



DEPARTMENT OF STATE

Washington, D.C. 20520

Honorable John Sparkman
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of February 10 concerning S. Res 351 "To request that the President engage in negotiations with other nations to halt international terrorist activities."

As you are aware, the Executive Branch has been deeply concerned by the threat of international terrorism. A major element in our efforts to combat this threat has been the encouragement of international cooperation in bringing terrorists to justice and in denying them safe haven. We have urged that all states become party to and implement the various international conventions on hijacking and the Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons. In 1972, the United States submitted to the UN a working paper containing a draft convention for the prevention and punishment of certain acts of international terrorism. This draft convention would, among other things, obligate those states adhering to it to extradite or to prosecute terrorists who come within their jurisdiction. (A copy of the draft convention is enclosed.) The United States has repeatedly urged that this or a similar convention be adopted by the UN, but so far, unfortunately, without success.

S. Res 351 is closely in line with these efforts to achieve greater international cooperation in the fight against terrorism. We would note, however, that we believe multilateral conventions generally hold out

greater prospects for success in combatting terrorism than individual bilateral agreements. Such conventions emphasize the responsibility of the entire international community in dealing with terrorism. Moreover, they stand a better chance of being acceptable to many states whose cooperation in fighting terrorism is essential but which would be unlikely to enter into a bilateral agreement on the subject with the United States. With regard to sanctions, we would favor their being applied to nations giving assistance or asylum to terrorists. As a practical matter, however, we have found that it is extremely difficult to secure the agreement of other nations on the application of such sanctions.

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

Sincerely,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosures:

1. Correspondence returned
2. Draft convention

5. Working paper submitted by the United States of America

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF CERTAIN
ACTS OF INTERNATIONAL TERRORISM

The States Parties to this Convention,

Recalling General Assembly resolution 2625 (XXV) of 24 October 1970, proclaiming principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations,

Considering that this resolution provides that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Considering the common danger posed by the spread of terrorist acts across national boundaries,

Considering that civilians must be protected from terrorist acts,

Affirming that effective measures to control international terrorism are urgently needed and require international as well as national action,

Have agreed as follows:

Article 1

1. Any person who unlawfully kills, causes serious bodily harm or kidnaps another person, attempts to commit any such act, or participates as an accomplice of a person who commits or attempts to commit any such act, commits an offence of international significance if the act

(a) Is committed or takes effect outside the territory of a State of which the alleged offender is a national;

(b) Is committed or takes effect

(i) Outside the territory of the State against which the act is directed,
or

(ii) Within the territory of the State against which the act is directed and the alleged offender knows or has reason to know that a person against whom the act is directed is not a national of that State;

(c) Is committed neither by nor against a member of the armed forces of a State in the course of military hostilities;

(d) Is intended to damage the interests of or obtain concessions from a State or an international organization.

2. For the purposes of this Convention:

(a) An "international organization" means an international intergovernmental organization;

(b) An "alleged offender" means a person as to whom there are grounds to believe that he has committed one or more of the offences of international significance set forth in this article;

(c) The "territory" of a State includes all territory under the jurisdiction or administration of the State.

Article 2

Each State Party undertakes to make the offences set forth in article 1 punishable by severe penalties.

Article 3

A State Party in whose territory an alleged offender is found shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1:

(a) When the offence is committed in its territory; or

(b) When the offence is committed by its national.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in the case where an alleged offender is present in its territory and the State does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

A State Party in which one or more of the offences set forth in article 1 have been committed shall, if it has reason to believe an alleged offender has fled from its territory, communicate to all other States Parties all the pertinent facts regarding the offence committed and all available information regarding the identity of the alleged offender.

Article 6

1. The State Party in whose territory an alleged offender is found shall take appropriate measures under its internal law so as to ensure his presence for prosecution or extradition. Such measures shall be immediately notified to the States mentioned in article 4, paragraph 1, and all other interested States.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled to communicate immediately with the nearest appropriate representative of the State of which he is a national and to be visited by a representative of that State.

Article 7

1. To the extent that the offences set forth in article 1 are not listed as extraditable offences in any extradition treaty existing between States Parties they shall be deemed to have been included as such therein. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider the present articles as the legal basis for extradition in respect of the offences. Extradition shall be subject to the provisions of the law of the requested State.

