



*Shiffel*

*OIC-78-0528*

February 15, 1978

MEMORANDUM

To: Members of the Executive Committee  
From: Ambassador Heyward Isham, Chairman *HI*  
Subject: Formal Response to Ribicoff Request for  
Executive Branch Comments on S.2236

The Administration's open hearing testimony on S.2236 will be completed on February 22. The Governmental Affairs Committee also intends to hear Secretaries Vance and Adams in closed session sometime in March. Although the Executive Committee comments on S.2236 have been conveyed informally to the Ribicoff Committee staffers and will serve as a working paper in the mark-up, I think it important to let the Committee have our comments for the record, and the attached draft has been prepared with that in mind.

In addition, this draft can serve as our formal reply to the outstanding requests for written comments on S.2236 from the Senate Foreign Relations Committee, as well as from the House Committee on Public Works and Transportation concerning H.R. 9775, H.R. 10086 and H.R. 10139, all of which closely parallel S.2236.

Once Executive Committee agreement on this new document is reached, the draft will be sent to OMB for the formal clearance process and transmittal to the three Committees in question.

I would appreciate your written comments/clearance as soon as possible, with a view to scheduling an Executive Committee meeting early next week.

Attachment:

As stated.

*Edited Copy*

*Per Exec. Committee  
Meeting of 28 Feb 78*



DEPARTMENT OF STATE

Approved For Release 2004/08/19 : CIA-RDP81M00980R000800050002-7  
Washington, D.C. 20520

Dear Mr. Chairman:

Your Committee has asked for the views of the Executive Branch concerning S.2236. The purpose of that bill is to "effect certain reorganization of the Federal government to strengthen Federal programs and policies for combating international and domestic terrorism."

The Executive Branch fully endorses and shares the objective of this proposed legislation, which is to counter the serious threat that terrorist actions pose to human life. On reviewing the text of S.2236, we are convinced that a strong consensus exists between the Executive Branch and the Congress that our efforts to combat international terrorism should be strengthened and made more effective both at home and abroad.

We have carefully studied your bill. It contains many valuable elements that we fully support. However, some provisions of the bill appear unnecessary in light of existing legislation and actions already taken within the Executive Branch. Other provisions might not be as effective as alternatives to serve the same purpose.

These comments are the product of careful consideration of the provisions included in the bill. Many of our concerns are technical and can be met by revised wording. The comments which follow are organized by title and section.

The Honorable

Abraham A. Ribicoff,  
Chairman, Committee on  
Government Operations,  
United States Senate,  
Washington, D.C.

INTRODUCTORY SECTIONS

While other portions of the introductory sections of the bill might require modification in order to reflect the final version of the operative sections, Section 5, which defines "terrorism" and "international terrorism", could be improved by new wording. In particular, we strongly suggest that the term "international terrorism" be defined as precisely as possible. The revision we suggest would strengthen the bill by using the definitions found in multilateral conventions or developed for the Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism that the US proposed to the UN in 1972. It should assist our diplomacy to use internationally recognized definitions. Therefore, we suggest the following redraft of Section 5:

Section 5. For the purposes of this Act -

- (a) "terrorism" includes but is not limited to the calculated use of violence or the threat of violence to obtain political goals through intimidation or coercion. It usually involves a criminal act, often symbolic in nature, which is intended to gain widespread publicity and influence an audience beyond the immediate victims; and
- (b) "international terrorism" includes any act designated as an offense or crime under:
  - (1) the Convention for the Suppression of Unlawful Seizure of Aircraft (done at the Hague, December 16, 1970);
  - (2) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (done at Montreal, September 23, 1971); and

(3) the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (adopted by the General Assembly of the United Nations, December 14, 1972); or

(4) any other act which results in the death, bodily harm, or forcible deprivation of liberty to persons, or in the violent destruction of property, or an attempt or credible threat to commit any such act, if the act is committed or takes effect;

(a) outside the territory of a State of which the alleged offender is a national; and

(b) outside the territory of the State against which the act is directed; or

(c) 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; or

(d) within the territory of a State when the act is directed, financed, or otherwise supported by the provision of arms, ammunition, weaponry or training by a foreign State or foreign national or group of foreign nationals, irrespective of the nationality of the alleged offender;

Provided that the act is --

(1) intended to damage the interests of or obtain concessions from a State or an international organization; and

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- (2) committed neither by nor against a member of the armed forces of a State in the course of military hostilities.

