

**In the Name of National Security: U.S.
Counterterrorist Measures, 1960-2000**

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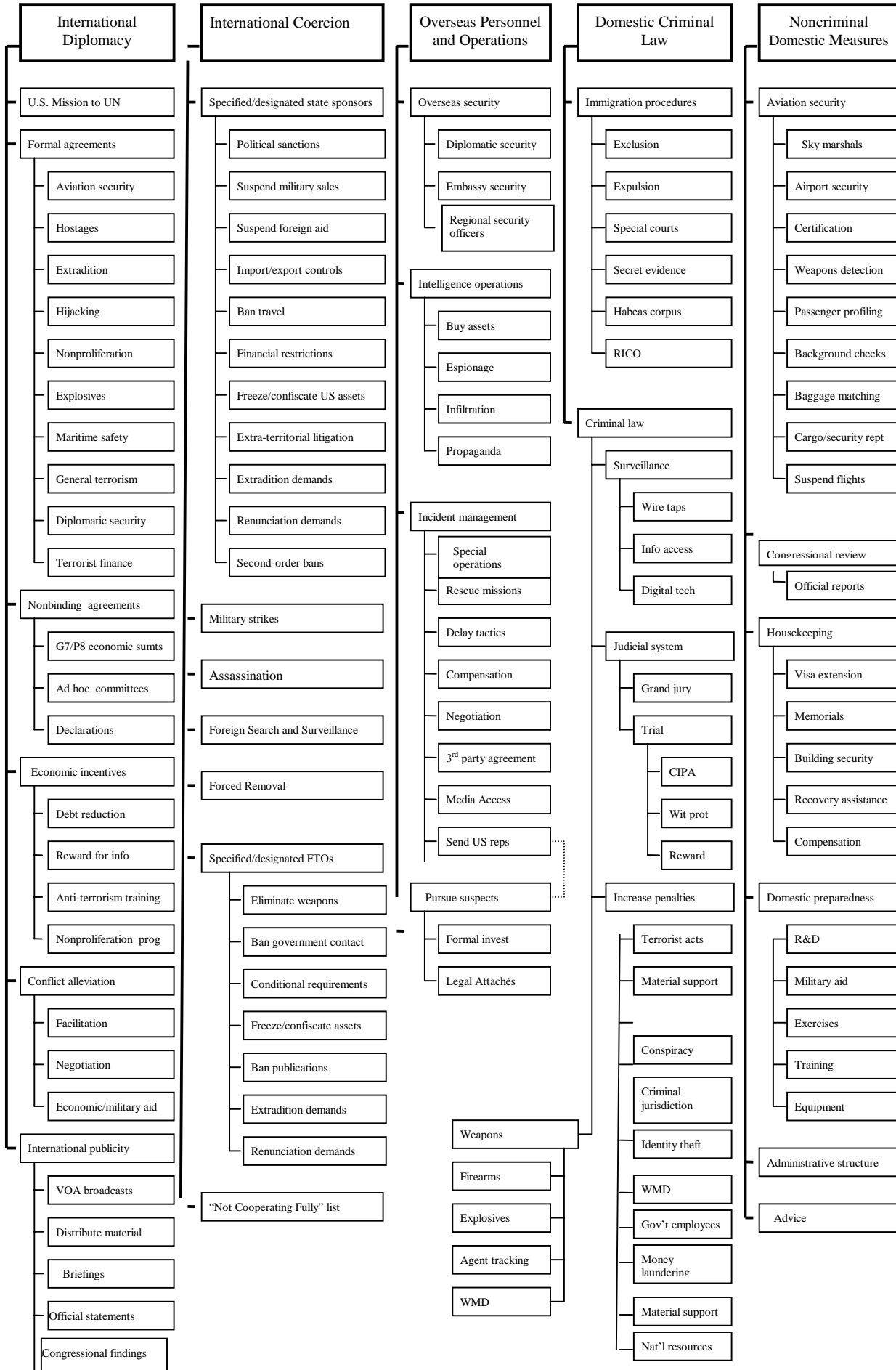
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FIGURE 1. U.S. COUNTERTERRORIST MEASURES 1960-2000



