

30 September 1988
OCA 3284-88

MEMORANDUM FOR THE RECORD

SUBJECT: Draft State Testimony on S. 2766 ("Berman Bill"): Relaying CIA Comments to OMB

1. On 29 September, 1988, I spoke with Sue Thau, Legislative Analyst, Office of Management and Budget (OMB).

2. I advised her that the Agency had no objection to the draft testimony by the Department of State on S. 2766, the "Anti-terrorism and Arms Export Amendments Act of 1988" which OMB had circulated for comment. S. 2766 is the Senate companion to the so-called "Berman bill" which, prior to House passage, had been modified to address the Agency's concerns.

3. Prior to calling Ms. Thau, I had discussed the testimony with [redacted] Office of General Counsel, Counterterrorism Center (CTC), who had no objection to it.

[redacted]

Office of Congressional Affairs

OCA/LEG [redacted] 30 Sep 88

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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September 27, 1988

LEGISLATIVE REFERRAL MEMORANDUM

OCA 3230-88

TO: Legislative Liaison Officer -

Department of the Treasury (Carro 566-8523)	28
Department of Commerce (Levitt 377-3151)	04
Department of Justice (Perkins 633-2113)	17
United States Trade Representative (Parker 3432)	23
Department of Defense (Brick 697-1305)	06
Arms Control and Disarmament Agency (Staples 647-8478)	34
Central Intelligence Agency	
National Security Council	

SUBJECT: State draft testimony on S. 2766, "Anti-terrorism and Arms Export Amendments Act of 1988."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 12:00 NOON, SEPTEMBER 29, 1988.

Questions should be referred to Annette Rooney/Sue Thau (395-7300).

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: J. Eisenhour
J. McClelland
A. Donahue
K. Scheid

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TESTIMONY ON S. 2766
THE ANTI-TERRORISM AND ARMS EXPORT AMENDMENTS ACT OF 1988
BY
L. PAUL BREMER III
AMBASSADOR AT LARGE FOR COUNTER-TERRORISM
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE

~~September 26, 1988~~

September 30, 1988

Mr. Chairman:

Thank you for the opportunity to comment on S. 2776, the Anti-Terrorism and Arms Export Amendments Act of 1988.

As you realize, a large portion of the bill has more to do with arms export issues than terrorism. I can testify only on the terrorism-related provisions of the bill. Because of the short notice for this hearing, Mr. Allan Holmes, the Assistant Secretary of State for Political and Military Affairs and the Department's lead witness at the March hearing in the House Foreign Affairs Committee, could not reschedule a previous commitment. There will not be formal testimony from his bureau. However Mr. Robert Mantel of the Bureau of Political and Military Affairs is with me today to help answer any questions you may have on the arms export control portions of the bill.

The legislation before you includes considerable revisions from the original version of the House bill. The Executive Branch had many problems with the original version of the bill. Subsequently, the State Department and other Departments worked extensively with members of the House Foreign Affairs Committee and their staffs to improve the

bill. It was a good cooperative effort and the version of H.R. 3651 passed by the House on May 24 and introduced in the Senate as S. 2766 is in effect a compromise bill. From the viewpoint of the counter-terrorism provisions of the bill, and I understand other portions as well, most of the administration's initial concerns have been met.

Naturally, as in the case of such efforts, there are some things we may have preferred to have handled differently. The Administration does not object to passage of the bill as approved by the House. The Administration notes that, as the Committee on Foreign Affairs report to accompany the bill makes clear, the bill is not intended to impair the constitutional authority of the President to conduct foreign relations.

Let me turn to the anti-terrorism portions of S. 2766. The legislation reflects a basic premise which we share and indeed use in our fight against international terrorism. That concept is: economic sanctions are an important tool in our fight against terrorism and countries which support international terrorism should not be able to engage in these criminal

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activities and enjoy business as usual with the civilized world.

As I noted in previous testimony to this Committee nearly a year ago, in the Administration's view, state-supported terrorists are substantially more dangerous than those operating independently. States which support terrorists provide these international criminals with important assets, such as money, weapons, training, documents, logistic support, intelligence information, safe houses and -- as this bill notes -- sanctuary.

For example:

The terrorists who attacked the Greek ferry boat City of Poros this year belonged to the Abu Nidal Organization and at least one of them used a Libyan passport. Passports the Libyans confiscated from Tunisian guest workers were used by the Abu Nidal terrorists in the December 1985 Christmas season attack at Vienna airport. A Syrian government service passport was used by the terrorist Nezar Hindawi who was convicted in a British court in November 1986 for trying to blow up an El Al passenger plane at Heathrow airport earlier that year.

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State supported terrorists also have an easier time obtaining weapons and transporting them. In the City of Poros attack, some of the weapons were traced to supplies originally sold to Libya. In the Hindawi case in London, his bomb was brought into the United Kingdom aboard the Syrian official airline.

Terrorists who enjoy safe houses and sanctuary can more easily hide after operations and plan new ones without the psychological pressures of fearing immediate arrest and punishment.

Thus it is particularly important that we keep pressure on countries which support terrorism so that they have to pay a price for their actions unless they change their behavior.

Libya remains a particular problem. Now that Qadhafi is conducting a so-called "charm offensive," some countries appear tempted to relax some of the diplomatic and economic pressures imposed by western countries two years ago. As a result of the strong actions taken by the U.S. and Western European countries in April 1986, Libyan-backed terrorism had dropped sharply in

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1986 and 1987. But earlier this year, Libyan-backed terrorists such as the Abu Nidal Organization and the Japanese Red Army became more active. For example, Abu Nidal terrorists struck at a British club in the Sudan, killing six persons, staged the City of Poros attack in Greece in which nine persons died, and a Japanese Red Army terrorist bombed a USO club in Naples, killing an American servicewoman. Terrorists groups with ties to Libya also planted bombs at U.S. facilities in three Latin American countries this April.

