to predicate a Federal prosecution for the murder of diplomats abroad.

Although the Department of Justice has determined that there is no Federal jurisdiction to prosecute anyone for the 1973 Khartoum murders, we conducted an extensive search of agencies and departments within our Government as well as outside our Government to see if admissible evidence does in fact exist that could support an indictment against Arafat. We enlisted the assistance of the State Department and various components of the intelligence community to obtain and verify information alleging Arafat's complicity in the planning of the Embassy takeover and the murder of our diplomats. We have analyzed all of the materials available and have determined that the evidence currently available is plainly insufficient for prosecutive purposes, even if there were a legal basis for instituting charges against Arafat.

If the committee wishes to convene an executive session, we can advise the committee in more detail concerning our findings.

Although neither the law nor the evidence supports a prosecution of Arafat for the 1973 murders, the Department of Justice does have jurisdiction to prosecute the international terrorists responsible for many of the most recent brutal attacks on Americans abroad. We intend to ensure the identification, apprehension, and

effective prosecution of terrorists whose wanton violence targets Americans abroad.

Along these lines we have commenced——

Senator LEAHY. Excuse me, Mr. Chairman. I want to make sure I understand his testimony. I just stepped out of the room and came back.

Did you say neither the law nor the evidence supports a connection to Yasser Arafat for the 1973 murders?

Mr. RICHARD. What I am saying, sir, is that the law is insufficient to predicate a prosecution and the evidence, assuming that we had legal bases for prosecuting him, the available evidence is insufficient for prosecutive purposes, in our judgment.

Senator LEAHY. I am sorry, Mr. Chairman.

Senator DENTON. Go ahead, Mr. Richard.

Mr. RICHARD. We have commenced investigations of those responsible for the hijacking of TWA 847, the piracy of the *Achille Lauro,* the hijacking of Egyptair 648, and the bombing of TWA 840, and we intend to prosecute them. The development of these cases has required substantial investigation abroad and unique cooperative initiatives with other countries that we hope share our commitment to bring the perpetrators to justice. With your permission, I would like to summarize our progress on each of these cases.

In the case of the June 1985 hijacking of TWA 847 and the cold-blooded murder of Robert Stethem, the Justice Department has charged the three hijackers with aircraft piracy and murder in the special aircraft jurisdiction of the United States. A reward of up to $250,000 has been offered for information leading to the apprehension, effective prosecution, and punishment of those responsible for the hijacking.

In the case of the October 1985 piracy of the cruise ship *Achille Lauro* and the cowardly murder of Leon Klinghoffer, the Department of Justice obtained a complaint and arrest warrant in the U.S. District Court for the District of Columbia for Abu el-Abbas, the mastermind of the attack, even before the ship's American passengers returned to the United States after their release from captivity. Abbas has been charged with hostage-taking, piracy, and conspiracy. A reward of up to $250,000 has been offered by the United States for information leading to the apprehension, effective prosecution, and punishment of Abbas, who remains at large.

In the case of the November 1985 hijacking of Egyptair 648 and the brutal murder of Scarlett Rogenkamp and the attempted murders of Scott Baker and Jackie Pflug, the Department of Justice has obtained a complaint against and an arrest warrant for the hijacker who survived the Egyptian rescue mission.

Finally, the Department of Justice has been aggressively involved in the investigation of the savage bombing of TWA 840 earlier this month, which killed four Americans. A Federal grand jury investigation has commenced to receive evidence concerning this attack. FBI agents have conducted preliminary interviews of key witnesses in Athens and Cairo and are continuing to gather critical investigative data.

Thus, as I hope you can see from the foregoing, the United States is aggressively pursuing available legal mechanisms by which to prosecute these recent terrorist acts. We are very grateful for the

efforts of this subcommittee, its chairman, and the full Senate for the attention they have given and continue to give to several legislative efforts that are needed to confront terrorism. While there are numerous matters presently pending in Congress relating to terrorism, I will comment only on those in the Senate which we believe will be the most beneficial.

One, the reinstitution of capital punishment in the Federal system for crimes relating to murder, espionage, and treason is a priority of this administration. While the full Senate will likely consider floor amendments to S. 239—one of which we anticipate will be an amendment to add the death penalty to 1203 if the death of any person results from a hostage-taking situation—we are confident that the Senate will produce a bill that contains the necessary procedures that will permit the constitutional imposition of a death sentence.

Two, the murder of and serious assaults upon U.S. nationals overseas by terrorists remains the area where the biggest gap in current Federal criminal jurisdiction exists. Under current law, we cannot prosecute someone without an alternative jurisdictional base for the murder of Americans who are not specifically protected. Senator Specter and this subcommittee recognized this serious gap and led the effort in the Senate's passage of S. 1429 by a vote of 92 to 0 in February of this year. As with the death penalty, we urge enactment of S. 1429.

Three, on March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. Presently, the Senate is carefully reviewing this measure. H.R. 4151 has many sections that the administration believes will be beneficial to fight terrorism. One of these is section 508 which creates a mechanism to control the provision of certain services to the military, police, and intelligence agencies of certain designated countries that support international terrorism.

Four, as you well know, recent decisions of U.S. courts have blocked the extradition of persons accused or convicted of terrorist acts abroad on the ground that their violent crimes, including murder, were political offenses. Moreover, similar provisions in foreign extradition laws have frustrated efforts to bring accused terrorists to this country for trial. To correct this situation, the United States has begun negotiations with selected countries to revise our extradition treaties to preclude the use of the political offense exception in cases involving violent crime. The first country with which we have concluded such a revision is the United Kingdom. The Supplemental United States-United Kingdom Extradition Treaty has been submitted to the Senate for ratification and is pending before the Senate Committee on Foreign Relations. We are hopeful for a favorable consideration of this important antiterrorism measure by the Senate within the near future.

There are, of course, other important antiterrorism matters of a preventive nature, such as S. 274, the Nuclear Power Plant Security and Anti-Terrorism Act of 1985, which was drafted and sponsored by the chairman of this subcommittee and which was overwhelmingly passed by the Senate last year. The administration has also submitted a bill to further improve airport security. These important measures, if enacted, will help to further protect Americans

from possible terrorist attacks, especially attacks here in the United States.

That concludes a summary of my prepared remarks, Mr. Chairman.

[Mr. Richard's prepared statement follows:]

PREPARED STATEMENT OF MARK RICHARD

Mr. Chairman and members of the Subcommittee, my name is Mark Richard. I am Deputy Assistant Attorney General of the Criminal Division of the Department of Justice. Deputy Assistant Attorney General Victoria Toensing, who has oversight responsibility for terrorism matters within the Criminal Division, is out of the country on business. Therefore, I will be presenting this testimony on behalf of the Criminal Division. With me is Lawrence Lippe, the Chief of the General Litigation and Legal Advice Section of the Criminal Division, which has line responsibility for terrorism matters. I am pleased to be here today to discuss with you the existing legal mechanisms available to combat international terrorism, the use that the Department is making of the existing legal mechanisms to prosecute those responsible for several of the most recent tragic terrorist attacks against Americans and some of the areas in which additional legislation is needed to close gaps in our jurisdiction to prosecute terrorist atrocities abroad. In addition, I will discuss the Department's extensive consideration of reports that PLO leader Yassir Arafat was criminally responsible for the March 1973 seizure by members of the terrorist Black September Organization of the Saudi Arabian Embassy in Khartoum, Sudan and that he personally authorized the savage murders of our ambassador, Cleo Noel, our Charge d'Affaires G. Curtis Moore and Belgian diplomat Guy Eid.

The Department of Justice has received a number of letters calling for the indictment of Arafat for the 1973 slayings and much has been stated about the existence of evidence that may implicate Arafat in the murders. On the basis of such assertions, the Department conducted an extensive search, both within our government and from other sources, to determine if admissible evidence is available to support criminal prosecution

in this country. Simultaneous with that search, the Department engaged in an exhaustive legal analysis to determine whether the United States has jurisdiction to prosecute Arafat or anyone else for these reprehensible acts. Regretfully, we have concluded as a result of this analysis that there is no statutory authority upon which to predicate a prosecution in this country against any person for the 1973 murders of Ambassador Noel and Charge d'Affaires Moore.

A federal prosecution of Arafat for the murder of our diplomats could not be predicated upon any concept included in the law of nations in the absence of statutory authority for such a prosecution enacted by Congress. While Article I, section 8 of our Constitution grants Congress the power to define and punish offenses against the law of nations, Congress must exercise that power before there is jurisdiction to prosecute an offense recognized under the law of nations. Thus, even assuming that the murder of diplomats was an offense cognizable under the law of nations in 1973, the federal courts of the United States could not exercise jurisdiction over such a prosecution in the absence of a statute prohibiting the crime.

The existence of drafts of two international conventions in the early 1970's does not demonstrate that the protection of diplomats was a cognizable obligation under international law at the time that Ambassador Noel and Charge d'Affaires Moore were killed. The United States did not even sign the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons until December 28, 1973, more than nine months after the murders in Khartoum. The United States did not become a party to either this Convention or the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance until the instruments of ratification were deposited after 18 U.S.C. § 1116 was amended in 1976. Section 1116 was specifically amended to criminalize

attacks on internationally protected persons so that the United States would be able to discharge the obligations of these international conventions before becoming bound by them. Thus, it was more than three years after the Khartoum murders that international conventions reflecting any multi-national commitment to protect diplomats were consummated and adopted by the United States.

In 1973, there was no federal criminal liability for the murder of United States diplomats abroad. It was not until 1976, when Congress amended 18 U.S.C. § 1116, that such attacks on our diplomats abroad became a federal crime. The 1976 amendments to § 1116 created a major substantive change in federal law: they enlarged the class of persons protected against deadly assaults, a class that had previously been limited to foreign officials or foreign guests attacked while in the United States. Moreover, these amendments created a major procedural change in our law: they established extraterritorial jurisdiction in the courts of the United States to prosecute the murderers of American diplomats wherever the crime occurs. Thus, while the murder of American diplomats abroad undeniably was a condemnable act in 1973, it was not a prosecutable crime in the United States at the time and did not become one until 1976. Prosecuting anyone in the United States for the 1973 Khartoum murders as a violation of 18 U.S.C. § 1116 as amended would amount to punishing persons for acts not punishable under our law at the time they were committed. Such a prosecution clearly would violate the ex post facto clause found in Article I, Section 9 of the United States Constitution.

There is no statutory authority besides 18 U.S.C. § 1116 upon which to predicate a federal prosecution for the murder of American diplomats abroad. Criminal statutes are presumed to apply only domestically unless the language and nature of the statute and its legislative history clearly demonstrate that Congress intended it to have extraterritorial effect. While

several extraterritorial statutes exist, many are of rather recent vintage and all reflect Congressional intent to prohibit acts occurring outside the territory of the United States. Upon review of these statutes, however, it is apparent that extraterritorial jurisdiction will vest in United States courts only in the case of particular attacks against specially protected persons. No extraterritorial statute besides 18 U.S.C. § 1116 as amended would cover the savage attacks against Ambassador Noel and Charge d'Affaires Moore.

Although the Department of Justice has determined that there is no federal jurisdiction to prosecute anyone for the 1973 Khartoum murders, we conducted an extensive search of agencies and departments within our government as well as outside our government to see if admissible evidence exists that could support an indictment against Arafat. We enlisted the assistance of the State Department and various components of the intelligence community to obtain and verify information alleging Arafat's complicity in the planning of the embassy takeover and the murder of our diplomats.

We have analyzed all of the materials available and have determined that the evidence currently available is plainly insufficient for prosecutive purposes even if there were a legal basis for instituting charges against Arafat. If the Committee wishes to convene an Executive Session, we can advise the Committee in more detail concerning our findings. Information concerning Arafat's direct involvement in this operation is, at best, hearsay and conjecture. Thus, such information would never be admissible in any trial of Arafat in this country.

Although neither the law nor the evidence supports a prosecution for Arafat for the 1973 murders, the Department of Justice does have jurisdiction to prosecute the international terrorists responsible for many of the most recent brutal attacks on Americans abroad. Our extraterritorial jurisdiction has expanded greatly since 1973 and we are using our enhanced

authority to investigate such barbaric attacks aggressively. We will not hesitate to prosecute all those criminally implicated in these heinous crimes. We intend to ensure the identification, apprehension and effective prosecution of terrorists whose wanton violence targets Americans abroad. We have commenced investigations of those responsible for the hijacking of TWA 847, the piracy of the Achille Lauro, the hijacking of Egyptair 648 and the bombing of TWA 840 and we intend to prosecute them. The development of these cases has required substantial investigation abroad and unique cooperative initiatives with other countries that we hope share our commitment to bring the perpetrators to justice. With your permission, I would like to summarize our progress on each of these cases.

In the case of the June 1985 hijacking of TWA 847 and the cold-blooded murder of Robert Stethem, the Justice Department has charged the three hijackers with aircraft piracy and murder in the special aircraft jurisdiction of the United States. Complaints against and arrest warrants for the hijackers were filed under seal in the United States District Court for the District of Columbia within days of the release of all passengers and these complaints and warrants were unsealed on October 17, 1985. A reward of up to $250,000 has been offered for information leading to the apprehension, effective prosecution and punishment of those responsible for the hijacking. Witnesses to the hijacking continue to be interviewed by the FBI and a federal grand jury investigation remains open to receive evidence.

In the case of the October 1985 piracy of the cruise ship Achille Lauro and the cowardly murder of Leon Klinghoffer, the Department of Justice obtained a complaint and arrest warrant in the United States District Court for the District of Columbia for Abu el-Abbas, the mastermind of the attack, even before the ship's American passengers returned to the United States after their release from captivity. Abbas has been charged with

hostage-taking, piracy and conspiracy. The United States issued provisional arrest requests for Abbas to Italy and Yugoslavia in efforts to capture him before he departed those countries after the apprehension on Sicily of the four terrorists who carried out the piracy. The Department of Justice also obtained complaints against and arrest warrants for these four terrorists, charging them with hostage-taking, piracy and conspiracy. As you know, the Egyptian aircraft carrying these terrorists to safety out of Egypt was diverted by United States aircraft to Sigonella, Sicily on October 11, 1985 to ensure the apprehension of the terrorists. A reward of up to $250,000 has been offered by the United States for information leading to the apprehension, effective prosecution and punishment of Abbas, who remains at large. A federal grand jury investigation is continuing into the matter. Meanwhile, the four terrorists apprehended on Sicily are in Italian custody. Last fall, they were tried and convicted by the Italian authorities for weapons offenses related to the piracy. They have been sentenced to between four and nine years for those crimes alone. They are in prison awaiting trial in Italy on charges of piracy and murder. At this time, the trial against the four terrorists in custody and ten other persons not in custody is anticipated to begin in June.

In the case of the November 1985 hijacking of Egyptair 648 and the brutal murder of Scarlett Rogenkamp and the attempted murders of Scott Patrick Baker and Jackie Pflug, the Department of Justice has obtained a complaint against and an arrest warrant for the hijacker who survived the Egyptian rescue mission conducted in Malta to end the crisis. Based upon this complaint for the offense of hostage taking, the United States submitted a request to Malta for the provisional arrest of that hijacker currently in custody and awaiting trial there. We instructed the Maltese to take no action on this request unless and until he ever becomes eligible for release from Maltese custody. If the hijacker ever becomes eligible for release, the request for

provisional arrest will serve to ensure that he can be placed in our custody. A federal grand jury investigation into this case is continuing. The Maltese authorities began a "compilation of evidence" procedure in their courts in January. This procedure is similar to an American preliminary hearing and has thus far included the live testimony of members of the Egyptair flight crew as well as the live testimony of Mr. Baker, who travelled to Malta specifically for that purpose. The Department of Justice is monitoring the Maltese proceedings and has been informed that the trial of the hijacker will commence at the conclusion of the "compilation of evidence" procedure, perhaps as early as next month.

Finally, the Department of Justice has been aggressively involved in the investigation of the savage bombing of TWA 840 earlier this month, which killed four Americans: Alberto Ospina, Maria Klug, her baby, Demetra Klug and her mother, Demetra Stylian. A federal grand jury investigation has commenced to receive evidence concerning this attack. In its efforts to preserve and obtain evidence located abroad and to track down the perpetrators, the United States has prepared requests for judicial assistance to transmit to Greece and Egypt seeking all relevant evidence and information. FBI agents have conducted preliminary interviews of key witnesses in Athens and Cairo and are continuing to gather critical investigative data.

Thus, as you can see from the foregoing, the United States is aggressively pursuing available legal mechanisms by which to prosecute these recent terrorist acts. We are, however, very grateful for the efforts of this Subcommittee, its Chairman, and the full Senate for the attention they have given and continue to give to several legislative efforts that are needed to confront terrorism. While there are numerous matters presently pending in the Congress relating to terrorism, I will comment only upon those in the Senate which we believe will be the most beneficial.

1. The reinstitution of capital punishment in the federal

system for crimes relating to murder, espionage, and treason is a priority of this Administration. The full Senate now has S. 239, which was reported favorably by the Judiciary Committee, pending before it. While the full Senate will likely consider floor amendments to S. 239, -- one of which we anticipate will be an amendment to add the death penalty to 18 U.S.C. 1203 if the death of any person results from a hostage-taking situation -- we are confident that the Senate will produce a bill that contains the necessary procedures that will permit the constitutional imposition of a death sentence. Unfortunately, prior bills which have passed the Senate to constitutionally impose the death sentence have languished in the House. Accordingly, we vigorously support prompt enactment of this legislation.

2. The murder of and serious assaults upon United States nationals overseas by terrorists remains the area where the biggest gap in current federal criminal jurisdiction exists. Under current law, we cannot prosecute someone, without an alternative jurisdictional base, for the murder of Americans who are not specifically protected. Senator Specter and this Subcommittee recognized this serious gap and led the effort in the Senate's passage of S. 1429 by a vote of 92 to 0 on February 19, 1986. Unfortunately, the House Judiciary Committee is not disposed to act upon S. 1429. We believe that the approach taken by S. 1429 is the most productive and workable arrangement in this difficult area. As with the death penalty, we urge enactment of S. 1429.

3. On March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. Presently, the Senate is carefully reviewing this measure. H.R. 4151 has many sections that the Administration believes will be beneficial to fight terrorism. One of these is Section 508 which creates a mechanism to control the provision of certain services to the military, police, and intelligence agencies of certain designated countries that support international

terrorism. This measure is the essence of the "services" bills submitted to the 98th Congress (i.e., S. 2626 and H.R. 5613) by the President to close the gaps in federal law that came to light in the Wilson-Terpil investigations. While Section 508 has somewhat limited the scope of the prior bills of the 98th Congress, we believe it represents the broadest coverage likely to be granted by the Congress. We would suggest, however, that Section 508 include appropriate language to clearly indicate that authorized undercover activities by United States Government personnel and their agents are not encompassed within the scope of the provision and that investigative authority for any offense be vested in both the Attorney General and the Secretary of the Treasury. Because the prohibited services would involve regulatory, export-type violations, which are more within the investigative expertise of the U. S. Customs Service, and could at times involve activities relating to known terrorists, which is the primary responsibility of the FBI, it is essential that both agencies have the necessary authority to investigate these cases either jointly or separately, depending upon the circumstances. We anticipate that investigative understandings between both agencies will be readily reached to ensure a coordinated law enforcement response.

4. As you well know, recent decisions of U. S. courts have blocked the extradition of persons accused or convicted of terrorist acts abroad on the ground that their violent crimes, including murder, were political offenses. Moreover, similar provisions in foreign extradition laws have frustrated efforts to bring accused terrorists to this country for trial. To correct this situation, the United States has begun negotiations with selected countries to revise our extradition treaties to preclude the use of the political offense exception in cases involving violent crime. The first country with which we have concluded such a revision is the United Kingdom. The Supplemental United States-United Kingdom extradition treaty has been submitted to

the Senate for ratification and is pending before the Senate Committee on Foreign Relations. We are hopeful of favorable consideration of this important anti-terrorism measure by the Senate within the near future.

There are, of course, other important anti-terrorism matters of a preventive nature such as S. 274, the Nuclear Power Plant Security and Anti-Terrorism Act of 1985, which was drafted and sponsored by the Chairman of this Subcommittee and which was overwhelmingly passed by the Senate last October. The Administration has also submitted a bill to further improve airport security. These important measures, if enacted, will help to further protect Americans from possible terrorist attacks, especially attacks here in the United States.

Senator DENTON. Thank you, Mr. Richard. I understand Mr. Lippe does not have a statement, so we will ask Ms. Mary Mochary for hers.

STATEMENT OF MARY V. MOCHARY

Ms. MOCHARY. Thank you, Mr. Chairman and distinguished members of the subcommittee. My name is Mary Mochary; I am Deputy Legal Adviser in the State Department. It is an honor to appear before you today to testify on the critical topic of legal mechanisms to combat terrorism. We very much appreciate the interest and support that you, this committee, and Members of Congress have shown in this critical problem of terrorism.

I have submitted a statement for the record, and at this time I would like to make just some brief remarks.

Your invitation indicated a particular interest in the question of law enforcement efforts against Yasser Arafat in relation to his alleged involvement in the 1973 murders of U.S. diplomats Cleo Noel and George Moore in Khartoum.

We have been cooperating with our colleagues at Justice to develop as complete a record as possible in this matter in order to assist them in determining whether the necessary jurisdiction and evidence exist to seek an indictment against Arafat for this crime. As you know, the Department of Justice recently communicated its conclusions on this question to the Congress.

With respect to the general topic of legal mechanisms to combat terrorism, I would like to recall that in a prior appearance, Abraham Sofaer testified on an important addition to the counterterrorism arsenal, S. 1429, the Terrorist Prosecution Act of 1985. The Department firmly supports that measure which would make it a Federal offense for terrorists to murder U.S. citizens abroad. Regrettably, recent terrorist acts in Berlin, Rome, and Vienna have reminded us of the need for this legislation.

S. 1429 provides an excellent model of productive cooperation between the legislative and executive branches in creating new legal

weapons to fight terrorism. Similarly, the new laws on aircraft sabotage and hostage-taking, which were enacted in 1984 pursuant to our responsibilities under the relevant international conventions, have given us needed authority to initiate investigations in terrorist incidents abroad. Thus, our law enforcement agencies, spearheaded by the FBI, have used these new powers effectively in close cooperation with the Department of State to investigate such terrorist attacks as the bombing of TWA 840 and the hostage-taking aboard the *Achille Lauro*.

We must recognize, however, that law has not yet proven to be a fully satisfactory tool in dealing with international terrorism. The record has been poor. Some terrorists are killed or captured during their crime, but few terrorists are brought to justice before a court of law. Thus, while in several respects it is correct to say that to deal effectively with terrorism we need some more laws, we must not deceive ourselves into believing that new laws will, of themselves, overcome the problems that yield poor law enforcement results against terrorists.

In applying criminal law domestically, we have Federal, State, and municipal cooperation at the judicial and police levels. However, in applying law internationally, we are dependent upon the cooperation of other governments. This is particularly true in the areas of international extradition. The United States now processes hundreds of extradition cases annually, but few, if any, of these cases involve terrorist offenders. When we or other nations seek the extradition of terrorists, more often than not we are refused. This fact can be attributed, in general, not only to gaps in applicable legal regimes but also to gaps in the political will and commitment of states to combat terrorism.

Yet even where that political will exists, loopholes in the law can and do frustrate justice. Foremost among these loopholes is the political offense exception to extradition. This exception was simply not developed with international terrorism in mind, yet today we see it used—or misused—to prevent terrorists from being brought to justice. To minimize this risk, the United States and a number of other states have concluded bilateral extradition treaties that exclude offenses covered by the multilateral law enforcement conventions from the application of the political offense exception. This has also been done on a multilateral basis by the Council of Europe in its 1977 Convention on the Suppression of Terrorism.

However, by far the most prominent among recent efforts of the United States to match its words with action in this area is the United States-United Kingdom Supplementary Extradition Treaty. This treaty would remove from the scope of political offense exception to extradition certain specified crimes of violence typically committed by terrorists. The policy underlying this treaty is clear: With respect to violent crimes, the political offense exception has no place in extradition treaties between stable democracies in which the political system is available to redress legitimate grievances and the judicial process provides fair treatment. We intend the U.K. Treaty as the first of a series of similar treaties we will negotiate with democratic governments. A network of such agreements will contribute substantially to our ability to deal effectively with terrorism within the framework of international law.

I cannot stress enough the critical importance of Senate support for the United States-United Kingdom treaty. Failure to ratify the treaty will send a signal that the United States is not really serious about combating terrorism We cannot allow the United States to be perceived by others as a sanctuary to international terrorists.

Mr. Chairman, terrorism is a broad subject, and I have covered only a few of the issues which are foremost in our minds. However, I would welcome any questions you might have.

[Ms. Mochary's prepared statement follows:]

PREPARED STATEMENT OF MARY V. MOCHARY

Mr. Chairman and Members of the subcommittee:

It is an honor to testify before you on the critical topic of legal mechanisms to combat terrorism. Your invitation indicated a particular interest in the question of law enforcement efforts against Yasir Arafat in relation to his alleged involvement in the 1973 murders of U.S. diplomats Cleo Noel and George Moore in Khartoum. I will open with a few words on that issue before moving to a more general discussion of today's subject.

We have consistently exerted a maximum effort to see that the perpetrators of this crime are punished. On the question of whether the necessary jurisdiction and evidence exist to seek an indictment against Arafat in this matter, we defer to the Department of Justice. We have been cooperating with our colleagues at Justice to develop as complete a record as possible in this matter. The State Department is particularly concerned that those who planned the action in Khartoum which caused the death of one our own be brought to justice.

In an appearance before this subcommittee last July, the State Department Legal Adviser, Judge Sofaer, testified on an important addition to the counter-terrorism arsenal, S.1429, the "Terrorist Prosecution Act of 1985." That bill would make it a federal offense for terrorists to murder U.S. citizens abroad. Judge Sofaer expressed the Department's strong support for that measure, which would fill a substantial gap in our legal coverage against terrorism. Recent terrorist acts, such as the killing of Americans in the Rome and Vienna airport bombings, and the killing of an American soldier in the Labelle

Disco bombing in Berlin, have reminded us of the need for this legislation. S. 1429 has passed the Senate without opposition, and we hope it will soon become law.

S.1429 provides an excellent model of productive cooperation between the legislative and executive branches in creating new legal weapons to fight terrorism. Congress has supported the Administration's policy of treating terrorists as criminals and going after them with the full resources of our law enforcement apparatus.

We must recognize, however, that the law has not yet proven to be a fully satisfactory tool in dealing with international terrorism. Unfortunately, the record has been poor. Some terrorists are killed or captured during the course of their crimes; but few terrorists are ever found and arrested after the fact. The prospects for a successful extradition of a terrorist fugitive are even fewer. Thus, while in several respects it can be correctly said that to deal effectively with terrorism we need <u>more</u> laws, we must not deceive ourselves into believing that new laws, closing "gaps," will, of themselves, overcome the problems that yield poor law enforcement results against terrorists.

One reason for this poor record is that terrorism is, in essence, criminal activity, and we cannot eliminate crime. In applying law domestically we have the benefits of excellent federal/state/municipal cooperation at the police and judicial level. In dealing with international terrorism we have no comparable co-operative or international police force or judiciary system.

The Comprehensive Crime Control Act of 1984, which provided us with some major new legal tools to combat international

terrorism, has now been in force for a year-and-a-half. The new laws on aircraft sabotage and hostage-taking, which were enacted pursuant to our responsibilities under the relevant international conventions, have given us the authority we needed to initiate investigations in several recent terrorist incidents, including the bombing of TWA 840 and the hostage-taking aboard the Achille Lauro. I can say that our law enforcement agencies, spearheaded by the FBI, have used these new powers effectively, in close cooperation with the Department of State, in investigating terrorist attacks against Americans abroad.

But, in combatting international terrorism, we are dependent upon the cooperation of other governments. The primary method of securing such cooperation in the law enforcement area is international extradition. The importance of extradition has grown as international transportation and communications links have increased in scope and efficiency, and as crime -- particularly terrorist crime -- has become more international in nature. The United States has extradition treaties with more than one hundred countries. We now process hundreds of extradition cases annually, a vast increase over just ten years ago. But few, if any, of these cases involve terrorist offenders. This fact can be attributed, not to gaps in the applicable legal regimes, but primarily to gaps in the political will and commitment of States to combat terrorism.

Extradition is not an end in itself, but a means to an end -- the meting out of justice to an accused or convicted offender. This fact is reflected in the extradite-or-prosecute formulas of the major multilateral conventions on aircraft hijacking and sabotage, attacks on internationally protected persons, and hostage-taking. The goal of these conventions is not to ensure that an alleged offender be extradited, but

rather that the offender be subjected to law enforcement measures. If, under the relevant factual and legal circumstances, extradition would serve that end, then the convention provides a legal basis for extradition. If, on the other hand, submission of the case for prosecution by the authorities of the state where the offender is found would serve that end, then the convention provides for the creation by parties of the legal basis to exercise their own criminal jurisdiction over the offense -- as we have done, for instance, in the new laws I mentioned earlier enacted as part of the Comprehensive Crime Control Act of 1984.

It is easy to question the effectiveness of these conventions, and indeed of any law enforcement treaties as a deterrent to terrorism. But it would be unfair to ask too much of the international conventions in this regard. The real achievement of the extradite-or-prosecute conventions is not to deter terrorism, but to ensure that terrorists cannot escape punishment for their deeds through gaps in the international legal structure, a situation that responsible governments simply could not allow.

The loophole that currently causes the greatest concern is the political offense exception to extradition. This exception was simply not developed with modern international terrorism in mind. Yet today we see it used -- or misused -- to prevent terrorists from being brought to justice. The major multilateral law enforcement treaties address this subject only indirectly. Proposals during negotiations of these treaties that the offenses covered by the treaties be excluded from the application of the political offense exception were ultimately rejected. However, the United States and many other parties to these conventions have adopted a policy in subsequently negotiated bilateral extradition treaties of excluding offenses

covered by the multilateral conventions from the application of the political offense exception. And of course, this has been done on a multilateral basis by the Council of Europe in its 1977 Convention on the Suppression of Terrorism.

The international community as a whole has begun to take note of this problem but has hardly dealt with it adequately. The resolution on criminal acts of a terrorist character adopted by consensus at the Seventh U.N. Congress on Crime in Milan last fall, co-sponsored by a diverse group of countries including strong Third World and non-aligned representation, urged all States, to the fullest extent possible, to facilitate the effective application of law enforcement meaures with respect to those who commit acts of terrorist violence, to rationalize their extradition procedures and practices, and to avoid inappropriate exceptions to extradition. Subsequently the UN General Assembly adopted the strongest anti-terrorism resolution in its history. The resolution condemned acts of terrorism as criminal and urged all states not to allow any circumstances to obstruct the application of appropriate law enforcement measures to persons who commit acts of international terrorism, and to cooperate with one another more closely, especially through the apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists. Howeveri it is worth comparing this resolution to past resolutions, which have regularly included provisions that demonstrate the absence of international agreement on the need to regulate political violence. Thus, while the United States looks to the strong anti-terrorist language of this resolution, defenders of certain terrorist acts may find comfort in language in the same resolutions that reaffirms the legitimacy of struggles against

colonial and racist regimes and other forms of alien domination.

By far the most prominent among recent efforts of the United States to match its words with action is the U.S.-U.K. Supplementary Extradition Treaty. This treaty would remove from the scope of the political offense exception to extradition certain specified crimes of violence typically committed by terrorists. The policy underlying this treaty is clear: with respect to violent crimes, the political offense exception has no place in extradition treaties between stable democracies in which the political system is available to redress legitimate grievances and the judicial process provides fair treatment. We intend the U.K. treaty as the first of a series of similar treaties we will negotiate with democratic governments. A network of such agreements will contribute substantially to our ability to deal effectively with terrorism within the framework of international law. I cannot stress enough the critical importance of Senate support for the U.S.-U.K. Treaty. Failure to ratify the treaty will send a signal that the United States is not really serious about conmbatting terrorism; we talk a good game, but when it comes to action we are negligent. After all, our laws are replete with authorities for punitive measures to be taken against states that give "sanctuary" to international terrorists. We cannot allow the United States to be perceived by others as such a sanctuary from foreign justice.

I would like to highlight one additional measure currently pending in the Congress that would significantly enhance our legal mechanisms to combat terrorism. Section 508 of H.R. 4418, the "Omnibus Diplomatic Security and Anti-terrorism Act of 1986" recently passed by the House, incorporates the essence of a measure proposed by the Administration in the last

Congress, introduced at that time as S. 2626. This measure would give us the clear authority to control certain types of services provided by anyone within U.S. jurisdiction to governments that support terrorism. We cannot tolerate a situation in which individuals are free to place their technical expertise in various fields at the disposal of foreign governments to aid such governments in sponsoring or carrying out terrorist activities. Current law effectively covers such assistance only when it is directly related to items on the Munitions List. But technical assistance in other areas, for example, in illegal document preparation, certain types of communications security, or evading security measures at airports, is not controlled under current law. This is a situation that section 508 would correct, and I commend it to your attention.

Terrorism is a broad subject, and I have covered only a few of the more salient issues in my remarks today. In the interest of time, however, I will stop here, and would welcome any questions you might have. Thank you.

Senator DENTON. Thank you, Ms. Mochary. We will have questions for you.

And I must note that the third panel will be comprised of a number of scholars and lawyers in the relevant field who take exception to some of the positions expressed. And it might be useful if at least one of this panel would remain—just to overhear what goes on—so that we could expedite the progress, if any is to result in examining the most specific issue which is at hand.

Mr. RICHARD. Mr. Chairman, I am due at another hearing, but Mr. Lippe, of the Department of Justice, will remain and be available.

Senator DENTON. All right, thank you, sir.

I will address this question to Mary Mochary. Freedom to travel is an essential complement of organized terrorist operations as so many terrorist incidents indicate. Are you confident that our current policy of granting visas to members of the PLO and other terrorist organizations such as the ANC and SWAPO, are you confident that that policy is in our Nation's best security interests?

Ms. MOCHARY. Well, the PLO is a proscribed organization. In order for the members of the PLO to get visas to enter the United States, waivers have to be granted—waivers recommended by the State Department and approved by the Attorney General

Our information indicates that, in 1985, 14 members of the PLO Observer Mission were given 59 waivers to enter the United States. Each time they are given only single-entry visas. In addition to that, eight other waivers were granted in 1985. And the indication is that those numbers have been consistent over a period of time.

Senator DENTON. Well, the State Department submitted a response for the record, in responding to Senator Lautenberg's questions at a March 1986 hearing of the Appropriations Subcommittee on Commerce, Justice and State, and in that response the State Department said:

> Temporary waivers and single-entry visas may also be granted to other PLO members when there are humanitarian or other circumstances where entry is deemed to be in the U.S. interest.

We will be discussing the McGovern amendment to the McCarren Act, but when does the State Department see entry of PLO members as being in the U.S. interest?

Ms. MOCHARY. An example was pointed out to me; Mr. Hoot, a PLO leader, was given a visa to enter the United States by Secretary Vance—I think it was in 1979—in promoting the Camp David peace process that was then going on.

Senator DENTON. And all of those other exceptions which you have acknowledged are of similar national interest to the United States?

Ms. MOCHARY. The vast majority of the waivers that I have cited were to people who were coming to the PLO Observer Mission at the United Nations, and the majority of the others—the other eight were for humanitarian reasons.

Senator DENTON. Well, it was the position of the State Department, in 1978, that there is a presumption in the McGovern amendment that:

> The Secretary of State will recommend to the Attorney General that a waiver be granted to persons affiliated with proscribed organizations, including the PLO.

And apparently the PLO is still granted that presumption of a waiver by the Department of State.

Do you feel that we are bending over backward to allow the PLO into the country, considering the terrorist inclinations of their members? Do you believe the McGovern amendment should be repealed, or are you happy with the situation as it presently exists?

Ms. MOCHARY. One of the attorneys on my staff informs me that the presumption is not what keeps the PLO out; it is the Solarz amendment which says that PLO members should not be granted visas except by waiver.

However, to my knowledge, waivers are very seriously considered, and strictly construed, and are not easy to come by. We have taken a strong position not only on the issuance of waivers but also on the issue of travel permission.

There is a man who is at the U.N. Observer Mission of the PLO, a Mr. Tertzi who was requested to speak at a Harvard law forum. We denied him permission to travel to that Harvard law forum. We were sued by a Harvard professor and one of the students in Federal court in Boston to force us to grant him this travel permission. The U.S. Government lost that suit and it is now under appeal.

So, we do try to be very circumspect in not only the visas that are granted but also the permission to travel that is approved.

Senator DENTON. Section 28(f) of the Immigration and Naturalization Act states that aliens who advocate, support, or advance the overthrow of any government or the killing of the officials of any government are inadmissible to the United States.

The PLO advocates the overthrow of the Israeli Government and the killing of Israeli officials, while the ANC advocates the overthrow of the South African Government, and SWAPO advocates the overthrow of the Namibian Government.

By granting PLO, ANC, and SWAPO members visas, is not the United States violating the Immigration Act?

Ms. MOCHARY. The PLO is in a different position from SWAPO and the ANC. The PLO has a specific exemption to the McGovern amendment, which says that they are not covered by the McGovern amendment but instead are covered by the Solarz amendment; this makes it a lot easier to deny visas to PLO members than to other members of terrorist organizations because we have specific authority in the legislation to deny visas to PLO members and, in order to get them in, waivers have to be granted.

In the case of members of other terrorist organizations, we are not permitted to deny visas simply because applicants are members or affiliates of such terrorist organizations; to be denied applicants actually have to be advocates of terrorism.

Senator DENTON. The subcommittee conducted a hearing in which we indicated that there was evidence that Sam Nyoma, of SWAPO, indeed, the president of SWAPO, ordered the terrorist killing from headquarters in the United Nations and, yet, we see the ANC with their U.N. contingents or information offices here and see them treated in the media, some of the media, as perfectly legitimate organizations, which would scarcely be believed by anyone who attended the hearings we had. So, it doesn't sound consistent with what you are saying that we would allow a person like that in here when he actually ordered a terrorist murder from not only the United States but up there in the United Nations.

Are you aware of that finding?

Ms. MOCHARY. I am not aware of that particular case, but I will certainly look into it. However, you mentioned the information office in Washington, DC——

Senator DENTON. Excuse me. We did bring that matter to the attention of the Secretary of State and the Attorney General, in March 1982.

Ms. MOCHARY. I was not with the Department at the time, but I will certainly look into it and get you updated information.

May I say a few words about the information office in Washington, DC?

Senator DENTON. Sure.

Ms. MOCHARY. To the best of our knowledge, that is manned exclusively by American citizens or legal resident aliens.

Senator DENTON. Which information office are you referring to?

Ms. MOCHARY. The one in Washington.

Senator DENTON. The PLO, OK.

Ms. MOCHARY. And, unfortunately, there is nothing that we can do about that because it is manned exclusively by legal resident aliens or American citizens.

Senator DENTON. Well, what it seems to many is that we might be playing a double game with the PLO, condemning their violence publicly, on the one hand, and by policy and practice encouraging contacts by them in the United States.

Are we, as a matter of policy, seeking to create in the PLO and Arafat, in particular, institutions on a person which are legitimate—a legitimate entity with which to negotiate, for example, on the Palestinian question? Is that the thrust of our policy?

Ms. MOCHARY. Certainly, that is not a policy of the Department of State to create anything out of anybody.

Senator DENTON. Well, for Mr. Richard, 2 weeks ago the New York Times reported that PLO offices in Europe are supporting terrorist operations by "Recruiting, renting safe houses, providing identity documents, choosing potential targets and collecting operational intelligence."

It is also asserted that PLO offices have specialists in terrorism who are ready to do violence.

And, again, the United States permits the PLO to maintain an office just a few blocks from here at 818 18th Street NW.

Can you assure this subcommittee that the PLO office in our Nation's Capital, irrespective of its composition, is not involved in supporting terrorism and will not be used to foment terrorist violence in the United States?

Mr. RICHARD. No, Senator, I would not give you those assurances that they are not engaged in those activities. I am not in a position to assure that any and all activities of any organization are necessarily legal. I am suggesting that what we are aware of at the present time is consistent with the law.

Obviously, to the extent that we develop information that suggests that they are violating——

Senator DENTON. Excuse me. Would you put the microphone a little closer?

Mr. RICHARD. Obviously, to the extent that we develop information that they are using their information office as a cover to engage in criminal activities, we will take appropriate prosecutive action.

Senator DENTON. Would you be in favor of reviewing the decision to keep the office open?

Mr. RICHARD. Well, as I appreciate it——

Senator DENTON. Since you can't give me an assurance, how can you justify the existence of such an office?

Mr. RICHARD. The office, as reflected in their registration statement, is engaged in activities that are perfectly legal.

Now, to the extent of any activities they may engage in as an organization or individually that does, in fact, violate the law, we will take steps to prosecute.

Senator DENTON. Under the Registration Act you have authority to investigate that office. Have you investigated it?

Mr. RICHARD. We do review with close scrutiny their submissions and evaluate whether there is any basis consistent with our practice to engage in an onsite review of their records.

Senator DENTON. In view of the amount and degree of terrorism for which the PLO is responsible, it might be expected that you would have reviewed their books and records. Have you done that?

Mr. RICHARD. I do not believe that, since they have registered, that we have engaged in an onsite review. The missions are reviewed and I have been informed by the people that do review and administer that act that, on their face, the submissions do appear to be in order.

Senator DENTON. How long have they been registered?

Mr. RICHARD. I am inclined to say several years, but I can get the precise time for you and submit it for the record, Mr. Chairman.

Senator DENTON. All right. We will wait for that.

Mr. RICHARD. That is just the information office as opposed to the New York office.

Senator DENTON. The information office.

I would ask and consider it a reasonable request that you have the FBI or your own people in the Department of Justice conduct an inspection which would be rather thorough in view of recent history and what we know overall about the organization.

Mr. RICHARD. The authority, of course, to conduct an inspection under FARA is limited to the purposes of FARA, and any such inspection would be designed to ensure that their submissions, under FARA, are accurate and complete. And I say that because I would not want to suggest that we, utilizing the authority granted by FARA, can go into the offices and necessarily rummage through other areas and materials that are not relevant to their registration under FARA.

Senator DENTON. Well, we are not asking that, but if you would inspect to see whether they are making full and complete disclosures I would think that would be the minimum that you would want to do.

How do we know that their disclosures are true, if we have not looked at their records? And they are connected with the PLO, the record of which we have already taken considerable note of.

Mr. RICHARD. For many years, Senator, the decision to make an onsite review, to my understanding, is triggered primarily by some indication that the submissions are incomplete or inaccurate or some basis for concluding that there may be noncompliance with the FARA requirements. And that is my understanding of the basis for conducting onsite reviews.

Senator DENTON. Well, we have made progress in this field of domestic terrorism by revising the Levy guidelines to the Smith guidelines so that the FBI could do some rather sensible things which they were previously prohibited from doing. I would think that the same kind of spirit would be prevailing in the State Department regarding international terrorism. Section 615 of this statute specifically provides for the authority to make those inspections.

Mr. RICHARD. Oh, yes. I am not quarreling with the suggestion, and your points are certainly well taken, Senator. I am not disputing them. I am suggesting though what the parameters have been and the focus of these inspections are. I am not quarreling with your points.

Senator DENTON. All right. I am glad to hear that because you know you have a purpose; we have a purpose in security and terrorism to do the best we can to protect one and prevent the other. And I would think the suggestions we have just offered are in that interest.

At this point, without objection, I will place in the record a chronology of PLO acts of terrorism beginning with the October 8, 1985, hijacking of the *Achille Lauro* and going back in time to August 18, 1968, when the Fatah exploded three grenades in the Jewish quarter of Jerusalem when eight Israelis and two Americans were injured.

With respect to the Irish operating in this country, you have a rather fulsome record of inspections dealing with the provisional wing of the IRA, but I don't see a parallel conscientiousness affecting the PLO, and litigations going all the way to the Supreme Court on the Irish case and it looks like we are ignoring part of the program and picking on another part.

AMERICAN CASUALTIES OF PLO TERRORISTS

October 8, 1985: Achille Lauro oceanliner hijacked. Leon Klinghoffer, American, shot and thrown overboard. Abul Abbas and Palestine Liberation Front claims responsibility. **4 underlings imprisoned in Italy; Abul Abbas, mastermind along with Arafat, allowed to escape--now in Iraq.**

March 1, 1973: **Black September** assassinates U.S. allegedly Ambassador in the Sudan, Cleo Noel, and DCM George C. Moore in Khartoum after an explicit order from Arafat/Abu Iyad in Beirut. A Sudanese court indicted the eight assassins on five counts, including murder, but **released** them for **lack of evidence** in October 1973. A Khartoum court convicted them of murder on June 24, 1974, and sentenced them to life, but Sudanese Pres Gaafar el-Nimery immediately commuted each sentence to seven years. He also announced tht the group would be handed over to the PLO. They were flown to Cairo the next day. It appears that Egypt placed the group at the disposal of the PLO in November 1974. (pp.375-378)

March 11, 1978: 13 **Fatah** terrorists landed on a beach on the northern coast, seized a tour bus and left 46 dead and 85 wounded. Among dead, Gail Rubin, 39, a photographer, relative of U.S. Senator Abraham Ribicoff (D-CT). **The surviving terrorists were sentenced to life imprisonment.**

September 5, 1972: **Black September** Munich massacre of 11 athletes including one American, David Berg of Cleveland, OH. 3 surviving terrorists **released.** (p. 338)

August 5, 1973: Two **Black Septembrists** opened fire with machine guns at passengers bound for NY at a TWA flight terminal in Greece. Among the three killed was a 16 year-old American girl. Terrorist was sentenced to life imprisonment and later released.

June 3, 1978: **Fatah** claimed credit for bombing a bus in Jerusalem, killing six and wounding 20. Among dead was Richard Fishman, 30, a student at the University of Maryland Medical School who was on vacation. (p. 792)

August 11, 1976: Four persons were killed and 26 injured when two **PFLP** terrorist threw grenades and fired submachine guns at a crowd waiting to board El Al flight bound for Tel Aviv from Istanbul. The dead included Harold W. Rosenthal, 29, of Philadelphia, a staff aide to Sen. Jacob Javits. Among the injured were two U.S. citizens: Nona Shearer, 40, and Lucille Washburn, 52. **On November 16, 1976, a Turkish court sentenced the terrorists to death but commuted the sentences to life imprisonment.** (p. 637)

June 16, 1976: U.S. Ambassador Francis E. Meloy, 59, economic counselor Robert O. Waring, and the ambassador's chauffeur, were shot to death by PFLP. The State Dept claimed that ambassador's car was never recovered and was believed to have fallen into the hands of Fatah. **There were rumors that Salah Khalaf was involved in planning the operation. Those responsible have yet to be brought to justice.** (p. 619)

March 8, 1986: A pistol shot grazed the head of an American tourist in the Old City of Jerusalem. NYT, 3/8/86, p. 31

July 7, 1983: Aharon Gross, an American yeshiva student, was attacked and stabbed to death in the Casbah in Hebron by three Arabs. (IDF Spokesman, p. 22)

September 12, 1981: A hand-grenade was thrown at a group of tourists in the old city of Jerusalem, near Damascus Gate, killing 2 people, and injuring 27, including 1 American. (IDF Spokesman, June 1967-October 1985, p. 20)

September 5, 1978: Stephen Michael Hilmes, a U.S. bomb expert, died five days later from injuries suffered when a bomb went off in Jerusalem. (p. 808)

March 20, 1976: The PLO in Damascus claimed credit for setting a predawn fire that gutted the eight-story Park Hotel in Netanya, killing four tourists and injuring 46, including two Americans. (p. 593)

June 27, 1976: Air France flight 139, from Tel Aviv to Paris was hijacked to Athens by seven members of the PFLP to Entebbe, Uganda. At least nine Americans were on board.

June 29, 1975: Col. Ernest R. Morgan of the U.S. Army was kidnapped in Beirut from a taxi by members of the PFLP-GC and released 13 days later. Some reports claimed that the PFLP was responsible for the attack, while others noted that the Revolutionary Socialist Action (RSAO) claimed credit. (pp. 528-529)

July 4, 1975: A bomb placed in an old refrigerator in Zion Square, Jerusalem, exploded killing 15 and injuring 75, including two Americans, Mark Katz and Deborah Levine, both from Richmond, VA. Fatah claimed credit. On June 27, 1977, an Israeli military court sentenced Ahmed Haj Ibrahim Mousa Assad Jabara to life imprisonment for the bombing. (p. 529)

August 4, 1975: Four members of the Japanese Red Army, trained in PFLP camps in Lebanon occupied the U.S. embassy in Malaysia and held hostages.

October 22, 1975: The director and assistant director of the USIS regional service center in east Beirut were kidnapped (Charles Gallagher, 44, and William Dykes, 55), and it is believed they were handed over to an arm of the PFLP; released Feb. 25, 1976. (p. 555)

October 29, 1975: Herman Huddleston, 48, was kidnapped from his beachfront home in Beirut by 4 Palestinians armed with machine guns. (p. 559)

November 17, 1975: a 23-lb. bomb exploded inside a porter's luggage cart in Zion Square, Jerusalem, killing seven and injuring 40, including an American woman tourist. Fatah claimed credit, saying that it was commemorating Yasir Arafat's U.N. address of the year before, as well as the passage of three pro-Palestinian resolutions in the UN. PDFLP also claimed credit. (p. 563)

September 16, 1974: A fire was caused by an incendiary device in a suitcase destined for a TWA flight to Israel from Boston's Logan Airport. Some damage resulted to the TWA baggage security cage but there were no injuries. (p. 479)

December 20, 1974: Terrorists threw a hand grenade at a busload of Christmas pilgrims from the United States who were touring Jerusalem, wounding Dejean Replogle, 16, of Jacksonville, FL, who had to have her right leg amputated, and injuring an Arab bystander. PLO issued a statement warning visitors "not to go to occupied Palestine during the escalation of commando activities against the Israeli enemy." (p. 496)

September 8, 1974: TWA 707 en route from Tel Aviv to NY radioed that he was having trouble with one engine after landing for a scheduled stopover in Athens--crashed in to the Ionian Sea, killing all 88 on board. **Organization of Arab Nationalist Youth for the Liberation of Palestine** said in Beirut that one of their members exploded a charge he was carrying around his waist. National Transportation Safety Board, and British team of investigators, confirmed that a high explosive bomb had gone off in a rear cargo compartment. (p. 475)

March 7, 1973: A elaborate network of explosives was found in the trunks of cars parked in front of the El Al warehouse at Kennedy airport, the First Israel Bank and Trust Co., and the Israel Discount Bank, Ltd. Police, having been tipped off by Israelis, were able to dismantle the bombs. A search of the vehicles also revealed a quantity of paper with **Black September's** letterhead...**On March 15, a U.S. federal warrant was sworn out for the Black Septembrist believed to have escaped the country after planting the bombs: Khalid Danham al-Jawari**, an Iraqi. (p. 379)

January 16, 1972: An American nurse was killed and a minister and other individuals were wounded when Palestinian guerillas ambushed a car in the Israeli-occupied Gaza strip. (p. 296)

October 25, 1972: **Black September** mailed three letter bombs to President Nixon, Secretary of State William Rogers, and Defense Secretary Melvin R. Laird from the northern town of Kiryat Shmona. Suspicious Israeli postal workers intercepted the bombs. (p. 355)

February 22, 1972: **PFLP** or Popular Revolutionary Front for the Liberation of Palestine hijacking of Lufthansa flight 649, a B747 flying from New Delhi to Athens, Joseph P. Kennedy, son of the late Sen. Robert Kennedy, on board.

May 30, 1972: **PFLP** hired Japanese terrorists opened fire at passengers arriving at Lod Airport, killing 16 Puerto Rican Catholic pilgrims, 27 others wounded. **Okamoto released.**

August 21, 1971: Fedayeen detained an adult dependent of a U.S. Dept of Defense officer in Beirut. (p. 275)

September 16, 1971: Fedayeen terrorists in Jerusalem threw a hand grenade into a crowd of U.S. tourists, killing a child and wounding six others, as well as hitting five American tourists with shrapnel (Mikolus, p. 278)

September 10, 1970: The U.S. cultural affairs officer, John Stewart, was kidnapped by members of the PLA in Amman. (p. 215)

June 9, 1970: Members of the **PFLP** took over two hotels, the Philadelphia and the Intercontinental, in Amman, hoding over 60 foreigners, including seven Americans, one U.S. foreign service officer, 35 newsmen (including reporter John K. Cooley)....The group threatened to bomb the hotels if PFLP camps in Amman and Zarqa were smashed in renewed fighting with the Jordanian army. ...Two Fatah 340-mm heavy rocket units were sent to bolster the guerrillas holding the Intercontinental Hotel. (p. 185)

June 7, 1970: Morris Draper, diplomat at the U.S. embassy in Amman, kidnapped by **PLO** terrorists, released the next day.

June 10, 1970: U.S. assistant Army attache, Major Robert Perry shot to death in Amman. **Fatah** claims responsibility.

September 17, 1970: During street fighting in Amman, mortar explosions damaged the U.S. Embassy, with several local employees receiving slight shrapnel wounds. Elsewhere a fedayeen attemp to capture the unoccupied residence of the U.S. ambassador was beaten off by guards. (p. 217)

September 9, 1970: U.S. Staff Sargeant Ervin Graham, assigned to the U.S. defense attache's office, was kidnapped by members of the PLA in Amman and held for eight days. (p. 214)

June 10, 1970: Two fedayeen terrorist broke into the homes of American personnel in Amman, where they searched and looted the residences and raped the wives of two U.S. officials. (p. 186)

September 6, 1970: **PFLP** hijacking TWA plane, Pan Am flight 93

September 6, 1970: **PFLP** hijacking Swissair DC8 carrying 143 passengers and 12 crew members, including Americans. (p. 210)

September 2, 1970: Two U.S. Embassy vehicles were taken at gunpoint in Amman. One was stopped on the street and the other by forcing an embassy officer at his residence to hand over the keys. (p. 207)

April 5, 1970: A fragmentation grenade was tossed over the back wall of the U.S. embassy in Amman. (p. 256)

July 22, 1970: An Olympic Airways 727 carrying 47 passengers and eight crewmen from Beirut to Athens was hijacked over Rhodes by five men and a woman, members of the Palestine Popular Struggle Front (some reports claim it was the **PFLP**), who allowed the plane to land in Athens...at least one American aboard. (p. 195)

September 3, 1970: Another U.S. embassy vehicle was taken at gunpoint on an Amman street. A personal vehicle was taken from a U.S. mission employee at his residence. (p. 207)

February 23, 1970: Arab terrorists attacked a tourist bus near Hebron, killing an American woman.

February 21, 1970: **PFLP** set off bomb on Swissair flight. 38 passengers killed, including six Americans. **3 Palestinians arrested but released for lack of evidence.**

June 20, 1969: The **PFLP** claimed responsiblity for three bombs that exploded on a street leading to the Western Wall in Jerusalem, killing one Arab and wounding five others, including two U.S. tourists and one Israel soldier. (p. 123)

August 21, 1968: A bomb planted by Palestinian terrorists exploded in the garden of the U.S. consulate in east Jerusalem. (p. 96)

August 18, 1968: **Fatah** exploded three grenades in Jerusalem's Jewish section, injuring eight Israelis and two Americans. (p. 96)

Mr. RICHARD. Part of the Irish case that you are referring to is the failure to register when, under the FARA statute, there was an obligation to register.

Senator DENTON. I thought the first case was one which entailed failure to produce records in the face of an inspection by the FBI.

Mr. RICHARD. That is correct. The first case was, if I recall correctly, predicated on that, but also, if my recollection is accurate, it was predicated on insufficient filing or a belief that it was inadequate and insufficient.

Senator DENTON. I am informed that was of a subsidiary group of Irish People, Inc.

On another tack, the PLO has an office in Washington, DC, known as the PIO, which opened in 1978. The office is registered with the Department of Justice under the Foreign Agents Registration Act to which we have been referring. However, it has failed to register, as required under section 2386 of the U.S. Criminal Code known as the Voorhis Act and, yet, they have been permitted to operate in Washington, DC, on the condition that it obeys all U.S. laws.

On November 22, 1976, a State Department spokesman said that the United States would not bar the PLO from opening an office in Washington, DC, provided that it was registered with the Justice Department and conformed to all U.S. laws. This condition was reaffirmed by the Reagan administration in February 1981, when a spokesman said the PLO could continue to operate as long as it "regularly files reports on its activities as an agent of a foreign organization with the Justice Department and complies with all other relevant laws." But, as mentioned, they have not complied with the requirements of title 18, section 2386, and section 2386 of the Voorhis Act requires organizations to register separately with the Attorney General if they are subject to "foreign control" and engage in "civilian military activity."

An organization is considered to be under foreign control if it "solicits or accepts financial contributions from an international political organization."

The PLO, under its own registration statements, under the Foreign Agents Registration Act, admits it is financially supported by the PLO at a rate of approximately a quarter of a million dollars per year.

An organization is engaged in "civilian military activity" if it "gives instruction to or prescribes instruction to its members in the use of firearms or other weapons, engages in any military or naval maneuvers or activity, or engages in any other form of organized activity which, in the opinion of the Attorney General, constitutes preparation for military action."

The Voorhis Act also requires registration of organizations if one of their purposes is the "seizure or overthrow of a government or subdivision thereof by the use of force, violence, military measures or threats of any one or more of the foregoing."

The Palestinian National Covenant, 1968, the official PLO charter, reaffirmed every year since 1968, states that "The establishment of Israel as null and void, whatever time has elapsed," and that "armed struggle is the only way to liberate Palestine," articles 9 and 19.

Registration under the Voorhis Act would require, among other things, a detailed statement of the assets of the organization and of each branch, chapter and affiliate of the organization; the manner in which such assets were acquired, a detailed description of the activities of the organization and of each chapter, branch and affiliate of the organization, and a description of all firearms or other weapons owned by the organization or by any chapter, branch or affiliate of the organization, identified by the manufacturer's number thereon, and that is all a quotation down from what the Voorhis Act would require among other things.

Organizations that fail to register are subject to criminal penalty by this statement. Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Why has the PLO front, called the Palestinian Information Office, not been required to register under the Voorhis Act? And if you think they should, are they not in violation of U.S. laws?