Between 1960 and 2000 the United States responded to the growing threat of terrorism with a wide range of measures. The government implemented provisions that extended from the negotiation of international agreements, military strikes against state sponsors of terrorism, and the creation of decontamination teams, to changes in immigration procedures, advances in surveillance, and an increase in the severity of penalties associated with terrorist attack. As discussion in the United States progresses on the best course of action for dealing with conventional, chemical, biological, nuclear, or radiologic terrorism, it is useful to take stock of where the country stands in the development of its counterterrorism strategy and to consider what factors have shaped the American response. While some substantive areas may be developed further to respond more effectively to terrorism, the significant picture that emerges is how complex and detailed the American counterterrorist complex already has become. The many branches of government entrusted with the life and property of the citizens have felt it necessary to respond to successive terrorist threats by the introduction of a wide range of measures. Left unchecked, the continued expansion of U.S. provisions risks significant inroads into civil liberties, the alienation of minorities and other states, an increase in the number and effectiveness of terrorist acts, and unchecked expenditures. This article provides a taxonomy of efforts to address the threat and argues that, while some gaps may need to be addressed, of more serious concern is the long-term affect of the steady expansion of U.S. counterterrorist measures.

“Let terrorists beware that when the rules of international behavior are violated, our policy will be one of swift and effective retribution.” President Reagan’s words from the White House lawn in 1983 underscored America’s view of terrorism in the closing decades of the twentieth century. Terrorism derived from overseas. It targeted American citizens and represented an attack on the United States. And it required an immediate and public response. From the hijackings of American planes in the early 1960s, these claims became the mantra of successive administrations. As the number of air-jackings, sabotage situations, hostage-taking incidents, and physical attacks on American citizens and military installations abroad increased, the enemy derived from – and for the most part struck – outside U.S. borders. It was not that there were no domestic terrorist incidents orchestrated by U.S. citizens during that time. But far fewer of these incidents occurred and, when they did, they tended to be seen as related to law enforcement, with terrorism reserved for attacks levied by foreign nationals abroad. Two qualities in the U.S. counterterrorist discourse followed: definitions of terrorism tended to focus on its international nature and the national security dialogue secured for itself a privileged position that helped to ensure the placement of counterterrorist discourse within a national security realm.

President Reagan's statement that terrorism demanded an immediate and public response emanated from two factors: the tactical and strategic nature of terrorism, and the obligation borne by a liberal, democratic government to protect the life and property of its citizens. These gave birth to dynamics that, while independent of U.S. actions, influenced America's counterterrorist policy. As a tactic, different individuals, groups, and states used terrorism to attack U.S. government policies. The origins of the attacks, the grievances held by the attackers, the solutions sought, the institutions being challenged, and the actual targets subjected to the acts of terrorism varied. As a strategy, terrorism challenged the political legitimacy of the U.S. government both at home and abroad. It threatened to render the elected government of the United States impotent. These fed into the responsibility borne by the government to protect the citizens. To fulfill its role as a liberal, democratic state, not only did the government have to react, but it had to be *seen* to respond to the challenge being mounted against its ability to uphold its obligations. It wasn't just the executive branch that had to react. Because of the wide tactical use of terrorism, such acts demanded a response from every branch entrusted with responsibility over the lives and property of the citizenry. The legislature legislated, the justice department initiated law and order proceedings, the military created Delta Force and executed counterterrorist missions, and the intelligence services ran special operations. The executive engaged in military strikes, pursued international agreements, instituted economic sanctions, constructed new administrative structures, and lobbied Congress for more powers to fight terrorism.

