

# COMBATTING INTERNATIONAL TERRORISM: THE ROLE OF CONGRESS

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## I. INTRODUCTION

Although terrorism has existed for centuries, terrorist acts are increasingly prevalent in today's shrinking world. While power has diffused in the international system, disaffected groups and "outlaw" states have used terrorism as a tool to attain political objectives.

International terrorist attacks frequently target the United States Government and its citizens. Recently, terrorists have bombed United States embassies, shot diplomats, hijacked airplanes, and machine-gunned airport passengers. In addition, on October 7, 1985, terrorists seized the cruiseliner *Achille Lauro* and murdered an elderly United States passenger aboard that ship. These attacks have resulted in the deaths of innocent men, women, and children.<sup>1</sup> In his 1984 Report to Congress on International Terrorism, President Reagan wrote that "in the past fifteen years, terrorism has become a frightening challenge to the tranquility and political stability of our friends and allies. During the past decade alone, there have been almost 6,500 terrorist incidents and more than 7,600 people have been wounded. American citizens have been the victims of more than 2,500 terrorist incidents."<sup>2</sup>

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<sup>1</sup> On April 2, 1986, terrorists bombed TWA flight 850 from Rome to Athens killing four United States citizens and injuring others. N.Y. Times, Apr. 3, 1986, at A1, col. 6. On December 27, 1985 terrorists killed five United States citizens in simultaneous attacks on the Rome and Vienna airports. N.Y. Times, Dec. 31, 1985, at A1, col. 6. In October of 1985 Palestinian hijackers murdered American tourist Leon Klinghoffer, who was vacationing on the the cruise ship *Achille Lauro*, N.Y. Times, Oct. 10, 1985, at 1, col. 6. For a discussion of the *Achille Lauro* tragedy, see McCredie, *Contemporary Uses of Force Against Terrorism: The United States Response to Achille Lauro — Questions of Jurisdiction and Its Exercise*, 16 GA. J. INT'L & COMP. L. 435 (1986). Additionally, on June 14, 1985 Shi'ite Moslem terrorists hijacked TWA Flight 847 from Athens to Rome taking 107 United States passengers hostage. The terrorists killed one of the Americans aboard. N.Y. Times, July 1, 1985, at A11.

<sup>2</sup> Message to the Congress Transmitting Four Proposed Bills, 20 WEEKLY COMP. PRES. DOC. 590, 591 (Apr. 26, 1984) [hereinafter President's Message].

These victims include members of the diplomatic service, military personnel, businessmen, and tourists. Thus, protection of United States citizens and property abroad has become a principal focus of United States foreign policy.

In recent years state-sponsored terrorism has become a disturbing and persistent part of interstate political relations. Frequently, heinous international terrorist events trace their origins to those states which support these acts as part of their foreign policy. For example, the tragedy of the West Berlin disco bombing on April 5, 1986,<sup>3</sup> and the Vienna and Rome airport attacks on December 27, 1985, had their roots in Tripoli, Libya.<sup>4</sup> Those states supporting terrorism often commit national resources to implement terroristic acts.

The United States Government has responded to repeated acts of international terrorism perpetrated by the Libyan Government through its abuse of diplomatic privileges.<sup>5</sup> The United States has employed economic sanctions<sup>6</sup> and military force against Libya<sup>7</sup> and has undertaken an extensive diplomatic campaign in an attempt to persuade European allies to impose similar sanctions. Thus, the United States has demonstrated that it will respond to international terrorism through diplomatic, economic, and military channels.<sup>8</sup>

The Reagan Administration clearly views the threat of international terrorism as an important foreign policy priority. As one manifestation of this concern, the Secretary of State instituted regular daily staff

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<sup>3</sup> N.Y. Times, Apr. 6, 1986, at A1, col. 6. The State Department acknowledged the possible involvement of Syria in the West Berlin disco bombing. Wash. Post, May 14, 1986, at A1, col. 6.

<sup>4</sup> *Libya under Qadhafi: A Pattern of Aggression*, Special Rep. No. 138, Bureau of Public Affairs, U.S. Dept. St., 4 (Jan. 1986). Libya's involvement in the simultaneous attacks on the Rome and Vienna airports was through Libya's support of the Abu Nidal group, a splinter organization opposed to Yasar Arafat's Palestine Liberation Organization (PLO). Investigators traced three of the passports used in the Vienna attack to Libya. *Id.*

<sup>5</sup> An example of Libya's abuse of diplomatic privilege is the misuse of so-called "Libyan People's Bureaus."

<sup>6</sup> Prohibiting Trade and Certain Transactions Involving Libya, 22 WEEKLY COMP. PRES. DOC. 19 (Jan. 7, 1986); *Washington Tightens Sanctions Against Libya*, Wall St. J., June 23, 1986, at 44, col. 2.