Mr. RICHARD. Senator, as you know, this law is unique in certain respects. One, it has been involved in little enforcement activities since its passage in the early 1940's. I am advised that, since 1940, approximately five organizations have registered pursuant to the provisions of this act.

There have been concerns raised about certain of its provisions and its constitutional implication, but, more significantly, I think with respect to the application to the PIO, it is a view that those provisions focus on activities within the United States as opposed to activities around the world, which would suggest, if this interpretation is correct, that they would not have an obligation under the act to register.

The activities you referred to are activities abroad as opposed to activities designed to overthrow a government within the United States, a State, or local, or Federal Government. The civilian military authority activities referred to are not focused in the United States, and this raises serious questions in our mind as to whether they have an obligation under this act to register.

Senator DENTON. Well, it would seem to this Senator that if the organization which sponsors them is devoted to terrorist activity and attempts to overthrow a government, that it is certainly stretching common sense to permit them to operate an information organization in the United States. And some of the other organizations which were required to register under the Voorhis Act were not, per se, in terms of the personnel attached to the offices, trying to overthrow the Government of the United States. The Bundists, pro-Nazi organizations were among those organizations, I think, who were required to register.

Mr. RICHARD. The American-German Bund I think was one in 1941 that was registered, I believe.

Senator DENTON. But they were not trying to overthrow the Government of the United States at that time.

Mr. RICHARD. I cannot address the registration statement back in the 1940's. I think, though, the positioning of the statute and the legislative history really tend to give credence to the notion that the statute was designed to address activities in this country direct-

ed at internal subversion rather than necessarily the activities you refer to which are largely those kinds of activities located abroad.

Senator DENTON. I will just get into the most specific subject of the hearing and submit the rest of the questions to you in writing in view of the time, because those, in the third panel, are going to make comments and submit testimony which will be more well prepared and knowledgeable than my own, but I will refer to a March 7, 1973, cable from the U.S. Embassy in Khartoum to the Secretary of State in Washington, a cable which was signed Fritts—that is with two t's and an s, Fritts:

> Embassy has obtained recitation of communications between Alfa Ta Radio, in Beirut, to terrorists at Saudi Embassy, in Khartoum; notable that terrorists were apparently under external control from Beirut and did not murder Ambassador Noel and Moore nor surrender to the Government of Sudan until receiving specific code word instructions.

Has the Justice Department located these taped transcripts?

Mr. RICHARD. Senator, my hesitancy arises out of concern about going into these areas at public session. I am reluctant to verify what information we have regarding Mr. Arafat's activities. Our concern flows from what kind of information we are transmitting to him and his confederates. And so, I would urge that we consider getting into this area, if you wish, in an executive session.

Senator DENTON. All right We will schedule at a future date a closed session to go into that entire area.

Mr. RICHARD. Thank you.

Senator DENTON. I initiated a letter cosigned by eight other members of the Judiciary Committee to the President, Secretary of State, and Solicitor General, urging the administration to support review of the D.C circuit's opinion in the case of *Hanoch Tel-Oren, et al.* v. *Libyan Arab Republic, et al.* that hold terrorism, torture, and hostage-taking do not violate international law.

Without objection, I will place copies of these letters in the record at this time.

[Senator Denton's submissions for the record follow:]

United States Senate

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WASHINGTON, D.C. 20510

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The President
The White House
Washington, D.C. 20500

Re: Hanoch Tel-Oren, et al. v. Libyan Arab Republic, et al.
United States Supreme Court Docket No. 83-2052

Dear Mr. President:

The case of Hanoch Tel-Oren, et al. v. Libyan Arab Republic, et al., currently before the United States Supreme Court on plaintiffs' Petition for a Writ of Certiorari, provides the United States with a unique opportunity to further the attempt by this nation to deter and prevent terrorism and the included acts of torture and hostage-taking. The Supreme Court recently invited the Solicitor General to file a brief in this case expressing the views of the United States, and we believe participation by the Government is warranted. We hereby respectfully request, therefore, that your Administration review the significant issues presented by the case, and urge you to express your support of Supreme Court review.

This case arises out of a terrorist attack in Israel on March 11, 1978. Thirteen heavily-armed members of the Palestine Liberation Organization, acting under the direction of and in conspiracy with the Libyan Arab Republic, commandeered two civilian buses, took the passengers hostage and committed acts of torture and murder. Twenty-two adults and twelve children, including an American citizen, were killed; seventy-three adults and fourteen children were seriously wounded.

Plaintiffs are American, Israeli and Dutch citizens who were themselves injured and/or sue as representatives of persons murdered in the attack. Their complaint was filed in the United States District Court for the District of Columbia on March 10, 1981. Plaintiffs relied, in part, on 28 U.S.C. § 1350 (the Alien Tort Claims Act), which provides that a federal district court has jurisdiction over civil actions "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The complaint was dismissed by the District Court on June 30, 1981, and plaintiffs appealed to the United States Court of Appeals for the District of Columbia Circuit. In February, 1984, a three-judge panel affirmed the District Court's decision. Although the panel issued a per curiam opinion, Judges Edwards, Bork and Robb filed separate concurring opinions setting forth startling and often contradictory views on the meaning

of the Alien Tort Claims Act, the content and applicability of the law of nations and the propriety of federal court adjudication of fundamental human rights issues.

One example of the rather startling nature of the D.C. Circuit's opinion is the requirement, proffered by Judges Edwards and Bork, that plaintiffs demonstrate unanimity of international opinion as a prerequisite to a finding that terrorism violates international law. Judge Bork, for example, stated that there is "less than universal consensus" about "terrorism generally" and about "PLO-sponsored attacks on Israel. . . in particular." He referred to an international declaration upon which plaintiffs had relied as evidence of an international proscription on terrorism, and sought to demonstrate a lack of consensus by arguing that the declaration "was said by at least one state at the time of its promulgation not to be applicable to Palestinian terrorist raids into Israel supported by Arab states." The state to which Judge Bork referred was Syria. According to Judge Bork, this qualification on the declaration by Syria, as well as the fact that "accusations of terrorism are often met not only by a denial of the fact of responsibility but by a justification for the challenged actions," indicated the "lack of consensus" about terrorism.

On June 14, 1984, plaintiffs filed their Petition for a Writ of Certiorari in the United States Supreme Court, requesting that the Court review the decision of the D.C. Court of Appeals. On October 1, 1984, the Supreme Court issued an order inviting the Solicitor General to file a brief in this case expressing the views of the United States.

In our view, several reasons exist which warrant the participation and support of the Government in this case. First, the D.C. Circuit's decision, if allowed to stand, will undermine the attempt by this and all other civilized nations to deter and prevent terrorism, torture and hostage-taking, and will undercut the willingness of those individuals harmed by such acts to rely upon the legal system for their remedy. Indeed, in its current posture, the case stands for the proposition that these acts do not violate international law. Such a proposition renders international law useless as a mechanism for governing the conduct of, and establishing the standards for relationships between, all nations. These consequences are particularly disturbing in light of the ever-increasing use throughout the world of terrorism, torture and hostage-taking and the growing public skepticism about the ability of governments to guarantee the safety of their citizens. Second, the D.C. Circuit's decision has called into question the credibility of the judiciary's commitment to the protection of human rights, since it leaves unremedied the torture and murder of unarmed civilians, including American citizens. We believe it it both necessary and appropriate for the Supreme Court to examine the human rights issues presented, and determine whether the terrorism, torture and hostage-taking committed in this case constitute violations of international law. Finally, we believe participation by the United States is necessary to affirm that the political question doctrine does not preclude adjudication of this case. The issues raised by this case are within the scope of proper judicial function, and their adjudication will not, in our view, interfere with the legislative or executive branches.

Thus, we strongly urge Administration support of Supreme Court review of the vitally important issues presented by this case. We suggest that any brief filed on behalf of the Departments of State and Justice emphasize the importance of reviewing the D.C. Circuit's opinion that terrorism, torture and hostage-taking do not violate international law, identify the well-developed consensus among civilized nations that the magnitude of

the threat posed by such acts requires their universal condemnation and adjudication and assert the inapplicability of the political question doctrine. It is our position that the interests of the United States will best be served if these issues are reviewed by the Supreme Court.

Thank you for the time and attention you have devoted to this matter.

Sincerely,

Patrick Leahy

Jeremiah Denton

Orrin G. Hatch

John P. East

Chuck Grassley

Dennis DeConcini

cc: Honorable Edwin Meese, III
Honorable Rex E. Lee

United States Senate

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JOEL S. LISKER, CHIEF COUNSEL AND STAFF DIRECTOR

June 21, 1984

The Honorable George Schultz
Secretary of State
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Re: Hanoch Tel-Oren, et al. v. Libyan Arab Republic, et al.

Dear Secretary Schultz:

We hereby request that the United States Department of State and the Department of Justice submit an amicus curiae brief in support of the Petition for a Writ of Certiorari filed in the United States Supreme Court on June 14, 1984 by the plaintiffs in the above-captioned case.

This case arises out of a terrorist attack in Israel on March 11, 1978. Thirteen heavily-armed members of the Palestine Liberation Organization, acting under the direction of and in conspiracy with the Libyan Arab Republic, commandeered two civilian buses, took the passengers hostage and committed acts of torture and murder. Twenty-two adults and twelve children, including an American citizen, were killed; seventy-three adults and fourteen children were seriously wounded.

Plaintiffs are American, Israeli and Dutch citizens who were themselves injured and/or sue as representatives of persons murdered in the attack. Their complaint was filed in the United States District Court for the District of Columbia on March 10, 1981. Plaintiffs relied, in part, on 28 U.S.C. § 1350 (the Alien Tort Claims Act), which provides that a federal district court has jurisdiction over civil actions "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The complaint was dismissed by the District Court on June 30, 1981, and plaintiffs appealed to the United States Court of Appeals for the District of Columbia Circuit. In February, 1984, a three-judge panel affirmed the District Court's decision. Although the panel issued a per curiam opinion, Judges Edwards, Bork and Robb filed separate concurring opinions setting forth startling and often contradictory views on the meaning of the Alien Tort Claims Act, the content and applicability of the law of nations and the propriety of federal court adjudication of fundamental human rights issues. Judge Bork, for example, held that acts of terrorism do not violate international law, since, in his words, there is "less than universal consensus" about "terrorism generally" and about "PLO-sponsored attacks on Israel . . . in particular," and because "accusations of terrorism are often met not by a denial of the fact of responsibility but by a justification for the challenged actions." Judge Robb, on the other hand, refused to address any of the issues presented, holding that the "political question" doctrine precluded adjudication of the case.

In our view, several reasons exist which warrant the participation of the Departments of State and Justice in this case. First, the D.C. Circuit's decision, if allowed to stand, will undermine the attempt by this and all other civilized nations to deter and prevent terrorism, torture and hostage-taking, and will undercut the willingness of those individuals harmed by such acts to rely upon the legal system for their remedy. Indeed, in its current posture, the case stands for the proposition that these acts do not violate international law. Such a proposition renders international law useless as a mechanism for governing the conduct of, and establishing the standards for relationships between, all nations. These consequences are particularly disturbing in light of the ever-increasing use throughout the world of terrorism, torture and hostage-taking and the growing public skepticism about the ability of governments to guarantee the safety of their citizens. Second, the D.C. Circuit's decision has called into question the credibility of the judiciary's commitment to the protection of human rights, since it leaves unremedied the torture and murder of unarmed civilians, including American citizens. We believe it is both necessary and appropriate for the Supreme Court to examine the human rights issues presented, and determine whether the terrorism, torture and hostage-taking committed in this case constitute violations of international law. Finally, we believe participation by the United States is necessary to affirm that the political question doctrine does not preclude adjudication of this case. The issues raised by this case are within the scope of proper judicial function, and their adjudication will not, in our view, interfere with the legislative or executive branches.

Thus, we strongly urge the Departments of State and Justice to file an amicus brief in support of plaintiffs' Petition for a Writ of Certiorari. We suggest that this brief emphasize the importance of reviewing the D.C. Circuit's

opinion that terrorism, torture and hostage-taking do not violate international law, identify the well-developed consensus among civilized nations that the magnitude of the threat posed by such acts requires their universal condemnation and adjudication and assert the inapplicability of the political question doctrine. It is our position that the interests of the United States will best be served if these issues are reviewed by the Supreme Court.

Thank you for the time and attention you have devoted to this matter.

Sincerely,

Patrick Leahy

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United States Senate

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October 10, 1984

The Honorable Rex E. Lee
Solicitor General of the United States
Main Justice Building
United States Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Hanoch Tel-Oren, et al. v. Libyan Arab Republic, et al.
United States Supreme Court Docket No. 83-2052

Dear Mr. Lee:

We hereby request that you file a brief expressing the views of the United States in the above-referenced case pursuant to the invitation to do so by the United States Supreme Court on October 1, 1984. We further request that this brief support the plaintiffs' Petition for a Writ of Certiorari filed in the Supreme Court on June 14, 1984.

This case arises out of a terrorist attack in Israel on March 11, 1978. Thirteen heavily-armed members of the Palestine Liberation Organization, acting under the direction of and in conspiracy with the Libyan Arab Republic, commandeered two civilian buses, took the passengers hostage and committed acts of torture and murder. Twenty-two adults and twelve children, including an American citizen, were killed; seventy-three adults and fourteen children were seriously wounded.

Plaintiffs are American, Israeli and Dutch citizens who were themselves injured and/or sue as representatives of persons murdered in the attack. Their complaint was filed in the United States District Court for the District of Columbia on March 10, 1981. Plaintiffs relied, in part, on 28 U.S.C. § 1350 (the Alien Tort Claims Act), which provides that a federal district court has jurisdiction over civil actions "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The complaint was dismissed by the District Court on June 30, 1981, and plaintiffs appealed to the United States Court of Appeals for the District

of Columbia Circuit. In February, 1984, a three-judge panel affirmed the District Court's decision. Although the panel issued a per curiam opinion, Judges Edwards, Bork and Robb filed separate concurring opinions setting forth startling and often contradictory views on the meaning of the Alien Tort Claims Act, the content and applicability of the law of nations and the propriety of federal court adjudication of fundamental human rights issues. Judge Bork, for example, held that acts of terrorism do not violate international law, since, in his words, there is "less than universal consensus" about "terrorism generally" and about "PLO-sponsored attacks on Israel . . . in particular," and because "accusations of terrorism are often met not by a denial of the fact of responsibility but by a justification for the challenged actions." Judge Robb, on the other hand, refused to address any of the issues presented, holding that the "political question" doctrine precluded adjudication of the case.

In our view, several reasons exist which warrant the participation of the Government in this case. First, the D.C. Circuit's decision, if allowed to stand, will undermine the attempt by this and all other civilized nations to deter and prevent terrorism, torture and hostage-taking, and will undercut the willingness of those individuals harmed by such acts to rely upon the legal system for their remedy. Indeed, in its current posture, the case stands for the proposition that these acts do not violate international law. Such a proposition renders international law useless as a mechanism for governing the conduct of, and establishing the standards for relationships between, all nations. These consequences are particularly disturbing in light of the ever-increasing use throughout the world of terrorism, torture and hostage-taking and the growing public skepticism about the ability of governments to guarantee the safety of their citizens. Second, the D.C. Circuit's decision has called into question the credibility of the judiciary's commitment to the protection of human rights, since it leaves unremedied the torture and murder of unarmed civilians, including American citizens. We believe it is both necessary and appropriate for the Supreme Court to examine the human rights issues presented, and determine whether the terrorism, torture and hostage-taking committed in this case constitute violations of international law. Finally, we believe participation by the United States is necessary to affirm that the political question doctrine does not preclude adjudication of this case. The issues raised by this case are within the scope of proper judicial function, and their adjudication will not, in our view, interfere with the legislative or executive branches.

Thus, we strongly urge you to accept the invitation of the Supreme Court to file a brief in this very significant case. We suggest that this brief emphasize the importance of reviewing the D.C. Circuit's opinion that terrorism, torture and hostage-taking do not violate international law, identify the well-developed consensus among civilized nations that the magnitude of the threat

posed by such acts requires their universal condemnation and adjudication and assert the inapplicability of the political question doctrine. It is our position that the interests of the United States will best be served if these issues are reviewed by the Supreme Court.

Thank you for the time and attention you have devoted to this matter.

Sincerely,

Senator DENTON. Despite my urging, the administration concluded that this case should not be subject to review; unfortunately, the Supreme Court agreed, thereby allowing what I consider to be a dangerous precedent to stand.

The administration's position in the *Hanoch Tel-Oren* case leads me to ask a number of questions. First, does the Alien Tort Claims Act, 28 U S.C. 1350, which states that the district courts shall have original jurisdiction over any suit, "by an alien for a tort only committed in violation of the law of nations or a treaty of the United States," provide for jurisdiction under Federal courts for acts of terrorism and the included acts of torture, hostage-taking, and summary executions sponsored by a state or its agent. If it is your opinion that such action is not within the scope of this statute, is this because you believe that terrorism does not violate the law of nations?

Mr. RICHARD. Mr. Chairman, I am reluctant to answer the question on behalf of the Civil Division of the Department of Justice, and I would request the opportunity to reply in writing to that, if I may.

I am not personally familiar with the position and the rationale for our position with respect to the petition for certiorari.

Senator DENTON. All right. Thank you, Mr. Richard; thank you, Ms. Mochary and Mr. Lippe.

We will be submitting written questions from myself, and other members of the subcommittee have advised me that they will submit questions.

We will ask you to submit your written responses within 15 days from the time you receive the questions, and we will, indeed, schedule a closed session to go into more detail on the specific subject of the hearing

Mr. RICHARD. Thank you very much.

Ms. MOCHARY. Thank you.

Senator DENTON. I will call the final panel: Harris Weinstein, Esq., Covington & Burling, Washington, DC; Irvin B. Nathan, Esq., Arnold & Porter, Washington, DC; John Norton Moore, Esq., chairman, American Bar Association's Standing Committee on Law and National Security; and Clifford J. Zatz, Esq., Seifman, Semo, Slevin & Marcus, Washington, DC.

Welcome, gentlemen, and I will ask Mr. Weinstein to begin with his opening statement.

STATEMENT OF A PANEL CONSISTING OF HARRIS WEINSTEIN, COVINGTON & BURLING, WASHINGTON, DC; IRVIN B. NATHAN, ARNOLD & PORTER, WASHINGTON, DC; JOHN NORTON MOORE, CHAIRMAN, STANDING COMMITTEE ON LAW AND NATIONAL SECURITY, AMERICAN BAR ASSOCIATION, AND CLIFFORD J. ZATZ, SEIFMAN, SEMO, SLEVIN & MARCUS, WASHINGTON, DC

Mr. WEINSTEIN. Thank you, Mr. Chairman.

My name is Harris Weinstein. I am an attorney and practice with the firm of Covington & Burling. I am accompanied today by two of my colleagues, Cliff Frazier and Dan Poneman, who have made substantial contributions to the testimony that I am presenting to the committee today.

I want to emphasize how much we appreciate the opportunity to appear before this subcommittee today.

We are truly grateful for the leadership, Mr. Chairman, that you, the other members of this committee and, indeed, so many Members of the Senate have shown in addressing this terrible problem of terrorism.

As you, Mr. Chairman, and Attorney General Meese have noted, we must close in on the kingpins of terrorism.

The purpose of today's hearing, which you have described so well, is to look at the present status of the efforts to close in on one of those kingpins, Yasser Arafat, and the rest of the PLO kingpins with the full force of the American legal system.

Any effort to bring Arafat and his henchmen into an American court ought to begin with the 1973 murders of the U.S. Ambassador and the Chargé d'Affaires in the Sudan in March 1973. Those murders represent one of the first successful PLO attacks on the United States.

There is, in addition, reason to believe that it is possible to demonstrate the guilt of Arafat and his PLO colleagues-in-terror in a court of law.

My formal statement describes what is public about the participation of Arafat and other PLO leaders in the Khartoum murders. I also address in that formal statement in substantial detail the legal question whether the United States has jurisdiction under the 1976 amendments to the criminal code to prosecute Arafat and others believed to bear responsibility for those murders.

Mr. Nathan will describe about how the RICO statute also provides a legal basis for prosecution in these and other crimes of international terror.

With your permission, Mr. Chairman, I shall summarize my formal statement here.

Senator DENTON. And your entire written statement will be included in the record.

Mr. WEINSTEIN. Thank you, Mr. Chairman.

On March 1, 1973, eight members of the Black September group—in effect, the operative terror arm of Al Fatah, which is Arafat's group—captured the U.S. Ambassador to the Sudan, Cleo Noel, as he was leaving a reception at the Saudi Arabian Embassy in Khartoum.

The terrorists then stormed and captured the Saudi Embassy and kept five hostages: Mr. Noel; the United States Chargé d'Affaires, Mr. Moore; the Saudi Ambassador; and the Chargé d'Affaires from each of Belgium and Jordan.

The terrorists then demanded the release of hundreds of terrorists and other criminals in prisons in Jordan, Germany, and the United States. These included Sirhan Sirhan, the assassin of Senator Robert Kennedy, and 17 PLO members who were imprisoned in Jordan on charges of plotting against the government of King Hussein.

Ultimately, the demands narrowed to what appeared to be the true objective, the release of their fellow PLO terrorists in Jordan.

When the demands were rejected, the terrorists beat, shot, and mutilated Mr. Noel, Mr. Moore, and the Belgium Chargé d'Affaires, Guy Eid.

After the terrorists surrendered, repeated public reports stated that the operation was planned and controlled by Arafat's Fatah organization in Beirut. The central evidence against Arafat is that the operation was controlled and the key orders were given by radio from his headquarters in Beirut.

The orders given from Beirut included the order to kill, reportedly given in Arafat's presence and possibly by Arafat himself.

When the terrorists in Khartoum delayed the murders for 1 hour, the radio message was reported to be: "What are you waiting for?"

American diplomatic personnel on the scene in Khartoum and Beirut cabled their views of what had happened and who was responsible.

For purposes of emphasis, we have enlarged the appropriate excerpt from the Fritts cable, Mr. Chairman, that you referred to a bit earlier. This is the conclusion of the American Embassy in Khartoum but 2 or 3 days after the terrorists surrendered, when the matter was under active investigation in Khartoum. They said:

Notable that terrorists were apparently under external control from Beirut and did not murder Ambassador Noel and Moore nor surrender to the Government of Sudan until receiving specific codeword instructions.

At approximately the same time, 2 days earlier, on March 5, our Embassy in Beirut sent another pertinent cable. In that cable, which is one of the attachments to my formal statement, the summary states that there was, and I quote, "a close connection between Arafat and PLO establishment, on one hand, and Black Septemberists, on the other." And elsewhere in the cable they said the facts, as they understood them, and I quote again, "gives lie to Arafat's claim that PLO in no way involved in Khartoum tragedy." That's the end of the quote.

Now, this much is said in public portions of cables sent by the U.S. Embassies in the relevant foreign capitals at the time of the terrorist incident in Khartoum.

Senator DENTON. I think I should intervene to announce that the messages to which you are referring, originally confidential, have had the classified parts excised by the Department of State and rendered declassified by the Department of State.

Mr. WEINSTEIN. The matter, Mr. Chairman, was further addressed in a study that was done in 1975 for the Defense Department Advance Research Projects Agency—a study that I understand was declassified at the end of 1983, and I believe is also in the possession of the subcommittee.

We have, for purposes of emphasis, also enlarged an excerpt from page 94 of that study, which contains in one of its chapters a retrospective analysis of what happened in Khartoum in early March 1973. Beginning in the middle of this paragraph, the authors concluded: "It becomes quite obvious, in a broader reading of the episode, that much of the planning was done in Beirut and perhaps Libya"—a very old story, I note, to this committee—continuing with the quote, "in fact, it is known that Salah Khalaf, the leader of the BSO, was responsible for this mission. Moreover it was approved by Yasser Arafat, Chairman of the PLO and head of Fatah," end of that quote.

Then, Mr. Chairman, about 6 months ago, our current Ambassador to the United Nations, Vernon Walters, said in an interview that he had understood, at the time of the Khartoum murders——

Senator DENTON. Again, Mr. Weinstein, may I note that the publication from which you just quoted was declassified on December 31, 1983. It was previously classified.

Please proceed.

Mr. WEINSTEIN. Thank you.

Ambassador Walters' statement to a newsman about 6 months ago led to reports that he had understood, at the time of the Khartoum murders, that there was a tape recording of Arafat personally giving the orders to kill Ambassador Noel, Chargé Moore, and Chargé Eid.

Now, this short summary of what happened and the reasons that exist for believing Arafat was personally implicated—and a longer exposition in my written statement—are based on materials that would, for the most part, not be admissible under the rules of evidence in a criminal trial. The sources of the information are nonetheless generally reliable reporters of fact, for example, Ambassador Walters. The reports that Arafat, the kingpin of both the PLO and Fatah, was personally involved in approving the operation and directing it from Beirut are consistent and are unrebutted other than by the standard denial of culpability that Arafat seems to issue to the press after every major PLO terrorist incident.

But the most important question is the one you posed a few moments ago to the representatives of the administration, Mr. Chairman: "Where is the tape?" Perhaps further discussion of that ought to be suspended until the executive session is held.

Whoever had the tape referred to in the cable of March 7—the possessor of the tape's name is excised from the public version—I suggest a virtually inescapable conclusion that the United States should have, and may well have, intercepted the broadcast from Beirut in view of the many listening posts that we had at the time in the areas of Khartoum and Beirut.

We have appended to my formal statement a list based on public materials that describe what we believe is publicly known about those listening spots.

Let me turn briefly to the legal question—the legal question that would arise from the assertion of jurisdiction under section 1116 of the Criminal Code. As the subcommittee knows, in 1973, the United States had not yet adopted a law providing our courts with jurisdiction to try persons accused of killing our representatives abroad, except to the extent that the prosecution could be brought under RICO.

Jurisdiction to try persons accused of killing our diplomats and other internationally protected persons was conferred on the Federal courts through the adoption of section 1116, as it now reads, in 1976.

The obvious question to lawyers is whether retroactive exercise of this jurisdiction would be consistent with the ex post facto clause of the Constitution.

My formal statement addresses the legal problem in considerable detail. The issue, frankly, is an open one, which the courts have never decided directly. The general principle, however, is clear

under the decisions of the Supreme Court. If the 1976 statute merely establishes jurisdiction to try persons accused of acts that were made criminal under prior legal rules, the jurisdiction may be exercised retrospectively. If, on the other hand, the 1976 statute criminalized what had previously been innocent activities, it may not be applied retroactively.

We suggest there is substantial bases for concluding that Federal jurisdiction can be exercised retroactively to try persons believed to be responsible for murdering our Ambassador and Chargé d'Affaires in 1973.

We believe that our argument is analytically identical with the argument that the Office of Special Investigations of the Justice Department made some 2 years ago in responding to an argument that the ex post facto clause precluded extradition of an alleged war criminal, named Demjanjuk, to Israel for trial.

Although the district court that heard that extradition proceeding in Ohio found it unnecessary to decide the issue in that particular case, it included language in its opinion specifically approving the Department of Justice's position.

I know that within the last 48 hours Members of the Senate have been provided with a memorandum from a different section of the Department of Justice that argues otherwise.

Senator Grassley, I believe, wisely and well analyzed the deficiencies in that position.

Because so little time was available, we were only able to append to my written statement a short summary of our view of what is wrong with this paper and, if the subcommittee wishes and will grant us leave, we will try to provide a more detailed analysis at a later date.

Senator DENTON. And that request is approved, thank you.

Mr. WEINSTEIN. Let me note in brief summary though, that the author of the new Justice Department memorandom seems to argue that Arafat and others were entitled to believe, in 1973, that the United States did not then consider the murder of our diplomats, when stationed aboard, to constitute criminal conduct.

Perhaps the most succinct response to an argument of this character is in a statement in the successful brief the Office of Special Investigations of the Justice Department, filed in the Ohio district court in 1984. That brief said, quoting from an opinion of the Nuremberg War Crimes Tribunal: "Certainly no one can claim with the slightest pretense at reasoning that there is any taint of ex post factism in the law of murder." That is the end of the quote from that Justice Department paper.

Now, I know that Attorney General Meese and his Assistant Attorneys General are people who have great, sincere concern about international terrorism and who are personally dedicated to bringing to the bar of justice every terrorist, from kingpin on down, whom the United States can apprehend and bring to justice under our law.

The difference in views expressed over the last 2 years by two sections of the Justice Department make a single point with great clarity. There is an important constitutional question that the courts should be asked to decide. Attorney General Meese is a devoted and effective public servant, as he has been throughout his

professional career. Should the United States find sufficient evidence that would be admissible under the strict rules applicable in criminal proceedings in our courts, I have every confidence that the Attorney General will see that justice is done.

There is, however, an important lesson to be learned from the very fact that we need to address this ex post facto question at this time. Although the Congress has expanded the jurisdiction of our courts to try persons committing terrorist acts outside our borders, each new law has responded to specific acts, generally of a kind that have been committed just prior to the law's passage.

As commendable as the Senate's action on S. 1429 is, there is still no comprehensive legislation on the books that deals with terrorist organizations as such. Nor do I believe that we have examined closely enough how civil proceedings may be used effectively in the war on international terror.

I know that Professor Moore has thought quite carefully about these subjects, and I hope that he will provide his proposals for this committee's consideration either today or at a later date.

Mr. Chairman, we urge the development and adoption in the near future of a comprehensive set of legal tools that will be sufficient to deal with not just the acts that terrorists have committed in the past but that will also anticipate and provide the legal tools required to deal with any new horrors terrorists invent in the future.

[Mr. Weinstein's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF HARRIS WEINSTEIN

I appreciate the invitation to appear before this distinguished committee to address today's important subject. You have asked me to discuss the alleged complicity of Yassir Arafat in the March 1973 murders of the United States Ambassador and Chargé d'Affaires in Khartoum on March 2, 1973 and to provide our legal analysis of the jurisdiction of the United States to prosecute persons believed to be responsible complicity for these crimes.[1/]

This statement first describes what happened in Khartoum in the first days of March 1973. It then sets out the public evidence of the complicity of Yassir Arafat and others in the leadership of the PLO in these events. The third section discusses the legal issues that would be involved in use of 18 U.S.C. § 1116 to prosecute those believed to be responsibile for planning and directing these murders.[2/]

I. The Murders of Messrs. Moore and Noel

On March 1, 1973 eight heavily armed members of the Black September arm of the Palestine Liberation Organization -- Al Fatah as it was called in the contemporaneous press reports -- attacked and seized U.S. Ambassador Cleo Noel as he was leaving a reception at the Saudi Arabian Embassy in Khartoum. The reception was in honor of George C. Moore, the United States Chargé d'Affaires, who was returning home after several tours of duty in the Sudan. The terrorists waited outside the Saudi Embassy until Mr. Noel was departing. They

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1/ I am indebted to my colleagues Daniel B. Poneman and J. Clifford Frazier, who have participated in the preparation of this statement.

2/ Another witness will address the applicability of the RICO statute to terrorist activities such as the 1973 Khartoum murders. RICO and Section 1116 constitute the two provisions of U.S. law that are potentially applicable to these murders.

captured Mr. Noel and invaded and captured the Saudi embassy. Messrs. Noel and Moore and the Belgian chargé d'Affaires, Guy Eig, were wounded in the attack.

After seizing control of the Saudi embassy, the terrorists kept five hostages -- Messrs. Noel, Moore, and Eig, the Saudi Ambassador, Abdullah al-Malhouk, and the chargé d'affaires of the Jordanian embassy, Adli el- Nazir. Others, including ambassadors from Eastern Bloc countries, were released.3/

The terrorists demanded that the Governments of the United States, Jordan, and Germany release several hundred prisoners, including Sirhan Sirhan, the assassin of Senator Robert Kennedy, the terrorist Mohamed Daoud Oudeh and 16 other members of Al Fatah who were then being held on criminal charges in Jordan, and members of the terrorist Baader-Meinhof terrorist group being held in Germany. The terrorists later narrowed their demands to what proved to be their main objective -- release of the 17 member Fatah group under arrest in Jordan.

In the evening of March 2, 1973, in Khartoum after the terrorists' demands had been rejected, Messrs. Noel, Moore, and Eig were murdered. Contemporaneous press stories reported that the three men were "tightly bound", "punched and kicked . . . unmercifully", pistol whipped and repeatedly shot; the bodies were said to be "almost unrecognizable".

Following the murders, the terrorists surrendered to the Sudanese authorities. The Sudanese Foreign Minister was quoted as saying, "This was a criminal act and since it was committed in the Sudan it must be prosecuted. Murder is a capital crime. This was a clear case of murder."

In June 1974, the terrorists who had captured the

3/ Although among those released by the the terrorists, the wife of Ambassador al-Malhouk insisted on returning to the embassy, so that the terrorists had six prisoners.

Saudi embassy were tried, convicted, and sentenced to life imprisonment by a Sudanese court. The President of the Sudan, Gaafar al-Nimiery then commuted the sentences to seven years imprisonment and immediately released the murderers to the custody of the PLO. The United States announced its "dismay" at the release of the murderers, recalled our ambassador to the Sudan, and accused President Nimiery of violating a personal pledge that the eight terrorists would be brought to justice.

II. The Complicity of Yassir Arafat and other PLO leaders in the Khartoum Murders

From the very beginning, there has been powerful public evidence that the Khartoum murders were a PLO operation, directed and controlled by the Fatah leadership from their headquarters in Beirut, Lebanon.

Reports of the complicity of the Yassir Arafat and other members of the PLO leadership in the Khartoum crimes began to surface almost immediately after the murders of Messrs. Noel, Moore, and Eig. The information that has since become publicly available provides a substantial basis for believing that the leadership of the PLO, including Yassir Arafat, personally directed the 1973 Black September invasion of the Saudi embassy in Khartoum and personally gave the orders to kill Messrs. Noel, Moore, and Eig. The evidence is contained in the press reports of the time, in U.S. diplomatic cables, and in a 1975 analysis commissioned by the Department of Defense Advanced Research Projects Agency.

Officials of the Fatah office in Khartoum were reported to have been in charge of the terrorists from the time they arrived in Khartoum. As the terrorists waited outside the Saudi embassy, they were in a vehicle belonging to the Fatah office in Khartoum. The Sudanese Government itself charged the PLO with responsibility for the kidnappings and murders immediately after the terrorists surrendered. On

March 6, 1973, President Nimiery said that the Khartoum office of Fatah had planned the operation and he demanded the extradition to the Sudan of Fawaz Yassin, who had been head of the Fatah office in Khartoum and who had left on a Libyan airliner a few hours before the invasion of the Saudi embassy. Abu Salem, the second in command of the Fatah Khartoum office, was identified as the other Fatah representative who had planned and carried out the attack.

A few days later, on March 10, 1973, the Vice President of the Sudan, Mohammed al-Baghir, stated that the Sudanese Government had a tape recorded confession of one of the terrorists. Mr. al-Baghir offered the recorded confession to anyone who requested it. Sudanese officials also disclosed that the operation had been directed from Fatah headquarters in Beirut. The terrorists had been given complete instructions in advance -- on whom to take hostage and what to do from then on. Sudanese officials close to the investigation reported that the orders to kill Messrs. Noel, Moore, and Eig had come in a radio message from Fatah headquarters in Beirut. When the terrorists in Khartoum seemed to be delaying in killing the three diplomats, Fatah radio reportedly asked, "What are you waiting for?"

The orders to surrender were transmitted to the terrorists in the same fashion. Yassir Arafat was quoted as saying he would contact the terrorists and an hour later the terrorists were told by radio, "Your mission is finished. Give yourself up." In fact, a newspaper in Beirut edited by a Fatah leader reported the surrender of the terrorists several hours before it occurred.

On April 5, 1973, David Ottaway reported in the Washington Post that Yassir Arafat "was in the Black September radio command center in Beirut when the message to execute three western diplomats being held hostage in Khartoum was sent out last month, according to western intelligence

sources." Mr. Ottaway also reported that Arafat "personally congratulated the guerrillas after the execution . . .." He also disclosed that Abou Daoud had said in a confession given to the Jordanian authorities "that Black September did not exist as an organization and that 'all its activities were carried out by the intelligence branch of the Fatah Guerrilla organization.'"

Mr. Ottaway's article contains the original report that Arafat's voice was reported to have been recorded in the course of the monitoring of the communications between the Beirut command center of the PLO and the Saudi Arabian Embassy in Khartoum where the three diplomats were held hostage and them murdered. The monitoring was attributed to the United States Intelligence Agency. Much more recently, in November 1985, the present United States Ambassador to the United Nations, Vernon Walters, said that he had heard at the time that such a tape existed -- "this was common knowledge at the time among all sorts of people in the government."

Although the United States government has never explicitly admitted or denied having such a tape, it is hard to escape the conclusion that the United States intercepted the radio communications between PLO headquarters in Beirut and the terrorists in Khartoum. The United States then had a major installation in Ethiopia, next to Sudan, and had numerous other stations and mobile listening facilities capable of intercepting these radio broadcasts.

Two contemporaneous U.S. diplomatic cables confirm that the Khartoum operation was directed from PLO headquarters in Beirut. The public versions of these two cables are labeled as attachments 1 and 2 to this statement. Although the State Department has not released the full text of these cables, the public material discloses that radio communications between Fatah radio in Beirut and documents from a desk drawer in the Fatah Khartoum office showed the detailed in-

structions issued to the terrorists by the PLO headquarters. A cable from the U.S. Embassy in Khartoum dated March 7, 1973 concluded:

> "Notable that terrorists were apparently under external control from Beirut and did not murder Ambassador Noel and Moore nor surrender to GOS [i.e., the Government of the Sudan] until receiving specific codeword instructions."

The cable also reported that the Beirut headquarters had assumed full responsibility for the attack.

The official summary in the second cable, dated March 5, 1973, states:

> From various reports appearing in local press, especially papers close to Fedayeen, re contacts: Mar 3 between Arafat and Sudanese Govt, we have pieced together what we think is fairly accurate scenario of events leading to surrender of Khartoum terrorists Mar 4. In providing evidence of close connection between Arafat and PLO establishment on one hand and Black Septemberists on other, it gives lie to Arafat's claim that PLO in no way involved in Khartoum tragedy.

Key portions of both cables remain secret. The United States Government has, however, declassified significant portions of a study of the Khartoum murders that was prepared in 1975 by a consultant to the Department of Defense Advanced Research Projects Agency. The pertinent materials are in attachment 3 to this statement. The key observation is, "In fact, it is known that Salah Khalaf, the leader of the BSO, was responsible for this mission. Moreover, it was approved of by Yassir Arafat, chairman of the PLO and head of Fatah." (See page 94.)

In summary, there is strong public evidence that Yassir Arafat and others in the PLO leadership planned and directed the assault on the Saudi embassy in Khartoum in which United States diplomats Cleo Noel and George Moore were tortured and murdered. While some mystery continues to exist regarding the question whether Arafat's voice was, as Ambas-

sador Walters was led to understand, recorded while radioing instructions to the occupiers of the Saudi embassy, there should be no doubt that the United States had ample opportunity to intercept and record those broadcasts and also had the opportunity to obtain the taped confession in the possession of Sudanese authorities and the written confession of the common identity of the Fatah and Black September from the Jordanese authorities. A memorandum describing pertinent United States listening facilities is provided as Attachment 4 to this memorandum.

While the reports and sources from which this summary have been prepared would not themselves constitute admissible evidence under the standards applicable in criminal prosecutions, they are sufficiently consistent and taken from authorities of established reliability that admissible evidence should be available to trained investigators who are provided with access to the necessary sources of information. It may well be that the need to protect methods and sources of intelligence would still in 1986 inhibit an investigation of these 1973 murders. There is, however, no statute of limitations on the crime of murder and with time and perseverance it should be possible to develop evidence admissible in a criminal case that can be disclosed without endangering national security.

There is a strong suggestion in the letter of April 21, 1986 to certain Senators from Assistant Attorney General Bolton that that day has not yet come. One ought not conclude, however, and Mr. Bolton does not say, that such a day will not come in the future. Those who planned and guided the terrorists who captured the Saudi embassy and murdered our representatives in the Sudan should at least be placed on notice that their time in the dock of justice will come, and that they have not yet escapted the forces of justice.

III. The Authority of the United States To Arrest and Prosecute Under 18 U.S.C. § 1116 On Charges of Complicity In the 1973 in Khartoum Murders

Section 1116 of the Criminal Code provides the United States with legal authority to prosecute an individual charged with complicity in the murder of U.S. diplomats. Application of Section 1116 to the crimes committed in Khartoum in 1973 would require resolution of a question arising under the ex post facto clause of the Constitution, as the relevant provisions were not written into the United States Criminal Code until 1976, and their use to prosecute participants in the 1973 murders would require a retroactive exercise of jurisdiction under Section 1116. For reasons addressed in detail below, we conclude that substantial authority supports the view that the ex post facto clause would not bar such a prosecution.

A. The Applicable Provisions of The United States Code Confer Jurisdiction on the United States to Prosecute Persons Accused of Murdering U.S. Diplomatic Personnel in Other Countries

Section 1116 of the Criminal Code, 18 U.S.C. § 1116, as amended in 1976, confers on the United States courts jurisdiction to try persons accused of murdering a United States diplomat abroad. The punishment for such a crime is established by Section 1116(a) as follows:

> Whoever kills or attempts to kill a[n] . . . internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life . . .

Section 1116(a) applies to persons who murder United States diplomats, because Section 1116(b)(4)(B) defines the phrase "internationally protected person" to include "any . . . representative, officer, employee, or agent of the United States Government . . . who at the time and place is entitled pursuant to international law to special protection against

attack upon his person . . .." An ambassador and chargé d'affaires on assignment outside the United States epitomize the class of persons entitled to special protection.

Section 1116(c), as amended in 1976, establishes extraterritorial jurisdiction over cases involving the murder of such internationally protected persons as U.S. diplomatic personnel:

> If the victim . . . is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of where the offense was committed or the nationality of the victim or the alleged offender.

As may be seen from the language of Section 1116(a), it relies on the substantive definition of the crimes of homicide found in Sections 1111, 1112, and 1113 of Title 18. This structure parallels the overall statutory scheme of the federal law against homicide. The substantive provisions of the Criminal Code are in Sections 1111 through 1113 of Title 18. These sections respectively define the elements and maximum punishment for murder, manslaughter, and attempted murder or manslaughter. The crime of murder is covered by Section 1111, which sets a maximum penalty of death for first degree murder.[4/] Sections 1111, 1112, and 1113 date at least to an act of March 4, 1909, 35 Stat. 1143, 1152, and therefore predate the 1973 Khartoum murders by many decades. The jurisdictional provisions of the Criminal Code are in Section 1114 (providing jurisdiction for trying persons accused of murdering certain enumerated officers and employees of the United States), Section 1116, and elsewhere in Title 18. See e.g., Sections 351 and 1751. In the 1976 amendments, Congress determined in Section 1116(c) the circumstances under which

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4/ In the amended Section 1116(a), Congress limited the punishment of persons convicted of first degree murder of internationally protected persons to life imprisonment in lieu of the capital punishment Section 1111 permits for first degree murder.

the United States would exercise jurisdiction over persons accused of killing U.S. diplomats and other internationally protected persons.[5/]

B. 18 U.S.C. § 1116 Was Intended To Be Applied Retrospectively

Because the applicable provisions of 18 U.S.C. § 1116(a) were first incorporated in the Criminal Code in 1976, three years after the murders of U.S. Ambassador Noel and Chargé d'Affaires Moore, the question arises as to whether that statute may be applied retrospectively. The legislative history notes that the statute was intended to apply to murders of U.S. diplomats committed before its enactment. In presenting the legislation to the Congress, the then Legal Adviser to the State Department used as an example the 1975 murder of the United States Ambassador to Lebanon. In his 1976 testimony before the Congress, the Legal Adviser said, "if it happened that the perpetrators of that event were apprehended in the United States, this statute would provide a jurisdictional basis to try them for the offense of murder. We could not do that under present law." Internationally Protected Persons Bills, Unsworn Declarations Bills: Hearing

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5/ The United States is party to two international treaties that provide for the extradition of persons whom our government charges with violation of 18 U.S.C. § 1116(a). Congress amended 18 U.S.C. § 1116 in 1976 in order to fulfill the responsibilities of the United States under two treaties: the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance ("the OAS Convention") and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents ("the UN Convention"). Both conventions require the contracting states to include in their penal laws provisions that apply to crimes against internationally protected persons and that establish extraterritorial jurisdiction to try persons accused of such crimes.

The United States may request the extradition of Yassir Arafat from any state in which he is present and which is a party to either the OAS Convention or the UN Convention. Each of those conventions obligates states that are parties to the convention either to extradite or to try persons accused of the murder of an internationally protected person once an extradition request is made by another party to the convention.

before the Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, 94th Cong., 2d Sess. 25 (1976) (statement of Monroe Leigh).

C. Retrospective Application of 18 U.S.C. § 1116 Would Be Consonant With The Ex Post Facto Clause

Whenever the retroactive application of a provision of the Criminal Code is considered, as would be the case if Section 1116 were used to prosecute persons accused the 1973 murders of Ambassador Noel and Chargé d'Affaires Moore, it is necessary to consider whether the ex post facto prohibition of the United States Constitution would bar the prosecution. Article I, § 9, Clause 3 of the Constitution prohibits Congress from passing any ex post facto law. Retrospective application of 18 U.S.C. § 1116 would present a case of first impression under this clause. While the prior case law provides a guide to analysis, no case is so squarely on point as to provide an exact precedent. It is plain nonetheless that a federal prosecution for the 1973 Khartoum murders would square with the principles that underlie the ex post facto clause.

1. The Ex Post Facto Clause Precludes Retroactive Application of Criminal Laws to Acts That Were "Innocent When Done"

The Supreme Court first interpreted the ex post facto clause in Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798). Justice Chase there enumerated the types of laws which are considered ex post facto:

> 1st. Every law that makes an action done before the passing of law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Id. at 390. See e.g., Dobbert v. Florida, 432 U.S. 282, 292

(1976); Beazell v. Ohio, 269 U.S. 167, 169-170 (1925); Duncan v. Missouri, 152 U.S. 377, 382-383 (1894).

In applying the constitutional principles to the problem at hand, it is useful to note that jurists from Blackstone to the present Justices of the United States Supreme Court have emphasized that the purpose of the ex post facto clause is to assure the accused of fair warning, before committing an act, that he will be subject to criminal punishment. Thus, Blackstone condemned ex post facto criminal laws on the grounds that under such laws:

> "it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust."

1 W. Blackstone, Commentaries *46 (1765). Blackstone's analysis was cited as the basis for Justice Chase's analysis in Calder v. Bull, supra, 3 U.S. (3 Dall.) at 390, and was quoted in Justice Patterson's concurring opinion in Calder, id. at 396.

Much the same understanding was expressed as the basis for the decision in Dobbert v. Florida, supra. The petitioner in that case had committed a murder at a time when an unconstitutional Florida death penalty statute was in effect. Petitioner was later sentenced to death under a newly enacted, valid death penalty statute, which he challenged as ex post facto. Justice Rehnquist dismissed this contention:

> . . . [T]his sophistic argument mocks the substance of the Ex Post Facto Clause. Whether or not the old statute would, in future, withstand constitutional attack, it clearly indicated Florida's view of the severity of murder and the degree of punishment which the legislature wished to impose upon murderers. The statute was intended to provide maximum deterrence, and its existence on the statute books provided fair warning as to the degree of culpability which the State ascribed to the act of murder.

432 U.S. at 297. (Emphasis supplied.)

Criminal laws may be enforced retroactively only if they satisfy the standards of Calder v. Bull. In applying those standards, the prior legal rules must be compared to the present law to determine whether retrospective application of a new statute would worsen the position of the accused in any of the respects enumerated in Calder.

2. The Ex Post Facto Clause Permits Retroactive Grants of Jurisdiction Over Criminal Acts

The ex post facto clause permits Congress to establish retroactive federal jurisdiction over acts committed before enactment of the jurisdictional statute. In Cook v. United States, 138 U.S. 157 (1891), the Supreme Court sustained the constitutionality of an 1889 act that conferred upon a specific district court jurisdiction to try murders that had been committed in 1888 in a strip of land known as "No-Man's Land." Id. at 183. The Court reached this conclusion even though No Man's Land may not have been attached to any United States judicial district at the time of the commission of the alleged homicide. Id. at 172. In Cook the Court relied on Gut v. The State, 76 U.S. (9 Wall.) 35 (1869), where the Court held that "[a]n ex post facto law does not involve, in any of its definitions, a change of the place of trial of an alleged offense after its commission." See 138 U.S. at 183. In Post v. United States, 161 U.S. 583 (1896), the Court concluded that "it is indisputably within the discretion of the legislature, when granting, limiting or redistributing jurisdiction, to include offenses committed before the passage of the act." Id. at 586. As Gut, Cook and Post show, Congress is well within the bounds of its Constitutional authority when it acts to confer federal jurisdiction over an offense committed before the enactment of the jurisdictional statute.

Read together, Calder v. Bull and Cook v. United States establish the division between constitutional and

unconstitutional retroactivity in criminal prosecutions. Accordingly, the essential question under the ex post facto clause is whether retroactive application of 18 U.S.C. § 1116 would make "an action done before the passing of [the] law, and which was innocent when done, criminal; and punishes such action." Calder v. Bull, supra. The ultimate issue is whether the accused lacked "cause to abstain from" the acts which provide the basis for a criminal prosecution -- was the accused without "fair warning of the degree of culpability" ascribed to those acts? See Dobbert v. Florida, supra; and Blackstone, supra. If the answer to these questions is affirmative, then the ex post facto clause would preclude a prosecution. On the other hand, if the answer is negative, the Constitution permits Section 1116 to confer jurisdiction over an offense retroactively, as Congress is empowered "when granting limiting or redistributing jurisdiction, to include offenses committed before the passage of the act." Post v. United States, supra, 161 U.S. at 586.

3. The Murders of Ambassador Noel and Chargé d'Affaires Moore Were Not "Innocent When Done."

The ex post facto clause would bar prosecution of participants in the 1973 murders of Messrs. Noel and Moore if those killings could be called, in the words of Calder v. Bull, supra, "innocent when done". No reasonable person could ascribe such a characterization to cold-blooded murder. Murder has been condemned by every civilized legal code for thousands of years.

Murder is and always has been a crime in the United States. Under the American federal system, general criminal statutes have always been enforced at the state and local level. Every state of the United States condemns murder. Life imprisonment or execution is commonly made the maximum punishment for murder, in the United States and elsewhere. Although federal jurisdiction over criminal activities has

been exercised sparingly, the United States Criminal Code has long defined criminal homicide, making first degree murder a capital crime.

The murders of Messrs. Noel and Moore were also capital crimes in Sudan, where they were committed. Recognition that such acts are criminal is so venerable and widespread that the perpetrators beyond doubt had ample "warning as to the degree of culpability" that attached to their acts. See Dobbert v. Florida, supra.

The murder of diplomats has constituted a violation of the law of nations cognizable in courts in the United States since a time that predates the Constitution. In a case incorporated into the very first volume of the United States Reports, a Pennsylvania court ruled that no statute was required to support a prosecution for an assault on a French diplomat. In Respublica v. De Longchamps, 1 U.S. (1 Dall.) 114, 119 (Pa. 1784), the Pennsylvania court held that the assault constituted a crime:

> the person of a public minister is sacred and inviolable. Whoever offers any violence to him, not only affronts the sovereign he represents but also the safety and well-being of nations -- he is guilty of a crime against the whole world.

Although the federal courts are not empowered to exercise jurisdiction over crimes in the absence of an enabling statute, United States v. Hudson and Goodwin, 11 U.S. (7 Cranch) 32, 34 (1812), the law of nations has long provided the basis for decisions in civil matters by the federal judiciary. See Talbot v. Jansen, 3 U.S. (3 Dall.) 133, 161 (1795); The Rapid, 12 U.S. (8 Cranch) 155, 162 (1814); Fremont v. U.S., 58 U.S. (17 How.) 542, 557 (1854); U.S. v. Arjona, 120 U.S. 479, 488 (1886); The Paquete Habana, 175 U.S. 677 (1900); MacLoud v. United States, 224 U.S. 416, 434 (1913). Indeed, "in the absence of Congressional enactment, United States courts are 'bound by the law of nations, which is a

part of the law of the land.'" Filartiga v. Pena-Irala, 630 F.2d 876, 887 (2d Cir. 1980), citing The Nereide, 13 U.S. (9 Cranch) 388, 422 (1815) (per Marshall, C.J.) .

The murder of diplomats on assignments outside their own countries has been condemned by the law of nations for centuries. In interpreting the Alien Torts Claim Act in Hannoch v. Tel-Oren, 726 F.2d 774 (D.C. Cir. 1984), Judge Bork looked to the law of nations as it was understood in 1789, noting that at the birth of the federal legal system one of the three "principal offenses" against the law of nations was the "'infringement of the rights of embassadors [sic].'" 726 F.2d at 813, quoting 4 W. Blackstone, Commentaries *68, 72; see also 1 W.W. Crosskey, Politics and Constitution in the History of the United States 459 (1953).6/

The world, moreover, has been on notice since at least 1942 that the United States seeks to bring to justice those guilty of murderous violations of international law. That was the year in which the allied powers declared their intent to prosecute Nazi war criminals. See Allied Declaration of December 17, 1942; Allied Declaration of St. James, London, January 13, 1942 (reprinted in History of the United Nations War Crimes Commission and the Development of the Law of War).

The cold-blooded murder of Messrs. Noel and Moore thus violated the millenarian and universal rules that condemn murder and protect diplomats. The substantive crime of murder

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6/ In a recent decision, a district court considered the potential liability of the Soviet Union for the alleged "unlawful seizure, imprisonment and possibly death" of Raoul Wallenberg, a Swedish diplomat. Von Dardel v. The Union of Soviet Socialist Republics, Civ. No. 84-0353, slip op. (D.D.C. October 15, 1985). The court held the "violation of diplomatic immunity" to be a clear violation of "universally recognized principles of international law." Slip op. at 17. The court further concluded that "the United States law has long accepted international standards of diplomatic immunity as part of its common law and has recognized a private civil cause of action for a violation of diplomatic immunity." Id. at 36. The opinion concludes that "if [Wallenberg] . . . is no longer alive, [18 U.S.C.] § 1116 has also been violated." Id. at 37.

has long been codified and subject to the severest punishment in the Criminal Code of the United States and the States of the United States. The applicable rules have long been recognized and enforced by courts of competent jurisdiction in the United States. The same rules have been enforced by international courts such as the Nurenberg Tribunal and are codified in the Vienna Convention.7/

Against these long established legal principles, only pretense should justify a claim that the Khartoum murders should be considered "innocent when done." No legal authority is known or could be shown to support so bizarre a contention. While the United States did not confer on its courts the jurisdiction to try persons accused of these crimes until the 1976 revisions of Section 1116 of Title 18, the Supreme Court long ago held that retroactive application of jurisdictional statutes the ex post facto clause. The extraterritorial extension of federal jurisdiction over international criminals indeed is consistent with and was foretold by the 1942 declarations of the World War II allies, in which the United States of course joined.

Substantial and compelling arguments therefore support the argument that those responsible for the 1973 Khartoum murders may be brought to justice in the courts of the United States pursuant to the grant of extraterritorial jurisdiction that Congress made in the 1976 amendments to Section 1116 of the Criminal Code.

4. The United States Department of Justice and a United States District Court Have Previously Recognized That Ex Post Facto Principles Do Not Bar Retrospective Accused of Murderous Violations of International Law

Some two years ago, the United States Department of

7/ The Vienna Convention on Diplomatic Relations, April 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, Art. 29. The Vienna Convention entered into force with respect to the United States in 1972, and states that "the person of a diplomatic agent shall be inviolable".

Justice acknowledged and supported the principles discussed in the foregoing portions of this memorandum. This occurred when the target of an Israeli extradition request argued that the ex post facto clause barred his removal to Israel to face charges resulting from his activities during World War II. The specific claim was that any Israeli law condemning such actions would necessarily be ex post facto because Israel did not exist at the time when the crimes were alleged to have been committed.

In response, the Department of Justice argued that "Israel's desire to try respondent for the murder of civilians during World War II is recognized under American and international law as not constituting enforcement of an ex post facto law." Government's Pre-Hearing Memorandum, In the Matter of the Extradition of John Demjanjuk, N.D. Ohio, Misc. 83-349, pp.47-48.

In fact, the Justice Department quoted the following passage from the Nuernberg Military Tribunal:

> In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of ex post factism in the law of murder.

United States v. Ohlendorf, 4 Trials of War Criminals Before the Nuernberg Military Tribunal 411, 459 (I.M.T. 1948), cited in Government's Pre-Hearing Memorandum, supra, pp. 46-47.

Although the district court properly disclaimed a need to decide any question under the ex post facto clause of the United States Constitution in the context of the extradition proceeding in Demjanjuk, the opinion nonetheless addresses the issue and concludes that U.S. ex post facto concepts would not bar retroactive application of the Israeli statute to prosecute a person accused of committing war crimes during World War II: "The Court notes, without deciding, that in all likelihood, the Israeli statute would not be a constitutionally prohibited ex post facto law. Accord Calder v.

Bull, 3. Dall. (U.S.) 386, 390 . . . (1797); Cook v. United States, 138 U.S. 157, 183 . . . (1891)." 612 F. Supp. 544, 568 n.21 (D.C. Ohio 1985).

Moreover, the court continued to analyze the Israeli statute to determine if it was an ex post facto law under prevailing international principles. The court followed the same analysis we have suggested here. First, the court looked to see if the statute punishes an action which was innocent when done. The court rejected any such claim: "[T]he Nazis and Nazi Collaborators [Punishment] Law is not an ex post facto law. The Israeli statute does not declare unlawful what had been lawful before; rather, it provides a new forum in which to bring to trial persons for conduct previously recognized as criminal." 612 F. Supp. at 567. The acts of which Demjanjuk was accused were criminal in "the state where the acts occurred" and were "illegal under international law;" furthermore, "Murder is malum in se." Id.