As a result, between the onset of the hijackings and the turn of the century, the United States introduced a plethora of counterterrorist measures. The majority of these responded to the latest atrocity in an immediate and public way. They reflected the particular challenge being mounted, the institutional affiliation of the responding agency, America's commitment to particular foreign policies, and, most of all, the demand for a swift response. But in its very call for immediate action, and caught up in dynamics beyond the country's control, America became further and further drawn into having to respond to each event. A complicated network marked by the ad hoc adoption of counterterrorist policies ensued, and as the United States continued to attempt to defeat international terrorism, the number and range of such measures steadily expanded. As long as terrorism remained in the international realm – and counterterrorist measures focused on the international arena – this posed little direct threat to civil liberties, minority issues, and the incidence of violence within the United States.

In the late 1980s and early 1990s it became clear that terrorism was no longer only an international phenomenon. Terrorism could – and did – happen on U.S. soil. Terrorism became international and/or domestic and within U.S. bounds. It presented a real and immediate threat. Concern over the

proliferation of chemical, biological, nuclear, and radiologic devices, the growth of grievances against the United States related to its new international role, and the vacuum created by the sudden disappearance of America's foremost enemy locked counterterrorism firmly into a national security dialogue. The growth of technology ensured that not only did the capacity to inflict widespread damage exist, but that a significant proportion of Americans became aware of threats posed by dissatisfied groups and individuals. These developments increased fear that terrorist attacks would occur within the U.S., which led to the absorption of greater resources and the introduction of additional counterterrorist measures.

Between 1994 and 2000 the U.S. doubled its annual expenditures on terrorism, bringing the total to more than \$10 billion, with \$11.3 billion proposed for 2001.¹ Even more telling was the dramatic increase in the monies allocated domestic preparedness: from virtually nothing earmarked specifically for the issue in 1995, in 1997 the total grew to \$130 million, by 2000 topping \$1.5 billion.² New measures ranged from deploying federal decontamination teams and increasing building security to monitoring immigration, establishing greater powers of surveillance, and halting verbal or monetary support of designated terrorist organizations.³ Bolstered by a handful of terrorist attacks hailed as harbingers of the catastrophic battles to come, apprehension within the U.S. increased, spurring further demand for resources and protection against future attacks. In Congress the number of committees holding hearings on terrorism rapidly proliferated. Between 1998 and 2000 the legislature held over 80 such sessions involving wide range of committees.⁴

By the turn of the century, despite the relative dearth of incidents on U.S. soil, terrorism had become enemy number one. A terrorist incident involving U.S. citizens or property anywhere in the world became seen as an attack on the national security of the United States. This illustrated the degree to which the United States had become drawn into a counterterrorist spiral: fear of possible attack, the

¹ Figures provided by the Office of Management and Budget, reprinted in Peter Eisler, "This is only a test, but lives still at stake," *USA Today*, Friday, July 7, 2000, 5A.

² Figures for fiscal years 1997 from General Accounting Office, *Combating Terrorism: Need for Comprehensive Threat and Risk Assessments of Chemical and Biological Attacks*, GAO/NSIAD-99-163, September 1999. Figures for fiscal years 2000 and 2001 are from Office of Management of Budget, *Annual Report to Congress on Combating Terrorism: Including Defense Against Weapons of Mass Destruction/Domestic Preparedness and Critical Infrastructure Protection*, May 18, 2000, p. 45.

³ See also Steven Simon and Daniel Benjamin, "America and the New Terrorism," *Survival*, vol. 42, no. 1, Spring 2000, 59.