<sup>7</sup> The United States conducted an air strike against Tripoli, Libya on April 14, 1986. N.Y. Times, Apr. 15, 1986, at A1, col. 3.

<sup>8</sup> See generally *Impact of International Terrorism on Travel: Joint Hearings Before the Subcomms. on Arms Control, International Security and Science and on International Operations of the House Comm. on Foreign Affairs and the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 99th Cong., 2d Sess. 136-40 (1986) [hereinafter *Travel Hearings*].

meetings to address the terrorism issue. Through these meetings the Secretary attempted to ensure full integration of the international terrorism issue into the State Department's strategic planning for diplomatic relations, and to deal with the security concern of United States embassies and official personnel abroad. The meetings involved both the Ambassador-at-Large for Counterterrorism Policy and the Director of Security.<sup>9</sup>

At the same time the United States Government was elevating international terrorism as a priority item on the national security agenda, reports of terrorist acts were dominating the media and capturing the attention of United States citizens. Television, newspapers, and radio instantly report the occurrence of terrorist incidents. In some cases these news reports have subjected the media to intense criticism for providing terrorists with a forum for presenting their views. Critics believe the media attention encourages other terrorist activity.<sup>10</sup>

Focusing attention on international terrorist acts has heightened public concern about personal safety. This heightened concern has resulted in a dramatic decline in American tourism to Western Europe and the Middle East. For example, following the hijacking of the TWA 847, the bombing of TWA 840, and the seajacking of the *Achille Lauro* cruiseliner, the traditional high level of American tourism in Greece fell dramatically during 1986.<sup>11</sup> Thus, the Greek cruise-ship industry lost much of its normal United States tourist business.<sup>12</sup> By imposing this *de facto* economic sanction, United States citizens not only have created a major issue in Greek-American relations, but also have created an issue affecting relations with other Western European allies.<sup>13</sup>

International terrorism presents a major challenge for the United States and other democratic countries. Democracies that face terrorist

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<sup>9</sup> Congress recently upgraded the position of Director of Security to the level of Assistant Secretary of Diplomatic Security. Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, § 104, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat. 853) 1874 [hereinafter Antiterrorism Act]; see also H.R. CONF. REP. No. 99-783, 99th Cong., 2d Sess. 5 (1986).

<sup>10</sup> See *The Media, Diplomacy, and Terrorism in the Middle East: Hearing Before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs*, 99th Cong., 1st Sess. (1985).

<sup>11</sup> *Travel Hearings*, *supra* note 8, at 206.

<sup>12</sup> See generally *id.* at 206-07.

<sup>13</sup> See STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 99TH CONG., 2D SESS., REPORT ON ANTITERRORISM MEASURES: THE ADEQUACY OF FOREIGN AIRPORT SECURITY 13 (Comm. Print 1986) [hereinafter STAFF REPORT].

threats must balance respect for individual constitutional rights against the need to protect individuals. A related challenge is the pressure on the United States Congress to legislate authority for the President to combat terrorism. The question remains, however, whether United States foreign policy should aim to eradicate the sources of terrorism, or suppress terrorism's criminal manifestations. This question raises major foreign policy dilemmas. Thus, in the short term, a more manageable objective is the safety of United States diplomats, businessmen, and tourists abroad.

Combatting international terrorism also poses new challenges for international law and multilateral diplomacy. As the State Department's Legal Adviser, Judge Abraham Sofaer, wrote in *Foreign Affairs*, "[r]ecent terrorist incidents have led to many efforts to use the law, virtually all of which have failed. The law has a poor record in dealing with international terrorism."<sup>14</sup> Unfortunately, the law is not being used to combat terrorism at the present time. To the contrary, judges have placed the law at the service of those who embrace political violence. Sofaer contends, however, that "civilized nations and peoples cannot give up on law."<sup>15</sup> Surely without law we would live in a Hobbesian state of nature. To improve its present state, the law should be expanded and used together with bilateral relations and international institutions, to improve the capability of controlling the threat of terrorism. In addition, the United States should devise a system through which it can integrate its policy on international terrorism with international law.

The problems of international terrorism are complex. Unilateral actions by the United States alone cannot solve the problems; the problems of terrorism transcend national boundaries as do the solutions. The United States Congress already has initiated several significant legislative measures designed to stimulate greater bilateral and multilateral cooperation to combat international terrorism. The purpose of this Article is to discuss those recent measures and the proposed efforts now being considered to deal with international terrorism.

## II. RECENT LEGISLATION

The Congress, in particular the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations, continues to

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<sup>14</sup> Sofaer, *Terrorism and the Law*, 64 FOREIGN AFF. 901 (1986).