More recently, evidence has become available that Libya is developing a chemical warfare capability. This development is of particular concern in the counter-terrorism community because Qadhafi has a track record of providing powerful weapons to terrorist groups. And the use of chemical weapons in the Iran-Iraq war may tempt terrorists to believe they could use the chemicals in terrorist attacks.

Thus it is important to keep up the pressure against countries like Libya and to take care that exports to them do not enhance their ability to support terrorism and military operations.

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It is not an easy effort. Our friends overseas are sometimes reluctant to cooperate. But as shown in the steps taken by the European Economic Community against Libya and Syria In 1986 and the condemnation of North Korea for blowing up the South Korean airliner, a united international front can be effective. I can assure you that this is a major focus of our counter-terrorism diplomacy.

I would like to make a few brief comments on the bill before you.

In an important change from existing law, the bill establishes a common standard for invoking certain sanctions against countries which support international terrorism. The bill incorporates the basic standard of the 1979 Export Administration Act, (EAA) section 6 (j), which establishes an export control mechanism for the sale of items with potential military or terrorist use to countries which the Secretary of State determines "repeatedly provided support for acts of international terrorism."

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The pending bill would add the language "taking into account such factors as whether that government grants sanctuary from prosecution or apprehension to an individual or group which has committed an act of international terrorism."

Of course there are other factors we take into account in making a determination, such as the provision of weapons, financial support, safehouses, logistic help, documents, or intelligence information. Still, we welcome the bill's focus on sanctuary from prosecution because this is a standard which had been used for anti-terrorism sanctions in a number of amendments passed since the mid-1970's. More important, in recent years we have placed great stress on using the rule of law against terrorists, to prosecute and punish them in courts. And this element of our counterterrorist policy is showing successes, as more terrorists are being brought to trial and sentenced stiff prison terms. To cite some examples:

-- Early last year a French court sentenced a Lebanese terrorist to life imprisonment for his part in the murders of an American military attache and an Israeli diplomat.

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- A Spanish court in 1987 passed a 47 year sentence on a Palestinian terrorist for his attempt to blow up an El Al airliner -- and in 1986 a British court handed down a 45 year sentence for another terrorist in a similar case at London Airport.

- An Austrian court sent two Abu Nidal terrorists to prison for life for their role in the 1985 assault on the Vienna airport;

- A West German court is currently trying Mohammed Hamadei, a Lebanese terrorist implicated in the 1985 TWA hijacking, which resulted in the murder of an innocent American seaman.

- And in Greece, authorities arrested a notorious Palestinian terrorist named Muhammad Rashid at our request in May. We have asked for Rashid's extradition, because he is believed to have masterminded the 1982 bombing of a Pan Am airliner. The hearing on his extradition is set for October 4. Our government hopes Greece will confirm its desire to help combat terrorism by agreeing to Rashid's speedy extradition.

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By singling out sanctuary from prosecution as a factor in designating a country as a supporter of terrorism, the Congress and Executive Branch of the United States are united in saying that terrorists should be brought to trial, that they should not be granted sanctuary from prosecution.

Other highlights of the bill:

-- Recession: The bill does provide more flexibility in removing a country from the designation on the so-called terrorism list. Currently the President would have to certify that the country has not supported acts of international terrorism during the previous six months and has given assurances that it will not support future acts. The pending bill would allow for a waiver of the six month period if there is a significant change in the government. This could help us provide restore normal relations quickly if there is a new government which does not support terrorism.

--Threshold: Under current law, Congress would have to be notified 30 days in advance before export licenses are issued for the sale of goods or services valued at more than \$1

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million which would make a significant contribution to that country's military potential or ability to support acts of international terrorism. The pending bill removes the \$1 million threshold, and requires a validated licenses for all goods or technology regardless of the dollar value.

-- Criminal and civil penalties: The bill would impose criminal penalties of up to \$1 million and civil penalties of up to \$500,000 for those who violate the law.

As I understand it Mr. Chairman, if a country is designated under the Export Administration Act's section 6 (j) as one which has repeatedly supported acts of international terrorism, the pending bill would then automatically trigger sanctions in three major areas: arms transfers under the Arms Export Control Act, the sale of dual use items, such as planes or trucks which could be used for military purposes under the Export Administration Act, and various forms of assistance under the Foreign Assistance Act.

You are undoubtedly aware that there other laws already on the books which automatically trigger additional sanctions

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against countries which are designated under the EAA's Section 6 (j). They were passed piecemeal as amendments to a variety of bills after the 1979 Export Administration Act. They include provisions mandating the U.S. to vote against loans in the international financial institutions such as the world bank, an IRS prohibition against foreign tax credits, and a prohibition on Defense Department and NASA procurement from companies or subcontractors controlled by countries on the Section 6 (j) list.

I mention these only to point out that if this bill is passed, there will be a number of sanctions automatically invoked against countries supporting terrorism. As I testified last year on another legislative proposal, there are only so many arrows in our quiver and the Committee should be extremely cautious in the future about adding to the list of automatic sanctions and thus inadvertently restricting the President's flexibility to tailor the most effective package to deal with each country. I do not want to belabor this point as we have no objection to this pending bill, S2766, but did want to remind the committee for the record of our position.

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