⁴ In the Senate, for instance, the Appropriations Committee, Armed Services Committee, Commerce, Science and Transportation Committee, Environment and Public Works Committee, Foreign Relations Committee, Health, Education, Labor and Pensions Committee, Judiciary Committee, and Select Committee on Intelligence all held hearings relating to terrorism. In the House the Armed Security Committee, Commerce Committee, Government Reform Committee, Intelligence Committee, International Relations Committee, Judiciary Committee, Science

introduction of measures, the allocation of greater resources, increased publicity, and increased fear. The magnitude of the perceived threat dictated the degree of the state's response. When placed in a national security dialogue, this encouraged – indeed demanded – the introduction and adoption of measures to fight against the threat. Four further elements influenced this spiral: a multiplier effect (wherein the measures introduced piled up without reconsideration or repeal), incomplete information that accompanied matters related to terrorism, the moral ascription associated with the term 'terrorist', and the reluctance of individuals in authoritative positions to risk under-preparation for terrorist attack. Each of these encouraged the adoption of more counterterrorist measures, requiring further funding, spurring greater awareness and fear. By the turn of the century little evidence existed to indicate the ending, or even slowing, of this spiral. Its continuation, particularly in the domestic context, gives rise to four concerns: inroads into civil liberties, the alienation of minorities and other states, an increase in the number and effectiveness of terrorist acts, and unchecked expenditures.

This article explores the proliferation of American counterterrorist measures between 1960 and 2000. It provides a taxonomy that can serve as a basis for discussion in considering the best approach to adopt in the future. In the first section I review international diplomatic efforts, which seek to encourage international agreement and complicity. In the second section international coercion combines overt threats with incentives. The third section, overseas personnel and operations, covers the placement of U.S. citizens abroad to build an effective counterterrorist structure. The fourth, domestic criminal law, focuses on alterations to the criminal code. In the fifth section I address noncriminal domestic initiatives addressing changes in civil law and noncriminal policy.⁵ The article concludes with discussion of the

Committee, Transportation and Infrastructure Committee, and Joint Economic Committee became engaged in this issue.

⁵ The taxonomy avoids distinguishing measures along lines advocated in other counterterrorist typologies, for three reasons. First, many of the distinctions collapse under scrutiny. Accordingly, this article avoids focusing on strict international and domestic distinctions, the number of countries engaged in counterterrorist activity, and the temporal relationship that the use of such measures bear to the occurrence of an actual terrorist incident. In the first instance, the overlap between the domestic installment of international mechanisms and the consequent penalties levied on U.S. citizens for infringement of the measures blurs the distinction between what might be considered international or domestic. The majority of attacks have occurred overseas. Three of the five categories – international diplomacy, international coercion, and overseas personnel and operations, focus on foreign countries, organizations, and individuals; their effect on U.S. citizens, companies, and organizations can hardly be ignored, however. The domestic criminal law and noncriminal measures categories devote substantial time to the ability of foreign nationals to launch attacks within the United States. Many of these provisions, however, apply equally to U.S. entities. In the second instance, many of the measures within each category cross unilateral, bilateral, and multilateral mechanisms. In the third instance, although most are designed to respond to a particular event or series of events, to examine each provision in a temporal manner ignores the far-reaching impact of measures employed. Other authors have focused on three such approaches: the first centers on the distinction between short and long-term responses. [See for instance Peter c. Sederberg, *Terrorist Myths: Illusion, Rhetoric, and Reality*. [Englewood, NJ: Prentice Hall) 1989] Measures designed to solve an immediate crisis constitute the first area, with preventative or long-term reform measures filling the second. In many instances, though, short-term fixes become long-term

risks posed by continued expansion of counterterrorist provisions. The irony is that in trying to uphold the legitimacy of the government current and future counterterrorist policy may actually undermine America's political legitimacy both at home and abroad.

INTERNATIONAL DIPLOMATIC EFFORTS

The United States has sought cooperation on developing and adopting counterterrorist measures through its mission to the United Nations (UN), the Organization for American States (OAS), and assorted regional and bilateral coalitions. In addition to its formal bilateral and multilateral treaties and conventions, the United States is party to multiple nonbinding unilateral, bilateral, and multilateral declarations. Subjects have included: hostages, extradition, explosives, hijacking, maritime safety, aviation security, non-proliferation of weapons of mass destruction, diplomatic security, terrorist finance, sanctions, and general terrorism.