After establishing that the statute did not punish actions which were innocent when done, the court established that the Israeli law was a permissible retroactive exercise of criminal jurisdiction under international ex post facto concepts. Citing Calder v. Bull and Cook v. United States, the court found that "The Israeli statute merely provides Israeli courts with jurisdiction to try persons accused of certain crimes committed extraterritorially and establishes judicial procedures and applicable penalties . . .. The statute is not retroactive because it is jurisdictional and does not create a new crime." Id. The court's analysis of the issues under international law is identical to the analysis which we have shown would be the proper one under the ex post facto clause of the United States Constitution.

Thus, the one court that has a comparable issue in light of the ex post facto decisions of the Supreme Court has squarely held that ex post facto principles, as evidenced by

the leading United States constitutional decisions on the subject, permit retroactive application of an extraterritorial jurisdictional statute to punish acts that were criminal at the time of their commission under the law of the state where the acts occurred and international law. In accepting the contentions that the U.S. Department of Justice made regarding the ex post facto issues in the Demjanjuk case, the district court established a persuasive basis for contending that 18 U.S.C. § 1116 may be applied retroactively to prosecute persons who participated in the 1973 murder of two United States diplomats.

CONCLUSION

Analysis of basic principles enunciated in numerous authorities provides powerful support to the view that Section 1116 of the United States Criminal Code may be applied retrospectively as Congress intended to prosecute those responsible for murdering United States diplomats before the 1976 amendments to that statute. No authority has been found that supports the contrary view in any substantial way. To decline to bring such a prosecution for reasons rooted in the ex post facto clause would require the Justice Department to abandon the litigating position it took in the Demjanjuk case. Although no decision is squarely on point, the cases that establish the metes and bounds of retroactive criminal legislation under the ex post facto clause and the historic policy underlying that Constitutional limitation on legislative powers support the conclusion that a federal prosecution for the 1973 murders may be brought. The issue without doubt deserves a full test in any case where there is sufficient evidence to sustain a criminal action.

* * * *

We did not receive the legal memorandum released by the Department of Justice on April 21, 1986 until this state-

ment was substantially completed. That memorandum has a number of deficiencies that may be summarized thusly:

1. Most of the paper is devoted to arguing an irrelevant question -- whether the United States courts may exercise jurisdiction over a case in the absence of a statutory grant of jurisdiction. Of course the federal courts may act only pursuant to a statutory grant of subject matter jurisdiction. The pertinent issue is whether a statutory grant of jurisdiction, once enacted, may be applied retroactively in a criminal case.

2. The only authority cited in support of the proposition that the ex post facto clause bars retroactive assertions of jurisdiction in criminal cases is a district court decision, United States v. Juvenile. A reading of that case shows that the applicable Supreme Court decisions were not discussed, and the case accordingly has no persuasive force.

3. The pertinent decisions of the Supreme Court, which we have addressed above, show first that jurisdictional statutes can be applied retroactively in criminal cases and second that the key issue is whether the statute retroactively makes illegal what previously was lawful.

4. Although the Justice Department author eventually acknowledges that the latter question has some bearing on the matter, the analysis misses the main point. The author's apparent contention is that there was no legal prohibition of murdering diplomatic personnel until The United Nations and OAS conventions regarding internationally protected persons were ratified. This simply is not the case, as is shown by such authorities as Respublica v. De Longchamps, which are discussed above. The murder of diplomatic personnel has been recognized to constitute a violation of international law for centuries, and the recently released memorandum is wrong in failing to appreciate the legal significance of this

point. And, as the Justice Department correctly said in its successful brief in the Demjanjuk case, "Certainly, no one can claim with the slightest pretense at reasoning that there is any taint of ex post factism in the law of murder."

5. In summary, the author of the memorandum released on April 21 fails to recognize that the ex post facto clause deals with substance rather than jurisdiction. The intent of the Founders was to incorporate the principles of fair warning enunciated in Calder v. Bull, which is the earliest authority on the subject and which continues to be cited as a basic authority on the meaning of the ex post facto clause.

We shall be pleased to provide the Committee with a more detailed analysis of the Justice Department paper at a later date.

ATTACHMENT 1

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FM AMEMBASSY KHARTOUM
TO SECSTATE WASHDC 6196
INFO AMEMBASSY BEIRUT

C O N F I D E N T I A L KHARTOUM 0471

E.O. 11652: N/A
TAGS: PINS, SU
SUB: KHARTOUM ASSASSINATIONS

REF: STATE 039764

1. EMBASSY [redacted] HAS OBTAINED NOTES AND DOCUMENTS [redacted] OF BSO INSTRUCTIONS, FLOOR PLAN OF ACTION, ALLOCATION OF DUTIES TO EACH TERRORIST BY NAME AND RECITATION OF COMMUNICATIONS (BASED ON TAPES) BETWEEN AL FATAH RADIO IN BEIRUT TO TERRORISTS AT SAUDI EMBASSY IN KHARTOUM. DOCUMENTS REPORTEDLY OBTAINED FROM DESK DRAWER AL FATAH KHARTOUM OFFICE. [redacted]

2. NOTABLE THAT TERRORISTS WERE APPARENTLY UNDER EXTERNAL CONTROL FROM BEIRUT AND DID NOT MURDER AMBASSADOR NOEL AND MOORE NOR SURRENDER TO GOS UNTIL RECEIVING SPECIFIC CODEWORD INSTRUCTIONS. GOS ALSO REPORTED ATTEMPTING BUY ABU DOUD FOR JORDAN (KING HUSSEIN REFUSED) AND CONTACTING BSO IN BEIRUT (WHO ASSUMMED FULL RESPONSIBILITY FOR ATTACK).

3. SOME OF THIS MATERIAL IS BEGINNING TO LEAK IN SUDAN PRESS AND VIRTUALLY ALL OF IT WILL BE PUBLIC FOLLOWING SUNDAY PUBLICATION IN LONDON.
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REVIEWED BY Silberkweit DATE 1/3/85
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ATTACHMENT 2

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PER MOORE, GEORGE C.
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INFO OCT-01 AF-10 ADP-00 IO-13 M-03 A-01 SY-07 USSS-00
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AMEMBASSY TEL AVIV
AMEMBASSY TRIPOLI
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PER MOORE, GEORGE C.
POL 17 SAUD-SUDAN

C O N F I D E N T I A L BEIRUT 2543

DEPT PASS USINT CAIRO; AMEMBASSY KHARTOUM

E.O. 11652: GDS
TAGS: PINS XF
SUBJECT: PLO ROLE IN SURRENDER OF KHARTOUM TERRORISTS

REF: BEIRUT 2488

1. SUMMARY: FROM VARIOUS REPORTS APPEARING IN LOCAL PRESS, ESPECIALLY PAPERS CLOSE TO FEDAYEEN, RE CONTACTS MAR 3 BETWEEN 'ARAFAT AND SUDANESE GOVT, WE HAVE PIECED TOGETHER WHAT WE THINK IS FAIRLY ACCURATE SCENARIO OF EVENTS LEADING TO SURRENDER OF KHARTOUM TERRORISTS MAR. 4. IN PROVIDING EVIDENCE OF CLOSE CONNECTION BETWEEN 'ARAFAT AND PLO ESTABLISHMENT ON ONE HAND AND BLACK SEPTEMBRISTS ON OTHER, IT GIVES LIE TO 'ARAFAT'S CLAIM THAT PLO IN NO WAY INVOLVED IN KHARTOUM TRAGEDY. END SUMMARY.

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2. ACCORDING TO ACCOUNTS IN SEVERAL PAPERS (INCLUDING THOSE WITH GOOD FEDAYEEN CONNECTIONS), PLO EXECUTIVE COMMITTEE MET HERE MORNING OF MAR 3 FOLLOWING RECEIPT OF NEWS FROM KHARTOUM RE "EXECUTION" OF THREE US AND BELGIAN DIPLOMATS. PLO/EC REPORTEDLY TOOK DECISION AUTHORIZE CHAIRMAN 'ARAFAT SEND SPECIAL PLO REP (UNNAMED) TO KHARTOUM FOR URGENT TALKS WITH SUDANESE GOVT AND CARRYING "ORDER" FOR EIGHT TERRORISTS HOLDING OUT IN SAUDI EMB THAT THEIR "MISSION" WAS COMPLETED AND INSTRUCTING THEM TO TURN THEMSELVES OVER TO SUDANESE AUTHORITIES. LATER IN DAY, 'ARAFAT REPORTEDLY CONTACTED SUDANESE GOVT DIRECTLY (IN PHONE CALL SAID TO HAVE BEEN ARRANGED BY LEBANESE PRIMIN SALAM VIA SUDANESE EMB HERE), ASKING HIM REFRAIN FROM ASSAULTING SAUDI EMB AND BE PATIENT "PENDING ARRIVAL IN KHARTOUM OF PLO REP WHOSE PRESENCE WOULD ASSIST IN FINDING SOLUTION TO THE CRISIS."

3. SUCCESS OF THESE EFFORTS APPEARED CONFIRMED DURING NIGHT OF MAR 3-4, SINCE LOCAL PRO-FEDAYEEN AL MUHARRIR REPORTED NEXT MORNING THAT "BSO HAS DECIDED END ITS KHARTOUM OPERATION BY HAVING FEDAYEEN SURRENDER TO SUDANESE AUTHORITIES" (FBIS 040723Z). PAPER SAID THIS DECISION HAD BEEN COMMUNICATED TO NUMAYRI SHORTLY BEFORE MIDNIGHT AND QUOTED BSO AS BEING CONFIDENT SUDANESE PRES "WOULD ACCORD OUR FEDAYEEN YOUTH STATUS OF REVOLUTIONARY STRUGGLERS." IT ALSO QUOTED PLO OFFICIAL IN DAMASCUS SAYING EIGHT TERRORISTS WOULD GIVE THEMSELVES UP "TRUSTING THAT VERDICT OF SUDANESE COURTS WILL TAKE INTO ACCOUNT FEELINGS OF SUDANESE PEOPLE AND SACRED CAUSE OF PALESTINE."

4. HAVING CORRECTLY FORECAST WHAT TOOK PLACE IN KHARTOUM LATER ON MAR 4, AL MUHARRIR ON MAR 5 CARRIED ALLEGED TEXT OF BLACK SEPTEMBER "ORDER" SENT TO TERRORISTS AT SAUDI EMB MAR 3. (PAPER CLAIMED IT RECEIVED BSO STATEMENT GIVING THIS TEXT FROM IRAQI NEWS AGENCY IN BEIRUT, BUT WE BELIEVE IT CAME STRAIGHT FROM FEDAYEEN.) TEXT OF "ORDER" FOLLOWS:
QUOTE: YOUR MISSION HAS ENDED. RELEASE SAUDI AND JORDANIAN DIPLOMATS. SURRENDER IN COURAGE TO SUDANESE AUTHORITIES TO EXPLAIN YOUR JUST CAUSE TO GREAT SUDANESE PEOPLE, ARAB MASSES AND INTERNATIONAL OPINION. WE ARE WITH YOU

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ON SAME ROAD. GLORY AND IMMORTALITY TO MARTYRS OF BEDDAWI, NAHR AL BARID AND LIBYAN AIRCRAFT. END QUOTE. BSO STATEMENT ADDED: QUOTE: NOW THAT OUR YOUTHS HAVE GIVEN THEMSELVES UP AS INSTRUCTED, WE WISH MAKE FOLLOWING POINTS:

(A) THEIR OPERATION WAS AIMED AT LIBERATING ABU DA'UD, HIS COMPANIONS AND SIRHAN BESHARA SIRHAN WHO ARE BEING TORTURED IN VIOLATION OF ALL HUMAN ETHICS. IT WAS NOT INTENDED TO SHED BLOOD, BUT TO SET THESE MEN FREE.

(B) OWING TO ARROGANCE AND OBSTINACY DISPLAYED BY NIXON AND JORDANIAN RULERS, OUR REVOLUTIONARIES EXECUTED THREE HOSTAGES WHO CONTRIBUTED TO PLANNING MASSACRE OF OUR NATION AND CONSPIRED AGAINST IT. MOST IMPORTANT OF THESE WAS CURTIS MOORE, WHO WAS CIA BRAINS IN AREA AND ONE THOSE DIRECTLY INVOLVED IN SEPT 1970 MASSACRES.

(C) OUR FIGHTERS WERE FEARLESS AND FOLLOWED INSTRUCTIONS TO THE LETTER. THEY WERE NOT DETERRED BY THREATS OR PITY AND DID NOT CRAWL BEFORE AMERICANS WHO CONTROL FATE OF NATIONS. THOSE WHO SHED CROCODILE TEARS FOR HOSTAGES MUST REMEMBER THOUSANDS OF OUR NATION MASSACRED IN UNPRECEDENTED BRUTALITY AND THOUSANDS MORE IN JORDANIAN PRISONS. END QUOTE.

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OPERATION UNDERWAY.

[redacted]

MOVEMENT [redacted] 'ARAFAT'S LAST-MINUTE
MOVE TO HELP AVERT ASSASSINATION OF SAUDI AND JORDANIAN
AMBASSADORS MAY HAVE BEEN DESIGNED MAINTAIN SOME SLIGHT
CREDIT WITH ARAB MODERATES AND THOSE WITHIN FEDAYEEN MOVEMENT
WHO BELIEVE THAT EXTRMINSTS LIKE SALAH KHALAF ARE LEADING MOVE-
MENT TO DESTRUCTION.
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ATTACHMENT 3

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See esp. page 94

DECISIONMAKING, BARGAINING, AND RESOURCES (U)

Project Director:

PAUL JUREIDINI

Authors:

PETER GUBSER
WILLIAM HAZEN
PAUL JUREIDINI
RONALD McLAURIN

[redacted]

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20. ABSTRACT (Continue on reverse side if necessary and identify by block number) This report discusses certain aspects of Palestinian guerrilla terrorism. Furthermore, five incidents are analyzed in depth and conclusions made from the analyses. A concluding part describes the future of the Palestinian revolutionary movement, with its evolvement into an independent state.		

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DECISIONMAKING, BARGAINING, AND RESOURCES (U)

Project Director:

PAUL JUREIDINI

Authors:

PETER GUBSER
WILLIAM HAZEN
PAUL JUREIDINI
RONALD McLAURIN

August 1975

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CHAPTER 7: KHARTOUM, MARCH 1, 1973 (U)

(U) At dusk on March 1, 1973, eight armed Palestinian terrorists initiated an operation against the Saudi Arabian Embassy in Khartoum, Sudan. Among the five hostages taken were two American diplomats. The motivating factor behind this mission was the release of Abu Da'ud, a senior Fatah official, who was being held by the Jordanian government. After twenty-six hours of futile negotiations, three of the hostages, including both Americans, were slain. The terrorists were to surrender the following day. Over two years later, the gruesome events continue to be discussed with horror. The terrorists, although tried and found guilty by a Sudanese court, were to be allowed to leave the Sudan, but were in turn, held by the Egyptian governement as pawns in their diplomatic gambits with the United States and the Palestinian resistance movement.

(U) On March 1, 1973, Sudan was celebrating the first anniversary of the agreement which ended years of fighting between predominant Arab north and almost totally black African south. Emperor Haile Selassie of Ethiopia, at that time ruler of Sudan's southern neighbor, had been invited to the celebrations and was being feted at several parties throughout the capital. The Saudi Arabian ambassador was honoring the occasion by hosting a cocktail party at his residence in the embassy compound. Striking at this time against designated diplomats attending a party at the Saudi Embassy strongly indicates the reasons for this operation.

(U) In the first place, the Black September Organization (BSO), the terrorist group which undertook this operation, was letting the world know that its ranks were not filled with incompetents. The Bangkok affair had painted an unfavorable picture of Palestinian guerrillas and of Fatah in particular. By this operation, BSO was attempting to redeem itself in the eyes of the Palestinian people and to serve a warning to the world that they were still a potent force. World-wide news coverage of the operation, a mandatory factor for staging missions such as these, would ensure that these factors were made evident.

(U) By striking when the Ethiopian Emperor was being feted, the BSO served notice to the members of the Eritrean Liberation Front (ELF) that is stood solidly behind them. Since the ending of Sudan's civil war, the Ethiopian government had been relieved of the pressure created by the influx of thousands upon thousands of refugees fleeing from the Sudan.

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It was now able to mount sterner measures against the ELF. The BSO was, therefore, serving a warning to the Ethiopian Emperor that the Palestinians would continue to support the Eritrean rebellion as it had in the past.

(U) The United States became a direct target in this operation. Although one of the demands stated by the terrorists was the release of Sirhan Sirhan, Senator Robert Kennedy's convicted assassin, the U.S. diplomats who were seized were not to be used for his release. Instead, the terrorists wanted the U.S. government to pressure Jordan into releasing Abu Da'ud and the other prisoners being held by Jordanian officials that were on the list submitted by the BSO. The terrorists also served notice on the American government that it must not forget the Palestinians in the peace talks which were then underway. (Mrs. Meir, Israel's Prime Minister, was then in Washington). If the United States knuckled under to the demands of the terrorists, then the repercussions in the Middle East would be tremendous. Israel would certainly be the loser.

(U) The Sudan had come under criticism from the Palestinians for their supposed disinterestedness in Arab affairs. Furthermore, the Sudan had recently restored full diplomatic relations with the United States and had moved closer in its relations with governments that were an anathema to the Palestinian revolutionary movement, such as Jordan and Ethiopia. The Sudanese government was being told, then, that it would be wiser to mend its ways and remain within the Arab (Egypt is synonymous for Arab in this case) sphere of influence.

(U) By this operation, Saudi Arabia was also being warned to exert pressure on Jordan to release Abu Da'ud and his compatriots. This was taking a chance, however, since Saudi Arabia was continuing to finance Fatah and had warned the Palestinians after the Paris Embassy operation that incidents such as these must cease against Saudi interests.

(U) The operation was also staged for Libya's benefit. Since the Bangkok fiasco, the Libyan governement had warned the BSO that is could not finance operations which resulted in total failure. The Libyan government had gone on notice, too, that it would initiate financial support for individual operations, a "pay-as-you-go" practice and that it would demand advance knowledge of and even participation in the planning of all future operations. The BSO thought that the success of the Khartoum mission would generate a favorable reaction from the Libyan regime and would, perhaps, enable

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the BSO to remain comparatively free in the planning of their operations while receiving the necessary funds to accomplish its missions.

(U) The prime reason for the operation, nevertheless, was the release of Abu Da'ud from prison. Many of the other motivating factors were, in reality, spin-offs--pressure on the United States, Jordan, and Saudi Arabia to release him. At this time, Abu Da'ud was still important to the infrastructure of the BSO. His usefulness as an operative may have been at an end; yet his planning ability and, what is more important, the knowledge that he possessed about the organization, was important to the Palestinian guerrillas. An unguarded target was, therefore, chosen in a country which it was thought would be sympathetic to the Palestinian cause. Instead of kudos, though, the terrorists were bitterly condemned, not only by the Sudanese, but also by most Arabs. Abu Da'ud had to remain in prison until a later operation; yet when released, he was no longer of any value to the Palestinian movement.

Pre-operational Decisionmaking (U)

(U) Following the conclusion of the Khartoum affair, President Numeiry of the Sudan described some aspects of the planning as revealed in papers recovered by Sudanese authorities from the local Fatah office. The President emphasized that the operation was planned and carried out in his country. However, it becomes quite obvious in a broader reading of the episode that much of the planning was done in Beirut and, perhaps, Libya. In fact, it is known that Salah Khalaf, the leader of the BSO, was responsible for this mission. Moreover, it was approved of by Yasir Arafat, chairman of the PLO and head of Fatah.[107]

(S) The plan was most probably initiated sometime in February 1973. By mid-February, Khalaf was requesting ten good men "for an operation to secure the release of Awad [Abu Da'ud]."[108] From then until March 1, the planning was turned over to subordinates. Chief among these were Abu Gamal (an alias) and Abu Fawaz (Fawaz Yasin Abd al-Rahman), the director of the Fatah office in

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107 (U) Arafat's subsequent denial of participation in the operation must be noted. However, reports implicating him have continued to emerge and probably carry more weight than his denial.

108 (S) CIA, The Seizure of the Saudi Arabian Embassy in Khartoum (S), June 1973.

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Khartoum. These two men met on February 16 in Beirut, presumably to coordinate plans. Shortly after this, Abu Gamal left for the Sudan, accompanied by Abu Tariq (an alias) who was evidently a tactician. Presumably, the spade work was done during their initial visit, for the Sudanese government has charged that prior to the arrival of the main body of terrorists, men attached to the Fatah office had kept certain members of the diplomatic community under surveillance. Abu Tariq returned to Beirut on February 26 and was able to provide any last minute details which may have been needed.

(U) Abu Gamal, in the meantime, returned to Beirut sometime around the 20th. Previous to his trip to the Sudan, he had personally contacted the men who would become part of the operational team. On February 24, he brought seven of these men together for the first time and told them that they were to undertake a mission for the BSO and that they would meet at the airport on the 28th.

(U) The men did as they were told and arrived at the airport on the given date. There, Abu Gamal gave them Jordanian passports containing names which they were to use throughout the mission and their court trial. As listed on the passports they are: Tariq, Jamil Ahmad, Muftah Juni'a Yasin, Abu Hijayr, Mahir Khalil Nasir, Rasim Ali Ibrahim al-Hadi, Jamal Hasan Mustafa, Khalid Ibrahim Hussayn Izzidin, and Salih Muhammad Abdul Rahim Sa'id. Their true identities have remained secret. The passports were even stamped with visas for the Sudan that had evidently been forged.[109]

(U) The party, including Abu Gamal, arrived aboard a Misrair flight sometime in the afternoon of February 28. They were met at the airport by Karam Muhammad Arram, a member of the Fatah office, who took them to a local hotel located near the Fatah office for the night.

(U) On March 1, the eighth man of the team joined the group. His code name was Abu Ghassan; his identity, however, is known. Rizq al-Qas was second to Fawaz Yasin in the local Fatah office and was well known in the Sudan for his radio programs on Palestinian affairs. His program, "The Palestine Corner," was aired over Radio Omdurman. At this time, too, Fawaz Yasin instructed the men on their mission in the Sudan. He had drawn up

109 (U) There were no records of visas being issued in Beirut to these men. Furthermore, all Palestinians had to have an official clearance from the foreign office in Khartoum before any visa could be issued by one of the embassies.

two documents which were to be used by the operatives.[110] First, he constructed a crude sketch of the Saudi Arabian Embassy compound which indicated the locations of the fenced-in embassy offices and the residency. The sketch further delineated exits and entrances, positionings of the guard kiosks, and the neighboring buildings. The other paper contained handwritten instructions given by Yasin to the terrorists.

(U) In these instructions, the guerrillas were referred to by their code names. Apparently there were two leaders and one secondary leader, as well as the other five functionaires. A detailed division of labor was specified in the plan, a pattern that was evidently pursued in the actual execution of the operation. Tariq was named as the tactical leader of the group, in charge of military matters during the operation and of maintaining their own security. He was charged specifically "to issue the orders strongly, violently and with a firm voice to all those present in the hall, to issue instructions to all the elements involved, and to take the decisions in case of loopholes after consulting with Abu Tariq [the secondary leader] and Abu Ghassan." Furthermore, Abu Tariq was specifically ordered to be in charge of overpowering the guards and securing control of the entrances and exits to the compound.

(U) Abu Ghassan, who throughout the operation was the spokesman and negotiator for the group, was ordered to issue the terrorists' statement to the hostages, to "screen the ambassadors" and choose the "wanted ambassadors," and to take control of the telephone.[111] The other terrorists were also given specific duties. Judging from this document, each and every detail had been foreseen so that there would be no slip-ups as had taken place in Bangkok.

(U) As to weaponry, there was a brief notation on the sketch map indicating that the group was to have "four Kalashnikovs, four pistols, and five grenades." The actual tally on the weapons amounted to: four Kalashnikovs, eight Nuthatches, five pistols, eight grenades, one-hundred sixty rounds of Nashinkov ammunition, one-hundred ninety-two rounds of assorted ammunition, and forty-

110 (U) For information on these documents, see Arab World, March 12, 1973, pp.6-7.

111 (U) It is obvious that controlling the telephone related to his roles as spokesman and principal negotiator. Furthermore, since he was the only member of the team from the Khartoum area and familiar with the local situation, he would obviously be in a better position to identify the targeted diplomatic personnel. He had, in fact, lived there for five years.

four empty cartridges. According to testimony elicited from the terrorists during their court trial, some of these weapons were brought with the men in their suitcases. Others were distributed by Fawaz Yasin and Abu Gamal from Fatah stores in Khartoum.

(U) With the briefing at an end, Abu Gamal and Fawaz Yasin, with the latter's family, left for Tripoli, Libya. Their intention was to escape arrest for their involvement.[112]

(S) Operational choices given to the guerrillas seemed to be limited to two: comply with their instructions or surrender without accomplishing their mission. According to the Jordanian charge who was a captive in the embassy, the terrorists had the latitude to negotiate the release of the hostages if some or all of the demands had been met.[113] Yet the barrage of messages which they received from Beirut via the PLO office in Khartoum and over Radio Omdurman strongly suggests that the operation was being tightly controlled from Beirut, presumably by Khalaf and Arafat. Certainly the detailed instructions given the group ruled out chances for error. The BSO was determined that the Bangkok scenario would not be repeated. Finally, the order to kill three of the hostages came from Beirut, and was not decided by Abu Ghassan or Tariq. It was doubtful whether the terrorists would have opted for surrender without killing the diplomats since they had before them the fate of the guerrillas who had been involved in the Bangkok operation. It is not known what happened to these men. But if their punishment were severe enough, the terrorists of Khartoum would have every reason to fulfill their instructions rather than suffer the same fate.

The Operation (U)

(U) The situation in Khartoum on March 1 was singularly propitious for

112 (U) According to President Numeiry, Yasin had been ordered to leave the Sudan by the Libyan government. In this manner, Numeiry was deliberately connecting the Libyan regime with the operation. However, no valid proof of Libyan involvement has been uncovered. (See Arab World, March 7, 1973, p.2)

113 (S) CIA, The Seizure of the Saudi Arabian Embassy in Khartoum (S).

carrying out this particular terrorist operation.[114] As was stated before, this date was being honored as Sudan's National Unity Day in commemoration of ending the civil war one year previously. As part of the celebrations, and in recognition of his role in helping solve the strife, the Ethiopian Emperor Haile Selassie was being entertained in Khartoum on an official state visit. Accordingly, the Sudanese security forces were focusing their attention on this event, paying little attention to other happenings in Khartoum.

(U) The specific occasion for the terrorist attack was an all-male reception for G. Curtis Moore, given by the dean of the diplomatic corps in Khartoum, the Saudi Arabian Ambassador Abdullah al-Malhouk. Mr. Moore had been in charge of the small American section in Khartoum and had been instrumental in the re-establishment of American-Sudanese full diplomatic relations. The reception which was to last from 5:30 p.m. to 7:00 p.m. was his farewell party.

(U) From 5:30 p.m., four of the terrorists sat in a white Land Rover which was parked at the corner outside the Saudi compound. These men apparently did not attract anyone's attention since their vehicle bore diplomatic plates due to its official status as a Fatah car.

(U) At approximately 7:00 p.m., the reception began to break up. Many of those who attended this affair had other parties to go to. The American Ambassador Cleo A. Noel and the Dutch ambassador stood near the main gate as Guy Eid, the Belgian charge d'affaires, in a fateful move, pushed his way through the crowd to have a last word with Ambassador Noel. At this moment, Mr. Noel's white Chevrolet started pulling up in order to pick up the ambassador. It was at this moment that the terrorists rammed their Land Rover into the side of the Chevrolet and began shooting into the air and onto the ground at the feet of Noel and Eid. Eid was struck in the foot by a bullet while Noel received a bullet fragment in the ankle. Other guests at the embassy ran for cover or else dropped to the ground. Moore, while lying on the ground, was kicked and beaten by a rifle butt, thereby sustaining some injury, too.

114(U) The account of the operation was given full coverage in the newspapers. Those affording pertinent information were the New York Times, March 2-5, 1973; The Washington Post, March 2-5, 1973; The Washington Post, March 14, 1973, article by Jim Hoagland; and the Christian Science Monitor, March 2-8, 1973. Further coverage is found in the Arab World, March 2, 5, 6, 7, 12, 14, 16, and 19.

Those who did not succeed in escaping by climbing the compound wall were rounded up by the terrorists. Only the two American diplomats, the Belgian charge d'affaires, the Jordanian charge d'affaires, Adli Nasir, and the Saudi Arabian Ambassador, Abdullah al-Malhouk were actually seized. Although permitted to leave, the Saudi Ambassador's wife elected to stay with her husband. She did, however, send their children to safety outside the compound.

(U) Initially, the terrorists appeared to be very nervous and agitated. They continued to mistreat Mr. Moore, yet bound up the wounds of Noel and Eid. They tied their hostages, save the Saudi Ambassador, very tightly, placed Eid on a couch and sat the others in chairs. Once in control of the situation, the terrorists relaxed somewhat and went about their business. Except for those listed before, all other diplomatic hostages were gathered together, lectured on the Palestinian cause, given mimeographed sheets on what had just taken place and the specifics of their demands, and released.

(U) The mimeographed material indicated that they intended to capture the two Americans and the Saudi and the Jordanian diplomats. No mention was made of the Belgian charge. The German ambassador was also on the list. He, however, had not attended the affair. The nationalities of each of the desired hostages were directly reflected in the terrorists' demands. These included the freeing of: (1) Robert Kennedy's assassin, Sirhan Sirhan; (2) Abu Da'ud, Major Rafah al-Hindawi, and some fifty Palestinians guerrillas and political prisoners being detained in Jordanian jails; (3) members of the Baader-Meinhof terrorist group who were in German custody; and (4) a number of Arab women in Israeli detention camps.[115]

(U) It is quite evident, then, that Noel, Moore, and Nasir were intended captives, to be used by the terrorists as the basis for negotiations. The Saudi ambassador was probably taken since the action was occurring in his government's embassy and because his government would be able to bring pressure on the Jordanian government regarding Abu Da'ud and the other Jordanian captives. Since the terrorists failed to capture the German ambassador, the

115 (U) Some of the personnel to be released from Jordanian prisons were the following: Aside from Abu'Da'ud, sixteen of his colleagues, Rafah al-Hindawi, Mahmud al-Khalil, and all military men detained in Jordan, the men specifically named were Khattab, Abu 'Ali Khalil, Abu al-Haytham, Ghazi al-Khalili, Hamdi Matar, Ma'ruf Husayn 'Arif, Salih Raf'at, Fawzi Hasan, Sa'ud Ahmad 'Abd al-Karim, 'Izz al-Din, and Muhammad Dawud. (See FBIS/MEA, 2 March 1973, p. A-1.)

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demands concerning the Baader-Meinhof group were subsequently de-emphasized and eventually dropped. The demands on Israel were most probably included for propaganda purposes and as a concession point in negotiations. Noel and Moore were taken much more for their potential as levers on Jordan (aside from their propaganda and symbolic value) than for the release of Sirhan Sirhan. The reason for retaining Eid, however, has remained an enigma. He was of Arab origin and had many Arab friends. Therefore, it seems he was taken hostage because he was injured. Subsequently, the terrorists broadcast reasons for his capture and assassination--that it was in retaliation for the performance of a Sabena pilot in killing a terrorist during a hijack attempt at Lod Airport. But initially they made no mention of him nor did they make any demands on the Belgium government.

(U) Within the first hour of the operation, Major General Muhammad al-Baghir Ahmad, the Vice President and Minister of the Interior of the Sudan, moved hundreds of armed policemen into the area and sealed off the Saudi compound. As chief negotiator for the Sudanese government, he received the above set of demands from the terrorists. The deadline for meeting these demands was 2:00 p.m. of the following day. The stage was now set for the bargaining of March 1st and 2nd, which was to end in the assassination of three of the diplomats.

(U) Approximately two hours after the operation had begun, the terrorists loosened the bonds on their captives and allowed them to drink some tea and smoke. A Sudanese doctor was called for to tend the wounds of the injured men. A Sudanese woman was also allowed to enter the embassy, presumably to see what could be done for the captives and to speak to Abdullah al-Malhouk's wife. She was unsuccessful in persuading Madame al-Malhouk to leave. For the captives it was a blessing since she lent the only truly human touch to the drama. Aside from making a brave stand by her husband, she made tea for everyone and continually begged the terrorists for clemency for the hostages. The doctor and the Sudanese woman, upon emerging from the compound, reported that the terrorists were very determined.

(U) At 11:45 p.m., Mr. Moore was ordered to telephone his embassy. He again related the previous demands made by his captors, stressed the 2:00 p.m. deadline for meeting these demands, and reported that the terrorist were

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threatening to kill him and the other hostages if the demands were not complied with. Washington was, of course, notified of this telephone exchange. The United States government had already decided to send government personnel, headed by Deputy Under Secretary of State William Macomber, to Cairo to determine what could be done to release the American hostages.

(U) Around midnight on March 1-2, the terrorists requested that the Saudi Arabian radio operator be sent to the compound. Within the confines of the embassy was a two-way radio, powerful enough to reach Beirut. The terrorists evidently had no knowledge of how the equipment worked. Their request was denied on the grounds that false messages might be relayed to and from the terrorists. This refusal may have cost the hostages their lives.

(U) March 2nd consisted of long, fruitless bargaining sessions, culminating in the deaths of Noel, Moore, and Eid. The Beirut morning newspapers of March 2nd spilled out the true designs and intentions of the terrorists, citing informal Palestinian guerrilla sources. Al-Nahar reported that the main interest of the terrorists was the release of Abu Da'ud and the sixteen men who had been captured with him. Al-Muharrir opined that the terrorists had definite instructions to execute the hostages if the demands were not met. Those two reports proved to be substantially accurate.[116]

(U) During the long hours of the 2nd, the terrorists established various forms of communication with the outside world. The telephone was in constant use by both the operatives and the hostages. And although those in the embassy could receive radio reports, no one was able to send any messages other than by telephone. Broadcast from Beirut, Cairo, and Omdurman were listened to very carefully by the guerrillas, probably for coded messages relayed to the stations by terrorist headquarters in Beirut. The final means of communication used during the bargaining sessions was bullhorns. Up to three Sudanese, including al-Baghir and another Minister, had direct conversations with the terrorists inside the compound.

(U) The negotiating process took a number of varied turns throughout the day. On the part of the guerrillas, the deadline was extended to 8:00 p.m. Furthermore, in talking with General Baghir, they pared down their demands to

116 (U) The importance of reading the Beirut press, especially key papers, cannot be stressed too much. They have certainly given clues as to the intentions of the Palestinian guerrilla organizations and could have helped those dealing with them in making judgments.

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the release of Abu Da'ud and his sixteen compatriots. General Baghir, with the assistance of the Saudi ambassador, continued to stress that the terrorists should await the arrival of Mr. Macomber. Taking it upon himself, General Baghir further related that the United States was attempting to intercede with Jordan's King Husayn concerning the fate of Abu Da'ud and his men. Although these points were being utilized as delaying tactics, the terrorists seemed to attach great weight to the expected arrival of the Deputy Under Secretary, a fact which was to be echoed later during the 8:00 p.m. telephone call from Ambassador Noel to the U.S. Embassy.

(U) During the day, to emphasize their determination and dedication to their operation, and also to insure their own security, the terrorists threatened to blow up the building if it were stormed by the Sudanese forces. The two Sudanese who had previously entered the building also reported that the building was mined, indicating that they were told this was the case when, in reality, no explosives were present except for the grenades.

(U) As noon approached, the terrorists began to indicate what their future movements might be. It was proposed that a plane be put at their disposal so that they could fly with the hostages to the United States. Initially, this point was not taken seriously by anyone since the terrorists wanted to take the hostages to New York, conduct a news conference concerning the Palestinian cause and then execute their captives on the runway. Nevertheless, by stating that the hostages would be killed buttressed the argument that the diplomats were to be slain regardless of what action would be taken by the United States and Jordan in meeting the demands of the terrorists.

(U) The guerrillas' second suggestion was one which was to be taken more seriously. They proposed that they be allowed to fly with their hostages plus the Sudanese Foreign Minister Mansur Khalid and the Information Minister Omar Hajj Mussa to a country friendly to the Palestinian cause. General Baghir rejected outright the suggestion that the Sudanese officials become hostages. He feared that they might be killed either unintentionally or deliberately if events began to go against the guerrillas. He did, however, take part of the suggestion quite seriously. It was relayed to American officials and a flury of diplomatic activity, evidently with the acquiescence of the U.S. government, was initiated, aiming at securing permission from an Arab country to accommodate the terrorists. General Baghir also informed the terrorists that they could fly anywhere they wished if they left the

hostages behind. The terrorists rejected his suggestion, though. The stalemate remained. General Baghir even went so far as to state, after lengthy talks with the terrorists by bullhorn, at 4:00 p.m., that the terrorists' demands remained very harsh and that he had no doubt about their intentions. The second and, according to the terrorists, final deadline was only a few hours away and the tension seemed to be rising.

(U) Between 4:30 and 5:00 p.m. in the afternoon, the terrorists heard President Nixon's statement that the United States will not bow to blackmail. According to those in the Saudi compound, this had a sharp impact on the men. The tension rose perceptibly and climaxed in the deaths of the three men at 9:06 p.m. The nerves of the parties concerned were stretched even tighter by a severe sandstorm which struck Khartoum around 7:30 p.m. Visibility was sharply limited and voice communications became impossible.

(U) Under cover of the storm, General Baghir moved regular troops into the area, supported by several armored cars. He shortened the cordon around the compound, too, perhaps believing that his armed personnel could rush the embassy while being screened by the storm. It was imperative that his men move forward since the eight o'clock deadline was fast approaching and had not been extended. Nevertheless the General did not order the storming of the embassy since he believed that the deadline would be extended and did not wish his actions to precipitate any fatal move by the terrorists.

(U) Shortly before 8:00 p.m., at the instigation of and under the direct observation and control of the terrorists, Ambassador Noel called M.C. Sanderson, Noel's administrative officer at the American Embassy:

"Any news," Noel asked Sanderson?

"No, we have been in touch with people and we are awaiting people," Sanderson replied.

'When will the people arrive," asked Noel?

"Later tonight," said Sanderson.

'That will be too late," Noel said tersely.

The call was then cut, presumably by the terrorists![117] In this manner, the final deadline was passed with no United States official entering into the dialogue with the captors.

117 (U) Washington Post, March 4, 1973, pp. A1, A22, A23.

(U) The next stage of the drama is far from clear, but holds the key to who made the final decision about the fate of the two Americans and the Belgian. BSO headquarters in Beirut spoke with General Baghir regarding the demands, including, and perhaps especially, the one relating to a plane which would be given them to fly the terrorists with their hostages to New York. When turned down again, General Baghir was informed that the execution of the hostages would be imminent.

(U) Within the embassy compound the terrorist leader, Abu Ghassan, left the first floor room where the hostages were being held and presumably went to the radio room. While there, it is presumed that he received the coded message, "Blood of the Cold River," which has been designated as the signal to execute the men. To ensure that Abu Ghassan received his instructions in case radio contact had failed, BSO headquarters also sent the message to the Sudanese Embassy in Beirut to be transmitted to the Sudanese Foreign Office in Khartoum and in turn by telephone to the terrorists in the embassy.

(U) On his return to the room where the hostages were gathered, Abu Ghassan appeared to be shaken. He immediately informed the three diplomats that they would be executed within an hour. The Saudi Ambassador attempted to persuade the terrorists to wait until Macomber arrived on the scene. This plea was rejected with the reply: "No, first we already know the Americans' answer. We have heard it from Nixon. Second, we have received our final orders." The ambassador's wife also begged that the men be spared, but to no avail.

(U) The terrorists then allowed the three men about twenty-five minutes to write farewell letters to their families and to compose last wills and testaments. Only Mr. Eid was unable to do so because of emotional stress. Then Abu Ghassan and all the other terrorists took the three men to a downstairs room and each terrorist participated in the killings.

(U) As the terrorists returned, they were becoming visibly exhausted and now seemed to be much more concerned with their own welfare. Ambassador al-Malhouk, with the approval of the guerrillas, telephoned General Baghir to inform him of the executions. At 9:15 p.m., the Sudanese Foreign Ministry was also called by the terrorists to inform it of the horrendous event, presumably to have this message relayed to BSO headquarters in Beirut.

(U) Upon being informed that the executions had taken place, General Baghir brought up more troops and some tanks, and positioned paratroopers

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in neighboring buildings, reportedly requiring the residents to evacuate their residences. Also, in relation to the terrorists, the Sudanese officials were by their own report taking a harder line. They were now demanding the release of the Arab diplomats and the bodies of the slain men as well as the surrender of the terrorists

(U) The terrorists, for their part, continued to demand an airplane to take them and their hostages and the bodies out of the country, preferably to Libya. The bodies had become a bargaining point since the terrorists considered them to be as important as their live captives. BSO headquarters also continued to demand the release of Abu Da'ud and the others who languished in Jordanian prisons and called upon Saudi Arabia to pressure Jordan into complying with the demands.

(U) Sometime before midnight, Sudanese officials cut both electricity and telephone service to the Saudi compound. Terrorists could be seen patrolling on the upper floor of the building. When the storm abated, a dialogue ensued. The terrorists shouted at the Sudanese on the ground, alternately threatening the lives of the remaining hostages and pleading to have the telephone service restored. At one point, one of the terrorists, visibly shaken, began crying, requiring one of his cohorts to grab the bullhorn from him. At another point, one of the Sudanese officials ordered the shouting terrorist to reenter the building, which he did.

(U) Sometime in the early morning hours of the 3rd, the terrorists received an order from their headquarters in Beirut to surrender. It is unclear whether they received the message via radio or, as some accounts relate, the message was passed on to the PLO representative in Khartoum, Abu al-Latif Abu Hijlah, who telephoned the message to the Saudi Embassy. Regardless, Beirut's al-Muharir, on the morning of the 3rd of March, stated that the Sudanese government"...had received a message from the Black September saying that in appreciation of the Sudanese people and the stand taken personally by President Numeiry towards the Palestinian people during the 1970 massacre [civil war in Jordan], the Black September Organization has decided to place its men at the disposal of the Sudanese leader, trusting

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that he will treat them as revolutionary strugglers."[118] The paper said that contacts had been made with the intention of having a message tranferred to the terrorists in the compound.

(U) The text of this message was given to the Iraqi News Agency on March 4. It said: "Release the Saudi and Jordanian ambassadors. Present yourselves to the Sudanese authorities with courage so you may explain your just cause to the great Sudanese people, the Arab masses, and to world public opinion...Glory to the victims of the Zionist-imperialist aggression against Badawi and Nahr al-Barid [camps] and the martyrs of the Libyan plane."[119]

(U) At 6 a.m. on March 3, three terrorists appeared at the front door of the compound. Two of these returned to the building, but then re-exited with the remaining guerrillas, all of whom then surrendered to Sudanese authorities. The Arab diplomats were found to be in good health, exhausted and distraught, but relieved that their ordeal was over. The tragic affair was over for the hostages but was only to begin for the terrorists. They were to suffer a lengthy trial, public censure, and found guilty. But their sentence was commuted by President Numeiry to seven and a half years, who then turned them over to PLO representatives for egress from the country. While in transit, Egyptian officials took custody of the terrorists and placed them in detention where they were to serve the remaining years left according to their terms of sentence.

Analysis of the Bargaining Outcome (U)

(U) Like the Munich incident, the Khartoum operation ended tragically for three of the hostages. One hypothesis receiving large support in government circles is that the men were doomed the minute they fell into the hands of the terrorists, that no matter how many concessions were made to the terrorists, the lives of the three diplomats were always forfeit. Judging from the scenario of this operation and others mounted by the

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118 (U) Arab World, March 5, 1973, p. 7.

119 (U) "Nahr al-Barid" (Cold River) was mentioned in this message as well as the order to assinate, thereby providing authenticity of the message rather than the order to kill as such.

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BSO, it is difficult to accept this theory.[120] A bargaining situation took place, one which was proceeding according to tried and true practices. However, certain factors emerged which altered the outcome.

(U) It must be remembered that the operational team inside the embassy was composed of dual leadership--one political and one military. Although better disciplined than the Bangkok operatives, the undeniable fact is that there was more than one leader. Abu Ghassan, in fact, only joined the group in Khartoum. The point to consider is this: could there have been emphasis placed during the negotiations to split the group, to play upon the vanities of the men? It may not have been possible, but at least this ploy should have been used. Once friction arises in a group it is difficult to reimpose authority. And if there is a dual authority, rivalry could be fomented.

(U) During the negotiations, there was a definite lack of negotiators. The Sudanese government rightly assumed the leadership during the bargaining sessions. However, those mediators which may have had some impact during the negotiations were kept in the background. The Arab ambassadors, although informed of the situation, were given no role to play. It was not until the latter stages of the affair, after the executions had taken place, that the PLO representative entered into the picture. If he were directly involved, he would not have come forth as he did. However, if he were genuinely concerned with the fate of the hostages, then his presence and even his voice, as a fellow Palestinian, may have created a different atmosphere, one more readily acceptible to further negotiations.

(U) Arab officials must be given credit for their attempts to put pressure on Black September headquarters. Pleas from the Lebanese President and the Iraqi Foreign Minister are reported.[121] Furthermore, there was Egyptian diplomatic activity during the operation, more in accommodating

120 (U) Because Moore was accused of being a CIA spy and responsible for much of the bloodshed which took place during the Jordanian civil war is not positive proof that he was still a dead man. Although it was a question of mistaken identification, this point was never pushed very hard with BSO headquarters. If American negotiators had been involved, this point might have been stressed.

121 (U) FBIS/MEA, 2 March 1973, pp. A-1 -3.

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American designs than in persuading the terrorists to spare their hostages.

(U) The lack of American negotiators on the scene seems to be a glaring mistake. That the Macomber party was speeded on its way does credit to the clear thinking that prevailed in Washington at this time. That the failure to proceed to Khartoum from Cairo does not. Macomber's plane could have arrived in the Sudanese capital before the expiration of the deadline. His delay in Cairo and the decision to remain there in the hope that the terrorists would leave the Sudan for Cairo is unreconcilable with the events which were then taking place in Khartoum. It seems imperative that he should have pushed on to Khartoum without any stopover in Cairo, much less any planned break in the trip. His arrival was expected momentarily. When told that it would be delayed, Ambassador Noel underlined the importance of his expected presence by stating it would be too late. Coupled with President Nixon's statement, his delay imparted a lack of concern for the lives of the diplomats, a definite refusal to even enter into negotiations. It is certainly conceivable to say that the presence of Macomber may have bought more time, and therefore, improve the bargaining options. The terrorists may have seen a purpose to the prolonged discussions and may have extended their deadline again.

(U) The fact which evidently sealed the fate of the three diplomats was Nixon's statement during a press conference the afternoon of the 2nd. Macomber was already en route and, in fact, had reached Cairo. There was no reason to make this statement at this time. Or if one had to be made, to equivocate on the situation, thereby leaving one door partly ajar. That his statement was rapidly spread throughout the world only hurried the deaths of the three diplomats. The news media has a responsibility to inform its readers of the news as it takes place. Nevertheless, on occasion restraint must be used. To broadcast the President's statement, with added comments derogatory to all terrorists and Palestinians in particular, only solidified in the minds of the BSO leaders the impression that the United States would not bargain and would sacrifice their diplomats to an ideal rather than face reality.

(U) It must be stressed here, too, that given the bargaining events as they unfolded, it became evident that the terrorists within the Saudi compound had little say in the bargaining which was taking place in Khartoum.

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The BSO headquarters in Beirut should have been recognized as the ones with whom the Sudanese and others must negotiate. The constant barrage of messages from Beirut and elsewhere to the parties concerned from BSO or guerrilla sources should have indicated that the terrorists were merely puppets being manipulated from afar. This being the case, it is entirely plausible that a direct two-way radio link may have significantly changed the outcome for the hostages. This link not only would have directly involved the personnel in BSO/Fatah headquarters in the negotiating process but also give the terrorists in Khartoum a chance to express their doubts and, perhaps, their opposition to the execution of the men. Furthermore, rather than being almost entirely removed from the very real human emotions of all the parties in the Saudi compound, they may have been caught up in the thinking of the terrorists on the scene and, perhaps, even that of their hostages. With this greater involvement, their decisions and orders may have been altered. Therefore, it was a grave error to refuse the Saudi radio operator permission to enter the compound in order to operate the radio link to Beirut.

(U) A note should be made about Yasir Arafat's public role in this affair. On at least three different occasions during this fifty-nine hour operation , he communicated with Sudanese officials. In the first of two telegrams he asked the Sudanese authorities not to use force against the terrorists and to maintain a "maximum sense of wisdom." In the second, after the executions had taken place, he "warned against storming" the Saudi compound, a fear which was raised by the added security personnel brought in at this time. In addition, Arafat spoke by telephone with General Bashir; both underlined their deep felt "concern and interest to avert deterioration of the situation."[122]

122 (U) Arab World, March 5, 1973.

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ATTACHMENT 4

U.S. Interception of the "Cold River" Command

The final "Cold River" command to kill the three diplomats in the Saudi Embassy in Khartoum was, according to numerous accounts, transmitted by shortwave radio from Black September Headquarters 1925 km away in Beirut at 8:00 P.M. Sudan time (plus or minus one half hour) on March 2, 1973. By this time, the hostages had been held for 25 hours, and the United States government had been involved in efforts to secure their release for 24 hours.

According to Lebanese sources familiar with communications equipment used by the PLO in Beirut, the message was probably sent via a single side band (SSB) high frequency transmitter manufactured by Racal, most likely operating in the range of 10-14 megahertz. Interception of such a message in the HF band is a simple task for any radio intercept system.

Several authorities on signals intelligence have given the opinion that this message, coming at the height of a hostage crisis that had been underway for twenty-five hours, and broadcast over open radio waves in a voice transmission, could not realistically have escaped interception and recording by the intelligence gathering facilities of the United States and other countries. One authority said, "It would be impossible" not to have intercepted it. Another offered the observation that, "If the U.S. didn't catch it, hundreds of people should have been fired."

Among the U.S. listening posts that could have recorded the message were several major facilities:

(1) Kagnew Station at Asmara, Ethiopia was an immense U.S. radio communication and signals intelligence installation with a staff of approximately 3,000 Americans and 1,800 Ethiopians, sitting next door to Khartoum.

It was definitely the largest U.S. signals intelligence facility on the African continent, and may have been the largest such facility in the world. In 1973, its operations were under the administration of the Naval Security Group component of the National Security Agency. Asmara is 1975 km from Beirut.

(2) Cyprus has long been a principal collection point for U.S. and U.K. signals intelligence in the Mediterranean and the Middle East. U.S. monitoring stations at Karavas, Mia-Milia, and Yerolakkas, and the main British station at Ayios Nikolaos (9th Signals Regiment, 33 Signals Unit) should have received the signal. Cyprus is 200-300 km from Beirut.

(3) The U.S. has more than a dozen signals intelligence facilities in Turkey. For example, the AN/FLR-9 COMINT and HF-DF antenna system at Karamursel is the size of about three football fields. Known as the "Elephant Cage," it is the largest signals intelligence antenna system in the world. Karamursel is 950 km from Beirut, while Incirlik, which reportedly includes another facility picking up signals from the Middle East, is 350 km from Beirut.

(4) Another AN/FLR-9 antenna system at San Vito dei Normanni Air Station near Brandisi, Italy (1750 km from Beirut), the "Briscoe Cat" SIGINT facility at Jeddah, Saudi Arabia (1375 km), if it was then operating, and smaller but quite capable facilities at the U.S. Embassies in Beirut, Tel Aviv, and Khartoum should easily have intercepted the message.

(5) RC-135 airborne signal intelligence collectors typically fly out of Hellenikon, Greece (1175 km from Beirut) to monitor messages during crises. For example, an RC-135 monitored the messages of the terrorists on the Achille Lauro, and the RC-135 has been a principal means of monitoring Libyan signals, flying 200 miles off the coast. The RC-135 has HF antennae on its wing tips and tail. While the RC-135 is the main workhorse of airborne

SIGINT, the U.S. also flies U-2's from Akritori, Cyprus to conduct signals intelligence missions in the Mediterranean, as well as EP-3 Orions out of Naples. It is even possible, though less likely, that the SR-71 or EC-121 were employed.

(6) Finally, various U.S. Navy ships of the Sixth Fleet are outfitted to monitor land communications in the Middle East.

With so many sets of ears listening, it is likely that the U.S. obtained more than one recording of the "Cold River" command to kill the three diplomats in Khartoum.

Time of the "Cold River" command on March 2, 1973

Khartoum	8:00 P.M.	(plus or minus one-half hour)
Beirut	8:00 P.M.	
Asmara	9:00 P.M.	
Cyprus	8:00 P.M.	
Turkey	9:00 P.M.	
Israel	8:00 P.M.	
Saudi Arabia (Jeddah)	9:00 P.M.	
Greece (Hellenikon)	8:00 P.M.	
Italy	7:00 P.M.	
Washington, D.C.	1:00 P.M.	
Greenwich Meridian	6:00 P.M.	

WHOSE TAPE?

1. David Ottoway reported in the Washington Post (April 5, 1973) that "according to one source, the U.S. Central Intelligence Agency monitored at least some of the communications between the operation's Beirut command center and the Saudi Arabian embassy in Khartoum... Arafat's voice was reportedly monitored and recorded."

2. Oswald Johnston reported in the Washington Star (April 15, 1973) that "The Sudanese last month secretly furnished U.S. intelligence with transcriptions of three monitored shortwave broadcasts from the Fatah operations center in Beirut to the Khartoum operatives. In one of them, the voices of both Arafat and Khalef were distinguishable, Sudanese authorities have reportedly told the Americans."

3. Edward F. Mickolus of the Central Intelligence Agency reported in Transnational Terrorism: A Chronology of Events (Westport Connecticut: Greenwood Press, 1980) p. 377 that, "Members of Israeli intelligence managed to monitor the ultrahigh-frequency shortwave that the terrorists were using to keep in touch with their leaders at headquarters." (The author cautions on p. xi. that "Despite my institutional affiliation, descriptions of incidents should not be interpreted as representing validation or official positions of the Central Intelligence Agency or any other branch of the U.S. government.")

4. Michael Bar-Zohar and Eitan Haber report in The Quest for the Red Prince that the terrorist brought with them a "powerful wireless transceiver" to communicate with PLO headquarters in Beirut (p. 166).

5. A secret cable from the U.S. Embassy in Khartoum to the Secretary of State, dated March 7, 1973 (released in response to a Freedom of Information Act inquiry, on July 3, 1980), reports that "Embassy... has obtained...recitation of communications (based on tapes) between Al Fatah Radio in Bierut to terrorists at Saudi Embassy in Khartoum."

Senator DENTON. We have three more statements, and I would not be able to remain nor to ask questions if all the other three were as long, albeit, as useful as the first.

So, may I ask the remaining three to summarize their statements?

Mr. WEINSTEIN. Mr. Chairman, I apologize.

Senator DENTON. No, that is all right, Mr. Weinstein. I believe that somehow from the panel we needed a comprehensive overview of your perspective. I believe we received that.

Mr. Nathan, would you proceed?

All statements will be included in the record as if read.

STATEMENT OF IRVIN B. NATHAN

Mr. NATHAN. Yes, thank you, Mr. Chairman, and I will be very brief.

I understand that the full statement will be submitted for the record. In that connection, Mr. Chairman, I would like to thank Ken Juster, my colleague at Arnold & Porter, for his substantial assistance in preparation of the statement.

Senator DENTON. Your full written testimony will be included in the record, Mr. Nathan.

Mr. NATHAN. Thank you.

To summarize that statement, as my statement indicates, I served as a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. In that capacity, I had some responsibilities for the RICO statute, the criminal prosecution of the racketeer influenced and corrupt organizations statute, which was utilized to combat organized crime in this country and other substantial criminal activities.

My basic position is that obviously the law is only one tool to go after terrorism and there have to be other aspects to the fight.

Further, I do not dispute that there needs to be additional legislation enacted in this area, more comprehensive and particularly focused on terrorist activities.

But my view is that there is existing legislation and, in particular, the RICO legislation which has not been utilized extensively and which is available to the Department of Justice.

I very much regret the decision and the analysis which came down from the Department of Justice within the last few days, because, to me, it shows a lack of imagination, a lack of vigor, and a lack of utilization of the kinds of tools that Congress has previously provided to the Department of Justice to deal with this problem.

The short of it is that the rhetoric of this administration is not being matched by the actions of the Department of Justice in trying to bring terrorists to justice and throwing the full weight of our domestic law against the terrorists. One of those tools is the RICO statute as I mentioned.

The reason that the RICO statute has been effective in dealing with organized crime is because it enables the Department of Justice, first, and then the courts and juries to focus on the structure of the organization, to focus on the leadership of the organization, and to recognize that criminal acts are part of a series of activities that demonstrates how this organization functions.

While that statute was designed to deal with organized crime in this country, it is a very broad tool and it is a very potent tool, and it could be utilized, in my opinion, to deal with international terrorism, insofar as it relates to acts whether committed here or abroad that are designed and are reasonably foreseeable to have effects in this country. This is a statute that deals with those organizations whose activities affect the foreign commerce of the United States.

And that statute incorporates other statutes, including State laws against murder, kidnaping, arson, and extortion, and incorporates other Federal laws, such as the Travel Act and the Hobbs Act, which makes it illegal to take actions abroad to interfere with our foreign commerce when it has the design, or the intent, or the reasonably foreseeable effect of influencing acts in this country.

There is a lot of jurisprudential debate about ex post facto law with respect to the 1976 statute, but the RICO statute was passed in 1970, 3 years before these dastardly deeds in Khartoum.

The RICO statute outlaws murder, which would be in violation of the laws of states, which may incorporate the laws of nations which includes the killing of Ambassadors. The RICO statute also incorporates the Hobbs Act, which deals with extortion.

In the Khartoum incident, which Mr. Weinstein did not mention, although his prepared statement does, one of the demands of the kidnapers there was that the U.S. Government release Sirhan Sirhan and take other actions with respect to our allies abroad, including Israel.

They were asking the U.S. Government to take actions, and they were holding hostage our American Ambassador and the Chargé d'Affaires. In my view, those activities were illegal then, under the statute that had been passed before those actions and, if the Department of Justice would exercise some imagination, it could see that it had jurisdiction at that time and it could go after not only the actual perpetrators but those who design this, those who lead the organization and not only in that activity but in a whole series of activities.