<sup>15</sup> *Id.* at 922.

play a significant role in developing legislation which will enable the United States to combat international terrorism. Under the Constitution the Senate has the responsibility to give its advice and consent to the ratification of international treaties, including those treaties pertaining to international terrorism.<sup>16</sup> Many of these treaties also require the passage of enabling legislation by both Houses of Congress.<sup>17</sup> In addition to approving treaties, Congress authorizes and appropriates funding to support programs to combat international terrorism and to protect United States officials abroad.<sup>18</sup> In response to the wave of international terrorism threatening the personal security of United States citizens in other parts of the world, Congress has exercised its authority during the last three years to develop new policies which I believe will make a difference.

As Chairman of the House Committee on Foreign Affairs, I established a bipartisan staff task force in 1984 to review diplomatic security, including a review of host government cooperation in protecting United States citizens and embassies, and to study the foreign

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<sup>16</sup> U.S. CONST. art. II, § 2, cl. 2. For a discussion of the Senate's role in ratifying treaties, see Bell & Foy, *The President, the Congress, and the Panama Canal: An Essay on the Powers of the Executive and Legislative Branches in The Field of Foreign Affairs*, 16 GA. J. INT'L & COMP. L. 607 (1987).

<sup>17</sup> See CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT 115-18 (1904). Examples of implementing legislation include: (1) the Continuing Resolution on Appropriations for Fiscal Year (FY) 1985, H.J. Res. 648, which contained the Comprehensive Crime Control Act of 1984, including the Aircraft Sabotage Act implementing the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention); (2) the same legislation mentioned in (1) also contained an Act for the Prevention and Punishment of the Crime of Hostage Taking, which amended the federal kidnapping statute (18 U.S.C. § 1201) by adding new § 1203 on Hostage Taking and created federal jurisdiction over those kidnappings that also constitute hostage taking; (3) the Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons amended §§ 1116, 112, and 878 of Title 18 of the United States Code, thereby implementing the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents and 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; (4) the Convention on the Physical Protection of Nuclear Material Implementation Act of 1982, implementing the Convention on the Physical Protection of Nuclear Material Implementation Act of 1982, which implemented the Convention on the Physical Protection of Nuclear Material adopted by the General Conference of the International Atomic Energy Agency on October 26, 1979.

<sup>18</sup> Antiterrorism Act, Pub. L. No. 99-399, § 104, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat. 853) 1874; International Security and Development Assistance Authorization Act of 1983, Pub. L. No. 98-151, §§ 571-74, 97 Stat. 968, 972-73 (1983).

policy implications of international terrorism.<sup>19</sup> Moreover, in 1984 the Secretary of State asked Admiral Bobby Inman (Ret.) to chair a panel of prominent citizens to address the problem of diplomatic security and to make recommendations for enhancing the security of United States diplomatic missions overseas.<sup>20</sup> Subsequently, the President charged the Vice President to create an interdepartmental task force to combat terrorism.<sup>21</sup> The findings and recommendations of the Staff Task Force, the Inman Panel, and the Vice President's Task Force resulted in several legislative measures. In addition, certain measures have been implemented in response to executive branch requests to Congress for authorizations and appropriations.<sup>22</sup>

On April 26, 1984, the President submitted several legislative proposals to Congress. The President requested the following: enabling legislation for the Convention Against the Taking of Hostages adopted by the United Nations on December 17, 1979;<sup>23</sup> enabling legislation for the Convention on Suppression of Unlawful Acts Against the Safety of Civil Aviation adopted by the International Civil Aviation Organization (ICAO) on September 23, 1971 in Montreal;<sup>24</sup> authority to pay rewards for information concerning international terrorist acts;<sup>25</sup> and final authority to prohibit the training or support of

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<sup>19</sup> The staff task force was established pursuant to the Chairman's authority under the rules of the Committee on Foreign Affairs. The task force meets on a regular basis and, although the task force does not publish reports, its work focuses on legislation and oversight of executive branch actions.

<sup>20</sup> The principal recommendations of the Secretary's Advisory Panel on Overseas Security are summarized in Spiers, *Legislative Proposals Regarding Diplomatic Security*, 86 DEPT. ST. BULL. 47 (1986).

<sup>21</sup> See America's Agenda for the Future Message to Congress, 23 WEEKLY COMP. PRES. DOC. 163, 176-77 (Feb. 6, 1986).

<sup>22</sup> See *supra* notes 19-21. For example, President Reagan attempted to increase intelligence cooperation with friendly nations to share information on terrorist plans and intentions; efforts were made to increase the influx of information regarding the activities of terrorist groups and their supporters; and new, stricter regulations were imposed for checking baggage, cargo, and access to aircrafts. Further, President Reagan refused additional funding to upgrade security of diplomatic missions abroad and asked the Senate to approve the Supplementary Extradition Treaty with the United Kingdom which would allow the return of international terrorists for trial.