TITLE I - CONCERNING ORGANIZATION

The Administration has taken action to address the concerns reflected in Sections 101, 102, 103 and 107 of Title I. Shortly after assuming office, the President reorganized the National Security Council. Among the actions taken was the establishment of the Special Coordination Committee (SCC) to handle, among other matters, crisis management. The Assistant to the President for National Security Affairs chairs this Committee; its members are the statutory members of the NSC and other senior officials as necessary.

In a crisis situation, the SCC can convene immediately to ensure that necessary decisions will be made at the highest levels of the government.

The Special Coordination Committee supervises a senior-level interagency group to coordinate the agencies dealing with terrorism. The interagency group has an executive committee consisting of representatives from the Departments of State, Defense, Justice, Treasury, Transportation, Energy, the CIA, and the NSC staff. It is chaired by the representative of the State Department; the Deputy Chairman is the representative of the Department of Justice. It has met frequently since it was established in September 1977.

The State Department has developed effective procedures to assist in this task. Its operations center is fully staffed on a twenty-four hour basis to handle crisis situations. It maintains communications with all parts of the government, has direct access to top officials, and is able to communicate rapidly with all Embassies and Consulates overseas. This arrangement has performed well in the past.

~~Among the changes~~ <sup>changes</sup> we have made in the organization and management of foreign intelligence activities is ~~a new program that~~ <sup>strengthens</sup> our counter-terrorist capabilities. which

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In reviewing the purposes of Title I, we have *concluded* ~~been convinced~~ that the organizational arrangements that we have in place will accomplish the purposes of this title. ~~We hope~~ Any legislation *should* ~~will~~ be consistent with these arrangements.

TITLE I - CONCERNING TERRORIST ENTERPRISES

Concerning the report on terrorist enterprises called for in Section 104, we believe that legislation should call for regular reports to the Congress on acts of international terrorism that affect American citizens or interests. These reports should be issued quarterly and in a form that can be made public in order that all concerned Americans can have authoritative and current data on terrorism incidents.

We find that there is need for a slight modification of the wording, to ensure that we will be able to prepare authoritative reports and still fulfill our obligation to protect certain information. For example, this provision must take care to protect information relating to criminal investigations or prosecutions, the disclosure of which would violate rule (6) of the Federal Rules of Criminal Procedure. In addition, properly classified information would continue to require protection. The changes we suggest to Section 104(b) (2) and (3) are designed to create a more precise standard to determine which countries and activities would require mention in these reports. Therefore, we suggest the following for this section:

Section 104

- (a) Not later than 45 days after the date on which each calendar quarter of each year ends, the ~~President~~ shall transmit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report regarding acts of international terrorism which affect or involve citizens of the United States.

*Executive Branch*

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(b) Such reports shall include, but not be limited to, the following information --

(1) (no change)

(2) The identity of any foreign government which may have been found to have willfully and knowingly provided financial support, training, and/or arms, equipment and supplies to perpetrators or groups responsible for such acts; or which grants sanctuary from prosecution to perpetrators of such acts;

(3) A summary of each incident required to be reported in paragraphs (1) and (2); presented in such a manner as it will not give unwarranted publicity to the terrorists or their objectives;

(4) (no change)

(5) (no change)

(c) Nothing in this section <sup>shall</sup> ~~is intended to~~ require the public disclosure of information which is properly classified under criteria established by Executive Order or is otherwise protected by law. Such information may be provided to the Senate and House Intelligence Committees in a classified form, ~~or otherwise as appropriate.~~

TITLE I - CONCERNING GOVERNMENTS SUPPORTING TERRORISM

We support the concept advanced in Section 105 that there be a public list of countries that aid or abet terrorist activities. The criteria for inclusion on this list should reflect our proposed modifications for Section 104. The primary responsibility for maintaining this list should rest with the Executive Branch, consistent with its responsibilities for the conduct of foreign affairs. The

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reporting provisions of the bill should ensure that there is full consultation between the Executive Branch and the Congress on the maintenance of the list. We realize, however, that our differences over this provision must be addressed together with our comments on Section 106.