I read Mr. Richard's statement. Mr. Richard is a friend of mine and is a dedicated public servant, and I think the Department of Justice is taking certain actions to deal with terrorism that has occurred in more recent days. But what I see as a deficiency is some effort by the Department to bring together the entirety of it, to look to the organization that is behind these various individuals acts, to go beyond the individual perpetrators of terrorism and to look at the organizations that sponsor it, that finance it, that plan these activities and that give a lot of logistical support to the individual terrorists.

I think the RICO statute is one tool; there may be others. I do not dismiss the notion that there needs to be more comprehensive legislation in this area, but I think there is legislation on the books which is not being utilized effectively. And I urge this committee to continue its fine work in this area to keep the Department of Justice on course and to see that its actions match the positions that are articulated by the President and by the Attorney General.

[Mr. Nathan's submissions for the record follow:]

PREPARED STATEMENT OF IRVIN B. NATHAN

My name is Irvin B. Nathan. I am a partner in the law firm of Arnold & Porter. I am pleased to accept your invitation to appear today to discuss legal actions which may be brought against people who commit acts of terrorism.

In the late 1970s, I served as a deputy assistant attorney general for enforcement in the Criminal Division of the United States Department of Justice. In that capacity, I was responsible, among other things, for the review of proposed prosecutions under the federal Racketeer Influenced and Corrupt Organizations statute ("RICO"), 18 U.S.C. §§ 1961, et seq. I have also served as special minority counsel to the Senate Intelligence Committee. Since leaving the government, I have served as Chairman of the White Collar Crime Committee of the Criminal Justice Section of the American Bar Association. I am currently an editor of the RICO Litigation Reporter and a member of the Board of Editors of the Civil RICO Reporter.

I believe that our government can be much more aggressive in combatting terrorism through the use of laws currently in force to prosecute terrorists for their criminal acts. I want to focus today particularly on the RICO statute, which has not been utilized to date to any significant degree in combatting terrorism. I believe that this powerful law could be used successfully to prosecute leaders of terrorist organizations and to seek forfeiture of the assets of

such organizations. While recognizing that it may be difficult to bring certain terrorists before U.S. courts, I think it is imperative to use our legal processes to the maximum extent possible to brand these individuals and their organizations for what they are -- outlaws and criminals -- and to attempt to bring the full force of the law against them.

I. AN OVERVIEW OF THE LEGAL RESPONSE TO TERRORISM

In attempting to combat terrorism, government officials may and should take action at three different stages of possible involvement -- before, during, and after an incident. The first stage is deterrence, before the terrorist act occurs. This involves preventive measures, such as increased security at airports and harbors, and improved intelligence. The second stage, if preventive measures fail, is to respond to, manage, and contain a terrorist incident once it occurs. This may involve communication with the terrorists and the possible use of force to attempt to disable the terrorists and rescue hostages. Finally, after a terrorist incident has run its course, there should be an unremitting law enforcement effort to apprehend, prosecute, and, if convicted, severely punish the terrorists.

While all three stages are important in the process of combatting terrorism, my focus today is on the third stage -- law enforcement efforts against terrorists. The law enforcement stage has actually received little public attention to date in the effort to combat terrorism. Public debate usually turns, instead, on the deterrence of and immediate response to terrorist

incidents. After a terrorist incident recedes from the public view, however, we hear little about legal mechanisms to prosecute terrorists. While one can quote a variety of statistics regarding the increase in recent years in the number of terrorist acts and the trend toward bloodier incidents with more fatalities,[1] there seems to be no systematic collection of information regarding the apprehension, prosecution, and punishment of the perpetrators of these acts. One reason for this, I suggest, is that much less has been done than could be to prosecute terrorists. We frequently give lip service to the need for prosecution, but our record to date is quite deficient in bringing terrorists to justice.

On the legal front, the response against terrorism has generally been to propose new laws rather than to use those already in place. For example, in the area of international cooperation, the Reagan Administration has recently undertaken an effort to revise extradition treaties, so as to close the loophole provided by the "political offense" exception in these treaties. The first such revision proposed by the Administration is the Supplementary Extradition Treaty between the United States and the United Kingdom, which was signed on June 25, 1985, and submitted to the Senate for consideration on July 17, 1985. That Treaty explicitly identifies particular crimes -- such as airplane hijacking and murder of diplomats -- that may no longer be regarded as political offenses excepted from the extradition

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[1] See Public Report of the Vice President's Task Force on Combatting Terrorism, at 4 (Feb. 1986).

process that exists between the United States and the United Kingdom. I applaud the work of the Administration on the Supplementary Extradition Treaty, and I urge the Senate to approve the Treaty promptly. I note, however, that the United States has bilateral extradition treaties with over ninety other countries, and it will be a rather long time before we are able to negotiate revisions closing the "political offense" loophole in most of these treaties.

Within the domestic arena, the political reaction to the recent spate of terrorist activity has been to propose new laws aimed at specific types of terrorist incidents. Over twenty new bills have been introduced on the subject of terrorism during both this and the preceding session of Congress. The topics of these bills have ranged from establishing the death penalty for the taking of hostages[2] to suspending nuclear cooperation with nations that have not taken adequate steps to protect nuclear material.[3] Recent legislation that has become law includes providing the Attorney General and the Secretary of State with authority to reward individuals for information leading to the arrest and conviction of terrorists,[4] making it a federal offense to commit an act of violence against any passenger on a government or civilian aircraft,[5] and outlawing acts

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[2] See, e.g., the following bills introduced during the 99th Congress: H.R. 3562; H.R. 3565; H.R. 3575; S. 1508.

[3] See, e.g., the following bills introduced during the 99th Congress: H.R. 4151, H.R. 4418.

[4] See 18 U.S.C. §§ 3071, et seq.

[5] See 18 U.S.C. § 32.

of violence wherever they may occur against the families of high-ranking federal officials.[6]

Again, these efforts are laudable and I certainly do not criticize or discourage them. But I think they are an insufficient response to a difficult and persistent problem. What the United States needs in addition to revised treaties or new laws are vigorous, imaginative, and persistent efforts to enforce those laws already on the books.

There are already, in my view, several laws in the U.S. criminal code that can be utilized effectively against terrorists who threaten or harm Americans abroad for the purpose of attempting to extort the American government into changing its policies. While these laws may not have been enacted specifically to apply to acts of terrorism, terrorist acts often fall within the scope of these laws and can thus be the basis for criminal investigations and prosecution.

One such law is the Hobbs Act, 18 U.S.C. § 1951, outlawing extortion. The Hobbs Act provides that "whoever in any way or degree obstructs, delays or affects commerce by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section . . ." is guilty of a felony punishable by twenty years' imprisonment. Under the Hobbs Act, the terms "commerce," "robbery," and "extortion" are broadly defined. "Commerce" means "all commerce over which the United

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[6] See 18 U.S.C. § 115.

States has jurisdiction," including the foreign commerce of the United States; "robbery" is defined as the unlawful taking or obtaining of property from a person against his will by means of actual or threatened force or violence or fear of injury; and "extortion" means obtaining the property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. Thus, (i) when hijackers seize by force or violence a ship or airplane carrying American citizens or when their actions otherwise impede U.S. citizens in their foreign travel, and (ii) when the demands of the hijackers involve proposed actions by the U.S. government or its citizens, there has been, in my opinion, a violation of the Hobbs Act. Under these circumstances, the Hobbs Act, therefore, could be applied to certain terrorist incidents abroad that have been directed at U.S. citizens or property.

Another relevant law already in force is the Travel Act, 18 U.S.C. § 1952. The Travel Act provides that whoever travels in foreign commerce or uses a facility of foreign commerce with intent to commit any crime of violence to further or promote "any unlawful activity," is punishable for a felony and subject to imprisonment for five years. The term "unlawful activity" includes extortion in violation of any state or federal law. Thus, once again, if a terrorist travels on a U.S. airline for the purpose of seizing passengers and extorting the U.S. government or its citizens, he may have violated the Travel Act.

There are other laws as well which may encompass

acts of terrorists, including the federal wire fraud statute.[7] For example, if terrorists use international televison or telegraph to communicate their threats or false claims to the American government and people, they may well have violated this statute.

In short, while additional legislation could be helpful, what we really need is the will, imagination, and energy to enforce vigorously and tenaciously those laws which are already on the books. There must be a concerted effort to open criminal investigations against terrorists on the basis of these laws, to convene grand juries, to gather as much evidence as possible from all available sources, to subpoena witnesses and documents, to return indictments, to label terrorists for exactly what they are -- world-class criminals of the worst sort -- and, if possible, to secure convictions and impose severe punishments. We should not be deterred just because it will be difficult to bring the terrorists to trial.

Once we have indictments and supporting evidence, we can go to other countries to seek extradition. We can present our case with strength and place public pressure upon these countries to cooperate with us in prosecuting terrorists. If a foreign country does not cooperate, and the circumstances warrant further action, then we have at least set the stage for the limited use of self-help measures to bring the culprits to this country to stand trial. I suggest that this type of limited operation is more principled and defensible

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[7] See 18 U.S.C. § 1343.

than the general use of military force, which could cause death to innocent civilians. While I would advocate the seizing of terrorists only in very special circumstances, the point is that we must first in any event have thoroughly presented a solid criminal case against the fugitives we seek.

II. RICO AS A TOOL AGAINST TERRORISTS

I would like to focus now on a particular statute -- RICO -- which though not enacted nor utilized extensively to date to combat terrorism, could, in my view, be used successfully to prosecute terrorist organizations and their leaders, and to seek forfeiture of the assets of such organizations. As you requested in your letter of invitation, I will relate my discussion to the particular concern of this Subcommittee with the alleged involvement of PLO leader Yassir Arafat in ordering the brutal slayings of U.S. Ambassador Cleo Noel, U.S. Charge d'Affaires George Moore, and Belgian diplomat Guy Eid in 1973.

A. The Elements of the RICO Statute

RICO makes it unlawful for any person or group of persons who are associated with any enterprise, whose activities affect the interstate or foreign commerce of the United States, from conducting or participating in the conduct of the affairs of the enterprise "through a pattern of racketeering."* A "pattern of racketeering" is defined to include the commission of a series of

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* 18 U.S.C. § 1962(c).

crimes, such as (1) any act or threat involving murder, kidnapping, arson, or extortion in violation of any state law, and/or (2) any act which is indictable under certain enumerated federal criminal laws. The specified federal criminal laws include, among others, the laws I have previously discussed -- namely, the Hobbs Act, the Travel Act, and the wire fraud statute.[9]

Under RICO and the applicable statute of limitations, one of these crimes must have occurred within the last five years, and at least one other crime must have occurred within ten years of the commission of a prior act of racketeering activity.[10] In other words, if the government can today charge the commission of an enumerated crime in or after 1981, then the prosecutor may also charge that the same individuals or organization committed another crime as part of the pattern at any time in or after 1971, so long as they are part of a "pattern" -- that is, some interrelationship exists between the acts in terms of purposes, results, participants, victims, or methods of commission.

The utility of a RICO prosecution is that it focuses on the overall makeup, methods, and functions of the organization -- not simply on an isolated act, such as the hijacking of a ship in 1985 or the murder of an American ambassador in 1973. Indeed, a RICO case enables the prosecutor to tie together a string of terrorist acts ranging over a several-year period of time and to focus on the leadership of an organization

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[9] 18 U.S.C. § 1961(1).

[10] 18 U.S.C. §§ 1961(5), 3282.

in order to demonstrate how that leadership uses criminal activities to further the organization's purposes.

Criminal violations of the RICO statute are prosecuted by the Department of Justice. Violators are subject to a combination of a maximum of twenty years' imprisonment, $25,000 in fines, and forfeiture to the federal government of all of the property and proceeds derived from the illegal activity.[11] The government may also seek appropriate civil relief, including dissolution of the organization, divestiture, and injunctions limiting the activities of the organization.[12]

B. Jurisdiction of U.S. Courts for Acts Committed Abroad

A principal question which may arise under RICO is whether the statute confers jurisdiction on U.S. courts for acts committed abroad. While this question has not been definitively answered, there are very substantial arguments to suggest that U.S. courts have jurisdiction under RICO for activities committed abroad, so long as those activities directly and foreseeably affect the foreign commerce of the United States. In my opinion, the Justice Department should take a far more aggressive view of its authority to investigate and prosecute violations of U.S. law that occur abroad and to assert the jurisdiction of U.S courts to hear the resulting cases.

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[11] 18 U.S.C. § 1963(a).

[12] 18 U.S.C. § 1964(a).

As noted, the RICO statute simply requires the activities of the enterprise to affect interstate or foreign commerce. Under RICO, an organization such as the PLO, would clearly constitute "an enterprise," which is defined to include any "association or other legal entity and any union or group of individuals associated in fact although not a legal entity."[13] A foreign government, such as the Government of Libya, would also qualify as an "enterprise" under RICO. Indeed, at least one RICO prosecution has been brought where a foreign corporation was the enterprise and the illegal actions occurred abroad.[14] Moreover, U.S. courts have uniformly held that Congress, by referring to "interstate or foreign commerce" in RICO, intended that this statute, like the antitrust laws on which it was modeled, should have the broadest reach possible under the Commerce Clause of Article I of the U.S. Constitution.[15] In addition, the Supreme Court, as well as other federal appellate courts, has repeatedly held that the terms of the RICO statute are to be liberally construed to effectuate their remedial purpose.[16]

A leading antitrust case, which would be applicable to the issue of extraterritorial jurisdiction under RICO, is Timberlane Lumber Co. v. Bank of America, 549

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[13] 18 U.S.C. § 1961(4).

[14] See United States v. Parness, 503 F.2d 430, 439 (2d Cir. 1974).

[15] See J. Fricano, Extraterritorial Reach of RICO to International Transactions: Just a Matter of Time?, 1 Civ. RICO Law Rptr 226 (Sept. 1984).

[16] See, e.g., Sedima v. Imrex, 105 S. Ct. 3275, 3286 (1985); United States v. Turkette, 452 U.S. 576, 586-87 (1981).

F.2d 597 (9th Cir. 1976). In that case, the Court of Appeals adopted a multi-part test for determining federal jurisdiction in cases arising overseas. The Court stated:

> "The elements to be weighed include the degree of conflict with foreign law or policy, the nationality or allegiance of the parties and locations or principal places of business of corporations, the extent to which enforcement by either state can be expected to achieve compliance, the relative significance of effects on the United States as compared with those elsewhere, the extent to which there is explicit purpose to harm or affect American commerce, the foreseeability of such effect, and the relative importance of the violations charged of conduct within the United States as compared with conduct abroad."[17]

Under such a standard, where the activities of a terrorist organization, such as the PLO, affect -- and are intended to affect -- the foreign commerce of the United States, including our political and economic relationships with a host of countries as well as the physical safety and property of our citizens in their travel from the United States, it seems highly likely that an American court would exercise jurisdiction.

In addition to terrorist acts committed abroad, a RICO indictment, of course, may also include illegal acts committed within the United States. If, for example, it can be established that the terrorist organizations have engaged in narcotics trafficking, arson, fraud, or conspiracies to kill or maim individuals in the United States, each of these actions could be included in the charge. If such acts are included, the jurisdictional

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[17] 549 F.2d at 614. Different courts and commentators have given various formulations of the factors, but the same issues are generally considered.

arguments with respect to acts committed abroad are even stronger.

A federal grand jury impaneled to investigate the activities of the PLO or other terrorist organizations insofar as they affect, directly or indirectly, the interstate or foreign commerce of the United States would have a very broad-reaching mandate to probe their worldwide affairs. Any resulting indictment against the organization and its leaders could spell out for all the world to see exactly what kind of an organization it is, how it is run, how it is financed, and how it uses crime, including political assassinations, on a worldwide basis to further its purposes.

A related question, of course, is whether an offense committed abroad may constitute a violation of U.S. state and/or federal criminal law, so as to form a part of the "pattern of racketeering." On the federal level, I have already demonstrated how offenses committed abroad can violate the Hobbs Act or the Travel Act. Two or more instances of such violations of these statutes can thus constitute a "pattern of racketeering."

Similarly, acts committed abroad may also be punishable as one of the state law crimes listed under RICO and may constitute part of a "pattern of racketeering." Thus, if the murder abroad of a U.S. ambassador or other U.S. citizen constitutes a violation of any state's criminal code or common law, then that murder may constitute part of the pattern of racketeering under RICO. If, for instance, the law of nations is incorporated in state common law and the law of nations

forbids the murder of a diplomat, then the murder of a U.S. ambassador may be a predicate act for purposes of RICO.

A number of federal laws which have been enacted recently to punish terrorist acts abroad are not listed as predicate acts under RICO. For example, RICO does not include the statute which outlaws international hostage taking[18] or the statute which prohibits crimes against internationally protected persons.[19] I urge Congress to include these statutes and future legislation against terrorists as predicate acts under RICO. In the meantime, these crimes can be investigated by the same grand jury investigating possible RICO violations and can be included as separate counts in an indictment bringing RICO charges.

C. A Conspiracy To Violate RICO

In addition to the substantive provisions of RICO, the statute prohibits anyone from conspiring to violate RICO.[20] To be convicted for conspiracy, a person need only aid and abet or facilitate the organization's functioning through a "pattern of racketeering."[21] There is no requirement under RICO for a person to have committed an overt act in order to be convicted for

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[18] 18 U.S.C. § 1203(b).

[19] 18 U.S.C. § 1116.

[20] 18 U.S.C. § 1962(d).

[21] See, e.g., United States v. Carter, 721 F.2d 1514, 1528-31 (11th Cir.), cert. denied, 105 S. Ct. 89 (1984).

conspiracy.[22] Nor must a person have been involved in the commission of the predicate act, or have even agreed to commit the specific act. Thus, the top leaders of an organization which operates through the commission of illegal acts can be prosecuted even if those leaders took no direct part in the planning or commission of a specific crime.

D. Forfeiture of Assets Under RICO

Finally, RICO is one of the few federal or state criminal statutes which authorizes forfeiture of assets. The statute provides that following a conviction, the defendant shall forfeit to the United States (1) any interest in, or any right which affords the defendant a source of influence over the enterprise, and (2) any property constituting or derived from any proceeds which the person obtained, directly or indirectly, from any of the illegal acts.[23] This means that the officers of an organization can be stripped of their positions, and the organization's property and proceeds may be forfeited to the United States to the extent that they are derived, directly or indirectly, from the racketeering activity. Thus, for example, if the proceeds of drug dealing or gun running are used to finance a terrorist organization's operations, property of the organization obtained with those proceeds may be forfeited to the United States. I am informed that some terrorist

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[22] See United States v. Alonso, 740 F.2d 862, 870-72 (11th Cir. 1984), cert. denied, 105 S. Ct. 928 (1985).

[23] 18 U.S.C. § 1963(a).

organizations, such as the PLO, have substantial assets in the United States, which may be the subject of forfeiture, even if none of the individual leaders are apprehended and brought to trial.

* * *

In sum, the RICO statute may provide an effective tool for the U.S. government to investigate and prosecute alleged terrorist acts against American citizens, property, and interests, including the brutal slayings in 1973 of U.S. diplomats. Under RICO, terrorist acts committed abroad may be violations of U.S. law, and U.S. courts may well have jurisdiction over members of the organization involved in the commission of the terrorist acts. Moreover, the statute enables a prosecutor to tie together terrorist incidents of today with those of years ago. While I certainly have no desire to discourage further efforts at increasing international cooperation to combat terrorism or refining U.S. laws to deal with specific kinds of terrorist acts, I believe that statutes such as RICO provide us the opportunity now to investigate and prosecute terrorists for their heinous crimes. I urge the executive branch, under prodding from the Congress, to devote more of its efforts to that task.

Thank you.

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May 12, 1986

The Honorable Jeremiah Denton
Chairman, Subcommittee on Security
and Terrorism
Senate Committee on the Judiciary
Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Denton:

I am writing in response to your questions of April 30, 1986, regarding legal mechanisms to combat terrorism. As you know, my testimony before your Subcommittee focused on the use of laws currently in force, especially the RICO statute, to prosecute terrorists for their criminal acts. From that perspective, I believe that some of the reasons provided by the Department of Justice and the Department of State for not proceeding with the investigation of the brutal slayings of U.S. Ambassador Cleo Noel, U.S. Charge d'Affaires George Moore, and Belgian diplomat Guy Eid in 1973 are simply unjustified.

The Justice Department claimed that "there is no statutory authority upon which to predicate a prosecution" of Yassir Arafat for his alleged participation in these slayings.*/ The Department's letter stated that the only federal statute possibly applicable to these heinous acts was 18 U.S.C. § 1116, which creates federal criminal liability for the killing of U.S. diplomats abroad. Because Congress did not enact the relevant amendments to that statute until 1976, the Justice Department argued that it would violate the ex post facto clause of the U.S. Constitution to apply this statute retroactively to the 1973 murders.

As I indicated in my testimony, I disagree with this conclusion. Had the Department been more imaginative and aggressive in its use of existing statutes, I believe it would have seen that there is a statutory basis, which existed prior to 1973, for the assertion of extra-territorial jurisdiction over these murders of U.S. and other diplomats. I refer specifically to the RICO

*/ The Justice Department also stated that "the evidence currently available from key departments and agencies within our government and from other sources is insufficient for prosecutive purposes." Of course, I am not in a position to comment on the validity of this assertion.

statute, 18 U.S.C. §§ 1961, et seq., which was enacted in 1970.

As I noted in my testimony, the RICO statute makes it unlawful for any person or group of persons who are associated with any enterprise, whose activities affect the interstate or foreign commerce of the United States, from conducting or participating in the conduct of the affairs of the enterprise through a pattern of racketeering. A "pattern of racketeering" is defined to include the commission of two or more of a series of crimes that are interrelated in terms of purposes, results, participants, victims, or methods of commission. Included among these series of crimes is the Hobbs Act, 18 U.S.C. § 1951, which outlaws, among other things, any effort to obstruct the foreign commerce of the United States by extortion or threats of physical violence. Thus, the 1973 murders of U.S. and other diplomats, which were part of a scheme by terrorists to force the U.S. government to release Sirhan Sirhan from prison, could constitute a violation of federal criminal law, so as to form a part of the "pattern of racketeering" under RICO.

The fact that this violation occurred in 1973 does not necessarily create a problem in terms of the statute of limitations. Under RICO and the applicable statute of limitations, one of the crimes in the pattern of racketeering must have occurred within the last five years, and at least one other crime must have occurred within ten years of the commission of a prior act of racketeering activity. 18 U.S.C. §§ 1961(5), 3282. In other words, if the U.S. government can today charge the commission of an enumerated crime in or after 1981, then the prosecutor may also charge that the same individuals or organization committed another crime as part of the pattern at any time in or after 1971. The public evidence indicates that the PLO has committed numerous crimes since 1981, not the least of which is the highjacking of the Achille Lauro and the cowardly killing of Leon Klinghoffer. The latest may well be the threat carried on international wire transmissions on the President and other U.S. citizens by Abou Abbas, a henchman for Yassir Arafat.

In sum, the 1973 murders and the more recent crimes could conceivably be prosecuted under RICO without any problem of retroactive application of a federal criminal statute and without any statute of limitations problem. I refer you to my written statement submitted to your Subcommittee on April 23 for a more complete discussion of the use of the RICO statute to seek indictments against those individuals allegedly responsible for the 1973 murders.

I trust this responds to your questions. Thank you again for the opportunity of presenting my views on this serious and increasingly vital issue.

Sincerely,

Irvin B. Nathan

Senator DENTON. Thank you, Mr. Nathan.

Mr. Moore, you may proceed with the summary of your statement.

STATEMENT OF JOHN NORTON MOORE

Mr. MOORE. Thank you, Mr. Chairman.

It is a privilege and a pleasure to be here and, with your permission, I would like to place my prepared remarks in the record and just summarize a few points extemporaneously, if I might.

Senator DENTON. Your written statement will be included in the record in its entirety.

Mr. MOORE. Mr. Chairman, this committee has provided great leadership for the American people in pointing out the serious threat that the democracies face from a network of radical regimes that are engaged in a more or less loosely coordinated series of guerrilla attacks, covert warfare, low-intensity warefare—we have many names for it, but it is consistent and, for the most part, being directed against the democracies and nations particularly allied with the United States and U.S. interests worldwide.

There is no single measure as the democracies seek to respond to that very fundamental threat, but it seems to me we can broadly categorize responses into two general categories, both of which are quite important.

The first of those is to seek to establish the illegitimacy of such terrorist attacks and low-intensity warfare and simultaneously to establish the clear legitimacy, as the United Nations Charter intended, of the right of effective defense of the democracies against that kind of attack.

In short, we are in one front here in a struggle for legitimacy and a struggle for law to establish that this kind of attack is fundamentally wrong and, indeed, that is the history of international law. It is simply a point for the democracies to continue to educate people about that very fundamental point.

Now, the second category is the range of things that are more specific measures that are intended to deter, and to raise the cost of, and to encourage prosecution and sanctions against terrorism when it takes place. I would collectively call all of those measures, whether they are legal measures or measures such as enhancing airport security, a kind of war-fighting for low-intensity conflict settings; that really you have a legitimacy struggle on the one hand that is of critical importance in this battle, and you have a kind of low-intensity, broad threshold specifics of war-fighting including legal instruments in that capacity, as well, to deal with this kind of threat.

What I would like to do is simply summarize a few initiatives that I think might be added to a range of initiatives the democracies are taking and have already taken, but some additional points, it seems to me, that are particularly needed and that are rooted in the legal tradition.

The first of those is the critical importance of educating all of the peoples of the world, including our own peoples and including more clearly our own allies, in some cases, of the fundamental dis-

tinction between aggressive warfare and the right of effective defense and response.

There is no provision of conflict management in the last 2,000 years of human thought about it that, in my judgment, is more important than recognizing that fundamental principle that aggressive attack is impermissible in international relations and you have a right of effective defense and response.

Unfortunately, we are having great difficulty in having the world understand this in dealing with the radical regime network attack. One of the reasons is, this is a carefully concealed covert attack. It is secret warfare. It is intended to turn that principle upside down in which, in general, the world does not see the kind of attack that is taking place. It falls as part of a general background noise of terrorism and guerrilla warfare that is always present in the international system and, instead, the international immune system singles out the relatively open response of the democracies in responding to this secret warfare.

We saw that again, it seems to me, at least in the statements of the opposition parties in Europe, many of whom alleged that the United States response to the Libyan terrorist pattern of ongoing attacks was somehow in violation of the U.N. Charter and the same groups that said nothing, as far as I can tell, about the prior pattern of aggressive attacks from Libya.

That is a very fundamental principle. We must educate the world that what is taking place is this illegal aggressive attack in fundamental violation of the charter and that we, as the democracies, have a right of effective defense against that.

A second point that I think relates in making that task somewhat easier is to encourage enhanced reporting on state-sponsored terrorism.

We are all aware of the very useful country-by-country human rights reports that we now have from the Department of State. It seems to me it would be very useful to encourage a country-by-country reporting—hard-hitting reporting consistent with what we can tell in protecting sources and methods but as hard-hitting as we can be on support for state-sponsored terrorism.

Those reports, by the way, should clearly differentiate governmental actions that are aggressive actions in violation of the charter and those that are defensive responses to them. I think some of the confusion here about reporting is that some confuse defensive assistance to insurgents, for example, as United States support in the Afghanistan setting, as somehow an equivalent of state-sponsored terrorism. Well, it is just not so at all. The fundamental distinction is between aggression, on the one hand, and defense, on the other, whether or not this modality in each case is assistance to insurgents.

All through World War II we funded insurgent groups in the occupied countries. That was clearly permitted as part of a defensive response. In my judgment, it is the same setting in Central America where we are engaged in trying to rebut and turn back a very clever, carefully concealed, ongoing, secret attack from Cuba and Nicaragua directed against neighboring states. And there is a failure to focus clearly on the U.S. response being something that is

clearly a right of effective defense under article 51 of the charter and article 3 of the OAS Treaty.

So, I think we should start some country-by-country reporting on a yearly basis on state-sponsored terrorism, and also encourage NATO to do it on a NATO-wide basis, because you have the problem of nations not believing, unfortunately in this area, what their governments tell them. And we should encourage our allies to begin to undertake this so at least those of us that would like to point out the secret attack could say:

Well, the Governments of Great Britain, NATO, and the United States and perhaps the Government of France have all published a country-by-country reporting. Here is what it says Libya is engaged in in this particular case.

One other possibility, it seems to me, that goes along with all of this is enhanced accountability talks on covert attack and state-sponsored terrorism.

We have for years, in East-West discussions, had arms control as a centerpiece of those discussions. Arms control is very important. Arms control ought to be a fundamental issue of discussion. It does seem to me, however, that it is time to broaden the range of issues that we discuss much as we did in the Helsinki talks when we very properly introduced human rights accountability talks.

Why not hold discussions, let us say, within the CSCE Stockholm conference framework, in which we raise the question of, "If you, as the Soviet Union, want, as an outcome of this negotiation, a new, nonuse of force agreement, let us simply examine the record. And if you deny that there is any support to terrorist groups, let us do exactly as we do in the human rights area; let us talk openly in that forum about where the training camps are that are part of the public record, what the support is, so that we begin to, on a broader basis, indicate the seriousness with which we take this kind of covert attack."

Let me just give you one illustration of something here that, for me, has been troubling as I have looked at the pattern of United States-Cuban relations over the years. We have had a series of Cuban crisis in which the United States responded very vigorously with great concern in the Cuban missile crisis, for example, about the potential emplacement of theater nuclear weapons in the region. We have reacted at the Cienfuegos Base issue. We reacted about the introduction of a Soviet battalion. President Carter even, after initially seeking good relations, very strongly reacted to the Cuban presence abroad of large numbers of Cuban troops.

But in that entire period, today spaning roughly 25 years in relations with the Castro regime, the United States has not once raised to the level of something we might put in that category of calling it a serious crisis the support by Castro for terrorism and covert groups in Latin America. And yet we know that he has trained at least 20,000 insurgents and terrorists who attack democratic governments in Latin America. We know that he has been engaged in attacking at least 17 different nations in Latin America in this period and there are at least two examples in which the Organization of American States has specifically on a multilateral basis condemned that action.

It seems to me that we need, as a nation, to begin to send signals that we take seriously this kind of nonadherence to the charter norms of nonaggressive attack.

Going on to another point, it seems to me that we should strongly support strengthening reform of the political offense exception.

My own sense is there are two things we should do on that as a starter. One is to proceed as the Department of State is recommending on a country-by-country basis with the democracies to eliminate the political offense exception for violent crimes. And we can start with that by giving Senate advice and consent to the Supplemental United Kingdom Extradition Treaty. The American Bar Association is on record in favor of that with its House of Delegates recently adopting a position in support, and I personally consider it a scandal that the U.S. Senate has not yet seen fit to give advice and consent to that treaty.

I would add to that as a second point that we should seek across-the-board legislation implementing provisions that would remove the political offense exception for all violations of the five basic multilateral international conventions, the three aircraft conventions, and the hostage convention, and the New York Convention on the Protection of Diplomats.

Now, let me just quickly, briefly, in three sentences each give you two or three other suggestions, because I think, Mr. Chairman, if I have any value in this, it is really just to provide a kind of menu of possible additional measures that might be taken against terrorism.

The United States should go back and vigorously support the 1972 U.S.-sponsored draft convention against terrorism. That was drafted in the aftermath of the Munich massacre. We did not push it very hard at the time. It did not go anywhere. It is an extraordinarily good treaty. It was ahead of its day. The core of it was never understood at the time. Intellectually it is a convention to prevent the spread of terrorism. It says, "You cannot fight your wars on the territories of other peoples' countries."

It would have applied to virtually every single incident that has taken place against Americans and American interests in Europe in the last months and, it seems to me, it is yet another provision we should move forward with.

And I might add one other interesting thing. We now have the Cairo declaration, in which Yasser Arafat has, at least on the record, said that the PLO would not support attacks against Israel outside of the West Bank and Israeli territory.

Now, if Yasser Arafat really means that, then he should be prepared to support the 1972 draft convention, and I think that we should hold Yasser Arafat to that. Obviously, we don't recognize Arafat, but, at least, it seems to me, that other countries ought not to take the position that the Arab States and the PLO are in opposition to this kind of thing when it would be wholly consistent with, it seems to me, at least the public statement made by Arafat on that point.

Another one, Mr. Chairman, I think we might want to look at is a confidential reporting requirement for private extortion payments to terrorist groups. We rightly have governmental policy that says we will not pay extortion to terrorist groups. There is no

such law applying to private groups, and American corporate and other private groups are being targeted for terrorist extortion all over the world. There are literally hundreds of such incidents.

I am told that at least on the public record one ransom involved a $14 million figure, and I believe it is time that we begin to find out what the payments are that are flowing to these terrorist groups by this kind of extortion aimed at American interests.

I would recommend a confidential reporting requirement in which we confidentially report—not publicly—any such payments so that we find out the magnitude of what is going on here, and we might even want to start initially by putting some kind of limit on payments per incident, as well.

Finally, Mr. Chairman, let me just mention something that I can only sketch out, but, I think, if you got a good group of lawyers together, it could be drafted fairly easily. We have talked a little bit today about the RICO Act that was developed as a response to a racketeering problem in the United States. It seems to me it is time that we develop a law that is aimed at the terrorist organization problem not solely at the racketeering problem. The problem of terrorist organizations has more difficult proof problems and a variety of other differences and we should tailor something for it.

The Nuremberg principles established very clearly that organizations, as well as individuals, can be regarded as criminal. And I would think it quite useful if we could draft a new statute that would be an antiterrorist organization statute that would have provision, let us say, for trial in Federal district court as to whether an organization were engaged in a pattern of terrorist attacks, possibly in violation of all of those principal U.N. conventions, and, upon conviction, with appropriate evidentiary kinds of standards worked out to get around some of these evidentiary problems in the terrorist kind of setting, that there would then be a much fuller reporting kind of standard than currently exists under present law; that there might be a provision for treble damages or even higher in facilitating civil suits against the assets of such organizations located in the United States and prohibitions on their fundraising in the United States, all of which would be policed with clear criminal sanctions.

Those are just a few things, Mr. Chairman. I am sorry to take the amount of time just to go through that list, but I did want to suggest some things that we might do to enhance the use of law in combating terrorism.

[The prepared statement of Professor Moore follows:]

Legal Mechanisms to Combat Terrorism
Testimony
of
John Norton Moore*
before the
Senate Judiciary Subcommittee on Security and Terrorism

Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to share a few thoughts on legal mechanisms to combat terrorism. Terrorist attacks against the democracies, particularly the United States, are a serious and growing threat. It is of critical importance that the American people and the democracies unite against this scourge which so cruelly disregards both the United Nations Charter prohibition against aggressive attack and two centuries of human thought about protecting non-combatants in settings of armed conflict.

There is no single answer to the threat posed by a growing radical terrorist network. Rather, the democracies must respond with a wide range of measures that can collectively at least dampen the terrorist attack. These measures might be grouped in two broad categories. First, measures intended to strengthen political, legal and moral prohibitions on terrorist actions, particularly the use of terrorist violence as a means of conducting foreign policy in violation of the United Nations Charter prohibition of aggressive use of force and terrorist attacks against non-combatant targets that would be grave breaches of the laws of war even if committed by regular armed forces during hostilities. And second, measures intended physically to deter, inhibit, raise the cost of or sanction terrorist violence.

The first category of measures recognizes that we are in a struggle for legitimacy and law regarding terrorist actions and that attitudes of the international community toward terrorist actions will profoundly contribute to either legitimizing such acts or condemning and deterring them. When George Habash of the PFLP gives an interview, as he did two days ago, asserting a right of attack against

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Formerly he served as Counselor on International Law to the Department of State and in that capacity drafted the 1972 United States Convention on Terrorism. He has also served as a United States Ambassador to the Law of the Sea negotiations and a member of the United States delegation to the Athens meeting of the Conference on Security and Cooperation in Europe.

The views expressed are those of the author and are not necessarily those of any organization with which he is or has been affiliated.

American military and economic interests worldwide, he is seeking to legitimate such actions, as well as proclaiming his own intentions.

The second category of measures might collectively be described as war-fighting for low-intensity conflict settings. It includes measures such as enhanced airport security, sky marshals on aircraft, enhanced intelligence assets in identifying terrorist threats, enhanced international information-sharing on the terrorist network, anti-terrorist military training and rules of engagement for settings of terrorist exposure, measures to permit careful proportional military response, and measures to facilitate successful apprehension and prosecution of terrorists.

Law can make a contribution to both the "legitimacy" and "war-fighting" strands in the fight against terrorism. Thus, the series of United Nations anti-terrorism conventions have established the international illegitimacy of some kinds of attacks, such as attacks against civil aviation, attacks against diplomats or the taking of hostages. Simultaneously these conventions have sought to enhance successful criminal prosecution for such acts by strengthening the obligation of prosecution or extradition.

With both these "legitimacy" and "war-fighting" strands in mind let me sketch several legal initiatives that I believe this Subcommittee might profitably explore.

Enhancing Education About the Fundamental Charter Distinction Between Aggression and Defense

A constant and recurring confusion in dealing with terrorism is the failure to condemn terrorism as a policy of aggressive violence in violation of the United Nations Charter and instead to condemn the defensive response of the democracies to terrorist attack as though the defensive response were itself the aggressive attack. In part, this results from terrorist warfare as covert war in which the attack is denied using all of the means available to a modern intelligence and political disinformation network. By so doing the attacking nations seek to conceal the attack as part of the general background noise of ongoing international terrorism and guerrilla warfare. The full weight of the international immune system against aggressive attack is then applied to the relatively open defensive response against the secret attack. This syndrome of "the invisible attack" and "the anemic defense right" threatens to destroy the international immune system against aggressive attack, and by destroying the distinction between attack and defense, to destroy the most important principle in 2000 years of human thought about war prevention.

The recent confusion over the United States response against the continuing and serious pattern of Libyan-sponsored terrorist attacks against United States interests worldwide is a good example. Little condemnation is heard of the secret covert war by Libya against the democracies. A careful and proportionate United States defensive response under Article 51 of the United Nations Charter, however, is condemned by some as the very illegal aggression to which it is responding.

Enhanced Reporting on
State-Sponsored Terrorism

One mechanism for dealing with terrorism is to strip away the curtain of secrecy that surrounds the "invisible" terrorist secret war. In this respect the United States might profitably begin an annual country by country report on assistance to terrorism exactly as we now have human rights reporting on an annual country by country basis. Similarly, it might be useful to encourage an annual joint NATO report on such state-sponsored terrorism within the NATO area and to encourage our allies individually to begin such reporting. All such reporting should clearly differentiate between aggressive attack and defensive response so as not inadvertently to contribute to destruction of this fundamental Charter distinction.

Enhanced "Accountability Talks"
on Covert Attack and State-sponsored Terrorism

Pursuant to the Helsinki process, "human rights" accountability talks have become a regular feature of NATO coordination and East-West talks. We should broaden this tradition to undertake "world order" accountability talks particularly focusing on support for state-sponsored terrorism and secret guerrilla attacks. Indeed, this might also be an appropriate subject for Western and East-West summit talks. We must end the pattern of relative public silence about covert war and support for state-sponsored terrorism as illustrated by repeated Cuban "crises" over force emplacement in Cuba but none over the sustained pattern of Cuban covert warfare in this hemisphere.

Strengthening Extradition by
Reform of the Political
Offense Exception

One pragmatic bar to enhanced criminal prosecution of international terrorists has been overly broad application of the "political offense exception." We should as a nation and with our allies carefully review how this concept should be reformed. As a first step we might consider a dual approach of eliminating the exception in cases of violent crimes on a country by country basis in extradition treaties with the principle democracies of the world, such as the United Kingdom, while also proceeding across-the-board to end the political offense exception for violation of any of the UN-sponsored anti-terrorism treaties.

It is a national scandal that the United States Senate has not yet given advice and consent to the Supplemental Extradition Treaty with the United Kingdom. If the United States and the United Kingdom cannot agree on mutual extradition of terrorists what hope is there internationally for successful prosecution? And this would seem to be the least we can do for the Government of the United Kingdom after their courageous support of the recent United States defensive response against on-going Libyan terrorism.

In addition to this country by country approach, we should also support across-the-board legislation ending the "political offense" exception for actions in violation of the United Nations anti-terrorism conventions; that is, the conventions for the protection of civil aviation, diplomats and prohibiting taking of hostages.

Vigorously Support the 1972
United States-Sponsored
Draft Convention on Terrorism
(Convention to Prevent the Spread of Civil Conflict)

The United States sponsored an excellent anti-terrorism convention in 1972 in the aftermath of the Munich massacre. That Convention was ahead of its time in serving as a counterpart to neutrality laws for low-intensity conflict settings. That is, it sought to establish that carrying on civil struggle on the territory of a third state was impermissible. This treaty is important in the struggle for "legitimacy" and should be vigorously pursued by the United States. It is notable that virtually all recent terrorist attacks against Americans in Europe would have come under the ambit of this draft treaty.

Explore a Confidential Reporting
Requirement for Private
Extortion Payments to Terrorist Groups

The United States Government rightfully adopts a policy that prohibits governmental payment of ransom for return of victims of terrorism or other terrorist extortion. Many corporate and other private groups, however, continue to pay ransom to terrorist groups. We should as a first step to considering whether such payments should be made illegal institute a system of required reporting on a confidential basis to the State Department anti-terrorism office and this Subcommittee (or perhaps the select committees on intelligence of both houses). Possibly such a reporting law might also be combined with a monetary limit on lawful payments such as $10,000 per incident. We should, however, at least as a nation know the magnitude of the problem of private sector extortion payments to terrorist groups as a prelude to more effectively dealing with this problem.

Enhanced Legal Determination
of Organizations Using Terror Coupled with
Full Reporting of their Activities, Prohibition on Fund-raising
and Provision for Enhanced Civil Suits Against Such Organizations

It is a recognized feature of international law, endorsed by the Nuremberg Tribunal, that organizations as well as individuals can be criminal. Our current domestic legal framework with respect to criminal conspiracies and criminal organization, however, is focused on racketeering--not terrorism. As a nation we might appropriately draft new legislation on the problem of organizations using terrorism that also maintain operations within the United States. Perhaps provision

could be made for trial in federal district court as to whether a particular organization were engaged in a pattern of aggressive terrorist attack with a terrorism finding triggering detailed reporting requirements, a prohibition on fund-raising and facilitation of civil suits (possibly treble or higher damages) to recover damages to Americans in particular terrorist incidents. The details of such legislation could be tailored for effectiveness against such organizations, maximum public education about the aggressive actions of such organizations, and, of course consistency with our Nation's cherished traditions of due process.

Mr. Chairman, this is only a partial list of possible legal initiatives. A steering committee of prominent national and international lawyers could, I believe, develop these and many other legal initiatives that could add further effectiveness to the war against terrorism.

Thank you.

Senator DENTON. Well, thank you, Professor Moore. We have a limited number of lawyers on our subcommittee staff, and we welcome suggestions, particularly when they are in the form of suggested or proposed legislation.

Mr. Zatz?

You may proceed with a summary of your testimony now, please.

STATEMENT OF CLIFFORD J. ZATZ

Mr. ZATZ. Thank you, Mr. Chairman. I will try to be as brief as a lawyer can be.

Mr. Chairman, I am a partner in the law firm of Seifman, Semo, Slevin & Marcus, here in Washington, DC. Two years ago, we petitioned the Supreme Court to review the dismissal of a lawsuit brought on behalf of the victims of a terrorist attack that left 34 innocent people dead on an Israeli highway in 1978. I am referring, of course, Mr. Chairman, to the *Hanoch Tel-Oren* v. *Libyan Arab Republic* case that you cited earlier.

Relying on the Alien Tort Claims Act, which purports to open the Federal courts to such lawsuits, we sought damages from the Palestine Liberation Organization and the Libyan Arab Republic, among others.

Despite the clear language of this 200-year-old statute and precedent in our favor, we found the courthouse doors closed at all three levels of the Federal judiciary. Ultimately, the Supreme Court declined to hear our case.

The controversy our lawsuit provoked and the obstacles the courts raised to litigation under the Alien Tort Claims Act plainly demonstrate the inadequacy of existing legal remedies for the victims of barbaric acts of terrorism.

This controversy is epitomized by the decision of the U.S. Court of Appeals for the District of Columbia Circuit, where three eminent jurists could not reach unanimous agreement on a single point of law. Indeed, a majority was attained on only one rather shocking proposition: that the cold-blooded torture and murder of innocent civilians by terrorist invaders does not violate international law.

Equally troubling, Mr. Chairman, was our discovery that our Government's position on these issues has undergone a complete reversal since 1980, when it filed an amicus curiae brief offering a far more favorable interpretation of the Alien Tort Claims Act than it espouses today.

In light of the time, Mr. Chairman, I will forgo reviewing for you the horrifying facts of our case. Suffice it to say, however, that by the time the incident was over, 22 adults and 12 children were dead, and 73 adults and 14 children were seriously wounded. Most of these persons died or were injured when the bus on which they were held hostage was blown up by terrorist grenades.

On March 19, 1981, the survivors and representatives of those murdered filed suit in the U.S. District Court for the District of Columbia, claiming jurisdiction primarily under 28 U.S.C. 1331, the Federal question provision, and 28 U.S.C. 1350, the Alien Tort Claims Act. The latter, passed as part of the First Judiciary Act in 1789, provides:

> The district courts shall have original jurisdiction in any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

The leading decision construing section 1350 is that of the second circuit in *Filartiga* v. *Pena-Irala*. There, a Paraguayan doctor filed suit under the Alien Tort Claims Act alleging that a former Paraguayan police official had tortured his son to death in retaliation for the doctor's opposition to the Stroessner regime.

The second circuit reversed the dismissal of the suit, holding that official torture is clearly prohibited by the general assent of civilized nations.

Despite the *Filartiga* decision, Judge Joyce Hens Green granted a motion to dismiss our complaint. Judge Green held that the Alien Tort Claims Act is merely jurisdictional and does not, itself, provide a case of action.

She also held that the Federal courts did not have jurisdiction over the claims of the American citizens. I am referring to 15-year-old Imry Tel-Oren, who was shot to death by terrorists as he rode in a car with his family of seven. Those people now live in Senator DeConcini's State, Arizona.

On appeal, a three-judge panel of the D.C. circuit affirmed Judge Green's dismissal of the complaint. Filing separate concurring opinions totaling 115 pages, the three judges set forth dramatically different views on whether terrorist acts violate the law of nations. They also disagreed on the existence of a cause of action under the Alien Tort Claims Act, the judicability of the case and the availability of a cause of action under section 1331 for the American plaintiffs.

I refer you to our written statement and our petition for a writ of certiorari for an elaborate criticism of the D.C. circuit's decision.

To summarize, however, Mr. Chairman, the decision eliminates the longstanding right of redress for violations of the law of nations in three distinct ways.

First, Judge Bork held that the Alien Tort Claims Act fails to provide a cause of action, requiring plaintiffs to identify an explicit grant of a cause of action in international law itself. At the same

time, however, he conceded that international law rarely, if ever, provides such a cause of action. This view effectively nullifies the "law of nations" portion of section 2350.

Second, Mr. Chairman, Judges Edwards and Bork ruled that terrorist attacks do not violate the law of nations because they are not unanimously condemned throughout the world. Far from demanding unanimity, however, international law looks only to the "general assent of civilized nations" to identify prohibited acts. Civilized nations have clearly reached general assent that terrorism, torture, hostage-taking, and summary execution are prohibited by international law.

Judge Robb, finally, would refuse to adjudicate virtually any Alien Tort Claims Act suit touching on the subject of foreign relations. "The conduct of foreign affairs," he believed, "has never been accepted as a general area of judicial competence." This position vastly overstates the political question doctrine as refined by the Supreme Court in the past 25 years.

The decision also raises two other obstacles for victims of terrorist attacks who seek relief in the Federal courts. First, it exempts nonstate entities such as the PLO from liability under the law of nations, freeing some of the most notorious of international outlaws from Federal court jurisdiction.

Second, it denies a remedy to American citizens, holding that they have no cause of action arising under the treaties of the United States.

We propose, Mr. Chairman, that the Alien Tort Claims Act be amended to clarify that it provides a cause of action as well as Federal court jurisdiction, to state explicitly that the law of nations shall be construed to prohibit terrorist activities, and to reaffirm Congress' desire that the courts adjudicate these questions even though they touch upon foreign relations.

Similarly, the immunity created by the Foreign Sovereign Immunities Act should be deemed waived in cases involving the state-inflicted injury or death of civilians outside the United States.

Finally, the doors of the Federal courts should be open to Americans injured or killed in terrorist attacks to the same extent as they are open to aliens.

We recognize that sincere concern may be expressed about the scope of section 1350. Judge Robb, for example, feared that every Soviet dissident or every person injured in a foreign civil war could claim a right to sue under section 1350. Experience to date, however, belies such fears. In the nearly two centuries the act has been in effect, only three cases have successfully invoked section 1350.

Our case, moreover, Mr. Chairman, hardly strained the conceivable limits of section 1350. As Judge Robb himself acknowledged, ours was "The easiest case and, thus, the most difficult to resist." It involved what would seem to be the minimal scenario cognizable under the statute—the kidnaping, torture, and murder of civilians who were in a public place and who were acting in a wholly nonpolitical and nonmilitary fashion. Surely, the boundaries of section 1350 can be laid as more difficult cases arise.

We recognize, too, that strengthening these legal remedies will not singlehandedly put an end to terrorism. Those who would murder innocent children to coerce political action will hardly be

deterred by the prospect of litigation. Yet, if even one terrorist is brought to justice, if even one injured person obtains redress, legislative action will have been, as Judge Irving Kaufman described the decision in *Filartiga*, "A small but important step in the fulfillment of the ageless dream to free all people from brutal violence." Thank you.

[Mr. Zatz' submissions for the record follow:]

STATEMENT OF

MICHAEL S. MARCUS, CLIFFORD J. ZATZ, AND GLENN M. ENGELMANN

Mr. Chairman, members of the Subcommittee, we are partners in the law firm of Seifman, Semo, Slevin & Marcus, P.C., in Washington, D.C. Two years ago, we petitioned the Supreme Court to review the dismissal of a lawsuit brought on behalf of the victims of a terrorist attack that left thirty-four innocent people dead on an Israeli highway in 1978. Relying on the Alien Tort Claims Act, which purports to open the federal courts to such lawsuits, we sought damages from the Palestine Liberation Organization, the Libyan Arab Republic, and related groups. Despite the clear language of this two hundred year-old statute and precedent in our favor, we found the courthouse doors closed at all three levels of the federal judiciary. Ultimately, the Supreme Court declined to hear our case. Hanoch Tel-Oren v. Libyan Arab Republic, 517 F.Supp. 542 (D.D.C. 1981), aff'd per curiam, 726 F.2d 774 (D.C. Cir. 1984), cert. denied, _____U.S. _____, 53 U.S.L.W. 3612 (Feb. 26, 1985).

The controversy our lawsuit provoked, and the obstacles the courts raised to litigation under the Alien Tort Claims Act, plainly demonstrate the inadequacy of existing legal remedies for the victims of barbaric acts of terrorism. This controversy is epitomized by the decision of the United States Court of Appeals for the District of Columbia Circuit, where three eminent jurists could not reach unanimous agreement on a single point of law. Indeed, a majority was attained on only one, rather shocking, proposition: that the cold-blooded torture and murder of innocent civilians by terrorist invaders does not violate international law. Equally troubling was our discovery that our government's position on these issues has undergone a complete reversal since 1980, when it filed an amicus curiae brief offering a far more favorable interpretation of the Alien Tort Claims Act than it espouses today.

We believe the story of our lawsuit is particularly timely in light of the events of the past ten days, since we alleged that the terrorist attack was sponsored and planned by Libya and that Libya claimed responsibility for the attack. We review the case for you in the hope that it illustrates the urgent need for legislative action to clarify and strengthen the legal remedies available to the victims of terrorism.

I. The Terrorist Attack

On March 11, 1978, thirteen heavily-armed members of the Palestine Liberation Organization landed by boat near the civilian Haifa-Tel Aviv Highway in

Israel. Their mission was to take civilians hostage in order to extort the release of PLO terrorists in Israeli jails. The terrorists were instructed to kill their hostages if the PLO prisoners were not released.

Landing on the beach in Israel, the terrorists first shot to death an American photographer who had witnessed their approach. Moving to the highway, they then attacked and commandeered an unarmed civilian bus carrying families of Egged Bus Company cooperative members returning from a company outing. The terrorists immediately killed some of the passengers and took the rest hostage. They then captured a taxicab, fired at its passengers, and took them hostage as well. Shooting at other passing automobiles, they killed and wounded more innocent civilians. Children witnessed the shooting, torture, and murder of their parents. Fathers sat helplessly as the terrorists abused their wives and children.

The terrorists then ordered the bus and taxicab drivers to travel toward Tel Aviv. Some of the terrorists sat on the roof of the cab and continued shooting at passing cars, killing and maiming more passengers. One of the cars carried seven members of the Tel-Oren family, citizens of the United States; Hanoch Tel-Oren's fifteen year-old son, Imry, was shot to death as his parents and siblings watched in horror.

Later, the terrorists shot at and stopped a second civilian bus, took its passengers hostage, and forced them onto the first bus. They tied all the men to their seats, and beat, humiliated, and tortured many of the hostages, including women and children. Captive parents were forced to watch their children being brutalized; youngsters saw their siblings murdered or disfigured.

Learning of the massacre, the civilian police set up a roadblock. The bus crashed through the roadblock, but was finally brought to a halt by the police. Unable to escape, the terrorists forced a man, Chaviv Enekave, to leave the bus, apparently to deliver a negotiation message to the police officers. Just as Enekave left the bus, however, the terrorists shot him in the back of the head, killing him instantly. Two of Enekave's children, witnessing their father's murder, jumped up in anguish, and were shot and killed by the terrorists. Two other Enekave children, frozen by terror and shock, witnessed all three of these murders.

Although the bus had been stopped, the terrorists continued to fire at their hostages and threw hand grenades into the back of the bus. The shrapnel from the grenades sprayed in every direction, wounding many of the hostages. Using a little girl as a shield, the terrorists departed the bus, leaving behind heavy explosives. They then

threw more grenades into the bus, igniting the explosives and setting the bus afire. Hostages tied to their seats or immobilized by flying shrapnel were engulfed by the flames and burned to death. Passengers who were able to extricate themselves watched as their family members died in the smoldering bus. The bus then exploded, killing more men, women, and children.

By the time the incident was over, twenty-two adults and twelve children had been killed, and seventy-three adults and fourteen children were seriously wounded. The survivors sustained serious and permanent physical injuries, including the loss of limbs and ears, paralysis, burns to all parts of their bodies, and incapacitating internal injuries, such as blood clots and hearing losses. All of the survivors suffer from permanent mental and emotional injuries.

II. The Alien Tort Claims Act and the Filartiga Decision

The Alien Tort Claims Act was passed as part of the First Judiciary Act in 1789. Codified at 28 U.S.C. § 1350, it provides:

> The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

The leading decision construing the Alien Tort Claims Act is that of the U.S. Court of Appeals for the Second Circuit in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980). In Filartiga, a Paraguayan doctor alleged that a former Paraguayan police official had tortured his son to death in retaliation for the doctor's opposition to the Stroessner regime. The District Court dismissed the suit on the ground that the "law of nations" did not encompass a sovereign state's treatment of its own citizens. The Second Circuit reversed. Reviewing the United Nations Charter, various declarations of the United Nations, and many other international charters and accords, it held that official torture is now clearly prohibited by the "general assent of civilized nations." On remand, the District Court held that "an award of punitive damages of no less than $5,000,000 to each plaintiff is appropriate to reflect adherence to the world community's proscription of torture and to attempt to deter its practice." Filartiga v. Pena-Irala, 577 F. Supp. 860, 867 (E.D.N.Y. 1984).

III. The Lawsuit

On March 10, 1981, survivors of the attack and representatives of those murdered filed suit in the United States District Court for the District of Columbia.

Claiming jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1332 (diversity jurisdiction), 28 U.S.C. § 1350 (the Alien Tort Claims Act), and 28 U.S.C. §§ 1330, 1602-1611 (the Foreign Sovereign Immunities Act of 1976), plaintiffs sought compensatory and punitive damages from the PLO, the Libyan Arab Republic, the Palestine Information Office, the Palestine Congress of North America, and the National Association of Arab Americans. They alleged causes of action for tortious acts in violation of the law of nations and the treaties and laws of the United States; for the intentional torts of assault, battery, false imprisonment, infliction of mental distress, and infliction of cruel, inhuman, and degrading treatment; and for conspiracy to commit torts in violation of the law of nations and the treaties and laws of the United States.

Plaintiffs alleged that "the PLO and the thirteen terrorists were acting as agents of and were acting within the scope of their employment with Libya." More specifically, they asserted that Libya had planned the terrorist operation; raised funds to support the operation; trained the thirteen terrorists; provided the PLO with the arms, boats, hand grenades, and other equipment used in the attack; and given a hero's welcome to the mother ship that brought the terrorists to the shore of Israel. Plaintiffs also alleged that Libya had claimed responsibility for the attack.

On June 30, 1981, Judge Joyce Hens Green granted a motion to dismiss the Complaint. Judge Green held that the Alien Tort Claims Act is merely jurisdictional and does not itself provide a cause of action. She also held that 28 U.S.C. § 1331 did not provide subject matter jurisdiction over the claims of the American citizens.

IV. The Court of Appeals' Decision

On appeal, a three-judge panel of the D. C. Circuit affirmed Judge Green's dismissal of the Complaint. Although the panel issued a four-paragraph per curiam opinion, Judges Edwards, Bork, and Robb filed separate concurring opinions totaling one hundred-fifteen (115) pages. While the court unanimously held that neither the American nor the alien plaintiffs could sue, the three judges set forth dramatically different views on whether terrorism, torture, hostage-taking, and summary execution violate the "law of nations" within the meaning of the Alien Tort Claims Act. They also disagreed on the existence of a cause of action under the Act, the justiciability of the case, and the availability of a cause of action under section 1331 for the American plaintiffs.