<sup>23</sup> President's Message, *supra* note 2, at 592; *Legislation to Combat International Terrorism: 98th Congress: Hearings and Markup Before the Subcomms. on International Security and Scientific Affairs and on International Operation of the House Comm. on Foreign Affairs*, 98th Cong., 1st and 2d Sess. 193 (1983, 1984) [hereinafter *Legislation Hearings*].

<sup>24</sup> President's Message, *supra* note 2, at 592; *Legislation Hearings*, *supra* note 23, at 197; see *infra* note 44 (description of Montreal Convention).

<sup>25</sup> President's Message, *supra* note 2, at 592; *Legislation Hearings*, *supra* note 23, at 214.

international terrorist organizations.<sup>26</sup> As Congress was considering these executive branch requests, the August 1985 bombing of United States personnel and property in Beirut resulted in another executive branch request for \$366 million for security enhancement at United States diplomatic missions overseas.<sup>27</sup> Subsequently, Congress approved legislation that authorized the enhancement of the security of United States diplomatic missions overseas, the payment of rewards for information on international terrorist acts, and danger pay for United States personnel serving in high threat posts.<sup>28</sup> The legislation directed the President to seek more effective international cooperation to combat international terrorism in regard to the punishment and execution of terrorists who attack diplomats.<sup>29</sup> Furthermore, Congress acted on the executive branch request to implement the Montreal Convention on Aircraft Sabotage and the United Nations Convention on Hostage Taking by incorporating into the continuing resolution for appropriations for fiscal year 1985, legislation adopting both Conventions.<sup>30</sup> Congress, however, took no action in 1984 to prohibit training and services to terrorist organizations.<sup>31</sup>

In 1985 the Committee on Foreign Affairs addressed international terrorism within the context of its authorization and oversight of the International Security and Development Cooperation Act of 1985<sup>32</sup> and the Department of State Authorization Act of 1985.<sup>33</sup> Specifically, the Committee undertook three legislative initiatives which have impacted bilateral and multilateral responses to international terrorism: the Foreign Airport Security Act of 1985;<sup>34</sup> the International Maritime

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<sup>26</sup> President's Message, *supra* note 2, at 593; *Legislation Hearings, supra* note 23, at 206.

<sup>27</sup> Security of United States Diplomatic Missions: Message to Congress Transmitting a Request for Supplemental Appropriations, 20 WEEKLY COMP. PRES. DOC. 1383 (Sept. 27, 1984).

<sup>28</sup> 1984 Act to Combat International Terrorism, Pub. L. No. 98-533, 98 Stat. 2706 (1984).

<sup>29</sup> *Id.* § 201.

<sup>30</sup> Continuing Appropriations, 1985 - Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, ch. 20, 98 Stat. 1837, 2186-90 (1984).

<sup>31</sup> H.R. 5613, 98th Cong., 2d Sess. (1984); see *Legislation Hearings, supra* note 23. The bill sparked opposition from civil liberties groups and questions about its vague definition of terrorism. The bill died in committee in both chambers. 1984 CONG. Q. ALMANAC 115.

<sup>32</sup> International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, 99 Stat. 190 (1985).

<sup>33</sup> Department of State Authorization Act, Fiscal Years 1984 and 1985, Pub. L. No. 98-164, 97 Stat. 1017, as amended by Pub. L. No. 99-93, 99 Stat. 405 (1985).

<sup>34</sup> International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, tit. 5, 99 Stat. 190, 219-27 (1985) [hereinafter Foreign Airport Security Act].

and Port Security Act of 1986;<sup>35</sup> and, the Omnibus Diplomatic Security and Antiterrorism Act of 1986.<sup>36</sup>

### III. FOREIGN AIRPORT SECURITY ACT OF 1985

The hijacking of TWA Flight 847,<sup>37</sup> the bombing of Air India Flight 182,<sup>38</sup> and the airport bombings in Tokyo<sup>39</sup> and Frankfurt,<sup>40</sup> underscored the need for security improvements at international airports and for stricter enforcement of existing standards. Following these airport tragedies, Congress enacted the Foreign Airport Security Act<sup>41</sup> which responds to the growing number of terrorist acts directed against United States citizens travelling through foreign airports. Moreover, the Security Act addresses the international aviation industry's concern over the increasing number of airport incidents. The House Committees on Foreign Affairs and Public Works and Transportation found that no formal mechanisms existed in the United States Government for identifying international airports having a serious security risk, for informing the public of those risks, or for taking the necessary preventive measures to correct security problems.<sup>42</sup> The Foreign Airport Security Act sets out applicable guidelines for these problem areas.

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<sup>35</sup> Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, tit. 9, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.) 1908 [hereinafter the International Maritime and Port Security Act].