The Executive Branch realizes that sanctions can be important in persuading other countries to desist from support of terrorist activities. But we also believe that sanctions are ineffective or counterproductive if not applied with discretion; therefore, we oppose the mandatory requirement of Section 106 (a). Likewise, the Administration ~~must~~ ~~oppose~~ the authority of one House of Congress or the Congress generally to put countries on a list or prevent their removal from it, especially if the list triggers automatic sanctions (See 205 (e) and (g)).

opposes on  
Constitutional  
and policy  
grounds

Subsections 106 (a) (2) and (3) parallel provisions in Section 1114 (a) of the Anti-Hijacking Act of 1974. The use of different terms in S. 2236 could create a conflict between parallel provisions, making use of either statute subject to challenge in the courts. Therefore, S. 2236 would be improved if these provisions were re-drafted.

Section 106 (a) (4), as presently drafted, raises the possibility of unconstitutional infringements on the right of citizens to travel and the imposition of hardships on aliens, including third country nationals. To be effective, such a provision should be primarily directed against nationals of the country on the Section 105 list. Also waiver provision should be available to protect our interests in international travel and international commerce and to fulfill our obligations under the UN Headquarters Agreement and the Vienna Agreement on Diplomatic Relations.

Subsections 5 and 6 could place a burden on third party governments not responsible for terrorist activities. Like others of the sanctions proposed in this Section, such action would place a heavy burden on international commerce that innocent third parties rather than the offending government would have to carry.



Subsection 9 raises issues dealt with in the Nuclear Non-Proliferation Act of 1978, which has ~~passed the House by a vote of 411-0, and the Senate by a vote of 88-3,~~ *been enacted by Congress and now awaits the President's signature.*

TITLE I - CONCERNING AIRPORT SECURITY

Concerning Section 107, we support the objective of publishing a list of airports that are deficient in their security measures. Time should be allowed for voluntary implementation of adequate security measures prior to listing an airport. The wording of this section should be revised to reflect problems we would encounter in implementation. One basic difficulty is that we do not have guaranteed access to inspect most airports around the world. The host governments must agree to full inspections. However, it should be possible to publish a list that would describe the condition in airports to which we have had access, indicate those airports to which we have not had access, and give our best assessment of what conditions in those airports are.

Concerning Section 108, we must repeat our doubts on the effectiveness of mandatory sanctions. Under the Anti-Hijacking Act of 1974 the Secretary of Transportation, with the approval of the Secretary of State, already has the power to withhold, revoke, or impose conditions on the operating authority of any airline of a nation that fails to administer security measures at least equal to those established as minimum standard under the Convention on International Civil Aviation. The list of unsafe airports would by itself largely accomplish the objectives of section 108 by giving adequate notice to American travelers of existing danger. We would retain the authority of the 1974 Act to impose sanctions which are consistent with the procedures established under applicable bilateral air transportation agreements should the host government not respond to a request to upgrade security standards.

TITLE II -

Concerning Title II, the Administration believes that the objectives of Section 201 and 202 are

*DoT wants to check out this language in-house - will get back to State*

*Such a list should be kept to general terms, however, so as not to become a valuable compilation of data for potential terrorists through the inclusion of "safety and security" information as significant on the list.*

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accomplished both by the organizational changes described above and by the existing Office for Combatting Terrorism in the Department of State, headed by a Director with administrative rank equal to assistant secretary. Therefore, the Administration ~~suggests~~ *^ recommends* that these sections might be deleted.

With regard to Section 203, the Administration supports this section with the exception of subsection b(4). The subject of this subsection has recently been dealt with by the ~~Senate's adoption~~ *^ Congress's enactment* of the Non-Proliferation Act of 1978.

The Administration supports Section 204. In fact, on November 11, 1977, the Attorney General submitted a parallel legislative proposal to the Speaker of the House of Representatives and the Senate. We strongly support enactment of that proposal and have no objection to this section.