One of the earliest international efforts counter terrorism in the 20th century is embodied in the 1937 Convention for the Prevention and Punishment of Terrorism. Twenty-four members of the League of Nations signed the convention, which responded to the assassination of King Alexander of Yugoslavia in

default strategies. Their continued use makes these measures de facto long-term responses, substantially reducing the use of such a distinction. Second, a distinction is sometimes made between measures as being employed before, during, or after a future terrorist event. This approach fails to focus on the specific purpose of the measure, which was to respond to the immediate situation. Third, typologies that focus on reactive versus proactive policies claim that short-term, incident-specific policies tend to ignore the longer term issues, while proactive measures account for the consequences resulting from particular measures. [See discussion in Ronald D. Crelinsten and Alex P. Schmid, 'Western Responses to Terrorism: a Twenty-Five Year Balance Sheet,' *Western Responses to Terrorism* (London: Frank Cass 1993) pp.307-340] These approaches suffer from the same limitations of the above two.

The second reason for departing from traditional typological approaches is that it is often in the interplay of the dichotomies that the effectiveness of the measures can be evaluated. Separating them according to somewhat false distinctions removes the opportunity to assess the impact of the measures in their entirety. For instance, it may be that the combination of the international and domestic elements of a particular provision provides the key to mitigating the threat posed by a terrorist organization. Separating the phenomena early on may hamper effective evaluation later. This does not mean that the distinctions may not be helpful later in analyzing the catalogue of measures provided in this taxonomy. The distinction between conciliatory responses and repressive responses may shed light on how different government branches have viewed specific measures and subsequently used them. [See Sederberg (note 12), Alex P. Schmid, 'Force or Conciliation? An Overview of Some Problems Associated with Current Anti-terrorist Response Strategies,' *Violence, Aggression and Terrorism* 2/2 (May 1988) pp.149-78; Ronald D. Crelinsten, 'Terrorism as Political communication: the Relationship between the controller and the controlled,' Wilkinson and Steward (eds.), *Contemporary Research on Terrorism* 3/23; Ronald D. Crelinsten, 'Terrorism, Counterterrorism and Democracy: the Assessment of national Security Threats,' *Terrorism and Political Violence* 1/2 (April 1989) pp.242-69; and Crelinsten and Schmid, op cit.]

Finally, a need currently exists for information to be collated on the breadth and depth of past U.S. counterterrorist measures. In the final years of the twentieth century the United States' concern with the terrorist threat significantly increased. Little has been written, however, that systematically lays out measures that have been taken to deal with it. Instead, the focus has been on evaluating the terrorist threat or analyzing responses in particular areas. A catalogue of what has already been done in this area will help to avoid duplication and contribute to an informed discussion.

Marseilles, France. Article 1 defined terrorism as “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or the general public.” Only one of the original signatories eventually ratified the convention. Of contention was the manner in which terrorism was defined.⁶ Reaching consensus on the definition of terrorism continues to be a problem. The political connotation and issues of legitimacy inherent in the term have made it virtually impossible to develop widespread consensus on how and under what conditions an act might be considered terrorist.⁷ No country wants to admit of terrorist actions or support for terrorist groups; yet many states, including the United States, have been involved in or lent support to groups that engage in actions considered terrorist by one or more countries. American support for the Contras in Nicaragua or UNITA in Angola, South Africa’s support for RENAMO in Mozambique, French support for Hutu rebels in Burundi, Libyan training of Charles Taylor in Liberia and the Revolutionary Urban Front in Sierra Leone, and Sudanese support of the Lord’s Resistance Army (LRA) provide some salient examples.