<sup>36</sup> *Id.*

<sup>37</sup> N.Y. Times, June 15, 1985, at 11, col. 6. Hijackers commandeered a Trans World Airlines jetliner with 104 Americans and 49 other people aboard and forced the crew to fly the plane from Athens to Beirut to Algiers, then back to Beirut, and again to Algiers. The hijackers demanded the release of Shi'ite Moslems being held by Israel. *Id.*

<sup>38</sup> N.Y. Times, June 24, 1985, at 11, col. 6. The Air-India flight, en route from Toronto to Bombay, plunged into the sea off the Irish coast killing all 329 people on board. *Id.*

<sup>39</sup> N.Y. Times, June 24, 1985, at 11, col. 4. A bomb exploded at New Tokyo International Airport as luggage was being unloaded from CP Air Flight 003 from Vancouver, British Columbia. The explosion killed two cargo handlers and injured four others. *Id.*

<sup>40</sup> N.Y. Times, June 20, 1985, at 112, col. 1. A bomb placed among seated passengers ripped through the international departure lounge at Frankfurt Airport, killing three people and wounding 42. *Id.*

<sup>41</sup> Foreign Airport Security Act, Pub. L. No. 99-83, tit. 5, 99 Stat. 190, 219-27.

<sup>42</sup> *International Terrorism: 1985 Hearings and Markup on H.R. 2822 Before the Comm. on Foreign Affairs and its Subcomms. on Arms Control, International Security and Science and on International Operations, House of Representatives, 99th Cong., 2d Sess. (1985)* [hereinafter *International Terrorism Hearings*].

Specifically, the Foreign Airport Security Act mandates that the Secretary of Transportation, through the Federal Aviation Administration (FAA), conduct periodic security assessments of foreign international airports used by United States carriers.<sup>43</sup> The security assessments must be measured against the minimum airport security standards set by the ICAO.<sup>44</sup> In carrying out these assessments, the Act requires the Secretary of Transportation to consult with the Secretary of State regarding the terrorist threat existing in each country, and to determine which foreign airports are not under the *de facto*

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<sup>43</sup> Foreign Airport Security Act, Pub. L. No. 99-83, tit. 5, § 551, 99 Stat. 190, 222-25 (1985).

<sup>44</sup> *Id.* The Committee on Foreign Affairs initially introduced legislation which required that the airport assessments conducted by the Federal Aviation Administration (FAA) be measured against existing FAA Standards on security. See *Travel Hearings*, *supra* note 8, and *International Terrorism Hearings*, *supra* note 42, at 145. The Committee reconciled this proposal with legislation originating from the House Public Works and Transportation Committee's Subcommittee on Aviation. The existing International Civil Aviation Organization (ICAO) standard was subsequently identified as the minimum which should be used by the FAA. *Id.* The decision to key the FAA assessments to ICAO security standards recognized the need to promote international cooperation as well as the ICAO's good record in this field. Among the ICAO's previous achievements in global cooperation are the Tokyo, Hague, and Montreal Conventions and Annex 17 of the Chicago Convention.

Convention on Offenses Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219. The Tokyo Convention establishes procedure for the investigation of offenses involving aircraft and rules for jurisdiction of such offenses. The Convention also describes the powers of the aircraft commander to restrain persons committing offenses and to disembark such persons to the authorities of a contracting state when necessary. *Id.*

Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192. The Hague Convention greatly increased the permissible scope of state activity in combatting hijackings by granting contracting states, state-wide jurisdiction and discretion to take offenders into custody subject to a duty of prosecution or extradition. Like the Tokyo Convention, the Hague Convention applies only when an aircraft is unlawfully seized while in flight. *Id.*

Convention for the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 564, T.I.A.S. No. 7570. The Montreal Convention is similar in scope to the Hague Convention but applies to attacks and sabotage against civil aircraft in flight and on the ground rather than unlawful seizure while the aircraft is in flight. *Id.*

International Standards and Recommended Practices, Security, Safeguarding International Civil Aviation Against Acts of Unlawful Interference, Annex 17 to the Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 [hereinafter Annex 17]. Annex 17 is periodically supplemented by the ICAO and defines the obligation of contracting states to provide a standardized level of security for the operation of international flights. Annex 17 defines state responsibility with respect to aviation organizations, airports and related facilities, operators, and the flow of information between contracting states. *Id.*

control of their government.<sup>45</sup> If an FAA assessment demonstrates that a foreign airport is substandard, the Secretary of Transportation shall notify that foreign government of the FAA assessment and recommend the necessary steps to bring the security measures at that airport up to the appropriate ICAO standards.<sup>46</sup> If the foreign government fails to comply with this request within ninety days, the Secretary of Transportation may impose sanctions.<sup>47</sup> In addition to these sanctions, the President may suspend all assistance under the Foreign Assistance Act of 1961<sup>48</sup> or the Arms Export Control Act<sup>49</sup> to any recipient country operating a substandard airport.<sup>50</sup> The Act also provides for immediate notification, issuance of travel advisories, and suspension of air service to any airport upon a determination by the Secretary of Transportation that an immediate condition exists which threatens the safety of passengers, aircraft, or crew traveling to or from such airport.<sup>51</sup> Finally, the Act directs the Secretary of State to seek multilateral and bilateral agreements to strengthen enforcement measures and standards for compliance with respect to aircraft sabotage, aircraft hijacking, and airport security.<sup>52</sup>