As presently drafted, Sections 205 and 206 might cast in doubt the effectiveness of other statutes that have successfully controlled the dangers to which these two sections are addressed. The substantive and procedural controls used to implement the Arms Export Control Act have ensured that defense articles sold on a government-to-government basis and exported from the United States have not fallen into terrorist hands. Purchasers are obligated not to transfer ownership or possession of these articles except to their own agents; resales may be made only to eligible foreign governments or international organizations and only with the explicit approval of the United States. It should also be noted that, as there are more than 20 thousand commercial license applications each year, specific Presidential review would seem unreasonable. With regard to Section 206, the Executive Branch ~~urges~~ *believes* that the current practice under which exporters must inquire whether the substance in question is subject to licensing has avoided the problem of allowing explosives inadvertently to escape control through failure to list them specifically on the munitions list. The present arrangement is more effective than this provision probably would be in achieving the same objectives.

TITLE III

~~The~~ Department of Justice, ~~now has an effective organization to prevent, react to, investigate, or prosecute terrorist incidents.~~ The Deputy Attorney General has the authority to coordinate the activities of the Federal Bureau of Investigation, United States Attorneys, the Criminal Division, the US Marshall Service and the Law Enforcement Assistance Administration. We believe that a new special office, as provided for in Sections 201 and 302,, would not be as effective in achieving coordination and control as the present arrangements that exist within the ~~normal~~ <sup>present</sup> command structure of the Department.

*in the investigation and prosecution of terrorist incidents.*

~~and DOJ~~  
~~is~~  
going to  
biddle  
a bit more  
with  
this.

With regard to the concern addressed in Section 303, there has only been one successful hijacking of a US air carrier since November 1972. Present security arrangements have proved their effectiveness over these 5 years. Under existing legislation, the Federal Aviation Administration has authority to extend security requirements to supplemental air carriers and other forms of air transportation. The Administrator is reevaluating the need to extend security requirements, and the Executive Branch does not now feel that this section is necessary.

Section 304 would require that all imported and domestically manufactured explosives be tagged to permit identification of the source and time of manufacture, as well as the detection of concealed explosives. The Treasury Department has already submitted to the Congress legislation that would give the Secretary of the Treasury the authority to impose requirements for detection and identification taggants. Identification taggants are in a final field test, and progress is being made in the development of detection taggants. The Administration ~~urges~~ <sup>believes</sup> that the proposal it has already submitted to the Congress would be the most effective way to achieve the objective of this Section *since the Treasury proposal provides the flexibility needed to accommodate changing technology.*

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TITLE IV

The Administration strongly supports Title IV.

The Executive Branch appreciates your concern over the terrorist threat. It is a concern we share, as the steps we have already taken indicate. We appreciated the opportunity to provide public testimony in your recent hearings and the informal consultations that have taken place between the two Branches. Working together, we can ensure that new legislation effectively serves our common purposes. You should be assured of cooperation to that end.

Sincerely yours,

Douglas Bennet, Jr.  
Assistant Secretary for  
Congressional Relations

*Handwritten signature/initials*

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<b>TRANSMITTAL SLIP</b>		DATE 28 February 78
TO: <input type="text"/> Office of Legislative Counsel		
ROOM NO. 7D35	BUILDING HQS	
REMARKS:  The Executive Committee of the NSC/SCC Interagency Committee on Terrorism met on Tuesday, 28 Feb. 78. Attached is an edited copy of the results. You will note that they accepted both of your suggestions. My guess is that there will still be some fiddling with language, but probably nothing critical.  Incidentally, Amb. Isham said that he expects to receive a new draft on S.2236 from the Senate Committee o/a 7 or 8 March.  <b>THANKS MUCH FOR YOUR SUPPORT!</b>		
FROM: I'll keep you informed.		
PCS/ITC <input type="text"/>		
ROOM NO. GB0704	BUILDING HQS	EXTENSION <input type="text"/>

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FORM NO. 241  
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REPLACES FORM 36-8 WHICH MAY BE USED.

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