3. States Parties which do not make extradition conditional upon the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the provisions of the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties as if it has been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4, paragraph 1 (b).

5. An extradition request from the State in which the offences were committed shall have priority over other such requests if received by the State Party in whose territory the alleged offender has been found within 30 days after the communication required under paragraph 1 of article 6 has been made.

Article 8

Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings.

Article 9

The statutory limitation as to the time within which prosecution may be instituted for the offences set forth in article 1 shall be, in each State Party, that fixed for the most serious crimes under its internal law.

Article 10

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in article 1.

2. Any State Party having reason to believe that one of the offences set forth in article 1 may be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in article 4, paragraph 1, if any such offence were committed.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 12

States Parties shall consult together for the purpose of considering and implementing such other co-operative measures as may seem useful for carrying out the purposes of this Convention.

Article 13

In any case in which one or more of the Geneva Conventions of 12 August 1949, or any other convention concerning the law of armed conflicts is applicable, such conventions shall, if in conflict with any provision of this Convention, take precedence. In particular:

(a) Nothing in this Convention shall make an offence of any act which is permissible under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War or any other international law applicable in armed conflicts;

(b) Nothing in this Convention shall deprive any person of prisoner of war status if entitled to such status under the Geneva Convention Relative to the Treatment of Prisoners of War or any other applicable convention concerning respect for human rights in armed conflicts.

Article 14

In any case in which the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 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, or any other convention which has or may be concluded concerning the protection of civil aviation, diplomatic agents and other internationally protected persons, is applicable, such convention shall, if in conflict with any provision of this Convention, take precedence.

Article 15

Nothing in this Convention shall derogate from any obligations of the Parties under the United Nations Charter.

Article 16

1. Any dispute between the Parties arising out of the application or interpretation of the present articles that is not settled through negotiation may be brought by any State Party to the dispute before a Conciliation Commission to be constituted in accordance with the provisions of this article by the giving of written notice to the other State or States Party to the dispute and to the Secretary-General of the United Nations.
2. A Conciliation Commission will be composed of three members. One member shall be appointed by each party to the dispute. If there is more than one party on either side of the dispute they shall jointly appoint a member of the Conciliation Commission. These two appointments shall be made within two months of the written notice referred to in paragraph 1. The third member, the Chairman, shall be chosen by the other two members.
3. If either side has failed to appoint its members within the time-limit referred to in paragraph 2, the Secretary-General of the United Nations shall appoint such member within a further period of two months. If no agreement is reached on the choice of the Chairman within five months of the written notice referred to in paragraph 1, the Secretary-General shall within the further period of one month appoint as the Chairman a qualified jurist who is not a national of any State Party to the dispute.
4. Any vacancy shall be filled in the same manner as the original appointment was made.
5. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It shall be competent to ask any organ that is authorized by or in accordance with the Charter of the United Nations to request an advisory opinion from the International Court of Justice to make such a request regarding the interpretation or application of the present articles.
6. If the Commission is unable to obtain an agreement among the parties on a settlement of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties and to the depositary. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations it has submitted to the parties in order to facilitate a settlement of the dispute. The six-months time-limit may be extended by decision of the Commission.
7. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel
 7D35 HQ

EXTENSION:

NO. DD/076-1601

DATE: 17 March 1976

STAT

TO: (Officer designation, room number, and building)

	DATE		OFFICER'S INITIALS
	RECEIVED	FORWARDED	

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

	DATE		OFFICER'S INITIALS
	RECEIVED	FORWARDED	
1. DDO 7E26 HQ	18 MAR 1976	<i>22 MAR 76</i>	<i>PR</i>
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We have been asked for our views on a State Department report concerning S. Res. 351, which requests the President to engage in negotiations with other nations to halt international terrorist activities. The full text of the resolution reads as follows: "Resolved, that the Senate requests that the President engage in the negotiation of agreements with other nations to help prevent acts of terrorism by, among other means, denying assistance or asylum to persons who perpetrate against any nation which gives assistance or grants asylum to such persons." I see nothing in State Department's report which should cause us any problems. Please let me know as soon as possible if you agree, whereupon I will report to OMB.

Office of Legislative Counsel

*1-5:
 The DDO agrees
 no problem. Go
 ahead. Thanks.*