In the spring of 1985, the Committee on Foreign Affairs conducted extensive hearings on the implementation of the Foreign Airport Security Act.<sup>53</sup> In addition, the Committee's Staff Task Force on International Terrorism and Diplomatic Security conducted two investigative trips to review the adequacy of foreign airport security at high risk foreign airports in Rome, Frankfurt, London, and Athens.<sup>54</sup> As a result of this oversight activity, the Staff Task Force concluded that to ensure a universally high level of security at foreign international airports, foreign flag carriers should establish security procedures equivalent to the standards required of United States carriers under the Foreign Airport Security Act.<sup>55</sup>

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<sup>45</sup> Foreign Airport Security Act, Pub. L. No. 99-83, § 551(b), 99 Stat. 190 (1985).

<sup>46</sup> *Id.* § 551(d).

<sup>47</sup> These sanctions include: (1) issuance of a travel advisory by the Secretary of State; (2) publication in the Federal Register of the identity of that airport; (3) public advertisement of the determination against that airport; and (4) notification of travel advisory on all airline tickets sold. *Id.* § 551(e).

<sup>48</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 575, *amended by* Pub. L. No. 98-151, 97 Stat. 972 (1983).

<sup>49</sup> 22 U.S.C.A. §§ 2341-45 (1986).

<sup>50</sup> Foreign Airport Security Act, Pub. L. No. 99-83, § 552(b), 99 Stat. 190 (1985).

<sup>51</sup> *Id.* §§ 551(e)(2), 552(a).

<sup>52</sup> *Id.* § 556.

<sup>53</sup> *See supra* notes 8 and 42.

<sup>54</sup> *See STAFF REPORT, supra* note 13, at 2.

<sup>55</sup> *Id.* at VII.

Following adoption of the Act, the Secretary of State and the Secretary of Transportation embarked on a two-fold strategy for implementation. First, the Secretary of State launched bilateral negotiations, either renegotiating existing aviation agreements or conducting separate efforts to reach specific agreement on aircraft and airport security. At the same time the Secretary of Transportation traveled to Montreal to seek an expanded multilateral aviation security agreement. Subsequently, ICAO produced a draft model aviation security article to be adopted by member states.

The Foreign Airport Security Act already has influenced the international community and United States foreign relations. As expressed by the Deputy Assistant Secretary of State for Transportation Affairs, Jeffrey Shane, "[t]his [Foreign Airport Security] Act has proved to be a powerful means of encouraging other countries to beef up security at their airports. The FAA has conducted assessments [as required by the Act] of more than 100 airports to date."<sup>56</sup> Further, Mr. Shane notes that since January of 1986, the United States Government has begun negotiations with some eighty bilateral aviation partners for the adoption of an improved aviation security agreement based on the ICAO model.<sup>57</sup> In fact, the United States already has signed or initialed agreements with thirteen countries, including the United Kingdom, the Soviet Union, the Netherlands, Argentina and Australia.<sup>58</sup> These agreements commit each party to follow the provisions of the international anti-hijacking accords, to observe the other party's security regulations, and to provide assistance to thwart any threats that do arise.<sup>59</sup>

In 1985 the ICAO reconsidered the issue of foreign airport security and, at the behest of the United States Government, adopted a major revision of the Chicago Convention's Annex 17 on aviation security. That revision, which became applicable in May 1986, establishes tough new standards and recommendations for airport and aircraft security.

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<sup>56</sup> J. Shane, Remarks before the Aero Club of Metropolitan Atlanta, in Atlanta, Georgia (June 18, 1986) (on file with the House Committee on Foreign Affairs).

<sup>57</sup> *Id.*

<sup>58</sup> As of October 1986, executive agreements have entered into force with the Dominican Republic, Luxembourg, Taiwan (R.O.C.), and the U.S.S.R. The Netherlands has signed an agreement with the United States and the following countries have initialed agreements: Argentina, Aruba, Australia, Canada, Ecuador, Switzerland, Turkey and the United Kingdom. These agreements are on file with the Treaty Affairs Office of the Department of State.

