

20 September 1988  
OCA 3122-88

MEMORANDUM FOR: [redacted]  
[redacted] OGC

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FROM: [redacted] Legislation Division  
Office of Congressional Affairs

SUBJECT: Kerry/Lugar Introduce Senate Companion to  
Berman Anti-terrorism Bill

1. Attached for your information are the remarks of Senators Kerry and Lugar upon introduction of S. 2776, the Senate companion to H.R. 3651, the Berman anti-terrorism bill which passed the House on 24 May of this year.

2. As you will recall, several changes were made in H.R. 3651 at the Agency's behest prior to House passage to protect Agency equities in the area.

3. In their remarks, Senate sponsors urge action on the bill before the session's end. We understand there is an effort in the House to attach the bill to a minor foreign affairs authorization bill. It is, however, not certain there will be sufficient time for final Congressional action before the end of the session in October.

4. We will keep you informed of the legislation's progress.

[redacted]

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Attachment

OCA/LEG, [redacted] (19 September 1988)

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## CONGRESSIONAL RECORD — SENATE

S 12409

(B) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.

(C) Six members shall be appointed by the President, at least two of whom shall be representatives of private sector employers, including small business, and at least two shall be representatives of organized labor. Such members shall be appointed by virtue of demonstrated experience in relevant family, temporary disability, and labor-management issues.

(D) Three members shall be—

(i) the Secretary of Health and Human Services;

(ii) the Secretary of Labor; and

(iii) the Director of the Office of Personnel Management.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

#### SEC. 204. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, while performing duties of the Commission.

#### SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not more than 30 days after the date on which all members are appointed. The Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable the Commission to carry out this Act. On the request of the chairperson or vice chairperson of the Commission, the head of the agency shall furnish the information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out the duties of the Commission.

(e) USE OF SERVICES AND FACILITIES.—On the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of the agency.

(f) PERSONNEL FROM OTHER AGENCIES.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of the agency to assist the Commission in carrying out the duties of the Commission.

#### SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the final report of the Commission to Congress.

By Mr. KERRY (for himself, Mr. LUGAR and Mr. LAUTENBERG):

S. 2776. A bill to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes; to the Committee on Foreign Relations.

#### ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT

● Mr. KERRY. Mr. President, today Senator RICHARD LUGAR, Senator FRANK LAUTENBERG and myself are introducing legislation which would close major loopholes in existing laws governing arms sales to countries that support international terrorism.

This measure, which passed the House of Representatives with strong bipartisan support on March 24, 1988, represents a long overdue revision of the arms export control laws. The principal sponsors of the measure on the House side, which passed by a voice vote, were HOWARD L. BERMAN, and HENRY J. HYDE.

Basically, this measure adds new prohibitions on arms sales to countries found by the Secretary of State to support international terrorism. Currently, Cuba, Iran, Libya, North Korea, South Yemen and Syria are on the Secretary's list.

In addition, while U.S. Government arms sales to terrorist countries have been prohibited by law since 1986, this legislation would extend that prohibition to sales by private companies, including those located overseas but owned by U.S. citizens. Private companies also would be barred from making an arms sale if they have reason to know that the weapons will reach a terrorist-supporting country.

This legislation does provide flexibility to the President. The President could waive, on a case-by-case basis, the ban on arms sales to terrorist countries if he makes a determination that it is in the national security interests of the United States to do so. Congress would have to be notified by the President 15 days in the advance of such a sale.

However, if the 15-day advance notification inhibits the President's ability to respond to an emergency situation, our legislation allows the President to use existing special authority in section 614 of the Foreign Assistance Act to avoid the 15-day advance notice. The legislation stipulates that under exceptional circumstances where time is of the essence the President would have to notify the Congress about the planned sale at least 24 hours in advance of such a sale.

The major provisions of the bill include the following:

Section 40 of the Arms Export Control Act, which prohibits exports of arms to terrorist states is significantly strengthened by this legislation. Prohibited transactions are listed in detail, both with respect to U.S. Government activities and private transactions.

Section 3(f) of the Arms Export Control Act is repealed. This is the

original antiterrorism provision of the Act, which would be superseded by the revised section 40 prohibition.