Only in 1954 did the international community again try to define terrorism, when the UN International Law Commission drafted the Code of Offenses against the Peace and Security of Mankind. This code limited terrorism to “the undertaking or encouragement by the authorities of a state of terrorist activities in another state, or the toleration by the authorities of a state of organized activities calculated to carry out terrorist acts in another state.”⁸ Failure to define “aggression”, however, halted the commission’s progress. In 1972, spurred by Black September’s kidnapping of Israeli athletes at the Olympics, the UN secretary general, Kurt Waldheim, attempted to move “measures to prevent terrorist and other forms of violence which endanger or take innocent lives or jeopardize fundamental freedoms” onto the UN agenda.⁹ Waldheim’s action sparked a widespread debate with telling amendments. Modifications offered by Saudi Arabia and Jamaica expanded the original request to include “the underlying causes of

⁶ For an early discussion of this problem see John Dugard, ‘International Terrorism: Problems of Definition,’ *International Affairs (London)* 50/1 (Jan. 1974).

⁷ For discussion of issues involved in defining terrorism see for instance Alex P. Schmid and Albert J. Jongman et al. *Political Terrorism: A new guide to actors, authors, concepts, data bases, theories, and literature.* (New Brunswick: Transaction Books 1988) pp.1-39.

⁸ Robert H. Kupperman and Darell Trent, *Terrorism: Threat, Reality, Response* (Stanford, California: Hoover Institution Press 1979) p.142.

⁹ Thomas M. Franck and Bert B. Lockwood, Jr., ‘Preliminary Thoughts Towards an International Convention on Terrorism,’ *American Journal of International Law* (January 1974), 69, cited in Mark A. Celmer, *Terrorism, U.S. Strategy, and Reagan Policies.* (New York: Greenwood Press 1987) p.97.

those forms of terrorism, and acts of violence which lie in misery, frustration, grievance and despair, and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.”¹⁰

Hostage taking, skyjackings, and other violent acts against U.S. citizens following the hijackings in the 1960s raised security issues related to, but not focused on, terrorism. They provided concrete issues on which to garner international support, while leaving aside arguments over the precise definition of terrorism. The United States initiated and participated in treaties relating to aviation security, hostages, diplomatic security, extradition, hijacking, weapons, explosives, maritime safety, sanctions, and terrorist finance.

The earliest aircraft security agreement – the 1944 Chicago Convention on International Civil Aviation, Annex 17 – set international standards for safeguarding aircraft.¹¹ The Convention on Offenses and Certain Other Acts Committed on Board Aircraft, adopted at the Tokyo Conference of the International Civil Aviation Organization, followed on September 14, 1963.¹² On December 16, 1970 the Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking) became the next milestone in aviation security.¹³ The following year, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation focused on the sabotage of aircraft.¹⁴ More than 120 countries signed each of these agreements. In 1973 the Chicago Convention Annex Seventeen to the International Civil Aviation Organization Convention on International Civil Aviation created standards for airport security. Then in 1988 the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, a supplement to the 1971 Montreal Convention, was signed.¹⁵ U.S. bilateral efforts included the crafting of the U.S.-Cuban Memorandum of Understanding on Hijacking of Aircraft and Vessels and Other Offenses, signed on February 15, 1973, as well as agreements between Cuba, Mexico,

¹⁰ U.S. Congress, House, Committee on Internal Security, *Terrorism, Part 2*, 93rd Cong., 2nd sess, May 16, 1974, 3310. For further discussion of UN efforts to address terrorism see Celmer (note 9) pp.95-111.

¹¹ 1944 Chicago Convention on International Civil Aviation, Annex 17, embodied in regulations located at 14 C.F.R. 107-108.

¹² 1963 Tokyo Convention on Offences and Certain other Offenses Committed on board Aircraft; embodied in P.L. 91-449; 84 Stat. 921.

¹³ Dec. 16, 1970, 22 U.S.T. 1641, 10 I.L.M. 133.

¹⁴ Sept. 23, 1971, 24 U.S.T. 565, 10 I.L.M. 1151.

¹⁵ 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, Section 60021 of the Violent Crime Control and Law Enforcement Act of 1994, PL 103-322.