<sup>59</sup> *Id.*

The revision requires countries to coordinate antiterrorism efforts in checking baggage and to impose strict controls over individuals allowed on the tarmac and in other restricted areas of airports. Moreover, in an effort to upgrade security screening standards, the ICAO revision requires the institution of a positive passenger baggage-match procedure in the international airports of all member states by late 1987.<sup>60</sup>

In conjunction with the Foreign Airport Security Act, Congress enacted the Anti-Terrorism Training Assistance Program<sup>61</sup> which has become an important tool in improving airport security. Through this Program Congress provided additional funding to upgrade security at foreign international airports, specifically in the areas of training and equipment as set out in the Foreign Airport Security Act.<sup>62</sup> The Department of State currently is providing bilateral assistance to several high threat countries, including Greece and Egypt, in an effort to train airport security personnel and provide them with necessary security screening equipment.<sup>63</sup>

#### IV. OMNIBUS DIPLOMATIC SECURITY AND ANTITERRORISM ACT OF 1986

Following approval of the Foreign Airport Security Act in 1985, the Committee on Foreign Affairs undertook further hearings which eventually resulted in approval of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.<sup>64</sup> This Act contained two additional Committee initiatives, the International Maritime and Port Security Act,<sup>65</sup> patterned after the Foreign Airport Security Act, and a proposal to establish an International Antiterrorism Coordinating Committee.<sup>66</sup>

##### *A. International Maritime and Port Security Act of 1986*

In response to the hijacking of the *Achille Lauro*,<sup>67</sup> the Committee on Foreign Affairs conducted a series of hearings on international maritime security to assess the adequacy of existing security stand-

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<sup>60</sup> Annex 17, *supra* note 44, at amend. 6.

<sup>61</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-95, § 575, *amended by* Pub. L. No. 98-151, 97 Stat. 972 (1983).

<sup>62</sup> Foreign Airport Security Act, Pub. L. No. 99-83, § 501, 99 Stat. 190 (1985).

<sup>63</sup> *Id.*

<sup>64</sup> Antiterrorism Act, Pub. L. No. 99-399, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.).

<sup>65</sup> *Id.* at tit. IX.

<sup>66</sup> *Id.* at tit. VII.

<sup>67</sup> N.Y. Times, Oct. 10, 1985, § 1, at 1, col. 6.

ards.<sup>68</sup> The Committee found that neither domestic nor international law adequately addressed the problem of maritime security. Therefore, in collaboration with the House Committee on Merchant Marine and Fisheries, the Committee on Foreign Affairs drafted the International Maritime and Port Security Act of 1986.<sup>69</sup> The purpose of this Act was to institute a regime for maritime security similar to the system established for aviation security under the Foreign Airport Security Act.<sup>70</sup>

While the Maritime and Port Security Act was pending in Congress, the United States Government convened an Interagency Group on Maritime Terrorism to develop proposals to present at the 1985 International Maritime Organization (IMO) Assembly.<sup>71</sup> The IMO Assembly agreed with the Group's proposals, and requested the Maritime Safety Committee (MSC) to further consider the United States proposals at the MSC's January-February meeting.<sup>72</sup> Prior to the IMO's September meeting, the Greek cruiseliner industry took the lead in establishing extraordinary security measures on its passenger ships. Specifically, the Greeks unilaterally imposed those security measures contained in the IMO draft recommendations and, along with the United States, supported the adoption of the draft regulations at the IMO's September 1986 meeting.<sup>73</sup> It should be noted, however, that the IMO measures are only recommended actions at the present time. Nonetheless, at the September 1985 session, the IMO members agreed to prepare an international convention on maritime security based on the ICAO airport model standards.<sup>74</sup> Such a convention, if ratified by the required number of governments, would significantly increase maritime security standards among the signatory nations.

### *B. International Antiterrorism Coordinating Committee*

The Committee on Foreign Affairs also supported the establishment of an international coordinating committee on antiterrorism as an

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<sup>68</sup> *Overview of International Maritime Security: Hearing Before the House Comm. on Foreign Affairs*, 99th Cong., 1st Sess. (1985) [hereinafter *Maritime Hearings*].

<sup>69</sup> Antiterrorism Act, Pub. L. No. 99-399, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.).

<sup>70</sup> See Foreign Airport Security Act, Pub. L. No. 99-83, tit. 5, 99 Stat. 190 (1985).

<sup>71</sup> See *Maritime Hearings*, *supra* note 68, at 27.

<sup>72</sup> International Maritime Organization, Maritime Safety Committee, 52 Sess., Agenda item 2, Jan. 31, 1986, Report of the Working Group.

<sup>73</sup> Drafts of the International Maritime Organization recommendations and hearing reports can be obtained by contacting the International Maritime Organization.