Judge Edwards held that section 1350 itself provides an express right to sue for violations of the law of nations. Ignoring the allegation that the PLO had acted as an

agent of Libya, however, he voted to affirm dismissal on the ground that the PLO is not a sovereign state and, therefore, not subject to the dictates of international law. He also held that the terrorists' actions did not violate the law of nations, since they were not unanimously condemned by the nations of the world. Judge Bork agreed that these acts did not violate the law of nations. He added, however, that the Complaint should also be dismissed because it failed to identify an express right to sue separate and apart from section 1350. Judge Robb, abstaining from any discussion of section 1350 and the law of nations, opined that the case was made nonjusticiable by the political question doctrine.

A. Terrorism, Torture, Hostage-Taking, and Summary Execution as "Law of Nations" Violations

Both Judges Edwards and Bork held that the terrorist attack did not violate the "law of nations." In reaching their conclusions, Judges Edwards and Bork required unanimity of international opinion as a prerequisite to a finding that particular acts violate the law of nations. Judge Edwards found that "[w]hile this nation unequivocally condemns all terrorist attacks . . . [such] sentiment is not universal." Judge Bork agreed that there is "less than universal consensus" about "terrorism generally" and about "PLO-sponsored attacks on Israel . . . in particular." He would apparently confine the "law of nations" to the three offenses that, he contended, were contemplated by the drafters of section 1350 in 1789: piracy, violation of safe conducts, and infringement of the rights of ambassadors.

B. The Availability of a Cause of Action Under Section 1350

Relying on Filartiga and the language of section 1350, Judge Edwards held that the statute itself provides an express right to sue for violations of the law of nations. Judge Bork, in contrast, deemed the Alien Tort Claims Act purely jurisdictional. "It is essential," he wrote, "that there be an explicit grant of a cause of action" in either the law of nations or a treaty in order to establish jurisdiction under section 1350. Judge Bork then reviewed international law and found that it did not provide the plaintiffs with a cause of action.

While Judge Edwards concluded that section 1350 provides a cause of action, he found that the "law of nations" had not been violated. The PLO "is not a recognized state," he said, and "does not act under color of any recognized state's law." It is not, therefore, subject to the dictates of international law. Curiously, however, Judge Edwards apparently failed to consider plaintiffs' allegations that the PLO acted under

color of Libyan authority and as an agent of that state. He also ignored plaintiffs' elaborate allegations of direct Libyan involvement in the attack.

C. The Justiciability of the Case

Judge Robb relied exclusively on the political question doctrine to preclude adjudication of the case. "The conduct of foreign affairs," he said, "has never been accepted as a general area of judicial competence." Judge Bork, while admitting that "the contours of the doctrine are murky and unsettled," nevertheless adopted it and other considerations of justiciability as additional support for his view that a cause of action could not be inferred from international law. Both he and Judge Robb were concerned with the "inherent inability of federal courts" to hear cases of this kind.

Judge Edwards took strong objection to his colleagues' reliance on "facile labels of abstention or nonjusticiability, such as the 'political question doctrine,'" and emphasized that "[n]onjusticiability based upon 'political question' is at best a limited doctrine, and it is wholly inapposite to this case." He warned that the doctrine "does not provide the judiciary with a carte blanche license to block the adjudication of difficult or controversial cases."

D. The Availability of a Cause of Action For the United States Citizens

Judge Edwards held that the Tel-Orens, citizens of the United States, had failed to establish jurisdiction under section 1331. That section, in his view, does not provide a cause of action. He concluded that the American citizens had not identified a remedy granted by the law of nations or by any treaties, and he declined to imply one. Judge Bork, while not specifically setting forth his reasons, also found that there was no jurisdiction over the claims of the United States citizens.

V. Legal Problems Raised by the Court of Appeals' Decision

The Alien Tort Claims Act is the only provision in our law granting aliens a right of redress for tortious actions in violation of international law. This right of redress has been available for two hundred years to victims of acts so heinous and flagrant as to make their perpetrator "hostis humani generis," an "enemy of all mankind." By 1789, when section 1350 was enacted, the common law had long declared the acts of piracy and slave-trading to be subject to such universal condemnation. Terrorism, torture, hostage-taking, and summary execution are modern equivalents of these acts.

The D.C. Circuit's decision eliminates the longstanding right of redress for such acts in three distinct ways. First, Judge Bork held that the Alien Tort Claims Act fails to provide a cause of action, requiring aliens to identify an explicit grant of a cause of action in international law itself. At the same time, however, he stated that international law rarely, if ever, provides such a cause of action. Second, Judges Edwards and Bork required unanimity of international opinion as a prerequisite to a finding that any act of a nation-state or its agent violates international law. This view, too, emasculates the statute, since at least one state, the perpetrator, will always condone terrorist acts. Judge Robb, finally, would refuse to adjudicate virtually any Alien Tort Claims Act touching on the subject of foreign relations.

The decision also creates two other obstacles for victims of terrorist attacks who seek relief in the federal courts. It exempts non-state entities such as the PLO from liability under the law of nations. It also denies a remedy to American citizens by holding that they have no cause of action arising under the treaties of the United States.

A. Requiring Identification of a Right to Sue Separate and Apart from Section 1350 Nullifies The "Law of Nations" Portion of the Statute And Is Contrary to the Unambiguous Language of the Statute

The construction of section 1350 proffered by Judge Bork voids a significant portion of the statute. While he requires that an alien suing under section 1350 demonstrate an express right of action provided by the law of nations, he concedes that "as a general rule, international law does not provide a private right of action . . . ." Judge Bork's view means that no plaintiff suing under section 1350 will ever be able to demonstrate a right to sue granted by international law. 1/ Thus, as Judge Edwards recognized, "to require international accord on a right to sue . . . would be to effectively nullify the 'law of nations' portion of section 1350." 2/

1/ Indeed, even the three offenses Judge Bork contended were recognized by the drafters of section 1350 — piracy, violation of safe conducts, and infringement of the rights of ambassadors — would not be actionable under his theory since, as Judge Edwards explained, "it was the municipal laws of England, not the law of nations, that made the cited crimes offenses . . . ."

2/ Judge Bork's construction of section 1350 thus raises substantial separation of powers concerns. As pointed out by Judge Edwards, to sustain such a construction "is not only to insult Congress, but inappropriately to place judicial power substantially above that of the legislature."

The language of section 1350 is unambiguous. It nowhere requires identification of a separate cause of action in order to establish a right of redress. Judge Bork's construction of the statute, as Judge Edwards pointed out, is "directly at odds with the language of the statute," which "only mandates a 'violation of the law of nations' in order to create a cause of action."

That section 1350 itself provides a right to sue is further evidenced by a 1907 opinion of the Attorney General. The question addressed in the opinion was whether any remedies were available to Mexican citizens harmed by the actions of an American irrigation company along the Rio Grande River. The Attorney General stated:

> As to indemnity for injuries which may have been caused to citizens of Mexico, I am of opinion that existing statutes provide a right of action and a forum. Section 563, Revised Statutes, clause 16, gives to district courts of the United States jurisdiction "of all suits brought by any alien for a tort only in violation of the law of nations or of a treaty of the United States" . . .
> I repeat that the statutes thus provide a forum and a right of action . . . .

26 Op. Att'y Gen. 250,252-53 (1907) (emphasis added).

The Departments of Justice and State reaffirmed this interpretation of section 1350 in their amicus curiae brief in Filartiga, which they filed at the invitation of the Second Circuit. The government not only stated that torture violates the law of nations, but also that it gives rise to a private cause of action under section 1350.

As Judge Edwards noted, this construction of section 1350 is also supported by the contrast between the language of section 1350 and that of section 1331. Section 1331 requires that an action "arise under the Constitution, laws or treaties of the United States." This "arising under" language means that the source of a plaintiff's right to sue is not section 1331 itself, but some other law, treaty, or constitutional provision. Since section 1350 does not contain similar "arising under" language, it clearly does not require identification of a separate right to sue. 3/

Judge Bork's interpretation of section 1350 is also directly at odds with that of the Second Circuit in Filartiga. There, once the court determined that torture

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3/ This distinction is particularly significant since Congress revisited section 1350 in 1948. Act of June 25, 1948, ch. 646, § 1350, 62 Stat. 869,934. At that time, the term "arising under" had been a well-established element of federal jurisdiction for more than seventy years. Act of Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470. As Judge Edwards pointed out, therefore, Congress was fully cognizant that it could draft section 1350 with "arising under" language or with other language requiring a separate cause of action. Congress chose, however, not to do so.

violated the law of nations, it found the jurisdictional elements of section 1350 satisfied. The court did not require the plaintiffs to identify a specific right to sue under the law of nations; indeed, there is no discussion at all in Filartiga about whether section 1350 grants a right of action as well as federal court jurisdiction.

B. The Decision Exempts the PLO From Liability For Acts of Terrorism

Judge Edwards disregarded the allegations of the complaint and contradicted the Second Circuit in holding that the PLO is not subject to the dictates of international law and thus not within the purview of section 1350. The PLO in our case stood in the same relation to Libya as the defendant in Filartiga did to Paraguay; as in Filartiga, the perpetrator was alleged to have acted as the agent of a sovereign state. Indeed, the state nexus was even stronger in our case than in Filartiga, since the terrorists were acting in accordance with Libyan authority, rather than, as Judge Bork describes the Paraguayan official in Filartiga, "in violation of the constitution and law of . . . [the] state" and in a manner "'wholly unratified by that nation's government.'"

Judge Edwards clearly erred, therefore, in ruling that "[p]laintiffs in the case before us do not allege facts to show that official or state-initiated torture is implicated in this action." As Judge Bork explained:

> It can be argued that appellants have alleged "official" torture: the complaint alleges that the PLO, in carrying out its attack . . . was acting at the behest of and in conjunction with Libya. Viewed this way, this case is indistinguishable from Filartiga, and as such, Judge Edwards' approach would force us to hear it.

Although he criticized Judge Edwards for misreading the Complaint, Judge Bork also grappled with the status of the PLO. While recognizing that the PLO is not a sovereign state, he cited the Act of State doctrine in support of his view that the case was nonjusticiable; later, he admitted that the doctrine was not really applicable. He also argued that the PLO is not subject to international law, yet would avoid adjudication of the case on the ground that "[t]he potential for interference with foreign relations is not diminished by the PLO's apparent lack of international law status as a state."

Outside the context of our lawsuit, the status of the PLO would raise a real dilemma. To exempt the PLO from liability under section 1350 as a non-state actor would, of course, immunize the most notorious of international outlaws from liability for its terrorist acts. To call the PLO a state, however, would afford it the protection of the Foreign Sovereign Immunities Act, which, as discussed below, arguably contains no

exception for acts causing injury or death on foreign soil. In our case, of course, the issue need not have arisen. The PLO was alleged to have acted as the agent of a sovereign state, and should have been subject to international law on that ground alone.

C. Limiting the Prohibitions of the Law of Nations to Acts Unanimously Condemned by all Nation-States Denies Redress to Victims of Acts Prohibited by the "General Assent of Civilized Nations"

Judges Bork and Edwards agreed that the barbaric acts of terrorism, torture, hostage-taking, and summary execution committed by Libya and its PLO agents did not violate the law of nations. In their view, the law of nations prohibits only those acts unanimously condemned by all nation-states.

Demanding unanimity of international opinion, however, means that no state-sponsored violation of international law could ever be found in the context of terrorism, no matter what form a terrorist attack takes. There will always be at least one nation, the sponsor, whose approval of these kinds of acts prevents a finding that they violate international law. This leaves the victims of acts condemned by the world community without any right of redress. Surely the opposition of one or a few states should not be allowed to repudiate the basic tenets of law that would otherwise protect the victims of terrorism.

Construing the law of nations to require unanimity also runs afoul of well-settled principles concerning the sources and scope of international law. As stated by the Supreme Court in United States v. Smith, 18 U.S. (5 Wheat.) 153, 160-61 (1820), the law of nations "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law" (emphasis added). Far from demanding unanimity, international law looks only to the "general assent of civilized nations." The Paquete Habana, 175 U.S. 677, 694 (1900); Filartiga, 630 F.2d at 881.

"Civilized" nations have clearly reached "general assent" that terrorism, torture, hostage-taking, and summary execution are prohibited by international law. For example, the Assembly of the League of Nations, in its Convention for the Prevention and Punishment of Terrorism, "reaffirm[ed] the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape . . . ." 7 Hudson, International Legislation, 862 L. of N. Off. J., Jan. 1938, 23. The Organization of American States, in its Draft Convention on Terrorism

and Kidnapping of Persons for Purposes of Extortion, O.A.S. Document CP/doc. 54/70 rev. 1 (1970), reprinted in 9 Int'l Legal Materials 1117 (1970), emphasized that terrorist acts constitute "flagrant violation[s] of the most elemental principles of the security of the individual and community as well as offenses against the freedom and dignity of the individual . . . ." According to the Statement of Reasons for this Draft Convention:

> Terrorist acts always have been the target of public condemnation because of their utter inhumanity and irrationality . . . . [T]errorism is a crime of international law, unanimously condemned, even though it may pursue a political or social aim.

O.A.S. Document CP/doc. 54/70 rev. 1 (1970), reprinted in 9 Int'l Legal Materials 1250, 1259 (1970) (emphasis added).

The terrorist attack at issue in our case included independent acts of torture, hostage-taking, and summary execution. Certainly these acts, inflicted upon civilians, violate the law of nations. In Filartiga, for example, the Second Circuit ruled that torture is prohibited by the law of nations within the meaning of section 1350. This prohibition, according to the court, is "clear and unambiguous." 630 F.2d at 884. The Second Circuit emphasized that numerous international agreements condemn the use of torture and that torture is denounced throughout the world. The International Convention Against the Taking of Hostages, G.A. Res. 34/146, 34 U.N. GAOR, Supp. (No. 46) 245, reprinted in 18 Int'l Legal Materials 1457 (1979), moreover, states that "the taking of hostages is an offense of grave concern to the international community," and that it is necessary to engage in the "prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism."

D. Redress for State-Sponsored Acts of Terrorism, Torture, Hostage-Taking, And Summary Execution Cannot Properly Be Denied Because of the Political Question Doctrine

The invocation of the political question doctrine by Judges Robb and Bork is contrary to the Supreme Court's modern formulation of that doctrine in Baker v. Carr, 369 U.S. 186 (1962), where Justice Brennan wrote:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination

> of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. at 217. The Court cautioned that "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." Id. at 211. Justice Brennan later emphasized the narrowness of the political question doctrine as applied to foreign policy matters in Goldwater v. Carter, 444 U.S. 996 (1979), stating: "Properly understood, the political-question doctrine restrains courts from reviewing an exercise of foreign policy judgment by the coordinate political branch to which authority to make that judgment has been 'constitutional[ly] commit[ted].'" Id. at 1006 (Brennan, J., dissenting).

The issues raised by allegations of terrorism, torture, hostage-taking, and summary execution are not among those made nonjusticiable by the political question doctrine. Whether there exists a "general assent among civilized nations" that such acts are prohibited, for example, is not a question that has been constitutionally committed to a coordinate branch of government; rather, it is a question that calls for judicial determination of the content and applicability of the law of nations. The enactment of section 1350, indeed, plainly evidences a congressional intent to channel lawsuits such as these into the federal courts. See Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 427 n.25 (1964); Ex Parte Quirin, 317 U.S. 1, 27-30 and n.6 (1942). Whether section 1350 provides a right to sue, similarly, is a question of statutory construction, clearly susceptible of judicial handling. Finally, whether the plaintiffs in our case were entitled to relief depended upon factual determinations that the alleged wrongful deaths and injuries occurred, and that the acts of Libya and its agents caused those deaths and injuries. Certainly, the federal courts are capable of making such determinations.

The other concerns identifed in Baker are equally inapplicable. The court did not, for example, lack "judicially discoverable and manageable standards." Baker, 369 U.S. at 217. As stated above, the court need only have determined whether the terrorists' acts were tortious and whether they were prohibited by the law of nations. As Judge Robb himself recognized, moreover, "[t]here has been no executive recognition" of the PLO, nor was any specific governmental action taken in response to the terrorist acts at issue in our case. Accordingly, there were no "political decision[s] already made" to

which there existed "an unusual need for unquestioning adherence." Baker, 369 U.S. at 217.

Judge Robb's reliance on the political question doctrine also conflicts with Filartiga. That case, like ours, involved allegations of torture; there, as in our case, foreign policy considerations were implicated; that suit, like the one brought by our clients, challenged the actions of a sovereign's agent. Nevertheless, the Second Circuit, unlike Judges Robb and Bork, did not even suggest that adjudication was precluded on the basis of the political question doctrine or the political nature of the case.

Indeed, in Filartiga, the Second Circuit specifically requested the Departments of State and Justice to provide an opinion of the "proper interpretation of 28 U.S.C. § 1350 in light of the facts of this case." The government's brief concluded that the plaintiffs' claims were properly before the court, stating: "Like many other areas affecting international relations, the protection of fundamental human rights is not committed exclusively to the political branches of government."

We recognize, of course, that the situation in the Middle East is the subject of national interest, and that the issues of our case were, therefore, presented in a politically-charged context. As the Supreme Court emphasized in Baker, however, "[t]he doctrine . . . is one of 'political questions,' not one of 'political cases.'" 369 U.S. at 217. Indeed, the presence of issues "with significant political overtones does not automatically invoke the political question doctrine." INS v. Chadha, 462 U.S. 919, 103 S. Ct. 2764, 2780 (1983).

E. The Decision Denies American Citizens Redress for State-Sponsored Acts of Terrorism

The judges held that the Tel-Oren family, citizens of the United States, had failed to establish jurisdiction under section 1331 because the treaties of the United States do not give rise to a cause of action. This holding conflicts with prior decisions of the Supreme Court and the Ninth Circuit.

In Head Money Cases, 112 U.S. 580, 598-99 (1884), the Supreme Court stated the test for determining when ratified treaties confer private rights on United States citizens:

> [A] treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private

> parties in the courts of the country . . . . A treaty, then, is the law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute.

Under the standard set forth in Head Money Cases, the Tel-Orens arguably did have causes of action arising under treaties of the United States. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287, for example, satisfies the standard set forth in Head Money Cases. Its essential purpose is to protect the rights of civilians. It confers individual rights on such persons, and states in detail that these individuals are to be free from acts of torture, terror, hostage-taking, and genocide. The rights given to individuals are clear, unmistakable, and enforceable in United States courts without the enactment of any new legislation.

The failure to recognize that the American citizens had causes of action arising under treaties of the United States also conflicts with the decision of the Ninth Circuit in People of Saipan v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974), cert. denied, 420 U.S. 1003 (1975). There, the plaintiffs alleged that they had a private right of action based on a Trusteeship Agreement pursuant to which the United States was authorized to administer the territory of Micronesia. The Ninth Circuit held that plaintiffs did indeed have a private right of action:

> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self or non-self execution.

502 F.2d at 97.

VI. Conclusion

As interpreted by the D. C. Circuit, the Alien Tort Claims Act is useless as a means of litigating terrorism-related tort claims. The court weakened the Act by:

1. Misinterpreting section 1350 as purely jurisdictional; i.e., as providing no cause of action;

2. Requiring unanimity of the world's nations as a prerequisite to finding a violation of the law of nations;

3. Holding that only states can violate international law, thereby freeing entities such as the PLO from liability under the Alien Tort Claims Act; and

4. Overstating the political question doctrine as generally precluding litigation of matters involving foreign relations.

Similarly, the court's decision leaves American citizens without a remedy for international law violations. If the treaties we cited are not self-executing, Americans cannot identify a right of action "arising under" a treaty within the meaning of section 1331.

We propose that the Alien Tort Claims Act be amended to clarify that it provides a cause of action as well as federal court jurisdiction, to state explicitly that "the law of nations" shall be construed to prohibit terrorist activities, and to reaffirm Congress's desire that the courts adjudicate these questions even though they touch upon foreign relations. Similarly, the immunity created by the Foreign Sovereign Immunities Act should be deemed waived in cases involving the state-inflicted injury or death of civilians outside the United States. 4/ Finally, the doors of the federal courts should be opened to Americans injured or killed in terrorist attacks to the same extent as they are open to aliens.

These legislative changes are made particularly necessary by the recent reversal of the Executive Branch's position on the meaning of the Alien Tort Claims Act. In Sanchez-Espinoza v. Reagan, 770 F.2d 202 (D.C. Cir. 1985), the government argued that section 1350 is "purely jurisdictional" and "cannot be interpreted . . . to authorize individuals to enforce in domestic courts private rights of action derived directly from customary international law." Amicus Brief at 11 n. 11. Earlier, in their amicus curiae brief in Filartiga, the Departments of State and Justice had stated that "a refusal to recognize a private cause of action in these circumstances might seriously damage the credibility of our nation's commitment to the protection of human rights," and that "private enforcement is entirely appropriate." Certainly, the availability of a remedy for the victims of terrorism should not be permitted to vary with each new President.

4/ Such an exception already exists in suits for money damages arising out of personal injury or death occurring in the United States. 28 U.S.C. § 1605(a)(5).

We recognize that sincere concern may be expressed about the scope of section 1350. Judge Robb, for example, feared that every Soviet dissident or every person injured in a foreign civil war could claim a right to sue under section 1350. As Judge Bork noted, however, experience to date belies such fears; in the nearly two centuries the Act has been in effect, only three cases have successfully invoked section 1350. Difficulties in identifying the proper defendants, serving process, obtaining personal jurisdiction over foreign officials, proving the plaintiffs' allegations, and enforcing judgments will inevitably limit the number of suits brought under the Alien Tort Claims Act.

Our case, moreover, hardly strained the conceivable limits of section 1350. As Judge Robb himself acknowledged, ours was "the easiest case and thus the most difficult to resist." It involved what would seem to be the minimal scenario cognizable under the statute: the kidnapping, torture, and murder of civilians who were in a public place and who were acting in a wholly non-political and non-military fashion. Surely the boundaries of section 1350 can be laid as more difficult cases arise, just as the federal courts regularly test the limits of any other federal statute.

We recognize, too, that strengthening these legal remedies will no more single-handedly put an end to terrorism than did last week's bombing of Tripoli. Those who would murder innocent children to coerce political action will hardly be deterred by the prospect of litigation. Yet if even one terrorist is brought to justice, if even one injured person obtains redress, legislative action will have been, as Judge Irving Kaufman described the decision in Filartiga, "a small but important step in the fulfillment of the ageless dream to free all people from brutal violence."

RESPONSES OF CLIFFORD ZATZ (SEIFMAN, SEMO, SLEVIN & MARCUS, PC) TO WRITTEN QUESTIONS SUBMITTED BY SENATOR DENTON

MR. ZATZ, IN LIGHT OF THE REFUSAL OF THE SUPREME COURT TO REVIEW THE D.C. CIRCUIT COURT'S OPINION IN HANOCH TEL-OREN, I WOULD ASK WHETHER YOU HAVE ANY SPECIFIC RECOMMENDATION ON HOW THE ALIEN TORT CLAIMS ACT COULD BE AMENDED TO INCLUDE ACTS OF TERRORISM?

To provide an effective remedy to the victims of terrorism, Mr. Chairman, and to avoid future decisions like that of the D.C. Circuit, the Alien Tort Claims Act must be amended to accomplish several things. First, it must make clear that section 1350 provides a cause of action, and that none need be separately identified in international law itself. A second sentence could be added to section 1350 to the effect that "This section shall be construed to create a cause of action as well as jurisdiction." Alternatively, the Act could be rewritten in the manner of a statute already recognized to create a cause of action, such as 42 U.S.C. § 1983.

Second, any amendment must respond to the argument that terrorist acts do not violate international law because they are not unanimously condemned. I believe the best way to do this is to specify the acts that are prohibited by the "law of nations" portion of section 1350 rather than to add the word "terrorism" to the statutory language. The Act could be amended to state that "For purposes of this section, 'the law of nations' shall be construed to prohibit torture, hostage-taking, and the murder of civilians." This would avoid the necessity for the court to define "terrorism" in each individual case and perhaps obviate the apparent judicial reluctance to adjudicate cases touching upon foreign relations.

Third, the Act should be amended to hold all terrorist groups liable, whether or not they are state entities. Such an amendment would relieve the plaintiffs of the difficult burden of proving state sponsorship of the acts that harmed them. Here again, 42 U.S.C. §1983 provides a model for legislation; it makes individuals liable for civil rights violations committed "under color of" state law. Similar language could be drafted to

encompass any person who acts with authority of a foreign government or with the intent to coerce political action.

To hold state entities liable, moreover, the immunity created by the Foreign Sovereign Immunities Act must be abolished. This would be a simple task. 28 U.S.C. § 1605(a)(5) already waives the immunity in suits for money damages arising out of personal injury or death "occurring in the United States." Deleting this geographical limitation would lower the shield of immunity in cases such as Tel-Oren.

Finally, Mr. Chairman, I would recommend that legislative action be undertaken to facilitate the enforcement of judgments entered in favor of the victims of terrorism. The Tel-Oren lawsuit was filed in the belief that millions of dollars of PLO and Libyan assets could be found in the United States to satisfy a judgment. You confirmed as much, Mr. Chairman, in your statement opening this hearing. I understand that the Subcommittee is already contemplating legislation empowering the President to freeze terrorist assets and hold them in trust for successful Alien Tort Claims Act plaintiffs. Such legislation would dramatically enhance the usefulness of the Alien Tort Claims Act as a legal remedy, and I applaud and support your efforts.

Senator DENTON. Thank you, Mr. Zatz.

As you know, or as I assume you know, a proposal has been submitted to us to amend the Alien Tort Claims Act, and we are actively working on that, bipartisanly, in the subcommittee to develop legislation.

I must state, personally, that I have never read a more abhorrent account than the one referring to the March 11, 1978, terrorist attack, and I feel that there ought to be required reading in the interest of the thrust of Mr. Moore's educational account of that incident and of incidents similar to that occurring in Central American, Southeast Asia, other parts of the world, where, as you wisely chose to term "low-intensity warfare" as part of terrorism, it is very difficult to be orally definitive about what the concept in our minds is of what constitutes terrorism.

And it is rather difficult, as you know, Mr. Moore, to maneuver within the United Nations, at this point, considering the composition of the General Assembly and the nature of the governments which are represented there as opposed to some decades ago when there was no doubt in the minds of that body as to the concepts which you so well enunciated.

We have a different situation now. Hence you are suggesting we move outside the United Nations to NATO, democracies, et cetera, to institute agreements with which those nations can operate, I think that is a very important trend to consider, and it has been in our Government's mind, I am sure, as well as in the subcommittee's mind for sometime.

We are belatedly dealing with a problem which has overcome the speed of our development of policy with its effectiveness and, to me, it is not only the newest force and trend in international affairs but represents the most effective one now changing the fate of nations and their interests, as well as regrettably the freedoms of humanity around the world.

And it is possible to engage in cynical conversation about "one man's terrorist being another man's freedom fighter," but I believe that there are distinctions that can be drawn and be serviceable enough in the international community to which we referred; that is, the civilized part of the globe.

I do believe it is worth noting that the U.S.S.R., the Soviet Union, with an announced objective of conquest of the world by violent means when necessary, is not the least factor in our discussion of terrorism and should not be restricted to just the radical entente or any other group of nations.

Time and the thoroughness of your testimony has rendered inadvisable the asking of oral questions. So, we will submit questions to the four of you for the record. We ask that you respond to those questions within 15 days. We remind you that we are going to have a closed hearing to investigate further the most specific thrust of today's hearing.

I thank all four of you and those who have listened today with what I consider to be admirable interest.

This hearing stands adjourned.

[Whereupon, at 12:46 p.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

I. THE PLO'S CONTINUED INVOLVEMENT IN TERRORIST ACTIVITY

DOCUMENT 1

ARAFAT'S PERSONAL ROLE IN TERRORISM

On April 8, 1986, Attorney General Edwin Meese declared: "We know that various elements of the PLO and its allies and affiliates are in the thick of international terror. And the leader of the PLO, Yasser Arafat must ultimately be held responsible for their actions." Referring to the fight against terror, Meese stated, "you don't make real progress until you close in on the kingpins."

Yasser Arafat is the kingpin of world terror. He is ultimately responsible for terrorism committed by the main wing of the PLO directed at Americans, Israelis and other citizens.

* According to the public record, Arafat's wing of the PLO and affiliated factions have been responsible for the murder of at least 32 Americans, the wounding of at least 38 Americans and the kidnapping of at least 6 Americans.

* Arafat is directly linked, through his top aides, to such major atrocities as the murder of United States Ambassador Cleo Noel, the Achille Lauro piracy and the death of Leon Klinghoffer, and the terror campaign of the Black September.

* In recent months, Arafat's anti-American threats have been explicit. On November 13, he stated: "We are on the threshold of a fierce battle -- not an Israeli-Palestinian battle but a Palestinian - U.S. battle." (Al-Ahali, 11/13/85)

* In January, Arafat reasserted his hostile position on the United States: The Arab "strategy should take into consideration that ... the enemy is the same, be he Israeli or the United States." (KUNA, 1/3/86)

* Terrorism lies at the core of Arafat's strategy. A recent report asserts that 13 of the 67 major acts of international Palestinian terrorism committed in 1985 were carried out by Arafat's Fatah. (New York Times, 4/13/86)

* Arafat continues to call for the destruction of Israel through terrorism. Recently, he reiterated these orders: "I don't simply want, I demand, more (commando) operations, and more resistance against this occupation..."(Arab News, 11/11/85)

* Arafat is not interested in making peace, but continuing terror: "Palestine will not be regained through peaceful solutions or through the Israeli Labor Party, as some believe, but through fighting and Palestinian blood." (QNA, 12/19/84)

Attorney General Meese is correct. Yasser Arafat continues to reaffirm his support for PLO terrorism. The kingpin of terror should be brought to justice.

DOCUMENT 2

AMERICAN CASUALTIES OF PLO TERRORISTS

October 8, 1985: Achille Lauro oceanliner hijacked. American Leon Klinghoffer, was shot and thrown overboard. Abul Abbas and Palestine Liberation Front claims responsibility. **4 underlings imprisoned in Italy; Abul Abbas, mastermind along with Arafat, allowed to escape--now in Iraq.**

March 1, 1973: **Black September** assassinates U.S. Ambassador in the Sudan, Cleo Noel, and DCM George C. Moore in Khartoum after an explicit order from Arafat/Abu Iyad in Beirut. A Sudanese court indicted the eight assassins on five counts, including murder, but **released them for lack of evidence** in October 1973. A Khartoum court convicted them of murder on June 24, 1974, and sentenced them to life, but Sudanese President Gaafar el-Nimery immediately commuted each sentence to seven years. He also announced that the group would be handed over to the PLO. They were flown to Cairo the next day. It appears that Egypt placed the group at the disposal of the PLO in November 1974. (pp.375-378)[1]

March 11, 1978: **13 Fatah** terrorists landed on a beach on the northern coast, seized a tour bus and left 46 dead and 85 wounded. Among dead, Gail Rubin, 39, a photographer, relative of U.S. Senator Abraham Ribicoff (D-CT). **The surviving terrorists were sentenced to life imprisonment.** (pp. 777-778)

September 5, 1972: **Black September** Munich massacre of 11 athletes including one American, David Berger of Cleveland, OH. 3 surviving terrorists **released.** (p. 338)

August 5, 1973: Two **Black Septembrists** opened fire with machine guns at passengers bound for NY at a TWA flight terminal in Greece. Among the three killed was a 16 year-old American girl. Terrorist was sentenced to life imprisonment and later released. (p. 402)

June 3, 1978: **Fatah** claimed credit for bombing a bus in Jerusalem, killing six and wounding 20. Among dead was Richard Fishman, 30, a student at the University of Maryland Medical School who was on vacation. (p. 792)

August 11, 1976: Four persons were killed and 26 injured when two **PFLP** terrorist threw grenades and fired submachine guns at a crowd waiting to board El Al flight bound for Tel Aviv from Istanbul. The dead included Harold W. Rosenthal, 29, of Philadelphia, a staff aide to Sen. Jacob Javits. Among the injured were two U.S. citizens: Nona Shearer, 40, and Lucille Washburn, 52. **On November 16, 1976, a Turkish court sentenced the terrorists to death but commuted the sentences to life imprisonment.** (p. 637)

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[1]Each time page numbers appear without attribution, the source is Edward F. Mickolus, Transnational Terrorism--A Chronology of Events, 1968-1979 (Westport, CT: Greenwood Press, 1980)

June 16, 1976: U.S. Ambassador Francis E. Meloy, 59, economic counselor Robert O. Waring, and the ambassador's chauffeur, were shot to death by PFLP. The State Dept claimed that ambassador's car was never recovered and was believed to have fallen into the hands of Fatah. **There were rumors that Salah Khalaf was involved in planning the operation. Those responsible have yet to be brought to justice.** (p. 619)

July 7, 1983: Aharon Gross, an American seminary student, was attacked and stabbed to death in the Casbah in Hebron by three Arabs. (IDF Spokesman, p. 22)

September 12, 1981: A hand-grenade was thrown at a group of tourists in the old city of Jerusalem, near Damascus Gate, killing 2 people, and injuring 27, including 1 American. (IDF Spokesman, June 1967-October 1985, p. 20)

September 5, 1978: Stephen Michael Hilmes, a U.S. bomb expert, died five days later from injuries suffered when a bomb went off in Jerusalem. (p. 808)

March 20, 1976: The PLO in Damascus claimed credit for setting a predawn fire that gutted the eight-story Park Hotel in Netanya, killing four tourists and injuring 46, including two Americans. (p. 593)

June 27, 1976: Air France flight 139, from Tel Aviv to Paris was hijacked to Athens by seven members of the **PFLP** to Entebbe, Uganda. At least nine Americans were on board. (pp. 621-625)

November 17, 1975: a 23-lb. bomb exploded inside a porter's luggage cart in Zion Square, Jerusalem, killing seven and injuring 40, including an American woman tourist. **Fatah** claimed credit, saying that it was commemorating Yasir Arafat's U.N. address of the year before, as well as the passage of three pro-Palestinian resolutions in the UN. **PDFLP** also claimed credit. (p. 563)

October 29, 1975: Herman Huddleston, 48, was kidnapped from his beachfront home in Beirut by 4 Palestinians armed with machine guns. (p. 559)

October 22, 1975: The director and assistant director of the USIS regional service center in east Beirut were kidnapped (Charles Gallagher, 44, and William Dykes, 55), and it is believed they were handed over to an arm of the **PFLP**; released Feb. 25, 1976. (p. 555)

August 4, 1975: Four members of the Japanese Red Army, trained in **PFLP** camps in Lebanon occupied the U.S. embassy in Malaysia and held hostages. (p. 533-536)

July 4, 1975: A bomb placed in an old refrigerator in Zion Square, Jerusalem, exploded killing 15 and injuring 75, including two Americans, Mark Katz and Deborah Levine, both from Richmond, VA. **Fatah** claimed credit. On June 27, 1977, an Israeli military court sentenced Ahmed Haj Ibrahim Mousa Assad Jabara to life imprisonment for the bombing. (p. 529)

June 29, 1975: Col. Ernest R. Morgan of the U.S. Army was kidnapped in Beirut from a taxi by members of the **PFLP-GC** and released 13 days later. Some reports claimed that the **PFLP** was responsible for the attack, while others noted that the Revolutionary Socialist Action (RSAO) claimed credit. (pp. 528-529)

September 16, 1974: A fire was caused by an incendiary device in a suitcase destined for a TWA flight to Israel from Boston's Logan Airport. Some damage resulted to the TWA baggage security cage but there were no injuries. (p. 479)

December 20, 1974: Terrorists threw a hand grenade at a busload of Christmas pilgrims from the United States who were touring Jerusalem, wounding Dejean Replogle, 16, of Jacksonville, FL, who had to have her right leg amputated, and injuring an Arab bystander. PLO issued a statement warning visitors "not to go to occupied Palestine during the escalation of commando activities against the Israeli enemy." (p. 496)

September 8, 1974: TWA 707 en route from Tel Aviv to NY radioed that he was having trouble with one engine after landing for a scheduled stopover in Athens--crashed in to the Ionian Sea, killing all 88 on board. **Organization of Arab Nationalist Youth for the Liberation of Palestine** said in Beirut that one of their members exploded a charge he was carrying around his waist. National Transportation Safety Board, and British team of investigators, confirmed that a high explosive bomb had gone off in a rear cargo compartment. (p. 475)

March 7, 1973: A elaborate network of explosives was found in the trunks of cars parked in front of the El Al warehouse at Kennedy airport, the First Israel Bank and Trust Co., and the Israel Discount Bank, Ltd. Police, having been tipped off by Israelis, were able to dismantle the bombs. A search of the vehicles also revealed a quantity of paper with **Black September's** letterhead...**On March 15, a U.S. federal warrant was sworn out for the Black Septembrist believed to have escaped the country after planting the bombs: Khalid Danham al-Jawari,** an Iraqi. (p. 379)

October 25, 1972: **Black September** mailed three letter bombs to President Nixon, Secretary of State William Rogers, and Defense Secretary Melvin R. Laird from the northern town of Kiryat Shmona. Suspicious Israeli postal workers intercepted the bombs. (p. 355)

May 30, 1972: **PFLP** hired Japanese terrorists opened fire at passengers arriving at Lod Airport, killing 16 Puerto Rican Catholic pilgrims, 27 others wounded. **Okamoto released** in May 1985. (pp. 321-324)

February 22, 1972: **PFLP** or Popular Revolutionary Front for the Liberation of Palestine hijacking of Lufthansa flight 649, a B747 flying from New Delhi to Athens, Joseph P. Kennedy, son of the late Sen. Robert Kennedy, on board.

January 16, 1972: An American nurse was killed and a minister and other individuals were wounded when Palestinian guerrillas ambushed a car in the Israeli-occupied Gaza strip. (p. 296)

August 21, 1971: Fedayeen detained an adult dependent of a U.S. Dept of Defense officer in Beirut. (p. 275)

September 16, 1971: Fedayeen terrorists in Jerusalem threw a hand grenade into a crowd of U.S. tourists, killing a child and wounding six others, as well as hitting five American tourists with shrapnel (p. 278)

September 10, 1970: The U.S. cultural affairs officer, John Stewart, was kidnapped by members of the PLA in Amman. (p. 215)

September 9, 1970: U.S. Staff Sergeant Ervin Graham, assigned to the U.S. defense attache's office, was kidnapped by members of the PLA in Amman and held for eight days. (p. 214)

September 6, 1970: **PFLP** hijacked TWA flight 741 to Dawson's Field in Jordan and held American passengers hostage. (pp. 208-210)

September 6, 1970: **PFLP** hijacked Pan Am flight 93 to Dawson's Field in Jordan. (pp. 211-212)

September 6, 1970: **PFLP** hijacked a Swissair DC8 carrying 143 passengers and 12 crew members, including Americans, to Dawson's Field in Jordan. (p. 210)

July 22, 1970: An Olympic Airways 727 carrying 47 passengers and eight crewmen from Beirut to Athens was hijacked over Rhodes by five men and a woman, members of the Palestine Popular Struggle Front (some reports claim it was the **PFLP**). At least one American was on the flight. (p. 195)

June 10, 1970: U.S. assistant Army attache, Major Robert Perry shot to death in Amman. **Fatah** claims responsibility. (New York Times, 6/11/70)

June 10, 1970: Two fedayeen terrorist broke into the homes of American personnel in Amman, where they searched and looted the residences and raped the wives of two U.S. officials. (p. 186)

June 9, 1970: Members of the **PFLP** took over two hotels, the Philadelphia and the Intercontinental, in Amman, holding over 60 foreigners, including seven Americans, one U.S. foreign service officer, 35 newsmen (including reporter John K. Cooley)....The group threatened to bomb the hotels if PFLP camps in Amman and Zarqa were smashed in renewed fighting with the Jordanian army. ...Two Fatah 340-mm heavy rocket units were sent to bolster the guerrillas holding the Intercontinental Hotel. (p. 185)

June 7, 1970: Morris Draper, diplomat at the U.S. embassy in Amman, kidnapped by **PFLP** terrorists, released the next day. (p. 184)

February 21, 1970: **PFLP** set off bomb on Swissair flight. 38 passengers killed, including six Americans. **3 Palestinians arrested but released for lack of evidence.** (pp. 159-160)

June 20, 1969: The **PFLP** claimed responsibility for three bombs that exploded on a street leading to the Western Wall in Jerusalem, killing one Arab and wounding five others, including two U.S. tourists and one Israel soldier. (p. 123)

August 18, 1968: **Fatah** exploded three grenades in Jerusalem's Jewish section, injuring eight Israelis and two Americans. (p. 96)

DOCUMENT 3

Arafat's Top Personal Aides Organize Terror

Salah Khalaf (Abu Iyad) and Khalil al-Wazir (Abu Jihad) have been Yasir Arafat's top aides since the early 1950s, preceding the founding of Fatah. In their capacities within the Fatah Central Committee (FCC), as chief of Fatah security services and deputy chief of military operations, respectively, they have been the principal organizers of Fatah's terror programs which have led to the murder, wounding and kidnapping of scores of Americans. Since they are not leaders of "splinter" factions or renegade groups, but rather have been the PLO chief's top lieutenants for over 30 years, the involvement of Salah Khalaf and Khalil al-Wazir in terror against Americans could only occur with the complicity of Chairman Arafat.

1. Abu Iyad and Abu Jihad were among the founders of Black September, an arm of Fatah, which murdered 11 athletes at the Munich Olympics, including David Berg of Ohio, in September 1972; assassinated Cleo Noel, U.S. Ambassador to the Sudan, and George C. Moore, Deputy Chief of Mission in Sudan in March 1973; and machine gunned to death a 16 year old American girl in Greece in August 1973, among other terrorist attacks against Americans.

2. They coordinated terrorist activity with George Habash's Popular Front for the Liberation of Palestine (PFLP), the IRA, the Baader-Meinhof gang, the Japanese Red Army, the Liberation Front of Iran, and the Turkish People's Liberation Army, sharing operatives and providing logistical support. For example: Basil al-Kubaissi, a trusted lieutenant of Habash, helped plan the 1972 Lod airport massacre in which three Japanese Red Army terrorists slaughtered 16 Puerto Rican pilgrims and wounded 26 others. He was then put in charge of Black September's arsenal in Europe and provided weapons for terrorist attacks throughout the continent.

3. They operated with the full support of Arafat and the Fatah Central Committee, which takes collective decisions. Faruq Qaddumi (Abu Lutf)--political secretary of the organization, Khalid al-Hasan, Hani al-Hasan, Mahmud Abbas (Abu Mazin), and Hayel Abd al-Hamid, have reiterated their support for "armed struggle," the codeword for terrorism, including, and especially, against Americans.

ARAFAT'S DEPUTIES AND TERROR AGAINST AMERICANS

Salah Khalaf (Abu Iyad), chief of Fatah's security services, and Khalil al-Wazir (Abu Jihad), deputy commander of the PLO forces, are Arafat's principal deputies responsible for terrorist activities against Americans. The purpose of this document is to provide background on their longstanding, ongoing relationship with Arafat; collective responsibility within the Fatah Central Committee; their personal role in terrorist activities against Americans; coordination of Fatah terrorism against Americans with other terrorist groups; and, the ongoing support for terrorism within the Central Committee.

I. Longstanding relationship with Arafat

1951: **Salah Khalaf (Abu Iyad)** met Yasir Arafat at the University of Cairo. **Khalaf, Khalil al-Wazir (Abu Jihad), and Khalid al-Hassan,** were among principal founders with Arafat of a Palestinian Students' Union. These were the men who were to form the core of the leadership of Fatah at the time of the movement's foundation in the late 50s and early 60s....by the mid-80s these four men were still firmly in the middle of the Fatah web. Helena Cobban, The PLO, pp. 8,10

1952: In an election for the presidency of the Union of Palestinian Students, Abu Iyad was number two on Arafat's list. He became Arafat's assistant.... Alan Hart, Arafat--Terrorist or Peace Maker, p. 86

In Cairo, (Arafat) met Salah Khalaf and Khalil al-Wazir, two Palestinians from Jerusalem who were to become his closest associates in his political career. Jillian Becker, The PLO--the Rise and Fall of the Palestine Liberation Organization, p. 42

1964: [A] Syrian agent was approached in Beirut by eight men who had formed a group of their own called the Movement for the Liberation of Palestine. Their names were **Yasser Arafat, Salah Khalaf, Khalil al-Wazir, Khalid al-Hassan, Faruq Qaddumi,** Zuhayr al-Alami, Kamal Adwan and Muhammad Yusef. **They described themselves as the collective leadership of their movement.** But before long Yasser Arafat was to emerge as its leader. Becker, p. 41

1967: In Amman, Abu Iyad was Arafat's deputy in the Fatah command, commanding, among other sections, the Jihaz al-Razd, the Reconnaissance Department of Fatah. Cobban, p. 21

1978: On 27 April 1978, in the aftermath of the coastal road attack, Arafat brought all Fatah's militia and security departments directly under the control of Abu Jihad. Becker, p. 198

"Arafat, along with two other young Palestinians from Gaza, Khalil al-Wazir and Salah Khalaf, were the founders of the political movement that later became known as Fatah." William B. Quandt, Fuad Jabber, Ann Mosely Lesch, The Politics of Palestinian Nationalism, p. 83

1985: [Arafat's] closest ally on the [Central] Committee was usually Abu Jihad [Khalil al-Wazir], Deputy Commander in Chief of PLO forces, while the part of the loyal opposition was often played by Abu Iyad [Salah Khalaf], chief of the PLO security apparatus, normally allied with Abu Lutf [Faruq Qaddumi]. Both Abu Jihad and Abu Iyad also had important Fatah responsibilities in addition to their PLO titles, the former with relation to Fatah military forces and the occupied territories, and the latter regarding security and intelligence matters.

This foursome had provided the core leadership of Fatah for decades ....In spite of differences which at times arose among them, they had a relationship with one another which was extremely durable, and were linked by strong bonds of mutual affection and respect going back to their common background in the Gaza Strip, Egypt, and Kuwait in the early 1950s. Rashid Khalidi, Under Siege, p. 103

II. Collective responsibility in Fatah Central Committee

According to an official spokesman of the Palestine Information Office in Washington, leadership is collective in Fatah; decisions are taken together and then executed by different members of the FCC.

evaluation in mid-1970s: Arafat, Salah Khalaf and Khalil al-Wazir were together by 1955. By 1959, Fatah's core groups expanded to include Faruq al-Qaddumi, Muhammad Yusif an-Najjar, Kamal Adwan, and Khalid al-Hassan. "The remarkable fact about Fatah is that the seven key figures of 1957-60 were still the undisputed leaders in 1971-72. To a large degree, Fatah's ability to dominate the Palestinian resistance movement has been made possible by the unity and coherence of its leadership." Quandt, et al., p. 84

evaluation in 1981: "The net effect of the 1981 affair was to underline the continuing vitality and power of the collective leadership of Fateh, and of the core relations within it, to the extent that despite the considerable personal support Arafat enjoyed in the movement by the early 80s, it was still the historic collective leadership of Fatah which provided the central direction and leadership of the Palestinian movement." Cobban, 251

evaluation in 1983: "Far from being unstable and fractious as the Palestinian movement was often portrayed in Western media, the leadership of Fateh, i.e., the core of the Palestinian movement, was if anything too stable...." Cobban, p. 249

Fatah Central Committee was to be the seat of the organization's greatest day-to-day power...most of the movement's power is concentrated in the Central Committee's hands....The development of Fatah since its inception has remained overwhelmingly in the hands of its Central Committee. Cobban, p. 25

evaluation in 1984: "The stability of Fatah's leadership has also contributed to its influence and staying power. All the leaders who founded Fatah and shaped its early development--Arafat, Khalaf, Wazir, and Qaddumi--still retain the top positions.There have been splits within this group and divisions within Fatah, most notably between Arafat and Khalaf and between Khalaf and Wazir, but these have not resulted in formal breaks...Despite infighting and a decentralized structure, Fatah has been remarkably cohesive. In fact, in comparison with other PLO groups, particularly the PFLP, Fatah has been a model of stability." Aaron David Miller, The PLO and the Politics of Survival, p. 45

III. Black September and Fatah: One and the same

Abu Dawud, Black September core group, assertion: "There is no such thing as Black September. Fatah announces its own operations under this name so that Fatah will not appear as the direct executor of the operations only the intelligence organ...attributes the operations to the Black September." "Abu Dawud Testimony Before Jordanian Military Tribunal," Amman Domestic Service, 3/24/73, as cited in FBIS, Middle East, p. D11

Government of Jordan assertion: An unidentified Jordanian government spokesman speaking in Beirut, Lebanon on September 17, 1971, formally accused Al Fatah of responsibility for the terroristic acts for which Black September claims credit. The spokesman said that a Black September organization does not exist and it is "only a mask" used by Fatah to hide its treacherous schemes. Milton Ellerin, "The Black September Organization: A Background Memorandum," American Jewish Committee, 9/5/72

United States Department of State assertion: "We are satisfied of linkage between Black September and at least some of the leadership of the PLO." Charles W. Bray III, State Dept spokesman, Washington Star, 4/13/73

Government of Sudan assertion: In the immediate aftermath of the Khartoum murders Sudanese officials led by President Jaafar al-Numeiri denounced the

Black September killers as criminals and explicitly connected them with al-Fatah. Washington Star, 4/13/73

shared operative: Kamal Adwan, chief operations officer of Fatah, was also the Black September commander of all activities inside Israeli-controlled territory. Eitan Haber and Michael Bar Zohar, The Red Prince, p. 170

shared intelligence: [Black September] enjoyed the freedom of Fatah's communication and intelligence-gathering facilities. Hart, p. 346

Americans killed by Black September:

1972	Munich: David Berg, Cleveland, OH
1973	Khartoum: U.S. Ambassador in Sudan Cleo Noel, DCM George C. Moore
1973	Athens: 16 year old American girl machine gunned to death at TWA terminal
1972	3 letter bombs mailed to President Nixon, Secretary of State William Rogers, and Secretary of Defense Melvin R. Laird (Bar Zohar and Haber, p. 133)

B. Coordinated founding of Black September

Black September, the progeny of Arafat and George Habash both, was formed in the newspaper offices of the PFLP's al-Hadaf. Claire Sterling, The Terror Network, p. 117

The founders of Black September were Ghassan Kanafani, Bassan Abu Sharif, and Wadi Haddad of George Habash's PFLP, together with Hassan Salameh, Abu Dawud, Abu Yussef, and Abu Jihad of Arafat's Fatah. Wadi Haddad, directing military operations for Habash, was an invaluable ally of Hassan Salameh's [Arafat's cousin and chief man in Europe] on the Continent. Some of Haddad's most gifted disciples were on Black September's hit team for the Munich Olympics, though Arafat's Fatah got all the credit. Sterling, p. 117

"Abu Iyad carries out special operations whose quality and not number is accentuated. He plans for big operations like the Munich operation.... The operations [of] Khalil al-Wazir--Abu Jihad, are usually ad hoc operations. They do not need long-term planning." Abu Dawud testimony, 3/24/73, p. D11

"Those who were most in sympathy with the Black September group and who eventually seem to have gained influence over it were...Salah Khalaf and Khalil al-Wazir." Quandt, et al., p. 143

In 1970, when Black September formed, Abu Iyad was given overall responsibility. He then recruited Ali Hassan Salameh for Fatah Jihaz al-Razd, the reconnaissance department of Fatah. Bar Zohar and Haber, p. 97

"As I was told by one of the men close to [Salah Khalaf], 'He is Black September.'" Dobson, pp. 42-43

C. Salah Khalaf's responsibility for terror attacks against Americans

1. Murder of U.S. Ambassador in Lebanon Cleo Noel and Charge d'Affaires George C. Moore

Abu Iyad "personally ordered the execution of the American diplomats" and Arafat himself was "probably personally involved." Abu Zaim, former PLO director of intelligence and deputy chief of staff, Newsweek, 5/12/86

On April 24, 1986 Abu Zaim accused Salah Khalaf of involvement in the 1973 slayings of two U.S. diplomats in Sudan. Associated Press, 4/24/86

[A]ccording to Western intelligence sources...it was not clear whether Arafat personally or Salah Khalef, an extremist Fatah theoritician better known as Abu Iyad, gave the order to carry out the executions using the code-word "Cold River." Washington Post, 4/5/73

2. Munich massacre

Abu Dawud assertion: "The successful [Abu Iyad] operations are the Munich operation.... Abu Dawud testimony, 3/24/73, p. D11

As the executive in charge of Fatah and PLO security and intelligence services, Abu Iyad assumed the responsibility for planning and organizing one Black September operation which he and other hoped would enjoy the support of the collective leadership.

...

[Abu Iyad advocated seizing Israeli hostages at Munich Olympics.] **Could he have done so without Arafat's support? I think not.** Abu Iyad had executive responsibility for organizing the Munich operation. Hart, pp. 349-350

The (Munich massacre) plot was laid by Abu Iyad, Hassan Salameh, Yusef al-Najjar, Kamal Adwan and Kamal Nasser....Abu Iyad and his right-hand man in the plot, Fakhri al-Umari, plus a third man, Abu Daoud, met their Bulgarian mentors in Sofia in August 1972, a month before the massacre was carried out. Becker, p. 107

D. Abu Jihad's (Khalil al-Wazir) responsibility for terrorist attacks against Americans

1. 1978 coastal road attack in Israel

Senator Abraham Ribicoff's niece, Gail Rubin, was shot to death when 13 Fatah terrorists landed on a beach on the northern coast. Israel Foreign Ministry White Paper, 1985, p. 7

IV. Coordination between Fatah/Black September and other terror organizations

A. The Badawi Conference

The Badawi Conference of international terrorist movements was organized by George Habbash, head of PFLP, in May 1972. Representatives of most of the leading terrorist groups attended the meeting, held in great secrecy in a Palestinian refugee camp outside Tripoli, Lebanon. At the conclusion of the discussions, Habbash announced that "we have created organic supports between the Palestinians and the revolutionaries of the entire world."

...