Venezuela, and Columbia. Combined with the security measures included in the 1974 Air Transportation Security Act, these efforts contributed to the decline in the number of skyjackings between the United States and South America.¹⁶

Diplomatic security concerns and an increase in hostage taking also attracted American and international attention. Events such as the 1969 kidnapping of the U.S. ambassador to Brazil by leftists, the Tupamaros' 1970 kidnapping and murder of a U.S. adviser in Uruguay, and the Black September 1973 capture of the Saudi embassy in Khartoum (in which the U.S. ambassador was held hostage) added to these concerns. In April 1970 Washington approached the OAS to discuss the danger to U.S. representatives overseas.¹⁷ Disagreement over the definition of terrorism, however, led to the withdrawal of half a dozen countries from the discussions. On February 2, 1971, the remaining thirteen countries adopted the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons of International Significance.¹⁸ The United Nations adopted a similar agreement in 1973 – the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents.¹⁹ The OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion, incorporated into U.S. law, extended special protection to heads of state, representatives of states, and their families.²⁰ The first UN action for international protection against hostage taking occurred in 1976 when calls from West Germany led to the creation of the International Convention against the Taking of Hostages.²¹

The United States has also sought international agreement in the realm of weapons of mass destruction. Concern about the terrorist use of nuclear weapons, for example, resulted in the establishment of the 1979 Convention on the Physical Protection of Nuclear Material.²² This convention, which, as its name suggests, requires signatories to take steps to protect their nuclear material, also calls upon members to pay special attention to the transportation of such materials. The agreement also required that the theft of nuclear materials be included in signatories' domestic criminal codes and that individuals suspected of

¹⁶ Celmer (note 9) p.99.

¹⁷¹⁷ Note that the 1961 Vienna Convention on Diplomatic Relations focused on diplomatic relations and required states to provide protection for them. (The Vienna Convention, April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502.)

¹⁸ 27 U.S.T. 3949, T.I.A.S. 8413.

¹⁹ 28 U.S.T. 77, T.I.A.S. 6820. Internationally-protected individuals include foreign ministers, heads of state, heads of government, and family members accompanying the official who, at the time the crime is committed, 'is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity.' [Art. 1(1), 28 U.S.T. 77, T.I.A.S. 6820]

²⁰ U.S.C., Congressional and Administrative News, 94th Congress, 2nd sessl, vol. 4 (St. Paul: West Publishing Co. 1976), 4481.

²¹ U.N. G.A.O.R. Supp. No. 46 (A/3443), 1979, 245-7, U.N. Doc. A/RES/34/146. Embedded in domestic law via PL 98-473, 18 U.S.C. § 1203.

obtaining or attempting to obtain nuclear materials either be prosecuted within the country where the activity occurred or be extradited to await prosecution. Concerns about the ability of states to use biological or chemical weapons was accompanied in the United States, particularly in the 1990s, by growing alarm that such weapons could make their way into the hands of terrorists. Many WMD nonproliferation efforts, although not wholly focused on terrorism, nevertheless recognize these concerns.

Attempts to prevent the proliferation of biological weapons led in 1971 to the Conference on the Committee on Disarmament (CCD) drafting of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons.²³ By February 1994, 152 countries had become signatories to the convention. Review conferences held in 1981, 1986, 1991, and 1996 underscored the importance of continuing disarmament efforts. In 1980 the CCD established an ad hoc working group to consider steps relating specifically to chemical weapons. In September 1992, after more than a decade of painstaking negotiations, all thirty-nine members of the CCD agreed to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction.²⁴ In January 1993 the convention opened for signature. As of January 31, 2001, 165 countries had signed the agreement, 141 of which were states parties.²⁵

In the explosives realm, the United States encouraged the incorporation of chemical taggants to make it easier to trace the perpetrators a terrorist attack. In 1991 the United States signed the Convention on the Marking of Plastic Explosives for the Purposes of Detection. The Senate consented to the measure in November 1993, and included it for implementation via the 1995 Omnibus Counterterrorism Bill.²⁶ In 1997 the UN General Assembly adopted the Convention for the Suppression of Terrorist Bombings, which sets a standard for international cooperation for incidents involving the unlawful and intentional use of explosives in public places with the intent to kill, cause serious bodily injury, or destroy a public place.