Section 38(a)(2) of the Arms Export Control Act is amended to further obligate the Director of the Arms Control and Disarmament Agency to evaluate how a sale of munitions items by the Government would or would not support international terrorism.

Section 6(j) of the Export Administration Act, which regulates the export of goods and technology of significant military or of terrorist value to terrorist states, is amended in two ways. First, to remove the current \$1 million annual threshold amount under which the Executive currently does not have to report to Congress exports of such goods and technology to terrorist states. Second, to require validated licenses for all such exports to terrorist states and 30-day prior notification to Congress of the proposed issuance of a validated license. Section 6(j) also is amended to conform to the rescission authority under that section with the rescission authority available under new section 620A of the Foreign Assistance Act of 1961.

Section 6(j)(1)(B) of the Export Administration Act of 1979 is amended to require that the Secretary of State's second determination be one regarding which the export of the goods and technology could make a significant contribution to the military potential of a terrorist country or could enhance the ability of such country to support acts of international terrorism.

Section 620A of the Foreign Assistance Act of 1961 is amended to conform it with other changes in the law, particularly the revision of section 40 of the Arms Export Control Act. There is a classification that the President cannot use humanitarian reasons to justify a waiver of the antiterrorism prohibition for the purpose of providing any security assistance under part II of the Foreign Assistance Act of 1961 or by the Export-Import Bank.

Section 36 of the Arms Export Control Act, which requires certain reports to the Congress about commercial and governmental military exports is amended to add two provisions. First, quarterly reports listing all Presidential consents to transfers of munitions list items, exceeding \$1 million in value, from a recipient country to a third country under the authority of sections 3(a) or 38 of the Arms Export Control Act or section 505 of the Foreign Assistance Act of 1961.

Second, quarterly reports—classified if necessary—of interagency transfers of munitions list items which will not ultimately be disposed of within the United States but excluding from the report those munitions list items which are used solely in connection with intelligence activities and are subject to other reporting requirements under the National Security Act.

S 12410

## CONGRESSIONAL RECORD — SENATE

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This bill is the same as H.R. 3651 which passed the House by a voice vote on May 24 of this year. The Office of Management and Budget issued a statement stating that the administration did not oppose H.R. 3651 at the time the legislation was scheduled for full House action.

As Congressman HYDE noted during the House debate on this measure:

As serious terrorist acts proliferate and the global community struggles to respond effectively, it is now more important than ever that the United States have a consistent, clearly stated terrorist policy. This legislation is designed to help fill this need.

Finally, this legislation, as was pointed out in the floor debate, does not intrude upon the responsibilities of either the House or Senate select committee's responsibilities oversight responsibilities for intelligence or covert activities.

Those of us who are sponsoring the Senate companion measure to H.R. 3651 urge our colleagues to move expeditiously on this legislation to assure that it becomes law before the end of this session of the U.S. Congress.●

● Mr. LUGAR. Mr. President, I am introducing the Antiterrorism and Arms Export Amendments Act of 1988, which would prohibit the exports of military equipment to countries supporting international terrorism. I am pleased to join Senators KERRY and LAUTENBERG as original sponsors of this legislation.

This legislation has already passed the House by a strong bipartisan vote of 411 to 20 on May 24. This bill is intended to accomplish several objectives: It will close many of the loopholes now in the law pertaining to selling and transferring defense articles to third countries; it provides stiff penalties for violators of the law against the sale of military goods to countries on the Secretary of State's terrorist list; and it streamlines the conflicting, overlapping and sometimes contradictory provisions on the law dealing with military exports to terrorist states. The bill also mandates a new reporting and informing requirement on arms sales, including covert sales and transfers. Because there are always unanticipated circumstances and exceptions, the bill retains existing Presidential waiver authority if time is limited and the relevant committees are consulted.

Mr. President, I noted that the House has already passed H.R. 3651. They have done the hard work, hearings were held in the Foreign Affairs Committee and the Permanent Select Committee on Intelligence, there was extensive consultation between the Congress and the executive branch and with various interested parties in the private sector. This legislation, as passed in the House, was not opposed by the administration because it did not and is not intended to limit the President's discretionary authority in this area.