A formal agreement between the PFLP and other terrorist organizations was considered especially significant because of the presence of two high-level officials from the PLO: Abu Iyad and Fouad Chemali. Since the decisions at Badawi were all unanimous, the international terrorist network could fairly be said to have benefitted from the substantial funds and connections of Arafat's organization. Michael Ledeen, "Intelligence, Training, and Support Components," Hydra of Carnage, pp. 157-158

Participants at Badawi Conference: emissaries included from Irish Republican Army, Baader- Meinhof, Japanese Red Army, Liberation Front of Iran, Turkish People's Liberation Army. Black September sent two represen-

tatives: Abu Iyad and Fuad Shemali. Khalil al-Wazir (Abu Jihad) attended on behalf of Fatah. Dobson, p. 69

B. Extent of cooperation

"Coordination between the two organizations is secret and complete although signs prove the opposite to serve political, financial, and ideological objectives, particularly in the Gulf." Abu Dawud testimony, 3/24/73, p. D6

shared operative: Ali Hassan Salameh: commanded handpicked personnel from Fatah and the PFLP both, as European director for Black September. Sterling, p. 117

shared operative: Prof. Basil al-Kubaissi: joined PFLP, trusted lieutenant of Habash, participated in the planning of the Lod massacre. Also held vital position in Black September overseeing the arsenal of the organization in Europe and responsible for the supply of the necessary weapons for Black September's operations throughout the continent. Bar Zohar and Haber, p. 156

shared operative: Mohammed Boudia: end of 1960s, particularly close to George Habash, PFLP. In 1972 became the chief of Black September in France, and Salameh's right-hand man in Europe. Bar Zohar and Haber, p. 187

logistical support: In one hijacking, PFLP cell members working at Damascus airport were able to hide guns in the seats of a Lufthansa airliner for Black September hijackers. Dobson, p. 78

V. Support for terrorism in the Fatah Central Committee

"Abul Abbas is free, of course, and he is a member of the PLO Executive Committee." Yasir Arafat, in the aftermath of the Achille Lauro hijacking, Ukaz, 11/3/85

The organization "will not abandon Abu al-Abbas." Salah Khalaf, in a joint interview with Yasir Arafat, shortly after the Achille Lauro hijacking, Radio Monte Carlo, 10/17/85

"The Palestinian Revolution will...continue to adhere to the pledge and the flame of our armed struggle will not be extinguished until we raise our flag over Jerusalem, the capital of the Palestinian state." Yasir Arafat, Aden Voice of Palestine, 1/3/86

"I declare here that we have recommend clandestine operations, that we are in the process of expanding these operations, and that we shall expand them and shall prove this shortly." Salah Khalaf, Al-Majallah, 3/12-18/86, p. 17

"On the 21st anniversary of the inception of the Palestinian revolution, we pause to remember the day of the armed inception of the Fatah Movement which has embodied the determination of our people and nation to confront the Zionist enemy and to raise the banner of armed struggle for the liberation of the usurped homeland." Khalil al-Wazir, Baghdad Voice of PLO, 1/6/86

"Let all rifles be united against the Zionist enemy." Fatah Central Committee statement, 6/21/85

"The armed struggle sows, and the political struggle reaps. The armed struggle is the only way to achieve liberation." Hani al-Hasan, Associated Press, 1/1/86

"The course of armed struggle has been and will remain the main course and option which we will not abandon or fail to carry out and protect the means of its continuation and escalation." Yasir Arafat, Voice of PLO, 1/1/85

"The PLO is currently...escalating their armed struggle in parallel with the PLO's political action." Khalid al-Hasan, WAKH, 6/17/85

"The Palestinian rifle will continue to fight and negotiations do not mean halting the armed struggle." Hani al-Hasan, Radio Monte Carlo, 4/26/85

"Our backs are to the wall, we have lost everything. What can we do? We can continue the armed struggle." Faruq Qaddumi, Christian Science Monitor, 5/9/85

DOCUMENT 4

ARAFAT AND TERRORISM

Terrorist Acts Claimed by Arafat's Wing of the PLO
Since February 11, 1985

DATE	INCIDENT	RESPONSIBILITY CLAIMED BY
2/11	Incendiary bomb attack on an Israeli bus on the West Bank	PLO General Command(1)
2/14	Molotov cocktail thrown at an Israeli bus on road to Jerusalem	PLO General Command
2/14	Molotov cocktails thrown at a bus carrying Israeli settlers on the West Bank	PLO General Command
2/14	Derailment of a train between Haifa and Tel Aviv	PLO General Command
2/19	Israeli bus hijacked near Hebron	PLO General Command
2/22	Israeli bus hijacked on West Bank	PLO General Command
2/24	Molotov cocktails thrown at an Israeli bus near Bethlehem	PLO General Command
2/26	Bomb attack on a shop in Ashdod	PLO General Command
2/26	Hand grenades thrown at a Tel Aviv restaurant	PLO General Command
3/12	Explosive charge near Israeli settlement in West Bank	PLO General Command
3/13	Molotov cocktail thrown at branch of Bank Leumi in Jerusalem	PLO General Command
4/8	Incendiary bomb thrown at an Israeli bus on West Bank	PLO General Command
4/9	Incendiary bomb thrown at an Israeli vehicle near	PLO General Command

	Bethlehem	
4/14	Hand grenade attack on an Israeli bus near Hebron	PLO General Command
4/14	Attack on an Israeli vehicle near Hebron	PLO General Command
4/22	Fedayeen naval operation - attempt to launch an attack from the sea against the center of Israel	PLO General Command
4/26	Explosion at Qiryat Milakhi	PLO General Command
4/28	Hand grenade attack on an Israeli vehicle in Nabulus	PLO General Command
4/28	Incendiary bomb attack on an Israeli vehicle on the Beersheva - Jerusalem road	PLO General Command
5/1	Grenade attack on an Israeli bus	PLO General Command
5/2	Missile attack in Bat Yam	PLO General Command
5/6	High explosive charge planted on the road to Betah	PLO General Command
5/8	Israeli navy sinks a rubber dinghy off the coast of Tyre carrying Palestinian guerrillas heading for the Israeli coast	PLO General Command
5/12	<u>Explosions at:</u> * bus stop near Shaare Tzedek hospital in Jerusalem * Shimshon road near Bet Shemesh * Givat Sharet near Bet Shemesh * Liberty Bell Park in Jerusalem	PLO General Command
5/13	Machine gun and grenade attack against an Israeli vehicle on West Bank	PLO General Command
5/14	Hand grenade attack on an Israeli vehicle in West Bank	PLO General Command

5/16	Machine gun attack against an Israeli bus on West Bank	PLO General Command
5/26	Detonation of a remote - controlled explosive charge in Haifa	PLO General Command
5/29 & 5/31	Detonation of a remote - controlled explosive charge in Afula	PLO General Command
6/6	Detonation of a remote - controlled device in Tammun	PLO General Command
6/8	Incendiary bomb attack on a gas station in Hebron	PLO General Command
6/9	Machine gun attack against an Israeli truck in Gaza	PLO General Command
6/10	Incendiary bombs hurled at an Israeli bus near Nabulus	PLO General Command
6/10	Hand grenade attack on an Israeli vehicle in Nabulus	PLO General Command
6/10	Attack on an Israeli bus with incendiary bombs on West Bank	PLO General Command
6/12	Explosive charge detonated in Ashqelon	PLO General Command
6/17	Attack on an Israeli vehicle near Bethlehem	PLO General Command
6/17	Incendiary bomb thrown at an Israeli vehicle near Hebron	PLO General Command
6/17	Explosive charge detonated at a bus stop in Ramot (Jerusalem)	PLO General Command
6/17	Explosive charge detonated at a bus stop on French Hill (Jerusalem)	PLO General Command
6/17	Explosive charges planted near a warehouse in Tel Aviv factory in Ashqelon	PLO General Command
6/19	Several mines planted on roads in the Golan Heights	PLO General Command

6/20	Explosion near an industrial plant in Kiryat Gat	PLO General Command
6/20	Civilian guard stabbed in Jerusalem	PLO General Command
6/23	Hand grenade attack in Nablus	PLO General Command
6/23	Incendiary bomb thrown at Israeli bus on West Bank	PLO General Command
6/24	Explosion at a bus stop in Neve Yaacov section of Jerusalem	PLO General Command
6/26	Deputy director of Ramleh prison attacked	PLO General Command
6/27	High explosive charge detonated on the Tel Aviv beach near the U.S. Embassy	PLO General Command
7/7	Bomb explosion at a bus stop near Holon, injuring 5 Israelis	PLO General Command
7/9	Hand grenade attack on an Israeli vehicle in Hebron	PLO General Command
7/9	Explosion in Haifa	PLO General Command
7/11	Explosion in main square of Nazereth	PLO General Command
7/11	Explosion in King Saul Hotel in Ashqelon	PLO General Command
7/15	Machine gun attack on Israeli vehicle	PLO General Command
7/16	Explosion at Israeli police station at Hebrew University	PLO General Command
7/17	Machine gun attack in Gaza	PLO General Command
7/17	Incendiary bomb attack in Gaza	PLO General Command
7/17	Explosion at a shipping company in Haifa	PLO General Command

7/17	Explosion at kibbutz factory in Haifa	PLO General Command
7/18	Ambush and machine gun attack of Israeli vehicle	PLO General Command
7/20	Bomb defused near Jericho	PLO General Command
7/26	Israeli public buses bombed outside of Jerusalem	PLO General Command
7/31	Explosion in Haifa factory	PLO General Command
8/4	Explosive charge planted at Israeli transport station	PLO General Command
8/8	Israeli man shot in Bani-Suhalylah	PLO General Command
8/16	Explosive charge detonated in Hebron	PLO General Command
8/20	Car exploded in Netanya bus station	PLO General Command
8/22	Bomb thrown at bus near Nablus	PLO General Command
8/22	Explosives detonated in main square in Nablus	PLO General Command
8/22	Explosives planted in factory in Ashqelon	PLO General Command
8/22	Explosion in Herziliya industrial center	PLO General Command
9/2	Incendiary bombs thrown at vehicle near Jabliyah camp	PLO General Command
9/9	Attack on Tel Aviv police station	PLO General Command
9/10	Incendiary bomb thrown at Jerusalem bus station	PLO General Command
9/14	Bomb attack on Israeli vehicle	PLO General Command
9/25	Three Israelis killed on yacht off Cyprus	Force 17 (Arafat's personal guard)

9/30	El Al office bombed in Amsterdam	Fatah
10/1	Bomb exploded at Turks Market in Haifa	PLO General Command
10/1	Incendiary bombs thrown at vehicle near Al-Nusayrat camp	PLO General Command
10/1	Incendiary bomb thrown at restaurant in Jerusalem	PLO General Command
10/1	Remote-controlled explosives detonated near Tiban	PLO General Command
10/5	Three Israelis killed in Mt. Refa'im area	PLO General Command
10/10	Two Israeli seamen murdered in Barcelona, Spain	Force 17
10/12	Explosive charges detonated at restaurant in Tel Aviv	PLO General Command
10/13	Bomb exploded at Barbis Shak settlement	PLO General Command
10/14	Bomb exploded at Israel Aircraft Industries plant in Dimona	PLO General Command
10/16	Incendiary bomb thrown at bus near the Hebron Gate (Jerusalem)	PLO General Command
10/19	Israeli settler stabbed in Sabastiyah of the West Bank	PLO General Command
10/23	Incendiary bombs burn Israeli vehicle	PLO General Command
10/24	Explosion in central market in Beersheba	PLO General Command
10/31	Explosion near Al-Bab al-Jadid (near Jerusalem)	PLO General Command
11/4	Two bombs exploded on French Hill, Jerusalem	PLO General Command
11/5	Two bombs exploded; one in Haifa, one in Ashqelon	PLO General Command
11/6	Remote-controlled explosives detonated at settlement	PLO General Command

11/8	Central bus station in Kfar Saba bombed	PLO General Command
11/9	Explosive charges detonated at cotton storage area in Nazareth	PLO General Command
11/13	Explosion near Haifa	PLO General Command
11/21	Machinegun attack on car in hills of Hebron	PLO General Command
11/26	Bus attacked in Nablus	PLO General Command
11/26	Israeli stabbed in Jerusalem	PLO General Command
11/29	West Bank settler seriously wounded in stabbing attack	PLO General Command
12/1	Bus attacked on route to Hebron	PLO General Command
12/4	Explosion in Afula	PLO General Command
12/13	Bomb exploded on bus near Jerusalem	PLO General Command
12/14	Explosion in Tel Aviv	PLO General Command
12/15	Explosion in commercial center in Tel Aviv	PLO General Command
12/15	Gunfire attack in Jerusalem killing passerby	PLO General Command
12/23	Explosion in Nablus setting buses, offices, and factories on fire	PLO General Command
12/25	Explosion in Hadera power station	PLO General Command
12/26	Explosion on bus in West Bank	PLO General Command
12/29	Israeli stabbed in Bat Yam	PLO General

		Command
12/29	Bus attacked on French Hill in Jerusalem	PLO General Command
12/31	Hand grenade attack on Israeli guard and cars	PLO General Command
1/2	Katyusha rockets shelled on Quiryat Shmona	PLO General Command
1/2	Rockets shelled on southern Israeli settlements	PLO General Command
1/2	Explosives planted in Israeli bus station	PLO General Command
1/3	Bombs exploded in Ramat Gan	PLO General Command
1/3	Bombs thrown at cars near Jerusalem	PLO General Command
1/3	Hand grenade thrown at civilian car in Gaza	PLO General Command
1/3	Taxi driver murdered in Tel Aviv	PLO General Command
1/4	Two bombs thrown at Egged bus in Jerusalem	PLO General Command
1/5	Explosion in Bat Yam damaging Israeli shops & cars	PLO General Command
1/15	Explosion in factory in Haifa	PLO General Command
1/16	Explosion in Quiyat Qabrun	PLO General Command
1/27	Explosion in Jerusalem restaurant	PLO General Command
1/30	Gunfire attack in Jerusalem killing one, injuring two	PLO General Command
2/1	Car bomb in Gaza	PLO General Command
2/13	Explosion at bus station in Afula	PLO General Command
2/13	Explosion at court building	PLO General

	Haifa	Command
2/16	Explosion at bus station in Jerusalem	PLO General Command
3/5	Egged bus bombed in township of Anabta	PLO General Command
3/11	Egged bus bombed in Ramat Gan	Force 17
3/12	Explosion at bus station in Bet She'an	PLO General Command
3/13	Bus bombed in Tel Aviv	PLO General Command
3/17	Explosion at bus station in Haifa	PLO General Command
3/18	Explosion at factory in B'nai Brak	PLO General Command
3/20	Car bombed in Jerusalem	Force 17
3/21	Explosion in Kfar Saba	PLO General Command
3/27	Explosion at night club in Jerusalem	PLO General Command
4/1	Explosions in two bus stations in Jerusalem	PLO General Command
4/9	Bomb thrown at Jerusalem bus, ten wounded	PLO General Command
4/10	Coca Cola Plant bombed	PLO General Command

(1) Palestine Revolutionary Forces General Command is the military spokesman for Yasser Arafat.

DOCUMENT 5

II. THE PLO VS. THE UNITED STATES

Arafat's Alliance with the Soviet Union

The recent meeting between PLO Chairman Yasir Arafat and Soviet leader Mikhail Gorbachev, held in East Berlin on April 18, 1986, underlines Arafat's continuing and consistent alignment with the Soviet Union against the United States. Moreover, it draws attention once again to the PLO's longstanding relationship with the Soviets which includes military and financial support from the U.S.S.R. for PLO terror efforts.

1. Arafat considers the Soviet Union "our friend and ally."[1] He met with Gorbachev to discuss the dangers of the U.S. "policy of force" in the region.[2] By contrast, Arafat considers the United States "a principal adversary."[3] Indeed, in the aftermath of the American action against Libya, Salah Khalaf, one of Arafat's closest deputies, called for "an Arab agreement with the Soviet Union on a plan to resist [U.S.] aggression."[4]

2. Since 1970, the Soviet Union has provided the PLO, under Arafat's leadership, with weapons, including tanks and surface-to-air missiles,[5] and military training. Thousands of PLO members have been trained by Soviet instructors in more than 40 Soviet training camps in staff and command courses as well as a variety of professional subjects, such as communications, electronics, engineering, artillery, pilot training, biological and chemical warfare, and military weapons and maintenance. They also learn specific terrorist techniques.[6]

3. The relationship is maintained through frequent and extensive contacts and meetings between Arafat and/or his chief lieutenants with high ranking Soviet officials.

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[1] Voice of Palestine, May 16, 1985

[2] El-Tayeb Abdel-Rehim, PLO spokesman in Cairo, United Press International, April 20, 1986

[3] Al-Sharq al-Awsat, October 18, 1985

[4] Al-Bayan (Dubayy), March 16, 1986, p. 17

[5] Mark Heller, editor, The Middle East Military Balance 1984, p. 172

[6] Ray S. Cline and Yonah Alexander, Terrorism: The Soviet Connection, pp. 45-46.

Arafat's Alliance With the Soviet Union

The purpose of this document is to illustrate the extent of PLO support for the Soviet Union and hostility towards the United States; the military and financial coordination between Arafat and the USSR; and the ongoing nature of this relationship.

I. Arafat's Support for the Soviet Union

Senior Reagan Administration officials say the Soviet Union apparently played a central role in persuading the PLO to frustrate American efforts to organize Middle East peace talks between Israel and a joint Jordanian-Palestinian delegation. New York Times, 2/17/86

Yasir Arafat "finally and totally" refused to recognize U.N. Resolutions 242 and 338 just two days after the Soviet Union encouraged him to do so. Radio Monte Carlo, 1/31/86; Agence France Presse, 2/3/86

"I say that the relationship between us and our Soviet friends is strong. We are proud of this relationship." Yasir Arafat, Al Ittihad, 3/22/86

"We are very keen on our friendship with the Soviets...Palestinian-Soviet relations have seen many positive changes recently. Currently there re continuous contacts on more than one level between us and our friends the Soviets." Yasir Arafat, Al-Anba, 2/23/86

"One of the most important steps we have taken is the restoration of Palestinian-Soviet relations to their former strength following attempts... to drive a wedge between us and our Soviet friends." Yasir Arafat, Kuwait News Agency, 1/7/86

"I should point out that one of the most important steps we have taken is the restoration of Palestinian-Soviet relations to their former strength ...." Yasir Arafat, Baghdad Voice of PLO, 1/3/86

"In my name and on behalf of the PLO Executive Committee and the Palestinian people, I extend greeting to Comrade Gorbachev, to the Soviet Union, and the Socialist countries....Our people are grateful for this friendly Soviet position expressed by Gorbachev....We Palestinians [words indistinct] our friendly ties with the great Soviet friend and its principled [word indistinct] toward our Palestinian people's just cause." Yasir Arafat, Budapest Television Service, 11/28/85

"Our Palestinian people highly appreciate the principled and firm Soviet stand in support of our people in their struggle to restore their full and firm rights." Yasir Arafat, congratulatory cable to Mikhail Gorbachev, general secretary of the CPSU Central Committee, on the 68th anniversary of the October Socialist Revolution, Aden Voice of Palestine, 11/8/85

"Soviet-Palestinian relations are good. We are eager to develop these relations and so is the friendly USSR." Yasir Arafat, Al-Khalij, 11/6/85

"[T]he PLO's relationship with the USSR is a special relationship and stronger now than any time before...I do not believe that this relationship

needs to be strengthened more." Yasir Arafat, Middle East News Agency, 10/13/85

In a meeting with the Soviet charge d'affaires in Tunis, Arafat expressed his high regard for the strategic relations that link Moscow with the PLO. Al-Qabas (Kuwait), 10/10/85

"We will continue to adhere to the international conference so the USSR will not be excluded from the framework of a just solution to the Middle East crisis, because the USSR is our friend and ally." Yasir Arafat, Voice of PLO, 5/16/85

"Our relations with the Soviet Union are strategic and reflect that we are in the same trench, in the same position against imperialism [and] Zionism...." Yasir Arafat, Voice of Palestine, 1/27/82

"As to our relations with the Soviet Union, they are very strong and we intend to strengthen and develop them more and more." Yasir Arafat, Los Angeles Times, 10/21/81

"The Palestinian people take great pride in and draw confidence from the fact that the great Soviet Union, the true friend of the Palestinian people...is together with us on these militant positions." Yasir Arafat, TASS, 12/1/81

"Arafat...would not make an important move without first consulting the Soviet ambassador. He meets him once or twice a week, sometimes once in two weeks, in order to report his plans and current activities. When he comes back to Beirut from Russia, the truth is that he has fully detailed new plans, designed by the Russians." PLO defector, New York Magazine, 9/24/79, p. 72

B. Arafat's Support for Soviet Allies

Yasir Arafat confirmed in January 1982, that the PLO had provided military assistance to both Nicaragua and Salvadoran guerrillas by sending pilots to Nicaragua and guerrillas to El Salvador. Washington Post, 5/29/82, p. 12, as cited in David Kopilow, Castro, Israel, & the PLO, p. 13

"The triumph of the Nicaraguans is the PLO's triumph." Yasir Arafat, FBIS, Central America, 7/24/80, p. 10

"We have connections with all revolutionary movements throughout the world, in El Salvador, in Nicaragua--and I reiterate in El Salvador." Yasir Arafat, Associated Press, 4/14/81, as cited in Kopilow, Castro, Israel & the PLO, p. 12

II. Arafat's Anti-Americanism

Mohammad Abbas, aka Abul Abbas, mastermind of the Achille Lauro hijacking, chairman of the Palestine Liberation Front, and handpicked appointee of Yasir Arafat for membership on the 11-man PLO Executive Committee, declared on NBC Nightly News, "Reagan has now placed himself as enemy No: 1....It is the American taxpayer who is financing the American policies that decide his fate...It is not our duty to be so considerate to the Americans...We have to respond against America in America itself." Washington Times, 5/6/86, p. 1

Soviet leader Mikhail Gorbachev met Yasir Arafat in East Berlin to discuss the dangers the U.S. "policy of force" in the region. PLO Spokesman El-Tayeb Abdel-Rehim (Cairo), United Press International, 4/20/86

"As for the United States, it will continue to insist on its stand. This stand is based on the arrogance of power...I want to address the U.S. arrogance of power that we will not be the losers in this. Let them know that the flood and volcano which I talked about as I left Beirut still continue in the region and that other interests, not only Arab interests in the region will be harmed." Yasir Arafat, Abu Dhabi Domestic Service, 3/21/86

"The Americans have to remember that unless Palestinians achieve something, they will face the typhoon." Yasir Arafat, UPI, 1/18/86

"We stand with Libya against any aggression against it by Israel or the United States...." Yasir Arafat, Al-Sharq al-Awsat, 1/7/86

"The enemy is the same, be he Israeli or the United States." Yasir Arafat, Aden Voice of Palestine, 1/3/86

"I personally believe that Reagan is a simple robot and a parrot who repeats what certain people tell him without comprehending what he is saying because he in fact lacks reason." Yasir Arafat, Kuwait News Agency, 1/1/86

"There is a confrontation between us and the American superpower. We regard the U.S. government as the controlling force of neo-colonialism, imperialism and racism, and we have no doubt that the U.S. employs Israel to spearhead its strategy of domination in the Middle East." Yasir Arafat, South, January 1986

"I spoke about 'the volcano' and 'the typhoon' when I was leaving Beirut. Nobody understood what I meant by the volcano and the typhoon, but soon the Americans knew, when they had to pay a high price in the shameful withdrawal of their navy and marines from Beirut because of the courage and unity of the Palestinians." Yasir Arafat, South, January 1986

"I see the U.S. as the leader of these forces of neo-colonialism and racism." Yasir Arafat, South, January 1986

"We are on the threshold of a fierce battle--not an Israeli-Palestinian battle but a Palestinian-U.S. battle." 11/13/85

Abul Abbas "is free, of course, and he is a member of the PLO Executive Committee. I do not think we will do what Reagan says." Yasir Arafat, Ukaz, 11/3/85

"The United States...has become a principal adversary to us. The Arab nation and its masses...should boycott the United States economically if they cannot boycott it politically." Yasir Arafat, Al-Sharq al-Awsat, 10/18/85

The United States intercept of the plane carrying the Achille Lauro hijackers was "an act of terrorism" and an exercise in "cowboy logic." Yasir Arafat, New York Times, 10/13/85

"The United States has a two-faced policy, not only towards me but

towards those who are its friends, King Hussein and President Mubarak." Yasir Arafat, Los Angeles Times, 10/8/85

"This onslaught is in implementation of the Camp Murphy conspiracy." Yasir Arafat, Voice of PLO, 7/4/85

"Under the leadership of the PLO, the Palestinian people in Lebanon have clung to their choice to struggle against the new plots of Camp Murphy." Yasir Arafat, Voice of Palestine, 5/21/85

"As for me, my objective is to defy the Americans and resist their policies." Yasir Arafat, Agence France Presse (Paris), 11/29/84

"When the balance of power is in the Arabs' favor, they are able to do something: they [were able] to pursue the fighting against the American Marines in Beirut in order to facilitate the return of the Palestinians to Beirut and create more problems for the Marines there." Faruq Qaddumi (Abu Lutf), statement to Soviet Foreign Minister Andrei Gromyko, 11/23/83, Hydra of Carnage, p. 495

"From the Lebanese Palestinian foxhole we say to you, Qadhdhafi, that we stand together with you in the front line, fighting not only aginst Israel but also against American ... We are preepared to send men from our joint forces in order to fight, together with you, in sister Libya, against this aggression." Yasir Arafat, Voice of Palestine (Beirut), 8/21/81

"If we had the capability to sign a treaty with the Soviet Union, we would have signed a thousand treaties, and if we controlled land we would have allowed the Soviets a thousand bases because we are dealing with a foe stronger than Israel, the United States." Salah Khalaf (Abu Iyad), Al-Rai al-Am (Kuwait) as quoted by Associated Press, 8/17/81

"I call upon you to adopt the most violent means against the U.S. and its interests in the region." Yasir Arafat, Voice of Palestine, 4/27/79

III. Soviet Military and Financial Support for the PLO

A. Arms

"When Israel went into Lebanon in 1982, Israeli forces uncovered irrefutable evidence that the Soviet Union had been arming and training the PLO and other groups." Secretary of State George Shultz, Park Avenue Synagogue Address, 10/25/84

The PLO receives tanks and surface-to-air missiles from the U.S.S.R. and other Soviet bloc countries. Mark Heller, editor, The Middle East Military Balance 1984, p. 172

The PLO reportedly received Soviet weaponry through South Yemen. Phalangist Radio, 4/4/84, as cited in Contemporary Mideast Backgrounder, no. 205, 3/27/85

Salah Khalaf (Abu Iyad) led a four man delegation to Moscow where the Soviets agreed to supply the PLO with "anti-aircraft missiles, modern armored cars, and helicopters fitted with the most modern reconnaissance equipment. The weapons will be delivered through an Arab state that has special relations with Moscow ...to be sent in three consignments--the last

being three years from now...." Al-Hadaf (Kuwait), as cited in Middle East News Agency (Cairo), 6/10/83; Baghdad Voice of PLO, 6/2/83

On April 6, 1983, it was made known that the PLO was promised by the Soviet Union new military support to make up for its losses in Lebanon. It was also reported that a new training team of 18 Soviet and Cuban instructors arrived in Aden for deployment to the PLO's four camps situated close to Naqoub, Sheilch Othman, Shuqra and Dala. Colin Legum, "PLO Moves Closer to Moscow." Jerusalem Post, 4/6/83, p. 8

The Soviet Union reportedly supplied the Palestinian resistance with $50 million worth of sophisticated weapons, including: surface-to-air missiles, Frog missiles, other missiles, a rapid detection radar network and heavy artillery. This arms deal was the result of talks which Arafat held in Moscow in October of 1981. The Palestinian officers who received training in the Soviet military academies "are the ones who are now using these sophisticated weapons." Kuwait News Agency, 2/5/82, as cited in FBIS, Middle East, 2/5/82, p. A1

Frog SS missiles will be supplied by the Soviet Union to the PLO. PLO Radio, 2/2/82, as cited in Contemporary Mideast Backgrounder, no. 135, 7/12/82

Military agreements were signed by Abu Iyad and the Soviet Union, East Germany, and Czechoslovakia. Al-Hawadith, 11/13/81, as cited in Weekly Media Abstract, no. 116, 12/29/81

On November 11, 1981, the Soviets supplied the PLO with 30 T-54/55 tanks. Deutsche Tagespost (West Germany), as cited in Contemporary Mideast Backgrounder, no. 135, 7/12/82

On November 6, 1981, Soviet arms were supplied to the PLO through Libya. Al-Hawadith (Lebanon), as cited in Weekly Media Abstract, no. 116, 12/29/81

On October 20, 1981, Arafat was in Moscow to discuss a possible increase in Soviet military aid to the PLO. Associated Press, 10/20/81

On October 18, 1981, Arafat began a three day visit to Moscow seeking sophisticated weapons from the Russians, especially surface to air missiles. Financial Times (London), 10/19/81

A Palestinian delegation signed a weponry supply agreement in Moscow for SAM-6 and surface-to-surface missiles. Akhbar al-Usbu'a (Jordan), 8/13/81, as cited in Weekly Media Abstract, no. 116, 12/29/81

On September 9, 1978, the Greek ship "Agios Demitros" was captured in the Gulf of Eilat. The ship, which had been loaded in Tripoli contained 45 Soviet-made Katyusha rockets. A Fatah officer who was on the ship confessed to receiving training at a military camp in the Black Sea area. He also said he had undergone a six month course which included in addition to engineering, political instruction on the Russian Revolution, communism, and socialism. The course was given without charge and was designed for members of "liberation movements" from all over the world. He had trained to serve as an instructor for Fatah forces in Lebanon. Israel Foreign Ministry Information Briefing, 8/30/81

"Hundreds of Palestinian officers holding the rank of brigade command-

er have already been accredited by Soviet military academies, and members of the PLO use arms of Soviet and Eastern European manufacture in their guerilla warfare against Israel." Muhammad ash-Sha'er, PLO representative in Moscow, Radio Monte Carlo, 2/17/81, as cited in "Let Them Speak for Themselves...," 8/3/81

Czechoslovak and Soviet experts set up a plant in southern Lebanon for manufacture of bombs and chemical weapons for the PLO. Phalangist Radio, 1/12/81, as cited in Contemporary Mideast Backgrounder, no. 79, 2/22/80 [sic]

On December 31, 1980, Soviet arms--including 17 tank rocket launchers and ammunition--reportedly were unloaded in Tyre. "Some Soviet-PLO Linkages." Middle East Review, Spring/Summer 1982, p. 69

"The USSR backs us in international circles and provides us with material, economic and military assistance." PLO spokesman Abd al-Muhsin Abu Maizer, Al-Qabas (Kuwait), 12/16/80, as cited in IDF Spokesman, September 1981, p. 7

Arafat held talks in Moscow on the supply of anti-aircraft guns, tanks and katyushas. Associated Press, 7/7/80, as cited in Weekly Media Abstract, no. 75, 2/2/81

Arafat received 50 T-34 Soviet made tanks. Associated Press, 5/5/80, as cited in Weekly Media Abstract, no. 76, 2/2/81

The USSR decided to supply the PLO with modern T-62 tanks. Sunday Times (Holland), 3/2/80, as cited in IDF Spokesman, September 1981, p.3

The Soviet Union reportedly committed itself to supply the PLO with new, longer range missiles. Al-Wattan Al-Arabi (Lebanon), 11/22/79, as cited in IDF Spokesman, September 1981, p. 17

Arafat held talks in Moscow on the supply of anti-aircraft guns, tanks and katyushas. Associated Press, 7/20/80, as cited in Weekly Media Abstract, no. 76, 2/2/81

According to "Free Lebanon" forces commander Major Sa'ad Haddad, two Soviet vessels docked at Tyre and unloaded supplies for the PLO and their Muslim allies. The consignment included rockets, anti-tank shells, small mortar bombs and 160 mm., 130 mm., 120 mm., and 82 mm. cannons. United Press International, 8/21/79, as cited in IDF Spokesman, September 1981, p. 12

Sophisticated Soviet weaponry was delivered to the PLO. Al-Hawadith, 1/12/79, as cited in Weekly Media Abstract, no. 76, 2/2/81

Arafat asserted that the joint communique issued during his November 1978 visit to Moscow was tantamount to a Friendship Treaty and guaranteed arms supplies to the PLO. Al-Dustur (London), 11/13/78, as cited in "The PLO and the Soviet Bloc--What the Documents Reveal," Israel Ministry of Foreign Affairs Information Briefing, 3/12/82

The PLO received sophisticated Soviet weaponry, including anti-tank and anti-aircraft systems. Al-Qabas, 8/27/78, as cited in IDF Spokesman, September 1981, p. 17

Arafat signed an agreement in Moscow by which Cuba was to set up

military installations in Lebanon and send advisers to run them. Al-Nahar (Lebanon), 7/24/78, as cited in Contemporary Mideast Backgrounder, no. 79, 2/22/80 [sic]

Two Soviet vessels unloaded weapons destined for the PLO at Tyre. Al-Nahar, 4/10/78, as cited in IDF Spokesman, September 1981, p. 17

In March 1978, during the Litani Operation, Israel discovered large quantities of Soviet and Soviet-bloc weapons, including Kalachnikovs, hand grenades, submachine guns, RPG's, 130 and 122mm rocket launchers, 240 mm rockets, heavy mortars and 130 mm field guns, 85mm anti-tank guns, 57 mm Czech-made guns, Russian-made recoilless rifles, tanks, Strella surface-to-air missiles, and other combat materiel. "A PLO State--Another Cuba," IDF Spokesman, 11/12/79, p. 4

Large quantities of arms reached the PLO. These arms were transferred under the aegis and protection of the Soviet Navy in the Mediterranean. Al-Nahar, 2/12/78

Soviet and Bulgarian vessels unloaded weapons destined for the PLO at Tyre. Die Welt (West Germany), 1/31/78, as cited in IDF Spokesman, September 1981, p. 17

"Large quantities of Soviet arms reached the Palestinian organizations-...transferred under the aegis and protection of the Soviet navy in the Mediterranean. The most prominent indication was the arrival in Sidon on 15 January 1978 of two ships carrying updated weapons which were tranferred to Palestinian warehouses. According to military reports, the terrorists received improved missiles from the USSR and several experts arrived in southern Lebanon to instruct the Palestinians in the use of this weapon." Al-Manaar (London), 2/12/78, as cited in "Soviet Assistance to the PLO," May 1978, p. 2

The Soviet Union "started shipping heavy weapons to the Palestinian commando movement in the last few days" and "they delivered them under a new agreement by which the Soviet Union was providing military as well as political support for the guerrillas." Al-Siyassah (Kuwait) quoted by the Christian Science Monitor, 11/9/77, as cited in "The Soviet-PLO Axis" ADL Special Report 1980, p. 31

Two vessels docking in Tyre unloaded arms and sophisticated missiles, some of them anti-aircraft missiles, for the PLO on January 15, 1977. Al-Nahar, 1/21/77, as cited in "Some Soviet-PLO Linkages," Middle East Review, Spring/Summer 1982, p. 69

The Kremlin reportedly agreed to supply weaponry to the PLO, including anti-aircraft and anti-tank systems. "Palestinians May Get Advanced Soviet Arms." Daily Star (Beirut), 8/4/74

The Soviet and Cuban embassies in Cyprus played a key role in arms smuggling to the PLO. As-Sayad, 7/28/72, as cited in IDF Spokesman, September 1981, p. 17

In the early 1970s "direct supplies and arms were conducted by the Soviets through Syria. That started to occur without any reservations by the early '70s." Testimony of Vladimir Sakharov, Hydra of Carnage, p. 517

In July 1974 Arafat and his fellow PLO delegates were invited by the

Soviet Government to the USSR. They were received on 4 August. From that year, the USSR began to supply the PLO with fairly new models of heavy weapons, though never the most up-to-date. It was agreed then that the PLO should keep permanent representation in Moscow, but the PLO office was not opened in the Soviet capital until 22 June 1976. Jillian Becker, The PLO--the Rise and Fall of the Palestine Liberation Organization, pp. 168-69

"Recipients of large-scale shipments of Soviet arms channeled through Libya include the Black Septmeber Organization...." Brian Corzier, Director of the Institute for the Study of Conflict in London, in International Terrorism: The Soviet Connection, The Jonathan Institute, 1979, p.17

In July 1972, Arafat returned from Moscow with a promise that the Soviets were about to start sending arms and ammunition to the PLO directly. Alan Hart, Arafat--Terrorist or Peacemaker?, p. 364

During his February 1970 visit to USSR "Arafat got...some small arms and two undertakings: that his arms losses would be replaced, and that, as from the last quarter of 1970, his men could receive some military training for officers and ideological instruction." Jillian Becker, The PLO--the Rise and Fall of the Palestine Liberation Organization, pp. 168-69

B. Training

"Various intelligence sources have reported on the existence of an elaborate infrastructure of over forty training camps within the Soviet Union. The camps in Moscow, Tashkent, Batum, and Simferopol, the major base known for the Soviet Academy of military training, give special attention to intelligence. Thousands of PLO members have been trained by Soviet instructors at these and other installations in staff and command courses as well as a variety of professional subjects, such as communications, electronics, engineering, artillery, pilot training, biological and chemical warfare, and military weapons and maintenance. They also learn specific techniques such as the preparation of electrical charges, the production of incendiary devices, and methods of exploding metals and destructing bridges..." Ray S. Cline and Yonah Alexander, Terrorism: The Soviet Connection, 1984. pp. 45-46

Soviet and Cuban instructors were in the PLO's training camps in Aden. Al-Siad (Lebanon), 5/13/83, as cited in Contemporary Mideast Backgrounder, no. 163, 6/26/83

On April 6, 1983, it was made known that the PLO was promised by the Soviet Union new military support to make up for its losses in Lebanon. It was also reported that a new training team of 18 Soviet and Cuban instructors arrived in Aden for deployment to the PLO's four camps situated close to Naqoub, Sheikh Othman, Shuqra and Dala. Colin Legum, "PLO Moves Closer to Moscow." Jerusalem Post, 4/6/83, p.8

In June 1982, during Operation Peace for Galilee, several documents were discovered that reasserted the robust military and intelligence linkages between the Soviet Union and the PLO. A document dated October 22, 1981, listed various air defense courses that were held in September and December of 1977, and November of 1978. Files also contained snapshots of PLO men and others undergoing training. Another document found, dated August 24, 1981, had been signed by a PLO security officer, reported that the Russian military attache in Beirut informed the PLO about Israeli efforts to acquire British military equipment during visits by an Israelis

Navy officer in Singapore and Malta. A document dated February 22, 1982 provided the names of PLO personnel who studied in the Soviet Union for the following positions: battalion commanders, battalion staff officers, deputy battalion commanders, improved Strell 2 operators, and commanders of 82mm mortar batteries. "The PLO and the Soviet Bloc--What the Documents Reveal." Israel Foreign Ministry Briefing, 10/3/82[1]

On April 28, 1982, a PLO-Syria strategic working paper was signed in Damascus. The paper stated that there were 21 Soviet, Cuban, and East German military advisers--headed by a Colonel--in major PLO camps in Sidon, Damur and Sabra. Contemporary Mideast Backgrounder, no. 135, 7/12/82

"Palestinian officers are now receiving higher military training in the general staff colleges in the Soviet Union, Yugoslavia, North Korea, and other socialist states as well as Pakistan and India." Kuwait News Agency, 2/5/82, as cited in FBIS, Middle East, February 5, 1982, p. A1

On September 9, 1978, the Greek ship "Agios Demitros" was captured in the Gulf of Eilat. The ship, which had been loaded in Tripoli contained 45 Soviet-made Katyusha rockets. A Fatah officer who was on the ship confessed to receiving training at a military camp in the Black Sea area. He also said he had undergone a six month course which included in addition to engineering, political instruction on the Russian Revolution, communism, and socialism. The course was given without charge and was designed for members of "liberation movements" from all over the world. He had trained to serve as an instructor for Fatah forces in Lebanon. Israel Foreign Ministry Information Briefing, 8/30/81

During his visit to East Berlin on January 17, 1981, Arafat concluded an agreement for the dispatch of 50 military advisors to train PLO men. L'Express and Phalangist Radio, as cited in Contemporary Mideast Backgrounder, no. 79, 2/22/80 [sic]

Terrorist Adnan Jaber, member of the PLO and one of the perpetrators of the Hebron murder, May 1, 1980, said he received six months military training near Moscow in 1974, together with a group of about 20 Palestinians. This group included members of Fatah, the Popular Front, the Democratic Front, As-Saiqa (Syria), Arab Liberation Front (Iraq), and the Popular Struggle Front. The Russian instructors trained them in tactical military exercises, the use of light arms, and hand grenades, the production and concealment of explosive materials, topography, military engineering, and communications, in addition to political indoctrination. David K. Shipler, "Palestinian Guerrilla Describes Taking Combat Training in the Soviet Union," New York Times, 10/31/80

In September 1980, a PLO apprentice pilot was caught by security in Pakistan with secret documents which were to be handed over to the Soviets through the Soviet ambassador of Islamabad, Server Alimaniovich (formerly ambassador to Beirut). It was later ascertained that Alimaniovich was responsible for operating terrorist networks and gathering intelligence information. The apprentice pilot was expelled from his training course and from Pakistan. Daily Telegraph (London) as cited in Israel Foreign Ministry Information Briefing, 8/8/81, p. 3

1For most comprehensive documentation of Soviet training of the PLO see Raphael Israeli, ed., PLO in Lebanon--Selected Documents (London: Weidenfeld and Nicloson, 1983)

"The Soviet Union and all other socialist countries, just like the rest of the world almost, they give us full support--diplomatic, moral, educational, and also they open their military academies to some of our freedom fighters....Our boys go to the Soviet Union. They go everywhere for their training, for their education, there is no secret about that...." Zehdi Terzi, PLO representative to the United Nations, PLO: The Russian Connection a PBS Documentary, 9/25/79

Muhammad Abu Kassem Hader, a PLO terrorist who was second in command over the terrorist attack which resulted in the coastal road massacre in Israel on March 11, 1978, admitted to participating in six months of military training and a course in engineering in the Soviet camp near the Black Sea. Another PLO terrorist also described his terrorist training in the Soviet Union including training guerilla warfare, land-to-land rocketry, and command procedures. New York Magazine, 9/24/79, pp. 67, 69

Some 150 Palestinian pilots underwent training in socialist countries. Al-Sharq al-Awsat (London), 9/13/79, as cited in Weekly Media Abstract, no. 76, 2/2/81

According to a Western intelligence report, "a military engineering course was held at Simferopol in which 25 skills were taught, including the production of incendiary devices; the preparation of electrical charges; bridge destruction; and atomic and chemical warfare." New York Magazine, 9/24/79

"Every year we send some of our personnel to train in the Soviet Union." Tala'at Yaqoub, Al-Liwa (Lebanon), 8/6/79, as cited in IDF Spokesman, September 1981, p. 12

The Russians are training Palestinian terrorists in installations near Moscow and along the Black Sea. The military academy at Simferopol in the Crimea receives PLO members selected for sabotage and terrorist training in the Soviet Union. The courses that are especially tailored for 50-60 PLO trainees include river crossings and all types of sabotage. Daily Telegraph (London), 7/16/79, as cited in IDF Spokesman, September 1981, p. 12

1000 Palestinians are getting advanced training in the Soviet Union. New York Times, 4/25/79 as cited in Weekly Media Abstract, no. 76, 2/2/81

South Yemen reportedly turned the Island of Socotra into a stronghold for the Palestinian terror organizations and for terrorists from many countries, and Soviet experts are also operating on the Island. October (Egypt), 7/23/78

32 Palestinian pilots and 60 Palestinian mechanics returned from advanced training in East Germany, Czechoslovakia, and the Soviet Union. Al-Watan al-Arabi (Paris), 7/17/78, as cited in Contemporary Mideast Backgrounder, no. 79, 2/22/80 [sic]

In March 1978 documents were discovered in Lebanon that included a map written in Russian depicting a region in East Germany used as a terrorist training camp, and graduation certificates granted to the PLO upon completing their training. Arms and terrorist materiel bearing markings of Soviet and Eastern European manufacture were also found. "The PLO, the Soviet Union and International Terrorism." Israel Foreign Ministry Information Briefing, 8/30/81

During the summer of 1977 the training branch of the PLO notified

its various member organizations that courses in infantry engineering and artillery would be held somewhere in the Soviet Union. Some two thirds of the places in these training classes were set aside for Fatah. Herbert Krosney, Herbert Krosney, "The PLO's Moscow Connection," New York Magazine, 9/24/79, p. 65

C. Intelligence-sharing

The Soviet ambassador to Baghdad conveyed a letter to Arafat from Soviet leaders detailing "recent Zionist military moves...." Algiers Voice of Palestine, 4/26/86

The KGB and GRU had extensive contacts with the PLO. "I know there was an operative in Cairo who handled PLO problems. There were two other operatives who worked out of the Cairo Embassy that shuttled to Beirut and Cairo all the time. They were in charge of liason, setting up PLO organizations in Beirut. These two looked very military, but they were KGB." Testimony of Vladimir Nikolaevich Sakharov, pseudonym of a former Soviet Ministry of Foreign Affairs official who worked clandestinely in cooperation with the KGB from 1967 to 1971, "Document 5: Testimony of Vladimir Sakharov," Hydra of Carnage, p. 516

An Iranian official informed his superiors that a Fatah official was an agent of the KGB. "Document 8: KGB Agent in the PLO," Hydra of Carnage, p. 526

In June 1982, during Operation Peace for Galilee, several documents were discovered that reasserted the robust military and intelligence linkages between the Soviet Union and the PLO. A document dated October 22, 1981, listed various air defense courses that were held in September and December of 1977, and November of 1978. Files also contained snapshots of PLO men and others undergoing training. Another document found, dated August 24, 1981, had been signed by a PLO security officer, reported that the Russian military attache in Beirut informed the PLO about Israeli efforts to acquire British military equipment during visits by an Israelis Navy officer in Singapore and Malta. A document dated February 22, 1982 provided the names of PLO personnel who studied in the Soviet Union for the following positions: battalion commanders, battalion staff officers, deputy battalion commanders, improved Strell 2 operators, and commanders of 82mm mortar batteries. "The PLO and the Soviet Bloc--What the Documents Reveal." Israel Foreign Ministry Briefing, 10/3/82

A Greek newspaper photographer admitted that he had routinely sent to Nicosia photographs of Israeli sites that were vulnerable to terrorist attack, and that these photographs had been forwarded from Nicosia to West Berlin and then handed over to the KGB. The KGB then transferred them to the PLO and other international terrorists to whom they were of interest. New York Times, 11/2/80

In September 1980, a PLO apprentice pilot was caught by security in Pakistan with secret documents which were to be handed over to the Soviets through the Soviet ambassador of Islamabad, Server Alimaniovich (formerly ambassador to Beirut). It was later ascertained that Alimaniovich was responsible for operating terrorist networks and gathering intelligence information. The apprentice pilot was expelled from his training course and from Pakistan. Daily Telegraph (London), as cited in Israel Foreign Ministry Information Briefing, 8/8/81, p. 3

During a meeting between Arafat and Soviet Ambassador in Lebanon Aleksandr Soldatov, held on March 15, 1980, Arafat "reported on the results of a visit that the PLO intelligence chief, Abu Iyad, had just made to Kuwait, Aden and Yemen." Robert Moss, "Terror: A Soviet Export," New York Times Magazine, 11/2/80

According to reports in the Lebanese press, Soviet missile experts toured PLO positions on October 24, 1979. Weekly Media Abstract, no. 76, 2/2/81

A wide ranging intelligence network exists in Pakistan aided by Palestinian terrorists. The Soviet ambassador to Pakistan, who formerly was stationed in Beirut, was reportedly in charge of the operation, and used his ties with the PLO, that he acquired during his stay in Lebanon. Furthermore, a Palestinian cadet, Zaiden Uni Mahmoud, who was arrested by the Pakistani authorities, was found to be carrying secret documents to be forwarded to the Russians. Daily Telegraph (London), September 1979, as cited in Middle East Review, Spring/Summer 1982, p. 68

"The head of PLO intelligence meets regularly each week with the Soviet ambassador to Lebanon, Mr. Soldatov." Foreign Report, 5/16/79

D. Financial support

A quid pro quo operates between the Soviet Union and the PLO: The Palestinians give training to members of such groups as the Baader-Meinhof gang, the Turkish underground, the Basque ETA and the Provisional Wing of the Irish Republican Army; in return the Palestinians get needed money --$5,000 to $10,000 for six weeks of training--and/or promises of assistance later in arranging PLO attacks on Jewish and Israeli targets in the trainees countries. Israeli intelligence specialist, Wall Street Journal, 4/26/83, p. 1

"The Soviet Union backs us in international circles and provides us with material, economic and military assistance." PLO spokesman Abd al-Muhsin Abu Maizer, Al-Qabas (Kuwait), 12/16/80, as cited in IDF Spokesman, September 1981, p.7

According to a CIA report issued in February 1980, the Soviet Union allocates approximately $200 million for "national liberation movements" --primarily the PLO. IDF Spokesman, September 1981, p. 3

The PLO received a promise of $10 million in aid from the Soviets. Daily Telegraph (London), 4/3/79, as cited in Weekly Media Abstract, no. 76, 2/2/81

In 1969, the Soviet KGB persuaded the Politburo of the Communist Party of the Soviet Union to accept the PLO as a major political instrument in the Middle East and to subsidize its terrorist policies by freely giving money, training, arms, and coordinated communications. Ray S. Cline, Jerusalem Conference on International Terror, The Jonathan Institute: July 2-5, 1979

V. Meetings between Arafat and/or deputies with Soviet officials

On April 18, 1986, Yasir Arafat met in East Berlin with Soviet leader Mikhail S. Gorbachev, secretary general of the Soviet Communist Party. MidEast Report, 5/1/86, p. 23

"We recently held talks with Soviet Foreign Minister Shevardnadze despite the fact that Soviet officials were preoccupied with the 27th CPSU Congress. A unified Palestinian delegation, led by Abu al-Lutf [Faruq Qaddumi], attended the Congress....Other meetings took place. Abu Jihad [Khalil al-Wazir], for example, visited the Soviet Union, and I also met with senior Soviet officials in Baghdad." Yasir Arafat, Middle East News Agency (Cairo), 4/17/86

Robert Turdyev, head of the settlement section in the Soviet Foreign Ministry, explained that many talks have been held between Palestinian and Soviet officials, the latest of which were those held by Faruq Qaddumi, head of the PLO Political Department, with Soviet officials in Moscow. Turdyev confirmed that contact between Moscow and the PLO "continues." Kuwait News Agency, 4/24/86, as cited in FBIS, USSR International Affairs, 4/25/86, p. H6

Arafat met with the Soviet Ambassador to Egypt on February 15, 1986, and received a message from the Soviet leadership regarding the "latest developments in the Arab world situation and bilateral relations between the Soviet Union and the PLO." FBIS, 2/18/86, p. A1

Arafat met with the Soviet Ambassador in Amman, Aleksandr Zinchuk. Petra News Agency, 1/26/86

Yasir Arafat met with the undersecretary of the Soviet Foreign Ministry in Baghdad for four hours on November 20, 1985. Washington Post, 11/21/85

Arafat met with the Soviet officials in Tunis at least 10 times in 1984 and 1985. Tunis, TAP, 12/24/85; FBIS, 4/9/85; Contemporary Mideast Backgrounder, no. 206, 4/3/85

Arafat visited Moscow in March 1985. French News Agency, as cited in Contemporary Mideast Backgrounder, no. 206, 4/3/85

Abu Iyad, Khalid al-Hassan and Abu-Mazin participate in a Fatah Central Committee delegation to Moscow. Agence France Presse, 5/30/84, as cited in Contemporary Mideast Backgrounder, no. 205, 3/27/85, p. 6

Arafat met with the Soviet ambassador in Kuwait on February 7, 1984. Contemporary Mideast Backgrounder, no. 206, 4/3/85

Arafat met with Soviet Foreign Minister Gromyko in East Berlin. Larry C. Napper, "The Arab Autumn of 1984: A Case Study of Soviet Middle East Diplomacy," Middle East Journal, Autumn 1985, p. 739

The Soviet Ambassador to Damascus mediated between Arafat and Abu Musa. Phalangist Radio, August 7, 1983, as cited in Contemporary Mideast Backgrounder, no. 205, 3/27/85

A six-man PLO delegation led by PLO "Foreign Minister" Faruq Qaddumi (Abu Lutf), of Arafat's inner circle, met with Soviet Foreign Minister Andrei Gromyko on November 23, 1983. "Document 3: Gromyko-Kaddoumi Meeting," Hydra of Carnage, p. 492

Arafat received a Soviet delegation in Tunis. PLO Radio, July 23, 1983, as cited in Contemporary Mideast Backgrounder, no. 205, 3/27/85

Arafat met with the Soviet Charge D'Affaires in Tunis. Monte Carlo Radio, 6/23/83, Ibid.

Arafat met with the Soviet Ambassador in Tunis. Beirut Radio, 6/30/83, Ibid.

Arafat met with the Soviet Ambassador in Damascus. Agence France Presse, 6/18/83, Ibid.

Arafat discussed Fatah's mutiny with the staffs of Damascus' Soviet and Yugoslavian embassies. Agence France Presse, 6/18/83, as cited in Contemporary Mideast Backgrounder, no. 163, 6/26/83.

Arafat met with the Soviet Ambassador to Kuwait. Monte Carlo Radio, 6/12/83, Ibid.

Arafat met in Damascus with the director of the Soviet Middle East Center. Agence France Presse, 6/4/83, Ibid.

Soviet delegation met with Arafat in al-Badawi refugee camp near Tripoli. FBIS, 6/3/83, p.A6

Salah Khalaf (Abu Iyad) led a four man delegation to Moscow where the Soviets agreed to supply the PLO with "anti-aircraft missiles, modern armored cars, and helicopters fitted with the most modern reconnaissance equipment...to be sent in three consignments...." Al-Hadaf (Kuwait), as cited in Middle East News Agency (Cairo), 6/10/83; Baghdad Voice of PLO, 6/2/83

Arafat visited the Soviet Embassy in Damascus. Phalangist Radio, May 31, 1983, as cited in Contemporary Mideast Backgrounder, no. 163, 6/26/83

Arafat met with the Soviet Ambassador in Tunis. Agence France Presse, 5/13/83, Ibid.

Arafat met the Soviet Ambassador in Damascus. Agence France Presse, 5/7/83, Ibid.

Gromyko's top advisor met Arafat in Tunis. Al-Wattan Al-Arabi, 4/22/83, (Lebanon), Ibid.

The Soviet Deputy Cultural Minister and Ambassador met Arafat in Tunis. Kuwait News Agency, April 22, 1983, Ibid.

Arafat discussed the Reagan Plan with the Soviet Ambassador to Kuwait. Christian Science Monitor, 4/12/83, Ibid.

Arafat met with the Soviet Ambassador to Kuwait. Qatar News Agency, 4/7/83, Ibid.

The Soviet Deputy Foreign Minister met with Arafat in Tunis. Al-Kifach Al-Arabi (Lebanon), 3/28/83, Ibid.

Arafat met with the Soviet Ambassador in Tunis. Roz al-Yusuf (Egypt), 3/21/83, Ibid.

Arafat met with the Soviet Ambassador in Tunis. Agence France Presse, 3/16/83, Ibid.

Arafat met with the Soviet Ambassador in Tunis on March 3, 1983, Ibid.

Arafat met with the Soviet Ambassador in Tunis. East German News Agency, 2/27/83, Ibid.

Arafat conferred with the Soviet and East German Ambassadors in Tunis. Iraqi News Agency, 2/3/83, Ibid.

In January 1983, Arafat met with Soviet leader Yuri Andropov, general secretary of the CPSU, in Moscow. Galia Golan, "The Soviet Union and the PLO Since the War in Lebanon," The Middle East Journal, Volume 40, No. 2, Spring 1986, p.291. Reportedly as a result of this meeting more Soviet arms were expected to be given to the PLO. Al-Mustaqbal (Lebanon), 1/22/83, Contemporary Mideast Backgrounder, no. 163, 6/26/83

Arafat conferred with the Soviet Ambassador in Damascus. Monte Carlo Radio, 1/19/83, Ibid.

Arafat conferred with the Soviet Ambassador in Damascus. Al-Siyassa (Kuwait), 12/13/82, Ibid.

Arafat and Faruq Qaddumi, a top aide, conferred with the Soviet Ambassador in Damascus. PLO's Wafa News Agency, 11/24/82, Ibid.

Arafat met with the Soviet Ambassador in Tunis. PLO Radio (Baghdad), 11/23/82, Ibid.

Arafat reportedly conferred with top Soviet leaders. Iraqi News Agency, 11/16/82, Ibid.

Arafat conferred with the Soviet Ambassador in Tunis. Qatar News Agency, 11/2/82, Ibid.

Arafat met with the Soviet Ambassador in Tunis. Wafa News Agency (PLO), 10/14/82, Ibid.

Arafat had a meeting with the Soviet Ambassador in Beirut during which he received a message from Brehznev. Agence France Presse, 6/24/82, as cited in Contemporary Mideast Backgrounder, no. 135, 7/12/82

Arafat met with Soldatov. South Lebanese Army Radio, 6/11/82, Ibid.

Arafat met with Soldatov. PLO Radio, 6/4/82, Ibid.

Arafat deputy Faruq Qaddumi (Abu Lutf) confers with Soviet Foreign Minister Gromyko in New York. TASS, 10/5/82, as cited in Contemporary Mideast Backgrounder, no. 163, 6/26/83, p. 8

Arafat met with Soviet President Leonid Brezhnev. Associated Press, 10/20/81

Arafat, Hani al-Hassan and Abu Maher met the Soviet Deputy Foreign Minister. PLO Radio (Lebanon), 5/8/81, as cited in Contemporary Mideast Backgrounder, no. 92, 6/1/81

"The key link man between Moscow and the PLO is Alksandr Soldatov, the Soviet Ambassdor, who arrived in Lebanon in September 1974. Working closely with Yasir Arafat, Soldatov suceededin building a trustworthy 'Soviet lobby' inside the PLO...." Robert Moss, "Terror: A Soviet Export," New York Times Magazine, 11/20/80

"Defectors from the PLO and high-level prisoners interrogated by the Israelis have revealed that Arafat currently meets with Soldatov on an average of once a week, and confers with the Soviet Ambassador before authorizing any major terrorist operation or political maneuver. Western diplomats who have monitored Soldatov's activities in Beirut found that, in the space of six weeks earlier this year [1980], the two men had at least seven lengthy consultations." Ibid.

Arafat and Khalid al-Fahum, chairman of the Palestine National Council, met with Soviet Vice President Koznetsov, Associated Press, TASS, 12/3/80, as cited in Contemporary Mideast Backgrounder, no. 76, 2/2/81

In 1979, a PLO delegation, led by Yasir Arafat, met in Moscow with Soviet Foreign Minister Gromyko and International Department Chief Boris Ponomarev to discuss coordination on issues ranging from strategy in the UN to thwarting US diplomatic initiatives in the Middle East. "Document 4: Arafat Meeting with Gromyko and Ponomarev," Hydra of Carnage, p. 499

Arafat met with Soviet Foreign Minister Gromyko. Radio Moscow, 3/25/79, as cited in Contemporary Mideast Backgrounder, no. 76, 2/2/81

Arafat first visited Moscow in the summer of 1968 as part of a delegation headed by Egyptian President Gamal Abdal Nasser....Arafat's subsequent journeys to the Kremlin took place in February 1970; October 1971; July 1972; November 1973; August 1974; April, November 1975; April, August 1977; March, July, 1978; May, November 1979. "The Soviet-PLO Axis," Anti Defamation League Special Report, 1980, p. 5

DOCUMENT 6

The Reagan Administration and the P.L.O

"The PLO and its allies and affiliates are in the thick of international terror. And the leader of the PLO, Yasser Arafat, must ultimately be held responsible for their actions...- The policy of the Justice Department and of President Reagan is to put the highest priority on going after those who actually control the terrorist organizations and who pay to send their henchmen on the various terrorist missions.

--Edwin Meese III
April 8, 1986

"The PLO is not entitled to any payment in advance so long as it rejects what are the basic premises of the peace process. [Israel] cannot be expected to make concessions to those who resort to terrorism and who treat negotiations as only a way station on the road to its ultimate destruction. . . . Unlike some of our European friends, . . . we feel that gestures toward the PLO while it has not accepted 242 and 338 only mislead its leaders into thinking their present inadequate policy is gaining them international acceptance and stature."

--George Shultz
December 10, 1985

"Terrorists are cowardly animals. They are not fighting for some liberation movement. They lack the guts to seek justice and peace by negotiation. We have to take action."

--George Shultz
December 14, 1985

"The PLO has been involved in recent weeks, as in the past, in acts of terror and violence, and I don't see how those who are perpetrating terror and violence...deserve a place at the peace table."

--George Shultz
December 31, 1985

"The Israelis will not sit down and talk to people who represent the PLO which is dedicated to the destruction of Israel and terrorism as a way of life."

--Vernon Walters
October 27, 1985

"What seems to happen is that there are moments when the PLO says, 'We're speaking for all the Palestinians, and then at other moments it seems more handy to say, 'This is a splinter group of a splinter group of a splinter group,' and nobody knows quite what. Right now it seems as though Mr. Arafat and the PLO have some role and control over [the hijackers of

the Achille Lauro] and their whereabouts, and they ought to turn them over to the proper authorities so they can be prosecuted."

--George Shultz
October 10, 1985

"There has been no change in the U.S. commitment not to negotiate with the PLO, unless that organization formally recognizes Israel's right to exist and disavows terrorism. It is indeed tragic that the PLO bureaucracy remains more interested in its own survival, as opposed to improving the quality of life of the people whom the PLO purports to represent."

--Robert McFarlane
March 8, 1984

"Anyone who thinks that we can stop these suicide bombings by cozying up to the PLO, or by walking away from Israel, is dead wrong."

--Kenneth Dam
October 1, 1984

"The terrorists who assault Israel are also enemies of the United States. When Libya and the PLO provide arms and training to the Communists in Central America, they are aiding Soviet efforts to undermine our security in that vital region."

--George Shultz
June 24, 1984

"The PLO sponsors terrorism, and its charter still calls for the destruction of the "Zionist entity." So long as the PLO refuses to recognize Israel's rights to exist and to accept Security Council Resolutions 242 and 338, the United States will neither recognize nor negotiate with the PLO."

--George Bush
April 9, 1984

"The PLO--and let there be no doubt about this--is nothing more or less than an international Ku Klux Klan, pledged to hatred, violence and the destruction of the values and free institutions we hold dear."