<sup>74</sup> *Id.*

additional tool to combat terrorism.<sup>75</sup> Both the International Security and Development Cooperation Act of 1985,<sup>76</sup> and the Omnibus Diplomatic Security and Antiterrorism Act of 1986,<sup>77</sup> direct the President to seek the creation of such a committee among friendly governments. This concept was proposed almost one year ago when I met with some thirty-two permanent representatives at the United Nations General Assembly and with the Summit Seven ambassadors in Washington in April of 1986.<sup>78</sup> The antiterrorism coordinating committee would focus the attention of like-minded governments on the problems and necessary responses to international terrorism.

Initially, the Executive Branch of the United States and foreign government representatives exhibited some apprehension toward this novel proposal. The magnitude of terrorist attacks in 1986, however, evidenced by the Libyan-supported attacks on the Vienna and Rome airports and the disco bombing in West Berlin, persuaded key governments to reevaluate this initial reaction. The disarray among Western allies regarding United States-backed economic, diplomatic, and military actions<sup>79</sup> against Libya provided compelling evidence of the need for greater coordination.<sup>80</sup> In addition, the confusion with NATO ally Italy, following the *Achille Lauro* hijacking, also illustrated the need for closer cooperation with United States allies in regard to the apprehension and prosecution of terrorists and other appropriate measures to combat international terrorism.<sup>81</sup>

In response to the need for coordination, United States European allies have begun to cooperate more effectively among themselves within the framework of the European Economic Community. A need remains, however, for wider and more regular coordination among the Summit Seven and other like-minded governments. As a first

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<sup>75</sup> See generally *supra* note 68.

<sup>76</sup> International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, tit. V, 99 Stat. 190 (1985).

<sup>77</sup> Antiterrorism Act, Pub. L. No. 99-399, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat. 853).

<sup>78</sup> House Comm. on Foreign Affairs, Survey on Activities, 99th Cong., 2d Sess. (1986) (to be printed). The "Summit Seven" group consists of the United States, United Kingdom, France, West Germany, Italy, Canada and Japan.

<sup>79</sup> In the wake of increasing terrorist attacks involving its citizens, the United States Government conducted air strikes against Libya in April, 1986. N.Y. Times, Apr. 15, 1986, § 1, at 1, col. 6.

<sup>80</sup> N.Y. Times, Jan. 4, 1986, § 1, at 1, col. 6; see *Travel Hearings*, *supra* note 8, at 137-39 (comments of John Whitehead, Deputy Secretary of State).

<sup>81</sup> See *Maritime Hearings*, *supra* note 68.

step, the Omnibus Diplomatic Security and Antiterrorism Act of 1986 directs the President to seek the establishment of a standing political committee under NATO to examine all aspects of international terrorism, review opportunities for cooperation, and make recommendations to member nations. Following the establishment of such a committee, the Act instructs the President to invite other countries to participate.<sup>82</sup> Thus, what will begin as a regional committee under the auspices of NATO, will hopefully evolve into a truly significant international body.

#### V. CONCLUSIONS AND RECOMMENDATIONS

Congress has established a strong domestic legislative foundation for combatting terrorism overseas and has laid the groundwork for coordination with United States allies. More, however, needs to be done. The growing evidence of the internationalization of terrorism accompanied by the ominous appearance of state-sponsored terrorism demands greater multilateral cooperation to defeat this menace. The internationalization of terrorism requires the use of multilateral mechanisms to administer many of the unilateral initiatives taken by the United States and other countries. These measures include: antiterrorism assistance and training to improve airport and port security; rewards for information leading to the arrest and conviction of international terrorists; improved passport and visa controls; an international convention making international terrorism a crime; enhanced enforcement of the Vienna Convention with respect to the sanctity of diplomats and diplomatic missions; and amendment of the Montreal Convention so that enforcement procedures, which are lacking in the current Convention, can ensure compliance with airport security standards. Finally, an international agreement is needed which would prohibit the provision of services and equipment to states which sponsor terrorism, and to individuals and groups that engage in terrorist activities.

While progress toward such initiatives and agreements will be arduous and compromise will be required to accommodate individual nation-state interests, such agreements are possible. Several years ago I joined in an effort to establish a regime for safety of life at sea. Critics said that economic and political factors would make this an impossible effort. Nevertheless, the International Maritime Organi-

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<sup>82</sup> Antiterrorism Act, Pub. L. No. 99-399, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat. 853).

zation successfully concluded the benchmark Safety of Life at Sea (SOLAS) Convention which became the model for further cooperative undertakings of the member states of the IMO.<sup>83</sup> Despite the far more difficult challenge posed by international terrorism, further multilateral cooperation is not only achievable, but is indeed essential if civilized peoples are going to win the war against terrorists.

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<sup>83</sup> International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, T.I.A.S. No. 9700.