Our laws dealing with U.S. antiterrorist policy is included in four major statutes: The Arms Export Control Act, the Export Administration Act, the Foreign Assistance Act, and the Hostage Act. Regrettably, there are nations and groups supported by these nations who are bent on committing acts of terrorism. This is an unfortunate fact of life. This legislation will not prevent international terrorist acts, but it will clarify the boundaries of what is permissible and what is prohibited in U.S. law with regard to terrorist states. It will ensure sufficient clarity in the law against the sale of military goods to terrorist states so that those who seek to violate this prohibition cannot claim ambiguity, uncertainty and inconsistency in the statutes.

This bill will go a long way in deterring U.S.-origin military and military-related sales to terrorist states. In the absence of effective deterrence against international terrorism, this bill provides stiff criminal and civil penalties to violators of our law against military sales to terrorist states.

Mr. President, this is a well-researched bill, it deserves and has received careful consideration and merits immediate approval in the Senate. I would hope that the Senate acts quickly and decisively to pass this bill and send it to the President prior to adjournment.●

By Mr. STEVENS:

S. 2777. A bill to authorize a certificate of documentation for the vessel *Gipsy*, to the Committee on Commerce, Science, and Transportation.

## DOCUMENTATION OF VESSEL GIPSY

● Mr. STEVENS. Mr. President, I am introducing today a bill to authorize issuance of a certificate of documentation for the sailing vessel *Gipsy* so that this Danish-built wooden ketch can be used for charter cruising in the waters of southeast Alaska.

Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act, coupled with the Coast Guard documentation provisions of title 46 of the United States Code, require that vessels engaged in the domestic coastwise trade be built and documented in the United States. A vessel may not be documented if it was built abroad, or has been owned by a person other than a citizen of the United States.

The vessel *Gipsy*—official No. 903276—is a 65-foot gaff rigged ketch. Built of solid oak in 1932 at Skagen, Denmark, the 66-ton *Gipsy* was constructed when wooden boat building was at its peak for vessels of this type and size. Bill and Toni Shattenberg of Juneau, AK, are the first American owners of the *Gipsy*, and currently use the vessel as their office and home. The *Gipsy* received the Slocum Award for outstanding sailing feats for her passage through the Straits of Magellan, and was on display as an historic vessel in the 1986 World's Fair in Van-

couver. The Shattenberg's would like to charter the *Gipsy* for pleasure cruises so that others might have the chance to experience sailing on a traditional gaff rigged ketch.

The problem is that the chartering of the *Gipsy*, as the Shattenberg's propose, constitutes coastwise trade under the Jones Act. In order to obtain the necessary documentation for such trade, the law requires that the vessel be built in the United States and be owned throughout its history by U.S. citizens.

As the *Gipsy* was built in Denmark, and the Shattenberg's are the first U.S. owners in the vessel's 56-year history, a legislative waiver is needed to allow them to share this unique nautical treasure with the American public. This bill provides the requisite legislative waiver, and I look forward to its adoption.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this time.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2777

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this act, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the vessel Gipsy, United States official number 903276.●*

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 2778. A bill to establish a pilot program for the tracking of medical wastes in the States bordering the Great Lakes; to the Committee on Environment and Public Works.

## GREAT LAKES STATES MEDICAL WASTE TRACKING ACT

Mr. LEVIN. Mr. President, on a very important environmental matter, we in the Great Lakes region—a unique region not only in this country but in the world—were appalled to learn that medical wastes had been found along the beaches on the western side of Michigan over this past weekend. In Oceana County near Pentwater, about 200 syringes were found in one area, and more syringes, surgical gloves, and other wastes were found in another area. Because of the uncertainty of the origin of this waste and whether it was diseased, these findings necessitated closing the contaminated beaches.

The Coast Guard found more debris, still floating off-shore during surveillance flights over the area. Concern about water contamination from the debris prompted officials to ask boaters to stay one-half mile away from shore over a stretch of beach 6 miles long.

While we have all been aware of the problem of medical wastes washing up