--George Bush
October 19, 1980

"Terrorists are not guerrillas, or commandos, or freedom fighters or anything else. They are terrorists and they should be identified as such. If others wish to deal with them, establish diplomatic relations with them, let it be on their heads. And let them be willing to pay the price of appeasement."

--Ronald Reagan
September 3, 1980

"President Carter refuses to brand the PLO as a terrorist organization. I have no hesitation in doing so."

--Ronald Reagan
September 3, 1980

DOCUMENT 7

AMERICANS SUPPORT STRONG ACTION AGAINST PLO TERRORISM

The American public overwhelmingly approves President Reagan's decisive action against PLO terrorism.

> 80% approved of the way President Reagan handled the hijacking of the Achille Lauro incident and the events that followed, when the U.S. intercepted the plane carrying the PLO mastermind of the hijacking and his collaborators. (Harris Survey, Oct. 1985)

Americans favor strong action against terrorism even when it runs the risk of straining relations with its allies.

> By a margin of almost 3:1, Americans think that it is more important to take action against terrorists, such as those who hijacked the Achille Lauro, than to maintain good relations with countries like Italy. (Washington Post-ABC News Poll, Oct. 24-28, 1985)

Americans oppose appeasement of terrorists.

> By more than 2:1, respondents in a poll on the TWA hijacking opposed negotiating with the Shiite terrorists who hijacked the plane. A majority felt that the U.S. should refuse to give in to terrorist demands. (NBC News Poll, July 8, 1985)

Opposition to the PLO is at an all time high. (Harris Survey, Oct. 1985).

> 82% of Americans feel the PLO is "unreasonable and probably will make it impossible to work out a peace settlement." (Harris Survey, Oct. 1985).
>
> 86% feel the PLO is not friendly and an enemy of the United States. (Harris Survey, Oct. 1985)
>
> The last authoritative poll showed that by a margin of 2:1 Americans believe the U.S. should neither officially recognize the PLO nor agree to have Israel sit down to negotiate with the PLO. (Harris Survey, 1981).

The Harris Survey

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HOSTILITY TOWARD PLO UP SHARPLY

By Louis Harris

As a result of the recent hijacking of the Italian cruise ship in the Mediterranean, hostility toward the Palestinian Liberation Organization has risen sharply. By 86-7 percent, a big majority of the American public feels negative toward the PLO.

Even more significant, fully 52 percent of the people now believe the PLO is an enemy of the U.S., up sharply from 38 percent who felt that way in 1983. The only other countries which have been viewed with the same hostility in the recent past by the American people are Iran during the time when they held American hostages in 1979 and 1980 and the Soviet Union.

The cause of this hostility toward the PLO is not hard to find, according to the latest Harris Survey conducted by telephone among a national cross section of 1,252 adults between October 23rd and 27th:

-- By 73-24 percent, a majority of the American people goes along with the claim that "the takeover of the ship and the murder of a crippled American passenger proved that the PLO is no better than a band of terrorists, unfit for the U.S. to have anything to do with.

As a consequence, a substantial 82-10 percent majority is now convinced that instead of the PLO being reasonable and willing to work for a just peace settlement in the Middle East, it has "unreasonable leadership that probably will make it impossible to work out a peace settlement."

Finally, by 54-41 percent, a majority opposes having the PLO included in peace negotiations over the West Bank between Israel and the Arabs. Instead, a substantial 64-29 percent majority favors having "Palestinian leaders not affiliated with the PLO" at the negotiating table.

The price to the Arab side as a result of the hijacking episode has been appreciable. A 64-14 percent majority of the public now says they sympathize more with the Israelis than with the Arabs; 10 percent sympathize with neither side and 3 percent sympathize with both. However, in 1980, the results of an identical inquiry showed that a lower 52 percent were sympathetic with Israel, 12 percent with the Arabs, 17 percent with neither side and 9 percent with both sides. Clearly, antipathy toward the PLO has swung American public opinion more over to the Israeli side than at any time in recent history.

The irony is that Jordan and Egypt, Israel's Arab neighbors are relatively well regarded by the American people:

-- By 48-33 percent, a plurality feels positive about Jordan, down slightly from a previous 52-28 percent. In the case of Egypt, which is in a special category ever since Anwar Sadat made his dramatic peace visit to Jerusalem in 1979, a higher 63-27 percent majority feels friendly toward that country, down from 77-13 percent who felt that way in 1983.

-- By 55-28 percent, a 2 to 1 majority is convinced that Jordan has reasonable leadership that wants to work for a just peace settlement, a sentiment that is shared by a higher 69-22 percent in the case of Egypt.

These results clearly point to the fact that if Jordan and Egypt insist that the PLO accompany them to any negotiations over the West Bank settlement issue then they will meet with little sympathy from the American people. By the same token, if a Palestinian alternative to the PLO were found, then this would engender much backing in this country.

But, as a consequence of the four PLO members being caught in the Egyptian plane and also being indicted for the murder of an American, the PLO is in effect viewed as an outlaw force of whom the American people want no part.

The PLO is not the only force whom the American people would ban from the negotiating table. In the case of the Soviet Union serving as a kind of "co-sponsor" of peace talks, a position the Russians have wanted to fill in the past and which the Israelis have talked about as a possibility recently, a big 69-27 percent say they would be opposed to this happening.

T A B L E S

Between October 23rd and 27th the Harris Survey asked a nationwide cross section of 1,252 adults by telephone:

"Now, I'm going to read you the names of some countries or groups. For each, tell me if you feel that country is a close ally of the U.S., is friendly but not a close ally, is not friendly but not an enemy, or is unfriendly and an enemy of the U.S.?"

EGYPT, JORDAN, PLO FRIENDLY NATIONS?

	Close Ally	Friendly	Not Friendly	Enemy	Not Sure
	%	%	%	%	%
Egypt					
October 1985	13	50	24	3	10
May 1983	21	56	11	2	10
Jordan					
October 1985	7	41	28	5	19
May 1983	9	43	24	4	20
PLO					
October 1985	1	6	34	52	7
May 1983	2	9	37	38	14

"In the dispute between Israel and the Arabs, which side do you sympathize with more -- Israel or the Arabs?"

SYMPATHY WITH ISRAEL OR THE ARABS

	October 1985	July 1980
	%	%
Israel	64	52
Arabs	14	12
Neither (vol.)	10	17
Both (vol.)	3	9
Not sure	9	10

"I'm going to read off some countries and groups, and for each one, I'd like you to tell me if you feel it has leadership which is reasonable and which will really work for a just peace settlement in the Middle East, or if it has unreasonable leadership that probably will make it impossible to work out a peace settlement."

	Reasonable	Unreasonable	Not Sure
	%	%	%
Israel	72	22	6
Egypt	69	22	9
Jordan	55	28	17
Saudi Arabia	51	37	12
Syria	30	52	18
PLO	10	82	8

"If peace negotiations between Israel and the Arabs take place, would you favor or oppose (READ EACH ITEM) being included in the negotiations?"

PARTICIPANTS IN MIDDLE EAST PEACE NEGOTIATIONS

	Favor	Oppose	Not Sure
	%	%	%
Egypt	77	18	5
Jordan	72	20	8
Palestinian leaders not affiliated with the PLO	64	29	7
PLO	41	54	5
Russia as a sponsor of the negotiations	27	69	4

M E T H O D O L O G Y

This Harris Survey was conducted by telephone within the United States between October 23rd and 27th, among a cross section of 1,252 adults nationwide. Figures for age, sex, race and education were weighted where necessary to bring into line with their actual proportions in the population.

In a sample of this size, one can say with 95 percent certainty that the results have a statistical precision of plus or minus three percentage points of what they would be if the entire adult population had been polled.

This statement conforms to the principles of disclosure of the National Council on Public Polls.

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III. Legal Avenues for the United States To Pursue in Prosecuting Terror

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DOCUMENT 8

President Reagan on the Use of the Legal Instrument Against Terrorism

"We must act against the criminal menace of terrorism with the full weight of the law, both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks."

Address to the American Bar Association, July 8, 1985 (as reported in the New York Times, 7/9/85, p.1)

DOCUMENT 9

EXPOSING ARAFAT'S COMPLICITY IN THE SEIZURE OF THE ACHILLE LAURO

Recently, efforts have been made to disassociate Mohammad Abu Abbas, the mastermind of the Achille Lauro hijacking, from Yasser Arafat, the head of the PLO. The New York Times reported that "the PLO officials have voiced suspicions that Mr. Abbas had in fact turned his loyalty from Mr. Arafat to anti-Arafat forces before the hijacking." (March 23, 1986)

In fact, before, during, and after the hijacking of the Achille Lauro Arafat, Abu Abbas and other PLO officials have affirmed the close relationship between Arafat and Mohammad Abu Abbas, member of the PLO Executive Committee.

Before the hijacking

Mohammad Abbas and Yasir Arafat met several times before the hijacking of the Achille Lauro:

* Arafat and Abbas both addressed the Palestinian Liberation Front Congress on Sept. 5, 1985 in Baghdad, just one month before the hijacking of the Achille Lauro. Both praised Iraq's stand on the "Palestinian revolution" and condemned Syria's Assad and Libya's Qaddaffi. Abbas reportedly was traveling on an Iraqi passport. (FBIS: 10/9/85)

* Abbas and Arafat met just two days before the hijacking as well. In Abbas' own words, "I have not seen Arafat since the 4th day after the Israeli raid on Tunis." The hijacking began on Oct. 7. Abbas indicated that he saw Arafat on Oct. 5, 1985. (FBIS, 10/20/85)

There is evidence that Abu Abbas spoke with PLO headquarters in Tunis prior to the hijacking:

* Italian Defense Minister Spadolini said that he has "proof that the hijackers of the Achille Lauro telephoned PLO headquarters in Tunis before seizing the cruise liner. 'We have discovered tapes of telephone calls from Genoa to Tunis, headquarters of the PLO, before the hijacking.'" (WP: 11/11/85;A38)

* Italian magistrate Luigi Carli sketched out a meticulous plot that Abbas allegedly began planning the hijacking last January. (WP: 11/14/86: A25) It is not likely that Abbas did not get the approval of, if not consult Arafat, during the 10 months that he so carefully planned the hijacking.

During the hijacking:

Abbas spoke candidly about who he takes his orders from:

* Abbas said he went to the Egyptian harbor Tuesday, Oct. 8, "at Mr. Arafat's behest," reportedly to mediate an end to the hijacking." (NYT, 10/10/85)

* And, Abbas told the Egyptian News Agency that he was "dispatched by Arafat to resolve the hijacking." (WP: 10/14/85)

One hijacker confessed that Arafat was his leader:

* Ibrahim Abdelatif, who is serving a seven year sentence in connection with the Achille Lauro, said he was a follower of PLO leader Yasser Arafat. (UPI:1/28/86)

After the hijacking

Arafat and his chief aides publicly supported Abu Abbas even after the hijacking, despite public so-called condemnation of the hijacking:

* Shortly after the hijacking, at a **joint interview with Arafat,** Abu Iyad, Arafat's second in command, vowed to support Abbas. He said that the organization "will not abandon Abu Abbas." (Radio Monte Carlo, Oct. 17, 1985)

* Arafat explicitly said that Abu Abbas is from the PLF group loyal to him. Asked if he authorized Abbas to talk with the terrorists and "to represent you," Arafat replied: "I sent two men: Abu Abbas and Hani al Hassan. They were joined by the leader of our Cairo office...The PLF is made up of four groups...Abu Abbas is the leader [who] is with us in Tunis." (Budapest Television Service, 11/28/85)

* Abu Abbas attended the meeting of the PLO leadership that convened in Baghdad at the end of November. (British Broadcasting Company, McNeil-Lehrer, 12/27/85) Following the meeting, when asked if he had been questioned by the PLO Central Committee about the Achille Lauro, Abbas stated that "it has been my duty to inform brother Abu Ammar (Yasser Arafat) of the details [of the Achille Lauro] during our first meeting." (Al-Ittihad Al-Usbu'i, 12/5/85)

Abu Abbas remains a member of the PLO Executive Committee, the position to which Arafat promoted him. He remains closely tied to Arafat. Attempts to disassociate Arafat, the architect of PLO terror, from PLO hijackings and murders continues today as it has in the past.

DOCUMENT 10

Yasir Arafat and the 'Achille Lauro'

Phil Baum & Raphael Danziger

ON MARCH 1, 1973, eight heavily-armed Palestinian terrorists of the Black September organization burst into the Saudi Embassy in Sudan, seized five diplomats attending a reception, and demanded the release of Palestinian terrorists jailed in several countries in return for the release of their hostages. On March 2, after their demands were rejected, the terrorists brutally murdered U.S. Ambassador Cleo A. Noel, U.S. Embassy counselor George C. Moore, and a Belgian diplomat. On March 4 the terrorists surrendered to Sudanese authorities after a 60-hour occupation of the Embassy.

President Numeri's charge that Yasir Arafat's organization Al Fatah had masterminded the outrage was vehemently and successfully denied by Arafat. It was only in 1981 that Salah Khalaf (also known as Abu Iyad), Arafat's second-in-command in Al Fatah, revealed in his book *My Home, My Land* that he himself had been the leader of Black September; by that time, however, the murders (as well as other Black September crimes such as the assassination of 11 Israeli athletes at the Munich Olympics) had been forgotten and Al Fatah's reputation as a "moderate" organization not engaged in terrorism firmly established.

When, on October 7, 1985, the Italian cruise ship *Achille Lauro* was hijacked in the Mediterranean by a group of unknown Palestinian terrorists who subsequently murdered the elderly, crippled American Leon Klinghoffer, it seemed as if Arafat would once again literally get away with murder. As soon as news of the *Achille Lauro*'s hijacking hit the headlines, the PLO denied any knowledge of, let alone complicity in, the affair. On October 7, none other than Salah Khalaf said that the gunmen who had hijacked the ship belonged to a new, small Palestinian group not affiliated with the PLO (*New York Times*, Oct. 8). On October 8, the PLO denied that the hijackers belonged to any of the groups loyal to Arafat (*New York Times*, Oct. 9). And on October 9, Arafat himself denied any PLO involvement in the hijacking (*New York Times*, Oct. 10).

Furthermore, on October 10, the head of the PLO's political department, Farouk Kaddoumi, told reporters in New York after a Security Council meeting that the reported murder of an American passenger aboard the ship was a "big lie fabricated by the intelligence service of the United States" (*Washington Post*, Oct. 11). In a number of television interviews leading Middle East specialists accepted the PLO's denials at face value, saying that Arafat had long since renounced terrorism in favor of peaceful diplomacy; the hijacking, they suggested, must have been perpetrated by an anti-Arafat splinter group bent on undermining his constructive role as a peacemaker.

When, on October 9, a deal was struck between the hijackers and a PLO-Egyptian-Italian negotiating team for the release of the ship to Egyptian authorities, Arafat's stock in the West immediately reached a new peak. Italy's Foreign Minister Giulio Andreotti argued that the end of the hijacking proved that those who had denounced Rome's approach to the PLO were wrong, and he criticized what he termed the "habitual distrust" that he said characterized Israel's attitude toward the PLO (*New York Times*, Oct. 10). Even President Reagan at first implicitly endorsed the PLO's protestations of innocence and even of outrage at the hijacking when he suggested that it would be proper for the PLO to punish the hijackers as Arafat had proposed. To his credit, however, the president promptly disavowed this misguided statement (*New York Times*, Oct. 11).

Within 24 hours, however, the PLO's protestations of innocence were fast crumbling. In an incisive page-one news article (Oct. 11), the *New York Times*'s Pulitzer-prize-winning correspondent Thomas L. Friedman summed up the mounting evidence of direct PLO complicity in the hijacking. Friedman made the following points:

1) The leader of the faction that ordered the operation, Muhammad Abbas, also known as Abu Abbas, is a close associate of Yasir Arafat, and was sent by Arafat to deal with the hijackers after their plan to reach Ashdod, Israel, aboard the *Achille Lauro* for the purpose of committing terrorists acts there had been foiled. This information was provided not only by Israel's Foreign Ministry and military officials but also by Arab analysts in Beirut and a statement issued on October 10 in Nicosia, Cyprus, by a spokesman of Abu Abbas's faction in the Palestine Liberation Front (PLF), one of the component groups of the PLO.

2) David Kimche, director general of Israel's Foreign Ministry, said Israel had "irrefutable proof" that Arafat himself was aware of the operation from the beginning. Mr. Kimche said Israel could not release the evidence without compromising its intelligence sources. According to Friedman, the best indication that Arafat may have had advance knowledge of the operation is the fact that the Abu Abbas faction is "little more than an extension of Mr. Arafat's own Al Fatah group." As Friedman points out, when the PLO broke up in 1984 into pro-Syrian and pro-Arafat segments, the PLF broke up into three factions, one of which, under Abu Abbas, aligned itself with Arafat. In gratitude for Abu Abbas's support, Arafat had him elected to the PLO's ruling 11-member executive committee at the Palestine National Council meeting in Amman last November. Abu Abbas then moved his headquarters to Tunis, where Arafat's own headquarters are also located.

PHIL BAUM *is associate executive director of the American Jewish Congress.* RAPHAEL DANZIGER *is the policy analyst of AJCongress's Commission on International Affairs.*

On October 16, the Israeli government released a tape recording of a ship-to-shore conversation between Abu Abbas and the Palestinian hijackers of the *Achille Lauro*. An army spokesman in Jerusalem said the tape was released in response to repeated requests by foreign correspondents. The tape provides conclusive evidence that Abu Abbas was not just a negotiator in the surrender of the hijackers to Egyptian authorities in Port Said, but was also a key figure in the takeover of the ship.

In his conversations with the hijackers (text in *New York Times, Washington Post*, Oct. 17), Abu Abbas instructs them to apologize to the passengers and crew and to "tell them *our* objective was not to take control of the ship" (emphasis added). Clearly, this is no negotiation of a surrender; Abu Abbas here is in a position of authority, transmitting orders to his subordinates. But even prior to the release of this "smoking gun" proof of Abu Abbas's complicity in the hijacking, in the face of already overwhelming evidence Abu Abass's PLF, on October 14, for the first time officially admitted it had carried out the hijacking. In a communiqué issued at its Tunis headquarters the group said the operation had followed a "military order issued by the PLF military command" (*Washington Post*, Oct.15). And as the autopsy of Leon Klinghoffer's body has established, the PLO's claim that no one was murdered aboard the ship was another brazen lie.

Forced to abandon its initial, thoroughly exposed lie that it had nothing to do with the hijackers, the PLO now retreated to a second, equally fraudulent line of defense. Following the PLF's admission of complicity, top Al Fatah official Khalid Hassan claimed that the PLF had received no PLO authorization or funding for the operation and should therefore be disciplined by the PLO's executive committee (*Washington Post*, Oct. 15). This absurd claim hardly merits comment. Suffice it to say that as a fully-integrated component group of the PLO operating out of the same town, it is inconceivable that the PLF would have embarked on such a major operation without having secured the prior approval of the PLO's top leadership.

But is it nonetheless possible that Yasir Arafat himself had no prior knowledge of the hijacking? While in the nature of things direct evidence of Arafat's personal complicity is highly unlikely ever to come to light, the possibility that he had not been apprised of the operation seems so remote as to be incredible. As a PLO executive committee member only recently hand-picked by Arafat, Abu Abbas would hardly have sprung such a momentous surprise on his boss. And since Arafat is known personally to control the PLO's purse strings, an expensive operation such as the *Achille Lauro*'s hijacking could not have possibly been carried out without his prior approval. The comment attributed to one of the cruise ship's hijackers by the Spanish passenger Sancho Casabona, "We came here on behalf of Arafat," may therefore be taken at face value. As stated by the *Wall Street Journal* (October 14), there is a "direct line from the PLO to Mr. Arafat to Mr. Abbas to the hijackers of the *Achille Lauro* to the murder of Leon Klinghoffer."

Since the publication of Friedman's article, the weight of rapidly accumulating evidence has removed that last remaining doubt as to Arafat's complicity in the ship's hijacking. In particular, the U.S. Navy's dramatic interception of the Egyptian jetliner carrying the Palestinian terrorists has led to an influx of pertinent information.

Prior to the plane's interception, much of the evidence linking the hijacking to the PLO had come from Israeli intelligence, raising suspicions in the minds of some that it was merely self-serving rumor. Since that time, however, the Israeli-supplied information has been fully confirmed by U.S. intelligence. And since the Administration had long been seeking the PLO's blessing for a Jordanian-Palestinian negotiating team, it had no conceivable political motive for wishing to implicate the PLO in the hijacking. Yet on October 12 U.S. District Court Judge Charles K. Richey signed an arrest warrant for Abu Abbas, the PLO executive committee member, based on an affidavit outlining the government's evidence, which remains sealed because it contains sensitive intelligence information (*Washington Post*, Oct. 15).

State Department legal advisor Abraham D. Sofaer said on October 14 that the evidence against Abu Abbas relies heavily on transcripts of intercepted radio comunications between him and the hijackers aboard the ship. A Justice Department official was quoted by the *Washington Post* as saying, "The evidence we have right now is that he participated in all of this, guiding them throughout." Federal authorities said that despite Abu Abbas's insistence that his role was confined to negotiating with the hijackers' surrender, they have evidence that he was involved in the plot that led to the seizure of the ship (*Washington Post*, Oct. 15). On the basis of the evidence, the White House issued on October 13 an official statement in response to Italy's decision to free Abu Abbas, in which it described him as "involved in savage attacks on civilians." According to the statement, Abu Abbas was "criminally implicated in the hijacking of the *Achille Lauro*—indeed... planned and controlled the operation" (*New York Times, Washington Post*, Oct. 14). The evidence has become so overwhelming that on October 30, Italy's highest criminal court found it necessary to defy its own government's wishes by upholding an arrest warrant for Abu Abbas issued earlier by Sicilian magistrates (*New York Times*, Oct. 31).

DOCUMENT 11

Memorandum re: Request for grand jury investigation into criminal responsibility under U.S. Law of perpetrators of Achille Lauro hijacking and other terrorist actions

Under a provision added to the Federal Criminal Code by the Comprehensive Crime Control Act of 1984, there now is clear jurisdiction under U.S. law to prosecute hijackings committed overseas where U.S. nationals are taken hostage and/or the hijackers seek to pressure the government of the United States.

This provision, contained in Section 1203 of Title 18 of the United States Code, reads as follows:

> §1203. Hostage taking
> (a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts to do so, shall be punished by imprisonment for any term of years or for life.
>
> (b)(1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless--
>
> (A) the offender or the person seized or detained is a national of the United States;
> (B) the offender is found in the United States; or
> (C) the governmental organization sought to be compelled is the Government of the United States.
>
> (2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.
>
> (C) As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

This law clearly reaches the terrorist conduct perpetrated against American nationals taken hostage on the Achille Lauro. In addition, by virtue of other provisions of

the Federal Criminal Code, prosecutions may be brought not only against those who directly perpetrated the hijacking, but against higher-ups in their organization and others who assisted, counseled, commanded, induced or caused the offense (Section 2, Title 18, United States Code), or who conspired with the perpetrators to commit the offense (Section 371, Title 18, United States Code).

Since violations of Section 1203 are felonies, the United States Constitution requires that a federal grand jury vote for an indictment before a prosecution may proceed. Prior to the return of an indictment, a prosecution may be instituted by the issuance of an arrest warrant by a federal judge or magistrate who finds from affidavits, sworn to by federal law enforcement personnel or others and presented by federal prosecutors, that there is probable cause to believe that a named individual committed the offense in question. Thus for example a warrant for the arrest of Abu Abbas for his role in the Achille Lauro hijacking was reportedly issued by a federal judge. But Abbas can be brought to trial, if he is extradited, only if a grand jury votes to indict him. Since grand jury proceedings are conducted in secret (as provided by Rule 6 of the Federal Rules of Criminal Procedure), we do not know whether evidence against Abu Abbas has as yet been submitted to a federal grand jury.

In any event, a federal grand jury has the power -- and we believe the responsibility -- to determine through an appropriate investigation the identity of all persons whom there is sufficient evidence to indict for complicity in the Achille Lauro hijacking. One obvious person whose possible complicity should be considered by the grand jury is Yasser Arafat; in view of Arafat's close association with Abu Abbas, and the fact that a federal judge has found from the evidence presented to him that there is probable cause of Abbas' guilt, the question of whether Arafat conspired with Abbas in this matter, or counseled, commanded, or assisted the hijacking, is certainly worthy of the grand jury's attention.

It seems likely that evidence as to the criminal complicity of Abbas, Arafat, and other higher-ups, to the extent it is available, would be within the possession of intelligence or law enforcement agencies of the U.S. or its allies (especially Italy and Israel).*/ It is also likely that such agencies, and/or the State Department, might have reasons of their own for being reluctant to allow public disclosure at this time of certain items of evidence (e.g., electronic surveillances that might reveal intelligence methods or sources).

One great virtue of the grand jury procedure, in light of such considerations as to confidentiality of sources, is that by law grand jury testimony must be heard in secret. During the investigation it remains secret; it may not be revealed without court order (unless the witness voluntarily chooses to do so, which in this case seems unlikely). The protection of grand jury secrecy may make the agencies and governments in question more willing to make necessary evidence available.

The grand jury is not limited to hearing evidence that would be admissible under the formal rules of evidence applicable to a criminal trial. Thus, for instance, the grand jury may receive hearsay evidence to assist in its investigation, including for instance evidence summarizing reliable information gathered by an intelligence agency. This too is likely to make the agencies in question more willing to cooperate in providing information to the grand jury in a manner they would find compatible with their security concerns. Of course, by the time of a trial of persons who are indicted, the prosecutors must have sufficient evidence, which the government is willing to produce in open court, to prove guilt beyond a reasonable doubt. But realistically there is likely to be a long period of time which passes before indictments are returned and the

*/ For example, David Kimche, Director-General of the Israel Foreign Ministry, has said that Israel has "absolute, complete and irrefutable proof that Arafat knew about this operation before it was about to begin." And the chief of Israeli Military Intelligence, Major General Ehud Barak, has stated: "Israel has irrefutable proof of Arafat's involvement." Washington Post, October 14, 1985, pages 1, 31.

extradition of the accused to stand trial can be secured (if it ever can). The passage of time may well make more evidence available for disclosure at a public trial, for example because it has already been revealed in the course of the criminal proceedings against the hijackers in Italy, or because sources or methods cease to be confidential for security purposes. There is thus no reason to defer the start of a grand jury investigation into the hijacking merely because some of the evidence might not be publicly disclosable at the present time.

A federal grand jury, when it undertakes an investigation, is not limited to investigating one particular crime. On the contrary, grand jury investigations into activities of allegedly criminal organized groups are likely to be far-ranging. Therefore, if a grand jury is impaneled to investigate the Achille Lauro hijacking (or if such an investigation is referred to a grand jury which is already sitting), the same grand jury may also receive evidence of other terrorist actions. For example, press reports have indicated that there is significant evidence that Yasser Arafat personally ordered the assasination of U.S. Ambassador to the Sudan, Cleo Noel, in 1973. And evidence may be obtainable for a grand jury of numerous other terrorist acts with U.S. victims or other jurisdictional ties to the U.S. (See for example the N.Y. Times, January 19, 1986, page 1.) Since a federal grand jury has the power to subpoena witnesses and documents from any place in the United States (and sometimes beyond), a great many sources of evidence are potentially available.

Finally, a potent weapon for indicting and prosecuting persons and groups involved in a longstanding series of criminal terrorist acts is provided by the so-called RICO statute (Sections 1961-1968 of Title 18 of the United States Code). A grand jury investigation could well result in an indictment including criminal charges under this law. The application of RICO to terrorist acts and organizations is the subject of a

separate memorandum, prepared by Irvin Nathan, which can be made available on request.

In light of the foregoing considerations, interested organizations and individuals may wish to request that the Department of Justice convene a grand jury to investigate the Achille Lauro hijacking and other terrorist offenses.

Respectfully submitted,

Robert L. Weinberg
Co-Chair, Commission on Law and Social Action, American Jewish Congress, National Capital Region

DOCUMENT 12

**Violations of the Foreign Agents Registration Act (FARA)
Committed by the Palestine Information Office (PIO)**

1) Section 2(3) of FARA requires "A comprehensive statement of the extent ...to which [the] foreign principal is...financed or subsidized, in whole or in part, by any government of a foreign country ..."

The PIO's registration statement of April 17, 1978, item 8(b) states that the PLO is not subsidized by any foreign government. The same registration, item 9, states to the contrary that the PLO is financed in part by "direct financial aid from Arab states."

In none of the original or subsequent statments has the PIO reported the extent to which its foreign principal is financed or subsidized in whole or in part by any government of a foreign country.

2) Section 2(3) of FARA also requires a "comprehensive statement of...the character of the business or other activities" of the foreign principal.

The PIO registration states that the nature of the business activity of its foreign principal, the PLO, is "a representative and democratic organization dealing with the political, social and economic affairs of the Palestininan people" (PIO registration statement April 17, 1978 item 8(a))

Secretary of State George Shultz stated that "The PLO has been involved in recent weeks, as in the past, in acts of terror and violence." Attorney General Edwin Meese stated that "We know that various elements of the PLO and its allies and affiliates are in the thick of international terror." It is clear that the PIO has failed to provide a "comprehensive" description of the PLO's activities.

3) According to Section 2(3), the foreign agent must file a "the name and address of every foreign principal for whom the registrant is acting..."

The PIO describes its foreign principal as "the PLO" and the address as "Tunis, Tunisia." Because the PLO is an umbrella organization, this is an unresponsive answer. Is the PIO, for example, controlled by the PLO's 11 member executive committee, including Abu Abbas? Or is it controlled by the central committee of Fatah, of which Salah Khalaf is a prominent member? The registration fails to provide the required information of who are the controlling parties within the foreign principal. This goes to the heart of the question of whether the Washington office is involved in terror.

4) Section 2(9) of FARA requires "Copies of each written agreement and the terms and conditions of each oral agreement... by reason of which the registrant is performing...any activities which require his registration hereunder."

To determine whether the PIO office in Washington acts in support of the terrorist philosophies of its foreign principal, much more specific information is required about the services it performs for its parent organization.

ENFORCEMENT

The rules that have been issued under Section 8 of FARA provide that a registrant must cease activity as an agent of a foreign principal no more than 10 days after receiving notification from the Attorney General that there is a deficiency in the registration statement, unless the agent files within these 10 days an amended statement that is in full compliance with the Act and the rules.

The Attorney General may also make application to the appropriate U.S. district court for an order enjoining a person from continuing to act as an agent of a foreign pricipal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. (Section 8(f,g))

[From the New York Times, Apr. 13, 1986, p. A18]

In Europe, P.L.O. Comes Under Close Watch

By HENRY KAMM
Special to The New York Times

ATHENS, April 12— In a period of heightened vigilance against terrorism in Europe, Palestine Liberation Organization offices in 18 non-Communist countries are under close scrutiny by security and intelligence agencies.

European and other officials say there is a dual purpose: to insure that those representing the P.L.O. in Europe carry out only their official functions, and to protect them against possible attacks by Palestinians opposed to Yasir Arafat, the P.L.O. leader.

In Greece, Cyprus, Turkey and Malta, the P.L.O. offices have diplomatic status equivalent to that of embassies. Officials have diplomatic immunity and are entitled to encode their communications and use diplomatic pouches that are not subject to inspection by host governments.

In France, Italy, Switzerland and Austria, the organization enjoys similar rights as an accredited observer to international organizations there.

Information Offices

Elsewhere, the missions are designated as information offices — in Belgium, Britain, Denmark, Finland, West Germany, the Netherlands, Norway, Portugal, Sweden and Spain, although Spanish officials announced March 22 that they would grant the P.L.O. office in Madrid diplomatic status. In some of those countries, the offices are part of the missions of the Arab League and thus have access to some diplomatic prerogatives.

There was a time when the P.L.O. was the main focus of counterintelligence to prevent Palestinian terrorist acts, according to an American expert on terrorism in a Western capital. Now, he said, concerned agencies are struggling to keep track of more shadowy groups and ad hoc plots.

In recent days, for example, the United States has asked Western European nations, as well as those in the Middle East, to increase security for American diplomats because of concern over the possibility of Libyan acts of revenge in the wake of fighting in waters off Libya between American naval forces and Libya.

Most Terrorism in Europe

According to the Project on Terrorism of the Jaffee Center for Strategic Studies at Tel Aviv University, terrorist acts attributed to Palestinians last year more than doubled in number over 1984, from 32 to 67. The center said Al Fatah, the P.L.O. group that Mr. Arafat heads, carried out 13 of these actions. It also said that 48 of the 67 acts took place in Europe.

For the time being, Government officials in various countries said, Mr. Arafat's European representatives seem to be following the P.L.O. leader's emphasis on conducting political actions and not terror attacks outside Israel and the territories it occupies.

But security officials in several capitals contended that whatever the present attitude toward terrorism by Mr. Arafat's mainstream followers, several of the organization's European representatives have been at least indirectly implicated in terrorist acts.

Recruiting Activity Reported

David Kimche, director general of the Israeli Foreign Ministry, said in an interview in Jerusalem that people attached to P.L.O. offices in Europe were preparing a suppprt structure for terrorist operations. He described this activity as recruiting, renting safehouses, providing identity documents, choosing potential targets and collecting operational intelligence.

According to Prof. Paul Wilkinson of Aberdeen University in Scotland, a specialist in Palestinian movements, "there are several kinds of people employed in P.L.O. offices," and "they are all ready to do violence."

European and Israeli officials and scholars who specialize in Palestinian affairs said each P.L.O. mission in Europe had on its staff a specialist in clandestine operations, including terrorism.

"In all of our offices we have representatives of different Palestinian organizations," said Massoud Ghandour, the P.L.O. diplomatic representative in Greece. He contended that all employees followed the political line laid down by Mr. Arafat and Farouk Kaddoumi, head of the P.L.O.'s political wing.

All P.L.O. representatives in Europe described their activities as political, educational and cultural. "The P.L.O. has now finally turned against terrorism," Mr. Ghandour said. He said the P.L.O. was ready to offer its assistance to governments.

"We would cooperate with anybody against terrorism — if you want, even with America," he said. He added that as a P.L.O. representative, he is "a target for many sides."

Last December, he said, Greece and the P.L.O. agreed to cooperate against terrorism. He said he was also sometimes called to help the Cypriot Government "control the Palestinians" to prevent terrorism on the island.

Israeli and European specialists said the organization's missions geographically closest to Israel were active in intelligence work to prepare for possible terrorist actions.

An Israeli official report that could not be verified from another source said that in December 1984, Abu Tayeb, who is described as the commander of Force 17, an elite military unit of Al Fatah, reported to a meeting of other senior officials that he had reorganized the unit's representation at P.L.O. offices in Europe in preparation for future actions. Israeli security officials said Force 17 representatives in Europe were stocking weapons.

Israel holds Force 17 responsible for the slayings last year of two Israeli seamen in Barcelona, Spain, and of three Israeli tourists on a yacht in the harbor of Larnaca, Cyprus.

DOCUMENT 14

The Palestine Information Office is in Violation of the Voorhis Act (Title 18, Section 2386 of the Criminal Code)

The PLO has an office in Washington, D.C., known as the Palestine Information Office (PIO), which opened in 1978. The office is registered with the Department of Justice under the Foreign Agents Registration Act. However, it has failed to register, as required, under Section 2386 of the U.S. Criminal Code, known as the Voorhis Act.

Section 2386 requires organizations to register separately with the Attorney General if they are subject to "foreign control" and engage in "civilian military activity" An organization is considered to be under "foreign control" if it "solicits or accepts financial contributions... from... an international political organization." The PIO, in its own registration statements under the Foreign Agents Registration Act, admits it is financially supported by the PLO, at a rate of approximately $250,000 per year. An organization is engaged in "civilian military activity" if it "gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons..., engages in any military or naval maneuvers or activities..., or engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action." The Voorhis Act also requires registration of organizations if one of their purposes is the "seizure or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing." The Palestinian National Covenant (1968), the official PLO charter which has been reaffirmed every year since 1968, states that "the establishment of Israel is null and void, whatever time has elapsed..." and that, "Armed struggle is the only way to liberate Palestine...." (Articles 9 and 19).

Registration under the Voorhis Act would require, among other things, "a detailed statement of the assets of the organization, and of each branch, chapter and affiliate of the organization, the manner in which such assets were acquired...; a detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization...; and a description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon." Organizations that fail to register are subject to criminal penalty: "Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The legislative intent of the Voorhis Act, is indicated by the Report of the House of Representatives (No. 2582 June 17, 1940): "Democratic government is threatened by the presence of private organizations engaging in military activities or preparing their members for an attempt at a forcible seizure of power and overthrow of constitutional government... At the present time there is no ground established in law whereby a law-enforcing agency of the United States government can effectively curb the activities of these types of organizations."

The PIO has been permitted to operate in Washington, D.C. on the condition that it obeys all U.S. laws. On November 22, 1976 a State Department spokesman said that the U.S. would not bar the PLO from opening an office in Washington, D.C. *provided* that it was registered with the Justice Department and conformed to all U.S. laws. This condition was reaffirmed by the Reagan Administration in February, 1981 when a spokesman said that the PIO could continue to operate as long as it "regularly files reports on its activities as an agent of a foreign organization with the Justice Department [and] complies with all other relevant laws." But in fact the PIO has not complied with the requirements of Title 18, Section 2386.

DOCUMENT 15

2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General" means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B) (1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B) (3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within

its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(l) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 808.

Historical and Revision Notes

Revisor's Note. Based on Title 18, U.S.C., 1940 ed., §§ 16-17 (Oct. 17, 1940, c. 897, §§ 2-4, 54 Stat. 1201-1204).

Section consolidates sections 16-17 of Title 18, U.S.C., 1940 ed., as subsections (a), (b), (c), and (d), respectively, of this section, with necessary changes of phraseology and translation of section references.

Words "upon conviction" which preceded "be subject" were omitted as surplusage, as punishment cannot otherwise be imposed. 80th Congress House Report No. 304.

Library References

Insurrection and Sedition ⇐1. C.J.S. Insurrection and Sedition §§ 2, 3.

PART 10—REGISTRATION OF CERTAIN ORGANIZATIONS CARRYING ON ACTIVITIES WITHIN THE UNITED STATES

REGISTRATION STATEMENT

Sec.

SUPPLEMENTAL REGISTRATION STATEMENT

Sec.

INSPECTION OF REGISTRATION STATEMENT

AUTHORITY: Pub. L. 772, 80th Cong.; 18 U.S.C. 2386.

SOURCE: 6 FR 369, Jan. 15, 1941, unless otherwise noted.

CROSS REFERENCES: For regulations under the Foreign Agents Registration Act, see Part 5 of this Chapter.

For Organization Statement, Internal Security Section, see Subpart K of Part 0 of this chapter.

REGISTRATION STATEMENT

§ 10.1 Form of registration statement.

Every organization required to submit a registration statement[1] to the Attorney General for filing in compliance with the terms of section 2 of the act approved October 17, 1940, entitled, "An act to require the registration of certain organizations carrying on activities within the United States, and for other purposes" (Pub. L. 772, 80th Cong.; 18 U.S.C. 2386), and the rules and regulations issued pursuant thereto, shall submit such statement on such forms as are prescribed by the Attorney General. Every statement required to be filed with the Attorney General shall be subscribed under oath by all of the officers of the organization registering.

§ 10.2 Language of registration statement.

Registration statements must be in English if possible. If in a foreign language they must be accompanied by an English translation certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes as a true and adequate translation. The statements, with the exception of signature, must be typewritten if practicable but will be accepted if written legibly in ink.

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[1] Filed as a part of the original document. Copies may be obtained from the Department of Justice.

§ 10.3 Effect of acceptance of registration statement.

Acceptance by the Attorney General of a registration statement submitted for filing shall not necessarily signify a full compliance with the said act on the part of the registrant, and such acceptance shall not preclude the Attorney General from seeking such additional information as he deems necessary under the requirements of the said act, and shall not preclude prosecution as provided for in the said act for a false statement of a material fact, or the willful omission of a material fact required to be stated therein, or necessary to make the statements made not misleading.

§ 10.4 Date of filing.

The date on which a registration statement properly executed is accepted by the Attorney General for filing shall be considered the date of the filing of such registration statement pursuant to the said act. All statements must be filed not later than thirty days after January 15, 1941.

§ 10.5 Incorporation of papers previously filed.

Papers and documents already filed with the Attorney General pursuant to the said act and regulations issued pursuant thereto may be incorporated by reference in any registration statement subsequently submitted to the Attorney General for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

§ 10.6 Necessity for further registration.

The filing of a registration statement with the Attorney General as required by the act shall not operate to remove the necessity for filing a registration statement with the Attorney General as required by the act of June 8, 1938, as amended, entitled "An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes" (52 Stat. 631, 56 Stat. 248; 22 U.S.C. 611), or for filing a notification statement with the Secretary of State as required by the act of June 15, 1917 (40 Stat. 226).

[13 FR 8292, Dec. 24, 1948]

§ 10.7 Cessation of activity.

The chief officer or other officer of the registrant organization must notify the Attorney General promptly upon the cessation of the activity of the organization, its branches, chapters, or affiliates by virtue of which registration has been required pursuant to the act.

SUPPLEMENTAL REGISTRATION STATEMENT

§ 10.8 Information to be kept current.

A supplemental statement must be filed with the Attorney General within thirty days after the expiration of each period of six months succeeding the original filing of a registration statement. Each supplemental statement must contain information and documents as may be necessary to make information and documents previously filed accurate and current with respect to the preceding six months' period.

§ 10.9 Requirements for supplemental registration statement.

The rules and regulations in this part with respect to registration statements submitted to the Attorney General under section 2 of the said act shall apply with equal force and effect to supplemental registration statements required thereunder to be filed with the Attorney General.

INSPECTION OF REGISTRATION STATEMENT

10.10 Public inspection.

Registration statements filed with the Attorney General pursuant to the said act shall be available for public inspection in the Department of Justice, Washington, D.C., from 10 a.m. to 5 p.m. on each official business day.

[13 FR 8292, Dec. 24, 1948]

DOCUMENT 16

January 13, 1986

MEMORANDUM

TO: Steve Rosen

FROM: Irvin B. Nathan

RE: RICO and the PLO

This brief memorandum is designed to set forth the manner in which the criminal and civil provisions of the federal Racketeer Influenced and Corrupt Organizations statute ("RICO"), 18 U.S.C. §§ 1961, et seq., may be used to prosecute the leaders, and seek forfeiture of the assets, of an international terrorist organization, such as the PLO.

I. The Elements of the RICO Statute

RICO makes it unlawful for any person or group of persons (such as the members of the Executive Committee of the PLO) who are associated with an enterprise (such as the PLO), whose activities affect the interstate or foreign commerce of the United States, from conducting or participating in the conduct of the affairs of the enterprise "through a pattern of racketeering." 18 U.S.C. § 1962(c). */ A "pattern of racketeering" is defined to include the commission of a series of crimes including (1) any act or threat involving murder, kidnapping, arson, or extortion in violation of any state law and/or (2) any act which is indictable under certain enumerated federal criminal laws. The specified federal criminal laws include the Hobbs Act (anti-extortion), the Travel Act

*/ The complete text of the statute is appended as Exhibit A.

(involving interstate or foreign travel in aid of racketeering), the mail and wire fraud statutes, and the obstruction of justice statutes. 18 U.S.C. § 1961(1).

The PLO clearly constitutes "an enterprise" which is defined to include any "association or other legal entity and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

Under RICO and the applicable statute of limitations, one of the predicate acts (such as those in the Achille Lauro affair) must have occurred within the last five years, and the other predicate acts must have occurred within ten years of the commission of a prior act of racketeering activity. 18 U.S.C. § 1961(5); 18 U.S.C. § 3282. This means that if the government or a private plaintiff can charge the commission of a crime in or after 1981, then the prosecutor or plaintiff may also charge that the same individuals or organization committed another crime as part of the pattern at any time in or after 1971. In turn, if the defendants committed crimes in or after 1971, then the prosecution can charge them with any crimes committed in or after 1961, so long as they are part of a "pattern" (i.e., some interrelationship exists between the acts in terms of purposes, results, participants, victims, or methods of commission).

The utility of a RICO prosecution is that it focuses on the overall makeup, methods, and functions of the organization -- not simply on an isolated act, such as the murder of an American ambassador in 1973 of the hijacking of a ship in 1985. In addition, a RICO case enables the prosecution to focus on the leadership of an organization and to demonstrate how the leadership uses criminal activities to further the organization's purposes.

Violations of the RICO statute are prosecuted criminally by the United States Department of Justice. Violators are subject to a combination of a maximum of twenty years imprisonment, $25,000 in fines, and forfeiture to the federal government of all of the property and proceeds derived from the illegal activity. 18 U.S.C. § 1963(a). The government may also seek appropriate civil relief, including dissolution of the organization, divestiture, and injunctions limiting the activities of the organization. 18 U.S.C. § 1964(a).

In addition, under the civil RICO provisions, any person who is injured in his or her business or property as a result of any of the illegal activities can bring a civil suit in a federal district court and recover three times the damages, as well as attorney's fees and costs. 18 U.S.C. § 1964(c). Thus, for example, the widow of an individual killed by a PLO terrorist in the course of one of the predicate acts may sue under civil RICO to recover three times her pecuniary losses, plus attorney's fees. In such a suit, the widow would have to demonstrate that the killing was not an isolated act, but part of a pattern of criminal actions by which the organization functioned.

II. Jurisdiction of U.S. Courts for Acts Committed Abroad

A principal question which arises is whether the statute confers jurisdiction on U.S. courts for acts committed abroad. While this question has not been definitively answered, there are very substantial arguments to suggest that U.S. courts have jurisdiction under RICO for actions committed abroad so long as those activities directly and foreseeably affect the foreign commerce of the United States. As noted, the statute requires the activities of the enterprise to affect

interstate or foreign commerce. At least one RICO prosecution has been brought where a foreign corporation was the enterprise and the illegal actions occurred abroad. U.S. v. Parness, 503 F.2d 430, 439 (2d Cir. 1974). In addition, courts have held that, by the interstate and foreign commerce language in RICO, Congress intended that the statute, like the antitrust laws on which it was modeled, would have the broadest possible reach under the Commerce Clause of Article I of the U.S. Constitution. See, e.g., Cullen v. Margiotta, 618 F.2d 276, 277 n.2 (2d Cir. 1981); cf. Mandeville Island Farms v. American Crystal Sugar Co., 344 U.S. 219 (1948). See also, Fricano, Extra-territorial Reach of RICO to International Transactions: Just a Matter of Time?, 1 Civ. RICO Law Rptr. 226 (Sept. 1984). Moreover, the Supreme Court and other federal courts have repeatedly held that the terms of the RICO statute are to be liberally construed to effectuate their remedial purpose. See Sedima v. Imrex, ___ U.S. ___, 105 S. Ct. 3275 (1985); U.S. v. Russello, ___ U.S. ___, 104 S. Ct. 196 (1984); U.S. v. Turkette, 452 U.S. 576 (1981). Indeed, criminal RICO convictions have been upheld where the affairs of the enterprise have had only a "minimal impact" on interstate commerce. See, e.g., U.S. v. Robinson, 763 F.2d 778, 781 (6th Cir. 1985).

A leading non-RICO case, which would be applicable in this context by analogy, is Timberlane Lumber Co. v. Bank of America, 549 F.2d 597 (9th Cir. 1976). The Court of Appeals in that case adopted a multi-part test for determining federal jurisdiction in cases arising overseas. The Court stated:

> "The elements to be weighed include the degree of conflict with foreign law or policy, the nationality or allegiance of the parties and locations or principal places of business of corporations, the

> extent to which enforcement by either state can be expected to achieve compliance, the relative significance of effects on the United States as compared with those elsewhere, the extent to which there is explicit purpose to harm or affect American commerce, the foreseeability of such effect, and the relative importance of the violations charged of conduct within the United States as compared with conduct abroad."

Under such a standard, where the activities of the PLO affect -- and are intended to affect -- the foreign commerce of the United States, including our political and economic relationships with a host of countries as well as the physical safety and property of our citizens in their travel from the U.S., it seems highly likely that a court would exercise jurisdiction.

In addition to terrorist acts abroad, a RICO indictment, of course, may also include illegal acts committed by PLO operatives within the United States. If, for example, it can be established (as has been alleged repeatedly in the press) that PLO agents have engaged in narcotics trafficking, arson and insurance fraud, food stamp fraud, and other conspiracies to kill or maim individuals of the United States, each of these actions could be included in the charge. If such acts are included, the jurisdictional arguments with respect to acts committed abroad are even stronger.

A federal grand jury impaneled to investigate the activities of the PLO insofar as they affect, directly or interectly, the interstate and foreign commerce of the United States would have a very broad-reaching mandate to probe the worldwide affairs of the PLO. Any resulting indictment against the organization and its leaders could spell out for all the world to see exactly what kind of an organization it is, how it is run, how it is financed, and how it uses crime on a worldwide basis to further its purposes.

III. Acts Committed Abroad As Violations of U.S. Law

A related question is whether an offense committed abroad may constitute a violation of U.S. state and/or federal criminal law so as to form a part of the "pattern of racketeering." On the federal level, two examples will suffice. The Hobbs Act, 18 U.S.C. § 1951, provides that "whoever in any way or degree obstructs, delays or affects commerce [defined to include "all commerce over which the United States has jurisdiction," including the foreign commerce of the United States] by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation [of this section] . . ." is guilty of a felony punishable by twenty years' imprisonment.

Under the Hobbs Act, "robbery" is defined to be the unlawful taking or obtaining of property from a person against his will by means of actual or threatened force or violence or fear of injury. "Extortion" means obtaining the property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. Thus, when hijackers seize a ship or airplane by force or violence or the threat of force or violence, and when their actions impede U.S. citizens in their foreign travel or when the demands of the hijackers involve proposed actions of the U.S. government or its citizens, there has been a violation of the Hobbs Act.

Similarly, the Travel Act, 18 U.S.C. § 1952, provides that whoever travels in foreign commerce or uses a facility of foreign commerce with intent to commit any crime of violence to further or promote "any unlawful activity," is

punishable for a felony and subject to imprisonment for a maximum of five years. "Unlawful activity" includes extortion in violation of any state or federal law. Thus, once again, if a PLO terrorist travels on a U.S. airline for the purpose of seizing passengers and extorting the U.S. government, he violates the Travel Act. As noted, two or more instances of violations of these statutes can constitute a "pattern of racketeering."

Acts or threats involving murder, in order to serve as a predicate act in RICO, must be "chargeable" under state law. It may be significant that acts must be chargeable under state "law" not under a state "statute." Thus, if the murder abroad of a U.S. ambassador or other U.S. citizen constitutes a violation of any state's criminal code or common law, then that murder may constitute part of the pattern of racketeering under RICO. If, for example, the memorandum prepared for you concerning the murder of U.S. Ambassador Noel is correct that the law of nations is incorporated in state common law and that the law of nations forbids the murder of an ambassador, then the murder of a U.S. ambassador may be a predicate act, constituting part of a pattern of racketeering for purposes of RICO.

Note that the federal statutes which outlaw crime abroad against internationally protected persons, 18 U.S.C. § 1116, and international hostage taking, 18 U.S.C. § 1203(b), are not predicate acts under RICO. Nonetheless, these crimes could be investigated by the same grand jury investigating possible RICO violations and could be included as separate counts in an indictment bringing RICO charges.

IV. A Conspiracy to Violate RICO

In addition to the substantive provisions of RICO, the statute prohibits anyone from conspiring to violate

the statute. 18 U.S.C. § 1962(d). To be convicted for conspiracy, a person need only aid and abet or facilitate the organization's functioning through a "pattern of racketeering." See, e.g., U.S. v. Carter, 721 F.2d 1514 (11th Cir. 1984). There is no requirement under RICO for a person to have committed an overt act in order to be convicted for conspiracy. See U.S. v. Alonso, 740 F.2d 862, 870-72 (11th Cir. 1984). Nor must a person have been involved in the commission of the predicate act, or have even agreed to commit the act. Thus, the top leaders of an organization which operates through the commission of illegal acts can be prosecuted even if those leaders took no direct part in the planning or commission of a specific crime. For example, if Mr. Arafat raises funds for the PLO or helps maintain its structure, and if it can be demonstrated that the organization carries out a pattern of criminal activities, he may be charged for conspiring to violate RICO. The penalties for conspiracy are the same as for the substantive violation.

V. Forfeiture of Assets Under RICO

RICO is one of the few federal or state criminal statutes which authorizes forfeiture of assets. The statute provides that following a conviction, the defendant shall forfeit to the United States (a) any interest in, or any right which affords the defendant a source of influence over the enterprise, and (2) any property constituting or derived from any proceeds which the person obtained, directly or indirectly, from any of the illegal acts. 18 U.S.C. § 1963(a). This means that the officers of an organization can be stripped of their positions, and the organization's property and proceeds may be forfeited to the United States to the extent that they are

derived, directly or indirectly, from the racketeering activity. Thus, for example, if the proceeds of drug dealing are used to finance PLO operations, property of the PLO obtained with those proceeds may be forfeited to the United States. I am informed that the PLO has substantial assets in the United States, which may be the subject of forfeiture, even if none of the individuals are apprehended and brought to trial.

* * *

RICO is a familiar tool to U.S. prosecutors. Indeed, it has been used by the federal government against terrorist organizations in the United States. The U.S. Attorney's Office in the Southern District of New York has brought RICO actions against Serbo-Croatian terrorists who were extorting people in the United States to contribute to their cause. See U.S. v. Bagaric, 706 F.2d 42 (2d Cir. 1983); cf. U.S. v. Ivic, 700 F.2d 51 (2d Cir. 1983). Most recently, a federal jury in the state of Washington convicted a Nazi terrorist group, called "the Organization," for violating RICO by engaging in a series of violent acts, directed, among others, at Jews and Jewish interests. Similarly, the Department of Justice recently obtained an affirmance from a Court of Appeals order divesting control of a labor organization from a bank of murderers and thieves. The Court held that the Provenzano group could be enjoined from participating in the affairs of Teamsters Local 560 and that the district court had the power to appoint a trustee to handle the union's affairs. U.S. v. Local 560, IBT, ___ F.2d ___, (3d Cir. Dec. 1985), aff'g, 581 F. Supp. 279 (D. N.J. 1984). The familiarity of prosecutors at the Department of Justice with the intricacies of RICO and its use against crime-infested

organizations is a substantial asset in trying to interest Justice to proceed with an investigation and prosecution.

Obviously, the degree of the government's interest in a RICO investigation or prosecution will depend in large part upon the facts. The facts are beyond the scope of this memorandum, but any presentation to Justice should clearly marshal all facts connecting any PLO terrorist activities to U.S. interests, including but not limited to the murder of Ambassador Noel, the hijacking of the Achille Lauro, and the murder of Leon Klinghoffer. I would be pleased to assist in this effort as well as to amplify any of the legal issues herein, several of which require additional research.

Exhibit A

18 U.S.C. SS 1961-1968 (1976)
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

AMENDMENT

1970—Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. (5), is Oct. 15, 1970.

SHORT TITLE

Section 1 of Pub. L. 91-452 provided in part: "That this Act (enacting sections 841 to 848, 1511, 1952, 1955, 1961 to 1968, 3331 to 3334, 3502, 3504, 3575 to 3578, and 6001 to 6005 of this title, and section 1826 of Title 28, Judiciary and Judicial Procedure, amending sections 838, 1073, 1505, 1954, 2424, 2516, 2517, 3146, 3486, and 3500 of this title, sections 15, 87f, 135c, 499m, and 2116 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1829 of Title 12, Banks and Banking, sections 49, 77v, 78u, 79r, 80a-41, 80b-9, 156, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1338 of

Title 19, Customs Duties, section 273 of Title 21, Food and Drugs, section 161 of Title 29, Labor, section 506 of Title 33, Navigation and Navigable Waters, sections 406 and 2281 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, section 1124 of Title 46, Shipping, section 406 of Title 47, Telegraphs, Telephones, and Radio telegraphs, sections 9, 43, 46, 916, 1017, and 1464 of Title 49, Transportation, section 793 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and former section 2158 of Title 50, Appendix, repealing sections 827, 896, 1406, and 2514 of this title, sections 32 and 33 of Title 15; sections 4874 and 7493 of Title 26, Internal Revenue Code, section 827 of Title 46, sections 47 and 48 of Title 49, and sections 121 to 144 of Title 50, enacting provisions set out as notes under this section and sections 841, 1511, 1955, preceding 3321, preceding 3481, 3804, and 9001 of this title, and repealing provisions set out as a note under section 2510 of this title] may be cited as the 'Organized Crime Control Act of 1970'."

SEPARABILITY OF PROVISIONS

Section 1301 of Pub. L. 91-452 provided that: "If the provisions of any part of this Act [see Short Title note set out above] or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that:

"The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and othe forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act [see Short Title note above] to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDENCE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Section 904 of Pub. L. 91-452 provided that:

"(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.

"(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

"(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

"(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

"(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

"(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1963, 1964 of this title.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and

(2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1968, by Reorg. Plan No. 1 of 1968, eff. May 23, 1968, 33 F.R. 7823, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceedings brought by the United States.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1968 of this title.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause action to be expedited in every way.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such persons, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as a racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States

before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE
500 NORTH CAPITOL STREET, N.W. • SUITE 300 • WASHINGTON, D.C. 20001 • (202) 638-2256

SAMPLE INCIDENTS FOR THE APPLICATION OF THE RICO ACT TO THE PLO

There is strong evidence linking the PLO to racketeering activity in the United States over the last fifteen years. Investigators believe that the PLO has organized crime rings involving narcotics, fraud, arson and smuggling.

NARCOTICS

*** In March, 1984, sixteen people were charged in connection with smuggling 16,000 pounds of hashish, valued at $670 million from Lebanon into North Carolina. U.S. Attorney Sam Currin stated that the 1981 incident had been perpetrated with the aid of the PLO.
(UPI, 3/14/84)

*** A New York Times story of February 8, 1984 reported that individuals in Detroit had smuggled at least 1000 pounds of heroin from Lebanon's Bekka Valley. A Federal agent also disclosed that Detroit is a center for illegal shipments of arms to the Middle East.

** In his article "Drugs for Guns," Nathan Adams quoted Western intelligence and law enforcement estimates that the PLO purchases 40% of its light weapons with narcotics from its laboratories in the Bekka.
(Readers Digest, 11/83)

*** In December, 1979, the son of the bursar of the Popular Front for the Liberation of Palestine was arrested in Pennsylvania preparing to sell large quantities of cocaine. U.S. Federal agents reportedly discovered that the profits were going to Beruit to purchase ammunition.
(Jerusalem Post, 5/29/80)

FOOD STAMP FRAUD

*** A food stamp trafficking ring was uncovered in New York, Denver, Chicago and San Francisco in early 1980. Forty seven Palestinians were arrested in connection with $400,000 of fraudulent food stamp purchases. One federal law enforcement agency alleged that profits were being donated to the PLO.
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** Despite Agriculture Department testimony that the accused were not acting under any single control, three congressmen, Reps. William Wampler (R-Va), Dawson Mathis (D-Ga) and Steven Symms (R-Id) pointed to PLO involvement. Mathis stated: "This is a pretty scary thing when you think about U.S. tax dollars...financing an organization like the PLO. It appears there is some kind of collusion between these people to use U.S. tax dollars to finance the PLO."
(AP, 2/7/80)

ARSON AND INSURANCE FRAUD

*** Officials have determined that a rash of New York City grocery store fires in the late 1970's was the result of arson. Insurance profits were allegedly funneled to the PLO.

(New York Post, 7/30/79 and 12/15/79)
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** A Jordanian arrested for arson stated: "the PLO expects sizeable contributions from the arson insurance profits."

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** An informant told police: "we bring our insurance money to the PLO office in New York."

(ibid)

ATTEMPTED SMUGGLING AND WIRE FRAUD

*** New York engineer Paul Ajlouny was arrested in September, 1978 in what prosecutors called "a scheme to set up an independent telecommunications network for the PLO." Ajlouny described himself as "counsel and advisor to the PLO mission in New York." He is currently the editor of the pro-PLO newspaper, Al Fair. Ajlouny had made several illegal phone calls to PLO headquarters in Beruit and was convicted of trying to smuggle communications equipment out of the country.

(New York Times, 9/27/79 & 11/24/79)

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*** According to the New York Times and the Washington Post, the PLO is believed to have earned millions of dollars from an auto insurance scheme in the 1970's. Carried out mostly in California, the racket was called "the biggest insurance fraud the California Highway Patrol has ever dealt with." After interviewing some of the suspects, one investigator stated: "There's no question about it that it is political; these people are just front people for the PLO."

(New York Times, 2/19&20/77)
(Washington Post, 2/21/77)

*** California Highway Patrol investigators believe there was a link between this alleged PLO-inspired insurance fraud scheme and the attempted extortion of $250,000 from a Lake Taho hotel in 1977. Two men were arrested and convicted of extortion.

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CONSPIRACY

*** In 1972, FBI agents raiding the Arab Information office in Dallas discovered the plans of a Fatah assassination squad to murder American Jews.

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PLO Financial Holdings in the United States

In addition to criminal activity, the PLO has enlarged its income through its financial holdings in the United States.

*** The Arab Bank Ltd., widely known as the "PLO bank," has a branch office in New York and owns 7% of UBAF Arab American Bank in New York. In 1978, Arab Bank Ltd. was reported as holding a 60 to 100 million dollar portfolio of PLO finances.
(Wall Street Journal, 9/7/78)

*** Abdul-Majeed Shoman, chairman of the Arab Bank Ltd., was formerly the PLO finance chairman.
(Reuters, 2/14/85)

*** Chemical Bank of New York confirmed that it holds an account for the PLO.
(New York Times, 1/10/85)

*** More than 70 million dollars in PLO money was invested in U.S. property through six Caribbean firms, according to a testimony before the House Subcommittee on Commerce, Consumer and Monetary Affairs. A Miami real estate consultant stated that five Arabs had formed a real estate syndicate that had conducted arms sales to the PLO and had invested the profits in Florida and Texas real estate.
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DOCUMENT 17

INCIDENTS OF REPORTED PLO CRIME

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GUN AND CASH SHIPMENTS

*** In a raid on a Memphis, Tennessee warehouse, Federal agents uncovered a shotgun, machine gun and $9,500 in cash which they believe were intended to be shipped to Jordan. An undercover agent reported that the owners of the warehouse had informed him that they were members of the PLO. One suspect reportedly said the weapons were "to kill Jews."

(The Commercial Appeal (Memphis), 1/18/86)

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DOCUMENT 18

BRINGING ARAFAT TO ACCOUNT FOR THE MURDER OF U.S. AMBASSADOR CLEO NOEL

On March 2, 1973, Palestinian terrorists murdered U.S. ambassador Cleo A. Noel, Jr. at the Saudi Embassy in Khartoum, Sudan. The terrorists had seized the embassy and held its occupants hostage while demanding the release of Robert Kennedy's murderer, Sirhan Sirhan, Fatah leader Abu Daoud, Baader-Meinhof killers being held in Germany, and other leading terrorists imprisoned in various countries for earlier crimes. When authorities refused to give in, the terrorists assassinated Ambassador Noel, U.S. Embassy Charge d'Affaires George C. Moore, and Belgian diplomat Guy Eid.

Intelligence leaks shortly after the incident implicated Yasser Arafat in the envoys' deaths (*Washington Post*, April 5, 1973, p. A-18). Declassified communiques released in a 1980 Freedom of Information Act inquiry also pointed to Arafat's direct involvement in the murder. But on November 23, 1985, Vernon Walters, currently U.S. Ambassador to the United Nations and at the time of the event Deputy Director of the CIA, revealed for the first time that a tape exists of Yasser Arafat personally giving the order to execute the three hostages. Walters said, it "was common knowledge at the time among all sorts of people in the government...that a tape existed." (Quoted in *Jewish Exponent*, November 29, 1985). Reportedly, this tape and other evidence are in the possession of the U.S. intelligence community today.

Arafat's role in the murders has now been confirmed by another top U.S. official involved in the events. In addition, an Israeli "White Paper" revealing a body of previously classified details on the PLO and terrorism, has asserted officially for the first time that "the order to kill the diplomats had been phoned to the terrorists personally by Yasser Arafat." (Ministry of Foreign Affairs, *The Threat of PLO Terrorism*, Jerusalem, October 1985, p. 24).

On the basis of these revelations, Ambassador Charles Lichenstein, currently a Senior Fellow at the Heritage Foundation, is urging the Justice Department to seek a warrant for Arafat's arrest for the crime of murder under U.S. and international law. In support of his proposal, a group of attorneys has prepared a preliminary legal memorandum to establish that U.S. courts would have jurisdiction. A further examination of the legal basis for jurisdiction is currently underway by Covington and Burling, which is providing *pro bono publico* legal advice on this matter to AIPAC.

The action being proposed follows the principles set forth by President Reagan in his address to the American Bar Association on July 8, 1985:

> **"We must act against the criminal menace of terrorism with the full weight of the law, both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks."**

DOCUMENT 18A

The Washington Post

Arafat Implicated In Envoys' Deaths

By David B. Ottaway
Washington Post Staff Writer

April 5, 1973

Yasser Arafat, leader of the main Palestinian guerrilla organization, Fatah, was in the Black September radio command center in Beirut when the message to execute three Western diplomats being held hostage in Khartoum was sent out last month, according to Western intelligence sources.

The sources said it was not clear whether Arafat personally or Salah Khalef, an extremist Fatah theoretician better known as Abu Iyad, gave the order to carry out the executions, using the code word "Cold River."

But they have reports that Arafat was present in the operations center when the message was sent and that he personally congratulated the guerrillas after the execution of the three diplomats, two Americans and a Belgian, was carried out.

"This is the first time that he [Arafat] has been clearly implicated in something like this," said one source.

Previously, the Sudanese minister of information, Omar Haj Musaa, had revealed that Arafat played a role in getting the Black September group to surrender in Khartoum to Sudanese authorities. Musaa declined to provide details.

According to one source, the U.S. Central Intelligence Agency monitored at least some of the communications between the operation's Beirut command center and the Saudi Arabian embassy in Khartoum where the hostages were being held. Arafat's voice was reportedly monitored and recorded.

But it was not clear from this source whether Arafat's voice was identified as the sender of the Cold River message or was only heard later congratulating the guerrillas and later during the negotiations leading to the surrender of the eight Black September terrorists.

The close ties between Black September and Fatah, long regarded as the "moderate" among the half dozen major Palestinian guerrilla groups, were disclosed recently in a confession by a top Fatah leader made to Jordanian authorities.

Mohamed Daoud Oudeh, who uses the cover name of Abou Daoud, told the Jordanians that Black September did not exist as an organization and that "all its activities were carried out by the intelligence branch of the Fatah guerrilla organization."

Daoud and 16 of his men were arrested in Jordan in February. According to his confession, the team was on a mission to kidnap Jordanian Cabinet ministers and bargain for the release of 40 imprisoned Palestinian guerrillas.

Daoud's confession, which revealed in great detail the training of Palestinians for terrorist operations, is generally regarded as authentic and accurate in Western intelligence circles.

Among other things, Daoud disclosed the key role played by Abu Iyad in planning various terrorist exploits, including the raid on the Israeli quarters at the Olympic Games in Munich last September. It resulted in the killing of 11 Israelis.

Daoud also revealed that he had received his intelligence and arms training in Cairo, where he took a nine-week course with nine other Palestinians.

Daoud's confession and the complications created for Fatah in its relations with Arab governments because of the Khartoum operations have reportedly led within the organization to a total reassessment of strategy.

Fatah has been busy since the Khartoum raid in early March patching up its relations with various Arab governments, including the Sudan.

A delegation from the Palestinian Liberation Organization, which Arafat also heads, recently visited Khartoum. After the visit, the Sudanese government issued a statement saying it had no evidence that the central Fatah organization was involved in the operation and that it was only holding individual Fatah members, including the leader of the local office, responsible for the assassinations.

President Jaafar Nimeri has announced that the eight terrorists will go on trial and that they face the death penalty.

Sources here believe that the difficulties that have arisen for Fatah because of Khartoum and Daoud's confession may lead Arafat to separate more formally the organization's terrorist arm from its central body.

Because of the adverse reaction of many Arab governments to the Khartoum operation, the sources also express the belief that it is unlikely that Black September will soon strike again in another Arab country, except perhaps Jordan.

CHICAGO SUN-TIMES, Thurs., June 13, 1974

ell cover-up in '73 Sudan slaying of diplomats

y Thomas B. Ross

un-Times Bureau

/ASHINGTON — While President Nixon is in Egypt trying to put Watergate behind i, another cover-up scandal is brewing here volving the neighboring Arab country of Su-n.

Reliable sources told The Sun-Times ednesday that the State Department securi- office has discovered the destruction of ables dealing with the murder of three diplo-ats — two American and one Belgian — by lestinian terrorists in Khartoum, Sudan's pital, 15 months ago.

The sources said some of the cables are believed to have contained reports of an interrogation by Sudanese officials in which the captured terrorists said they killed the diplomats after hearing on the radio that Mr. Nixon had rejected their demands.

The sources said other cables evidently dealt with the bungled U.S. effort to negotiate the release of the diplomats, U.S. Ambassador Cleo A. Noel Jr.; George C. Moore the departing U.S. charge d' affaires, and Guy Eid, the Egyptian-born charge d'affaires at the Belgian Embassy.

The sources contended that the order to destroy the cables could have come only from a high level in the State Department or the White House. The destruction was discovered when security officers came across a cable ordering the U.S. Embassy in Khartoum to destroy its copies of the cables. That led to a master index in which the destroyed cables were listed by serial numbers and the discovery that there were no copies in the file.

The diplomats were seized in the Saudi Arabian Embassy March 1, 1973, by members of the Black September organization. The guerrillas vowed to kill the diplomats in 24 hours unless the United States, West Germany, Israel and Jordan released various Arab prisoners, including Sirhan Sirhan, the convicted assassin of Robert F. Kennedy.

Mr. Nixon was asked about the incident at a press conference the next day. He replied: "As far as the United States Government giving in to blackmail demands, we cannot do so and we will not do so. We will do everything that we can to get them released, but we will not pay blackmail."

The President ordered William B. Macomber Jr., then deputy undersecretary of state for management and now ambassador to Turkey, to go to Khartoum and try to get the diplomats released.

Shortly before the press conference, the terrorists allowed Noel to call the U.S. Embassy about the official reaction to their demands. Told that "a man is coming from Washington sometime tonight," Noel replied: "That will be too late."

Macomber was delayed en route through a misunderstanding and the lack of adequate radio communications equipment on his plane. He stopped in Cairo in the mistaken belief that the terrorists would go there with the diplomats in response to an Egyptian proposal. Then he was diverted to Ethopia by a sandstorm in Khartoum.

Three hours after the President's press conference and after his remarks were flashed by radio to the Arab world, the three diplomats were shot.

Mr. Nixon then issued a statement saying the terrorists, who surrendered two days later, should be "brought to justice. This tragic event," he said, "underscores once again the need for all nations to take a firm stand against the menace of international terrorism."

JUN 13 1974

DOCUMENT 19

Memorandum Regarding the Authority of the United States To Arrest and Prosecute Yassir Arafat On Charges of Complicity In the 1973 Murder of U.S. Diplomats in Khartoum

In 1973, adherents of the "Black September" faction of the Palestine Liberation Organization murdered three persons in Khartoum, the capital of the Sudan. The three victims included two United States diplomats: Ambassador Noel and Chargé d'Affaires Moore. The Sudanese Government apprehended, tried and convicted the terrorists who were present in Khartoum and had seized and killed these two United States diplomats. Recent press reports state that the United States has evidence showing that the attack and the murders were directed by persons not present in the Sudan. These reports allege that Yassir Arafat directed the 1973 assassinations in Khartoum and personally ordered the murders of Messrs. Noel and Moore.

This memorandum assumes that the United States has or is able through grand jury or other investigational means to obtain sufficient evidence to support the arrest and prosecution of Yassir Arafat for these murders and addresses the question of the legal authority of the United States to bring such a prosecution. On the assumption that the United States possesses or can obtain such evidence, the legality of the prosecution depends on whether the United States has the legal authority to prosecute an individual charged with complicity in the 1973 murders of two U.S. diplomats in the Sudan. Jurisdiction to bring such a prosecution is conferred by 18 U.S.C. § 1116. Application of Section 1116 to crimes committed in 1973 would require resolution of a question arising under the ex post facto clause of the Constitution, as the relevant provisions were not written into the United States Criminal Code until 1976, and their use to prosecute

participants in the 1973 murders would require a retroactive exercise of jurisdiction under Section 1116. For reasons addressed in detail below, we conclude that substantial authority supports the view that the ex post facto clause would not bar such a prosecution.

I. The Applicable Provisions of The United States Code Confer Jurisdiction on the United States to Prosecute Persons Accused of Murdering U.S. Diplomatic Personnel in Other Countries

Section 1116 of the Criminal Code, 18 U.S.C. § 1116, as amended in 1976, confers on the United States courts jurisdiction to try persons accused of murdering a United States diplomat abroad. The punishment for such a crime is established by Section 1116(a) as follows:

> Whoever kills or attempts to kill a[n] . . . internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life . . .

Section 1116(a) applies to persons who murder a United States diplomats, because Section 1116(b)(4)(B) defines the phrase "internationally protected person" to include "any . . . representative, officer, employee, or agent of the United States Government . . . who at the time and place is entitled pursuant to international law to special protection against attack upon his person . . .." An ambassador and chargé d'affaires on assignment outside the United States epitomize the class of persons entitled to special protection.

Section 1116(c), as amended in 1976, establishes extraterritorial jurisdiction over cases involving the murder of such internationally protected persons as U.S. diplomatic personnel:

> If the victim . . . is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of where the offense was

committed or the nationality of the victim or the alleged offender.

As may be seen from the language of Section 1116(a), it relies on the substantive definition of the crimes of homicide found in Sections 1111, 1112, and 1113 of Title 18. This structure parallels the overall statutory scheme of the federal law against homicide. The substantive provisions of the Criminal Code are in Sections 1111 through 1113 of Title 18. These sections respectively define the elements and maximum punishment for murder, manslaughter, and attempted murder or manslaughter. The crime of murder is covered by Section 1111, which sets a maximum penalty of death for first degree murder.[1/] Sections 1111, 1112, and 1113 date at least to an act of March 4, 1909, 35 Stat. 1143, 1152, and therefore predate the 1973 Khartoum murders by many decades. The jurisdictional provisions of the Criminal Code are in Section 1114 (providing jurisdiction for trying persons accused of murdering certain enumerated officers and employees of the United States), Section 1116, and elsewhere in Title 18. See e.g., Sections 351 and 1751. In the 1976 amendments, Congress determined in Section 1116(c) the circumstances under which the United States would exercise jurisdictions over persons accused of killing U.S. diplomats and other internationally protected persons.[2/]

1/ In the amended Section 1116(a), Congress limited the punishment of persons convicted of first degree murder of internationally protected persons to life imprisonment in lieu of the capital punishment Section 1111 permits for first degree murder.

2/ The United States is party to two international treaties that provide for the extradition of persons whom our government charges with violation of 18 U.S.C. § 1116(a). Congress amended 18 U.S.C. § 1116 in 1976 in order to fulfill the responsibilities of the United States under two treaties: the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance ("the OAS Convention") and the Convention on the Prevention and Punishment of Crimes

(Footnote continued)

II. 18 U.S.C. § 1116 Was Intended To Be Applied Retrospectively

Because the applicable provisions of 18 U.S.C. § 1116(a) were first incorporated in the Criminal Code in 1976, three years after the murders of U.S. Ambassador Noel and Chargé d'Affaires Moore, the question arises as to whether that statute may be applied retrospectively. The legislative history notes that the statute was intended to apply to murders of U.S. diplomats committed before its enactment. In presenting the legislation to the Congress, the then Legal Adviser to the State Department used as an example the 1975 murder of the United States Ambassador to Lebanon. In his 1976 testimony before the Congress, the Legal Adviser said, "if it happened that the perpetrators of that event were apprehended in the United States, this statute would provide a jurisdictional basis to try them for the offense of murder. We could not do that under present law." Internationally Protected Persons Bills, Unsworn Declarations Bills: Hearing before the Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, 94th Cong., 2d Sess. 25 (1976) (statement of Monroe Leigh).

III. Retrospective Application of 18 U.S.C. § 1116 Would Be Consonant With The Ex Post Facto Clause

Whenever the retroactive application of a provision of the Criminal Code is considered, as would be the case if

(Footnote continued)

Against Internationally Protected Persons, including Diplomatic Agents ("the UN Convention"). Both conventions require the contracting states to include in their penal laws provisions that apply to crimes against internationally protected persons and that establish extraterritorial jurisdiction to try persons accused of such crimes.

The United States may request the extradition of Yassir Arafat from any state in which he is present and which is a party to either the OAS Convention or the UN Convention. Each of those conventions obligates states that are parties to the convention either to extradite or to try persons accused of the murder of an internationally protected person once an extradition request is made by another party to the convention.

Section 1116 were used to prosecute persons accused the 1973 murders of Ambassador Noel and Chargé d'Affaires Moore, it is necessary to consider whether the ex post facto prohibition of the United States Constitution would bar the prosecution. Article I, § 9, Clause 3 of the Constitution prohibits Congress from passing any ex post facto law. Retrospective application of 18 U.S.C. § 1116 would present a case of first impression under this clause. While the prior case law provides a guide to analysis, no case is so squarely on point as to provide an exact precedent. It is plain nonetheless that a federal prosecution for the 1973 Khartoum murders would square with the principles that underly the ex post facto clause.

A. The Ex Post Facto Clause Precludes Retroactive Application of Criminal Laws to Acts That Were "Innocent When Done"

The Supreme Court first interpreted the ex post facto clause in Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798). Justice Chase there enumerated the types of laws which are considered ex post facto:

> 1st. Every law that makes an action done before the passing of law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Id. at 390. See e.g., Dobbert v. Florida, 432 U.S. 282, 292 (1976); Beazell v. Ohio, 269 U.S. 167, 169-170 (1925); Duncan v. Missouri, 152 U.S. 377, 382-383 (1894).

In applying the constitutional principles to the problem at hand, it is useful to note that jurists from Blackstone to the present Justices of the United States Supreme Court have emphasized that the purpose of the ex post

facto clause is to assure the accused of fair warning, before committing an act, that he will be subject to criminal punishment. Thus, Blackstone condemned ex post facto criminal laws on the grounds that under such laws:

> "it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust." (Emphasis supplied.)

1 W. Blackstone, Commentaries *46 (1765). Blackstone's analysis was cited as the basis for Justice Chase's analysis in Calder v. Bull, supra, 3 U.S. (3 Dall.) at 390, and was quoted in Justice Patterson's concurring opinion in Calder, id. at 396.

Much the same understanding was expressed as the basis for the decision in Dobbert v. Florida, supra. The petitioner in that case had committed a murder at a time when an unconstitutional Florida death penalty statute was in effect. Petitioner was later sentenced to death under a newly enacted, valid death penalty statute, which he challenged as ex post facto. Justice Rehnquist dismissed this contention:

> . . . [T]his sophistic argument mocks the substance of the Ex Post Facto Clause. Whether or not the old statute would, in future, withstand constitutional attack, it clearly indicated Florida's view of the severity of murder and the degree of punishment which the legislature wished to impose upon murderers. The statute was intended to provide maximum deterrence, and its existence on the statute books provided fair warning as to the degree of culpability which the State ascribed to the act of murder.

432 U.S. at 297. (Emphasis supplied.)

Criminal laws may be enforced retroactively only if they satisfy the standards of Calder v. Bull. In applying those standards, the prior legal rules must be compared to the present law to determine whether retrospective application of a new statute would worsen the position of the accused in any of the respects enumerated in Calder.

B. The Ex Post Facto Clause Permits Retroactive Grants of Jurisdiction Over Criminal Acts

The ex post facto clause permits Congress to establish retroactive federal jurisdiction over acts committed before enactment of the jurisdictional statute. In Cook v. United States, 138 U.S. 157 (1891), the Supreme Court sustained the constitutionality of an 1889 act that conferred upon a specific district court jurisdiction to try murders that had been committed in 1888 in a strip of land known as "No-Man's Land." Id. at 183. The Court reached this conclusion even though No Man's Land may not have been attached to any United States judicial district at the time of the commission of the alleged homicide. Id. at 172. In Cook the Court relied on Gut v. The State, 76 U.S. (9 Wall.) 35 (1869), where the Court held that "[a]n ex post facto law does not involve, in any of its definitions, a change of the place of trial of an alleged offense after its commission." See 138 U.S. at 183. In Post v. United States, 161 U.S. 583 (1896), the Court concluded that "it is indisputably within the discretion of the legislature, when granting, limiting or redistributing jurisdiction, to include offenses committed before the passage of the act." Id. at 586. As Gut, Cook and Post show, Congress is well within the bounds of its Constitutional authority when it acts to confer federal jurisdiction over an offense committed before the enactment of the jurisdictional statute.

Read together, Calder v. Bull and Cook v. United States establish the division between constitutional and unconstitutional retroactivity in criminal prosecutions. Accordingly, the essential question under the ex post facto clause is whether retroactive application of 18 U.S.C. § 1116 would make "an action done before the passing of [the] law, and which was innocent when done, criminal; and punishes such action." Calder v. Bull, supra. The ultimate issue is

whether the accused lacked "cause to abstain from" the acts which provide the basis for a criminal prosecution -- was the accused without "fair warning of the degree of culpability" ascribed to those acts? See Dobbert v. Florida, supra; and Blackstone, supra. If the answer to these questions is affirmative, then the ex post facto clause would preclude a prosecution. On the other hand, if the answer is negative, the Constitution permits Section 1116 to confer jurisdiction over an offense retroactively, as Congress is empowered "when granting limiting or redistributing jurisdiction, to include offenses committed before the passage of the act." Post v. United States, supra, 161 U.S. at 586.

C. The Murders of Ambassador Noel and Chargé d'Affaires Moore Were Not "Innocent When Done."

The ex post facto clause would bar prosecution of participants in the 1973 murders of Messrs. Noel and Moore if those killings could be called, in the words of Calder v. Bull, supra, "innocent when done". No reasonable person could ascribe such a characterization to cold-blooded murder. Murder has been condemned by every civilized legal code for thousands of years.

Murder is and always has been a crime in the United States. Under the American federal system, general criminal statutes have always been enforced at the state and local level. Every state of the United States condemns murder. Life imprisonment or execution is commonly made the maximum punishment for murder, in the United States and elsewhere. Although federal jurisdiction over criminal activities has been exercised sparingly, the United States Criminal Code has long defined criminal homicide, making first degree murder a capital crime.

The murders of Messrs. Noel and Moore were also unlawful in Sudan, where they were committed. Recognition that such acts are criminal is so venerable and widespread

that the perpetrators beyond doubt had ample "warning as to the degree of culpability" that attached to their acts. See Dobbert v. Florida, supra.

The murder of diplomats has constituted a violation of the law of nations cognizable in courts in the United States since a time that predates the Constitution. In a case incorporated into the very first volume of the U.S. reports, a Pennsylvania court ruled that no statute was required to support a prosecution for an assault on a French diplomat. In Respublica v. De Longchamps, 1 U.S. (1 Dall.) 114, 119 (Pa. 1784), the Pennsylvania court held that the assault constituted a crime:

> the person of a public minister is sacred and inviolable. Whoever offers any violence to him, not only affronts the sovereign he represents but also the safety and well-being of nations -- he is guilty of a crime against the whole world.

Although the federal courts are not empowered to exercise jurisdiction over crimes in the absence of an enabling statute, United States v. Hudson and Goodwin, 11 U.S. (7 Cranch) 32, 34 (1812), the law of nations has long provided the basis for decisions in civil matters by the federal judiciary. See Talbot v. Jansen, 3 U.S. (3 Dall.) 133, 161 (1795); The Rapid, 12 U.S. (8 Cranch) 155, 162 (1814); Fremont v. U.S., 58 U.S. (17 How.) 542, 557 (1854); U.S. v. Arjona, 120 U.s. 479, 488 (1886); The Paquete Habana, 175 U.S. 677 (1900); MacLoud v. United States, 224 U.S. 416, 434 (1913). Indeed, "in the absence of Congressional enactment, United States courts are 'bound by the law of nations, which is a part of the law of the land.'" Filartiga v. Pena-Irala 630 F.2d 876, 887 (2d Cir. 1980), citing The Nereide, 13 U.S. (9 Cranch) 388, 422 (1815) (per Marshall, C.J.).

The murder of diplomats on assignments outside their own countries has been condemned by the law of nations for centuries. In interpreting the Alien Torts Claim Act in

Hannoch v. Tel-Oren, 726 F.2d 774 (D.C. Cir. 1984), Judge Bork looked to the law of nations as it was understood in 1789, noting that at the birth of the federal legal system one of the three "principal offenses" against the law of nations was the "'infringement of the rights of embassadors (sic).'" 726 F.2d at 813, quoting 4 W. Blackstone, Commentaries *68, 72; see also 1 W.W. Crosskey, Politics and Constitution in the History of the United States 459 (1953).3/

The world, moreover, has been on notice since at least 1942 that the United States seeks to bring to justice those guilty of murderous violations of international law. That was the year in which the allied powers declared their intent to prosecute Nazi war criminals. See Allied Declaration of December 17, 1942; Allied Declaration of St. James, London, January 13, 1942 (reprinted in History of the United Nations War Crimes Commission and the Development of the Law of War).

The cold-blooded murder of Messrs. Noel and Moore thus violated the millenarian and universal rules that condemn murder and protect diplomats. The substantive crime of murder has long been codified and subject to the severest punishment in the Criminal Code of the United States and the States of the United States. The applicable rules have long been recognized and enforced by courts of competent jurisdiction in the United States. The same rules have been enforced by

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3/ In a recent decision, a district court considered the potential liability of the Soviet Union for the alleged "unlawful seizure, imprisonment and possibly death" of Raoul Wallenberg, a Swedish diplomat. Wallenberg v. The Union of Soviet Socialist Republics, Civ. No. 84-0353, slip op. (D.D.C. October 15, 1985). The court held the "violation of diplomatic immunity" to be a clear violation of "universally recognized principles of international law." Slip Op. at 17. The court further concluded that "the United States law has long accepted international standards of diplomatic immunity as part of its common law and has recognized a private civil cause of action for a violation of diplomatic immunity." Id. at 36. The opinion concludes that "if [Wallenberg] . . . is no longer alive, [18 U.S.C.] § 1116 has also been violated." Id. at 37.

international courts such as the Nurenberg Tribunal and are codified in the Vienna Convention.[4/]

Against these long established legal principles, only pretense should justify a claim that the Khartoum murders should be considered "innocent when done." No legal authority is known or could be shown to support so bizarre a contention. While the United States did not confer on its courts the jurisdiction to try persons accused of these crimes until the 1976 revisions of Section 1116 of Title 18, the Supreme Court long ago held that retroactive application of jurisdictional statutes fully satisfies the limitations that the ex post facto clause imposes on federal legislation. The extraterritorial extension of federal jurisdiction over international criminals indeed is consistent with and was foretold by the 1942 declarations of the World War II allies, in which the United States of course joined.

Substantial and compelling arguments therefore support the argument that those responsible for the 1973 Khartoum murders may be brought to justice in the courts of the United States pursuant to the grant of extraterritorial jurisdiction that Congress made in the 1976 amendments to Section 1116 of the Criminal Code.

IV. The United States Department of Justice Has Previously Recognized That The Ex Post Facto Clause Does Not Bar Retrospective Assertions of Jurisdiction Over Persons Accused of Murderous Violations of International Law

Less than two years ago, the United States Department of Justice acknowledged and supported the principles discussed in the foregoing portions of this memorandum. This occurred when the target of an Israeli extradition request

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4/ The Vienna Convention on Diplomatic Relations, April 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, Art. 29. The Vienna Convention entered into force with respect to the United States in 1972, and states that "the person of a diplomatic agent shall be inviolable".

argued that the ex post facto clause barred his removal to Israel to face charges resulting from his activities during World War II. The specific claim was that any Israeli law condemning such actions would necessarily be ex post facto because Israel did not exist at the time when the crimes were alleged to have been committed.

In response, the Department of Justice argued that "Israel's desire to try respondent for the murder of civilians during World War II is recognized under American and international law as not constituting enforcement of an ex post facto law." Government's Pre-Hearing Memorandum, In the Matter of the Extradition of John Demjanjuk, N.D. Ohio, Misc. 83-349, pp.47-48.

In fact, the Justice Department cited with approval the following passage from the Nuernberg Military Tribunal:

> In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of ex post factism in the law of murder.

United States v. Ohlendorf, 4 Trials of War Criminals Before the Nuemberg Military Tribunal 411, 459 (I.M.T. 1948), cited in Government's Pre-Hearing Memorandum, supra, pp. 46-47.

The courts granted the extradition request in Demjanjuk without deciding this particular issue, so that these contentions were not addressed in the rulings of the district court and the Sixth Circuit. The argument in the government's memorandum emphasizes nonetheless that the principles discussed in this memorandum have been recognized as valid by the Justice Department. The Department of Justice could not decline on ex post facto ground to prosecute those responsible for the 1973 Khartoum murders without abandoning the position taken in Demjanjuk.

CONCLUSION

Analysis of basic principles enunciated in numerous

authorities provides powerful support to the view that Section 1116 of the United States Criminal Code may be applied retrospectively as Congress intended to prosecute those responsible for murdering United states diplomats before the 1976 amendments to that statute. No authority has been found that supports the contrary view in any substantial way. To decline to bring such a prosecution for reasons rooted in the ex post facto clause would require the Justice Department to abandon the litigating position it recently took in the Demjanjuk case. Although no decision is squarely on point, the cases that establish the metes and bounds of retroactive criminal legislation under the ex post facto clause and the historic policy underlying that Constitutional limitation on legislative powers support the conclusion that a federal prosecution for the 1973 murders may be brought. The issue without doubt in eminently litigable and deserves a full test in any case where there is sufficient evidence to sustain a criminal action.

Harris Weinstein
Daniel F. Poneman
J. Clifford Frazier
Covington & Burling

January 31, 1986

DOCUMENT 20

ITALY ISSUES, THEN REVOKES ARREST WARRANTS FOR ARAFAT'S ARREST.

ITALY HAS TWICE ISSUED WARRANTS FOR ARAFAT'S ARREST.

I. SEPT. 2, 1983

*ITALIAN MAGISTRATE CARLO MASTELLONI ISSUED A WARRANT FOR ARAFAT'S ARREST AFTER CONVICTED RED BRIGADE MEMBERS TESTIFIED THEY HAD RECEIVED WEAPONS FROM THE PLO IN 1978-79 WITH THE APPROVAL OF ARAFAT.

*THE COURT RULED THAT BECAUSE OF A FLAW IN THE LEGAL PROCEDURE, NAMELY THAT **THE WARRANT HAD NOT BEEN FORMALLY SERVED ON ARAFAT AT AN ADDRESS ON ITALIAN SOIL**, THE WARRANT WAS INVALID.

*JUDICIAL SOURCES SAID THE DECISION WAS BASED MORE ON POLITICAL THAN LEGAL CONSIDERATIONS. (Reuters, 2/3/84)

II. SEPT. 1984

*VENICE MAGISTRATE CARLO MASTELLANI ISSUED A SECOND WARRANT FOR THE ARREST OF ARAFAT AND A TOP AIDE OF HIS SALAH KHALAF, ON THE SAME GROUNDS AS THE FIRST WARRANT.

*TESTIMONY BY RED BRIGADE MEMBERS SAID A DEAL INVOLVING THE SMUGGLING OF WEAPONS, INCLUDING THREE SURFACE TO AIR MISSILES, WAS MADE BETWEEN KHALAF AND THE ITALIAN TERRORIST ORGANIZATION. **THIS, WITH THE KNOWLEDGE OF ARAFAT.**

*ITALIAN REPORTS SAY KHALAF AND THE RED BRIGADES CHIEF AGREED TO PASS ON SOME OF THE ARMS TO OTHER EUROPEAN TERROR GROUPS.

*THE **WARRANT WAS UPHELD** IN OCTOBER 1984 WHICH RULED THAT THE EXISTING EVIDENCE, WHILE NOT COMPLETE, WAS SUFFICIENT TO JUSTIFY ARREST WARRANTS OF BOTH ARAFAT AND KHALAF. THE ARREST WARRANT REFERS TO A "JOINT PLAN OF COLLABORATION" BETWEEN THE RED BRIGADES AND THE PLO... AT THE "HIGHEST LEVELS."(WP: 1/2/85)

*IN JUNE OF 1985, THE **ITALIAN COURT REVOKED** THE ARREST WARRANT CLAIMING **INSUFFICIENT EVIDENCE** TO SHOW THAT ARAFAT WAS INVOLVED IN THE DEAL. THE WARRANT FOR KHALAF STANDS.

*ARAFAT'S LAWYER, WHILE CHALLENGING THAT THE EVIDENCE PROVIDED BY THE "REPENTED" RED BRIGADE MEMBERS, SAYS THAT ARAFAT SHOULD ENJOY THE SAME PENAL IMMUNITY AS A HEAD OF STATE. EVIDENCE OF ARAFAT'S STATUS IS EVIDENCED BY HIS MEETINGS WITH CRAXI.

DOCUMENT 21

Memorandum Re: Establishment Of A New Justice Department Office For The Investigation And Prosecution Of Terrorist Crimes Against Americans

I. Summary Of Proposal

It is proposed that there be established within the Department of Justice a special office for the investigation and prosecution of terrorist crimes committed against American citizens or American-owned entities and in violation of American law. The new office would investigate and prosecute such crimes whether they were committed domestically or extraterritorially (to the extent permitted by federal law). The new office would be established upon Order of the Attorney General and reposed in the Department's Criminal Division (owing to the subject matter of its mandate). Funding for the new office would be provided by special congressional authorization, in order to avoid internal conflicts and jealousies with other, already-established and financially-hurt sections of the Department.

It should be noted that this new office would be empowered to investigate and prosecute the terrorist crimes of the radical right (e.g., neo-Nazis who violate federal civil rights laws) and the extreme left (e.g., the P.L.O.).

II. Activities Of The New Office

The new office would be responsible for all current anti-terrorist law enforcement activities undertaken by the federal government which are retrospective in nature - i.e., the investigation and prosecution of persons accused of having already committed crimes (including conspiracy). The physical prevention of terrorist activity would still be undertaken by the F.B.I., the Secret Service, the Armed Forces, state and local police, and other appropriate intelligence and security agencies. However, the new Justice Department office would when appropriate share information in the possession of these other agencies, since those persons accused of having already committed terrorist crimes are often suspected of planning future and similar offenses.

Specifically, the new Justice Department office would carry out the following activities:

(1) It would assume resonsibility for existing investigations of past terrorist crimes, such as the assassination of the American ambassador to the Sudan. In assuming such resonsibility, the new office would receive all currently available intelligence about such crimes (e.g., the tape recording of P.L.O. leaders which planned and peceded the assassination in the Sudan).

(2) The new office would have the authority to apply federal laws which in its judgment might improve and expand the reach of the United States Government over terrorist crimes, including:

a. R.I.C.O.; and
b. new legislation which provides for the jurisdiction to prosecute in the United States those persons who commit acts of terrorism against Americans abroad.

(3) The new office would have authority to recommend and draft for the Attorney General and Congress proposed legislation which might additionally improve and expand the jurisdiction of the United States over that terrorist activity directed against Americans and their property.

(4) The new office would share intelligence and otherwise cooperate with foreign law enforcement agencies which are engaged in the investigation and prosecution of terrorists (including those accused of committing crimes against Americans). Also, the new office would handle the requests of foreign governments (made pursuant to treaty law) for the extradition of alleged terrorist offenders who allegedly reside in the United States, and would in turn initiate requests to foreign governments for the extradition of alleged terrorist offenders in hiding abroad who are accused of crimes against Americans.

III. Composition Of The New Office

The new Justice Department office would include prosecuting attorneys, paralegals, criminal investigators, social scientists (e.g., experts on the Middle East and on domestic neo-Nazis), and a support staff. The director of the office would be a lawyer, in conformity with standard and sound Justice Department policy that prosecuting agencies should be led by prosecuting attorneys.

IV. Advantages Of The New Office

(1) A centralized office for the investigation and prosecution of terrorist crimes would consolidate the expertise and energy now dispersed among various law enforcement agencies (such as United States Attorneys' Offices), whose concern with and treatment of such crimes are neither their primary nor their most familiar activity. The new office would do for the investigation and prosecution of terrorists what the Justice Department's Office of Special Investigations did for the investigation and prosecution of Nazi war criminals - i.e., attempt a professionally specialized solution and full-time commitment to an unconventional law enforcement problem.

(2) The new office would remove from the investigation and prosecution of terrorists those in the Department of Justice (and elsewhere) who have not responded aggressively or effectively to the need for increased legal action against such terrorists. By contrast, members of the proposed new Justice Department office would have it in their interest and expertise to engage in such legal action.

(3) The new office would be more amenable to executive and legislative oversight than the current dispersed state of anti-terrorist law enforcement activity.

DOCUMENT 22

State Department Policy on Visa Denial

**(Spokesman Charles Redman
Noon Briefing, January 15,1986)**

Overriding national security concerns sometimes demand that we exclude a particular alien or class of aliens from the United States. Thus the United States occasionally finds it necessary, under extremely tight control and in extremely small numbers, to exclude aliens for reasons relating to internal security or because we conclude that their presence for a particular visit would have a potentially serious adverse effect upon the conduct of our foreign policy, or because of their personal advocacy of terrorism or membership in or affiliation with certain terrorist organizations.

For example, it has been United States policy, sanctioned by the Congress as recently as 1979, to deny visas to members of the PLO. Similarly, we will as a matter of principle exclude individuals who personally advocate terrorism or who we believe have participated in or supported terrorist activities.

U.S. ACTION ON PLO VISITS TO THE UNITED STATES

On January 15, 1986, Charles Redman reiterated U.S. policy regarding visa denial to terrorists. "With the very narrow exception of those who espouse terrorism, the United States does not exclude aliens for purely ideological reasons...This having been said, however, overriding national security concerns sometimes demand that we exclude a particular alien or class of aliens from the United States...**For example, it has been United States policy, sanctioned by the Congress as recently as 1979, to deny visas to members of the PLO. Similarly, we will as a matter of principle exclude individuals who personally advocate terrorism or who we believe have participated in or supported terrorist activities."**

Previous administrations have also proclaimed stringent policies against PLO entry into the United States:

"As a matter of policy we consider any official of the PLO, and its designated or self-proclaimed agents or spokesmen, ineligible for visas...This ineligibility may be waived under existing law, but it is in no way affected by the McGovern Amendment and the Department of State has no desire to ease entry restrictions on such persons."
-- Douglas Bennett Sept. 11, 1978

"We want to make clear--members of the PLO, a proscribed organization, are ineligible for visas to the United States..."
-- State Department 1979

"...waivers are not granted for political activity ...If he [PLO member Sabri Elias Jirvis] were to give a speech at this Quaker meeting, that would be reasonably construed as a political matter."
--State Department Spokesman Brown 1977

Despite the encouraging policy statements made by successive administrations, enforcement of visa restrictions on PLO members has been inconsistent and deficient. The freedom of travel in the United States given to PLO members to engage in activities unrelated to the United Nations enhances the opportunity for terrorist activities in this country. It has been documented that at least 11 PLO officials have entered the United States during the Reagan administration.

DOCUMENT 23

Cases of United States Visas Granted to Officials of the PLO During the Reagan Administration

November 1985
Shafiq al-Hout, a PLO leader, attended a conference of the Association of Arab American University Graduates in Chicago. His visa stipulated that he could not address the conference.

February 1984
Fatah Central Committee members Khaled el-Hassan and Hani el-Hassan accompanied King Hussein and President Mubarak to Washington. Hani el-Hassan is known for his comments after the Achille Lauro highjacking when he said that allegations of Leon Klinghoffer's murder were "lies." His brother Khaled has said that "there will be no existence for either the Palestinian people or for Israel unless one of them disappears... there will be no peaceful co-existence with Israel. The PLO has no right to discuss recognition with the enemy Zionist state."

April 1983
PLO Executive Committee member Ahmed Abu Sitta was sent by Arafat to Washington to plead for U.S. recognition of the Palestinians' right to self-determination.

March 1983
Issam Abdul-Hadi, president of the General Union of Palestinian Women, was granted a visa to travel in the United States on a speaking tour. As a PLO affiliate organization, U.S. immigration laws consider the women's group as a proscribed organization.

January-February 1983
Noha Tadros, a senior member of the office of the Chairman of the PLO, apparently travelled with John Mroz to Washington on several occasions. She also apparently spent the summer in Washington.

December 1982
Khaled el-Hassan, a member of the Fatah Central Committee, accompanied King Hussein to Washington.

October 1982
Khaled el-Hassan travelled to Washington as an unofficial member of the Arab League delegation led by King Hassan of Morocco.

August 1982
Nabil Shaath, a senior member of the Palestine National Council, visited Washington.

July 1982
Khaled el-Hassan concluded his meetings in Washington.

August 1981
John Mroz told Arafat that "as a confidence building measure" Haig had personally decided to grant visas to Mahmoud Labadi, Arafat's spokesman, and Khaled Fahoum, chairman of the Palestine National Council.

August 1981
Khaled el-Hassan reportedly visited Washington and met with "three senior State Department officials."

June 1981
Khaled el-Hassan visited Washington and met with U.S. officials.

DOCUMENT 24

THE POWER OF THE UNITED STATES TO EXCLUDE YASSER ARAFAT FROM UNITED NATIONS HEADQUARTERS IN NEW YORK

Since the establishment of the United Nations Headquarters in New York, and the signing of the Headquarters Agreement between the United States Government and the United Nations Organization in 1947, the United States has reserved and exercised the right to safeguard its security by denying visas to delegates, representatives, and invitees whose entrance to the Headquarters District might imperil its security. This right was explicitly reserved by Congress and signed into law by President Harry Truman on August 4, 1947, in Section 6 of Public Law 357 (80th Congress), conditioning the terms under which the United States accepted the Headquarters Agreement: "Nothing in the [Headquarters] Agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens...." U.S. Representative Warren R. Austin conveyed this reservation to U.N. Secretary-General Trygve Lie in his formal notification on November 21, 1947: "I have the honor to inform you that the Government of the United States of America is prepared to apply the above-mentioned Headquarters Agreement subject to the provisions of Public Law 357." The Secretary-General recognized the significance of PL 357, in his own report on the Headquarters Agreement dated September 3, 1947: "Public Law 357 refer[s] to the interpretation placed on the Agreement by Congress, in particular to the right of the United States to control the entry of aliens into the territory of the United States. In this connection it would appear desirable to draw the General Assembly's attention to Section 6 of Public Law 357."

The legislative history of Section 6, according to an authoritative 1953 State Department interpretation by the Assistant Legal Adviser for United Nations Affairs, was as follows: "The President was empowered to sign the Agreement on behalf of the United States only subject to the reservations specified in Public Law 357.... When the House of Representatives considered the Joint Resolution as approved by the Senate, it felt that a definitive reservation was needed regarding the safeguarding of the national security of the United States. It was the opinion of the House that the United States must have at least some control over the entrance of aliens into the Headquarters District and its immediate vicinity, this control to be limited by the strict requirements of national security." These requirements were described in a joint Position

Paper of the Department of State and the Department of Justice, dated May 4, 1953: "The pertinent provisions of the domestic law of the United States relating to the exclusion of aliens on grounds affecting the national security may be found in Section 212(a) (27), (28), and (29) of the Immigration and Nationality Act." Paragraph 27 of the Immigration and Nationality Act permits the exclusion of aliens who "seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." Paragraph 29 permits the exclusion of aliens who, the U.S. has reason to believe, would (inter alia) "engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security...." The joint Position Paper also states that "The Government of the United States does not consider that it is under any legal obligation to submit to the United Nations . . . the nature or source of information of a classified nature which forms the basis of its conclusions in an individual alien's case...." (See attachment on Procedures).

Since 1947, successive Administrations have reaffirmed and exercised these rights to deny aliens access to the Headquarters District for security reasons, who otherwise would enjoy rights under Sections 11 and 13 of the Headquarters Agreement. Most of these cases have been handled confidentially, but a few examples have appeared in the public record. For example, on April 9, 1953, the United States representative reported to the U.N. Economic and Social Council that it was denying visa applications by Mrs. Margarette Rae Luckock and Mr. Jan Dessau, who sought to represent certain Non-Governmental Organizations at sessions of the Council, under the powers the U.S. reserved by Section 6 of PL 357. Similarly, on March 30, 1954, U.S. Ambassador Henry Cabot Lodge, Jr., told the Economic and Social Council that the U.S. would not grant a visa to Iradj Eskandary, an Iranian wanted for conspiracy to murder the Shah of Iran, saying:

> I am certain that no Government around this table, and I would particularly include the Soviet Union and Czechoslovakia, would expect the United States to permit him to come to New York, no matter what his purported business or his alleged purposes. Clearly the headquarters agreement . . . did not contemplate the admission of desperadoes and trigger-men.

On October 6, 1972, U.S. Ambassador George Bush explained to U.N. Secretary General Kurt Waldheim a decision to bar Dia-Allah El-Fattal, head of the International Organizations Department in the Syrian Foreign Ministry, from joining his country's delegation in the General Assembly, in the face of strenuous objections by Syria. This controversy led to a number of newspaper stories, which gave as the reason for exclusion his purported involvement in recruiting individuals for terrorist operations by the PLO. The Washington Post (October 7, 1972) quoted a State Department spokesman as saying that the United States believes its security laws take

precedence over the U.N. Headquarters Agreement. The New York Times (same date) observed that the practice of barring persons from coming into the country to go to the United Nations "is not normal, but it is not unique either... and it is believed that the practice has not been challenged."

According to reliable authorities, these few examples that have become known in the public record typify a far larger number of cases that are kept confidential. Reportedly, the practice is to rely, insofar as possible, on oral communication in highly confidential exchanges between the United States mission and the authorities of the Secretariat of the United Nations organization, and the countries affected. In addition, the United States and the United Nations secretariat have sought to avoid a confrontation over differences of legal interpretation of the Headquarters Agreement. (See attachment on procedure).

This practice of confidential communication in cases of visa denial has been continued under the Reagan Administration, during which, according to Ambassador Charles Lichenstein, the United States has exercised its rights to deny visa applications reserved by PL 357 Section 6, several dozen times. In fact, he notes, "the matter is after forty years of experience such common practice that only rarely do these cases become controversial at all."

Other officials familiar with these cases report that, at times, the U.S. has considered it necessary to its security to deny visas and exclude from the U.N. Headquarters even senior officials of delegations from major member nations, who enjoy much greater protection under the Headquarters Agreement than do representatives and visitors associated with Observer Missions.

Arafat himself seems to be aware that the U.S. has the power to deny him a visa. He told the Bahrain-based Gulf news agency WAKH on October 25, 1985 that, "Even if a resolution had been issued inviting me to the [40th Anniversary events of the] United Nations, Reagan would never have granted me a visa to enter the United States." (Four days later he told the Baghdad Voice of PLO that Reagan had actually denied him a visa.)

Sources

For a detailed history of PL 357 Section 6, see especially Marjorie M. Whiteman, Digest of International Law, Volume 13 (Washington: U.S. Department of State, 1969) pp.75-91; a legal memorandum on the subject introduced into the Congressional Record by Senator Patrick Leahy on October 18, 1985, pp. S13569-S13585; and a collection of materials on the development of U.S. policy toward controlling access to the U.N. Headquarters, in Foreign Relations of the United States, 1952-54, Volume III (Washington: U.S. Department of State, 1979) pp. 195-312.

PROCEDURE

Memorandum by the Under Secretary of State for Administration (Lourie) to the United States Representative at the United Nations (Lodge)

WASHINGTON, May 29, 1953

Subject: Implementation of the Headquarters Agreement and Section 6 Reservation

The following brief statement, based on the very helpful analysis and suggestions contained in your memorandum of May 19, 1953, sets forth our understanding of procedures which can usefully be followed in dealing with the access provisions of the Headquarters Agreement where a security problem exists.

1. It is highly desirable for you to agree with Mr. Hammarskjold on a practical working solution of the question of access by aliens to the United Nations headquarters, rather than to dispute with the Secretary-General, and the Organization at large, legal questions concerning the effect and scope of the Section 6 reservation.

2. In cases where an alien covered by Section 11 of the Headquarters Agreement applies for a visa and the consular officer considers that the alien is or may be excludable under subsections 212(*a*) (27), (28) or (29) of the Immigration and Nationality Act, the consular officer will refer the matter to the Department of State. No visa will be denied by a consular officer prior to such reference.

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4. When it is determined that a visa will be denied on security grounds (for example, because the Department of State or the Department of Justice considers that the applicant alien is covered by subsection 212(*a*) (27) or (29) of the Immigration and Nationality Act), the Department will communicate to you the reasons for this action. You would then be authorized in your discretion to discuss the alien's case with the Secretary-General, making known to him the substance of the information on which this Government based its decision to deny a visa. The information so given to the Secretary-General would need to be limited in such a way as not to disclose the source of the information. The Department would send its communication to you as soon as possible after the decision to deny a visa, and in any event before the visa is denied by the consular officer. As stated in your memorandum of May 19, you would not discuss with the Secretary-General the cases of governmental representatives, but of other aliens covered by Section 11 of the Headquarters Agreement.

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Arafat concedes that the U.S. has the power to deny him a visa to visit the U.N. headquarters in New York

On the reason why he did not attend the UN meetings, 'Arafat said: U.S. President Ronald Reagan sent two warnings to the United Nations in case I was considering attending its meetings. The first warning was that he would not attend its celebrations and the second was that he would reduce U.S. aid to the United Nations. Even if a resolution had been issued inviting me to the United Nations, Reagan would have never granted me a visa to enter the United States, he said. 'Arafat emphasized that out of his concern for the United Nations, he decided to withdraw on that "because my presence or absence would never make any difference."

'Arafat Calls Peres Plan for Peace 'Maneuver'
GF251352 Manama WAKH in Arabic 1200-GMT 25 Oct 85

They also used their influence and pressure to prevent the PLO chairman from participating in the UN anniversary celebrations. Reagan not only threatened the United Nations, but also made a strange announcement for fear that the General Assembly might agree to that [inviting 'Arafat]. Knowing that we would get approval by 120 votes, he announced that he would not grant me an entry visa to the United States. I have the right to ask American public opinion: Why not?

'Arafat News Conference
JN291916 Baghdad Voice of PLO in Arabic 1700 GMT 29 Oct 85

DOCUMENT 25

THE PLO OBSERVER MISSION AT UNITED NATIONS HEADQUARTERS IN NEW YORK DOES NOT HAVE DIPLOMATIC IMMUNITY FROM CRIMINAL PROSECUTION

Permanent observer missions at the United Nations Headquarters in New York are not granted diplomatic immunity by any of the major agreements the United States has signed. This was conceded by an authoritative and explicit legal opinion on the status of permanent observer missions issued by the United Nation's Office of Legal Affairs in 1962: "Permanent observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host state...If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities."[1] In an October 1982 statement, the United Nations Legal Counsel, Erik Suy, noted that "there are no specific provisions relating to permanent observer missions in the Charter, the Headquarters Agreement or the Convention on the Privileges and Immunities of the United Nations..."[2] Thus, the PLO observer mission does not have diplomatic immunity from criminal prosecution in U.S. courts.

...NOR WOULD YASSER ARAFAT IF HE CAME TO NEW YORK

Invitees to the United Nations are also not among those granted diplomatic immunity by the host nation. In a 1963 opinion paper of the Secretariat, the United Nations Office of Legal Affairs described the intent of the Headquarter's Agreement: "The Headquarters Agreement does not confer diplomatic status upon an individual invitee because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside the Headquarter's District."[3]

CASES

There are several cases which provide precedent on the issue of United Nations non-member missions and diplomatic immunity. In Pappas v. Francisci (1953), the Supreme Court of New York ruled that permanent observer missions did not have diplomatic immunity. The decision quoted from a 1952 opinion of the Acting Chief of Protocol of the United Nations: "The Headquarters Agreement does not mention the observers category and up until now the agreement has not been interpreted to confer diplomatic immunity on such persons and/or members of their staff."[4]

The question of immunity of an invitee to the United Nations arose in the 1963 case of Enrique Galvao, a Portuguese national living in Brazil who sought to come to New York to testify before a United Nations committee. Portugal was seeking extradition of Galvao on charges of piracy and hijacking under a U.S.-Portugal extradition agreement. The United States Representative to the United Nations, Sidney Yates, clarified the U.S. position on immunity of invitees: "Section 11 [of the Headquarters Agreement]... does not grant them [invited persons] immunity from legal process" and noted that "the General Convention [on Privileges and Immunities of the United Nations] does not confer any immunities on invitees."[5] The United Nations Office of Legal Affairs supported Yates' conclusion in an opinion paper on the case: "It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvao concerning immunity from legal process."[6]

"FUNCTIONAL IMMUNITY"

While the PLO mission and PLO invitees in New York do not enjoy diplomatic immunity, they are conferred certain functional immunities. Functional immunity was explained by the Deputy U.S. Representative to the United Nations and summarized in the 1983 Report of the Committee on Relations with the Host Country: "...Permanent observer missions enjoy only functional immunity, namely, immunity from arrest resulting directly from the discharging of those specific functions for which the mission had been permitted into the United States."[7] The 1983 Report also summarized the opinion of the Office of Legal Affairs: "Such functional privileges and immunities were to be extended to permanent observer missions, which had developed de facto, including the immunity from legal process in respect of words spoken or written and all acts performed by members of the mission in their official capacity before United Nations organs, as well as inviolability for official papers and documents relating to an observer's relation with the United Nations and inviolability of the premises of the mission and of the residences of its diplomatic staff."[8] These immunities, which do not include immunity from criminal prosecution for acts committed outside the performance of United Nations functions, are the maximum claim of members of the PLO mission or Yasser Arafat if he were to come to the United Nations.

LEGAL EXPOSURE

Because they lack diplomatic immunity, the PLO mission and Yasser Arafat, if he were to come to the United Nations, could be subject to various legal actions:

* Criminal justice procedures in Federal or New York State courts
* Extradition proceedings on actions involving other nations
* Civil suits by victims of the PLO

Insofar as jurisdiction exists in state or federal courts, civil actions could be brought by victims of PLO terror and crime seeking indemnification for damages. In such cases, the plaintiffs have the right of discovery into facts relevant to allegations in the complaint. Further, if the plaintiff wins a money judgment and the judgment is not paid by the PLO voluntarily, the plaintiff may have the right of discovery into the PLO's assets in the United States. If these assets are insufficient to satisfy the judgment, it may be possible to discover and make claims against assets in other countries.

Even if the U.S. government did not bring legal action against the PLO mission or Arafat in New York, such actions could be brought by others. A U.S. representative to the United Nations, Sidney Yates, noted during the 1963 Galvao case that "the United States Secretary of State had no power to prevent the arrest of a person whose extradition was sought by a Government with which the United States had an extradition convention, unless such a person was covered by immunities or other facts not present in the instant case..."[9] In its opinion on the Galvao case, the United Nations Office of Legal Affairs noted that "Even if it should prove possible that the executive branch could, in the exercise of its authority over foreign affairs, certify and allow to the judicial branch that the freedom of Mr. Galvao to depart without impediment should override the authority of the courts to detain him, it is not clear on what basis an advance assurance could be given him."[10]

NOTES

1. United Nations Juridical Yearbook, 1962, ST/LEG/8 (Provisional mimeo), p. 237.

2. Statement by Erik Suy, United Nations Legal Counsel, October 1982.

3. Marjorie M. Whiteman, Digest of International Law, vol. 13 (Washington: U.S. Department of State, 1969) p. 94.

4. Pappas v. Francisci, 119 N.Y.S. 2d, 69 (Sup. Ct. Kings County 1953).

5. Whiteman, pp. 92-93.

6. Whiteman, p. 94.

7. Report of the Committee on Relations with the Host Country, General Assembly Official Records: 37th Session, Supplement no. 26 (A/37/26) p. 12.

8. Ibid, p. 13.

9. Whiteman, p. 96.

10. Whiteman, p. 95.