²² The U.S. implemented this measures in 1982 via PL 97-351, 18 U.S.C. § 831.

²³ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 26 March 1975, TIAS 8062; 26 U.S.T. 583.

²⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 26 U.S.T. 571.

²⁵ <http://www.fas.harvard.edu/~hsp/cwcsig.html>.

²⁶ This instrument, however, has not yet passed the House. [Kraft (note 9) p.20]

In the wake of the *Achille Lauro* incident, an increasing concern with maritime safety led in 1988 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.²⁷ Other counterterrorist maritime measures have also been initiated. For instance, the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf was drafted to address growing concerns in the 1980s about possible terrorist attacks on offshore oil rigs.²⁸

Efforts to develop international consensus on acts of terrorism continue. Some of the formal mechanisms are drawing closer toward adopting a common definition. Nowhere is this clearer than in attempts to reduce the resources available to terrorist individuals and groups or states engaging in terrorist acts. In 2000 the International Convention for the Suppression of the Financing of Terrorism opened for signature.²⁹ Economic sanctions against countries harboring terrorists also mark international agreements. For instance, in 1992 the UN decision to place strictures against Libya pressured Tripoli to hand over the men suspected of engineering the bombing of Pan Am flight 103 over Lockerbie, Scotland.

In addition to its formal agreements, the United States has signed a number of nonbinding declarations. For instance, summit statements by the Group of Seven have adopted a position of outrage to convey a common moral opprobrium towards certain terrorist acts. Other nonbinding agreements, such as the 1994 Declaration on Measures to Eliminate International Terrorism and the 1999 ad hoc committee to continue to work on a draft Convention for the Suppression of Acts of Nuclear Terrorism have functioned as diplomatic tools to build consensus on these issues. Additionally, through the UN Security Council, the United States has spoken out against terrorism. For instance, in December 1985 the council condemned, “all acts of hostage-taking and abduction” and called for the “immediate safe release of all hostages...wherever and by whomever they are being held.” Council members urged that immediate international steps be taken “to facilitate the prevention, prosecution and punishment of all acts of hostage-taking and abduction as manifestations of international terrorism.”³⁰ More recently, in October 1999 the Security Council passed a resolution imposing economic sanctions on the Afghani Taliban. The

²⁷ 1988 IIMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation implemented in domestic law as sec. 60019 of the Violent Crime Control and Law Enforcement Act of 1994 (PL 103-322).

²⁸ See Jan S. Breemer, ‘Offshore Energy Terrorism: Perspectives on a Problem,’ *Terrorism: an International Journal* 6/3 (1983) pp.455-65.

²⁹ For European Conventions relating to terrorism see for instance the European Convention on the Suppression of Terrorism (Jan. 27, 1977, 15 I.L.M. 1272), and the Agreement on the Application of the European Convention for the Suppression of Terrorism, (Dec. 4, 1979, 19 I.L.M. 325).

³⁰ S.C. Res. 579, 40 U.S. SCOR (2637th mtg.), 24-25, U.N. Doc. S/17,685 (1985).

resolution bans all flights by planes owned, operated, or leased by the group and freezes all property and bank accounts related to the organization. The order requires that the Taliban turn over Osama bin Laden to a country in which his indictment has already been secured.³¹

Beyond these formal agreements and nonbinding measures, economic incentives – such as debt reduction, rewards for information, and anti-terrorism training programs – constitute further diplomatic initiatives. In the early 1980s the Reagan administration brought forward a number of congressional bills with the aim of creating a reward and anti-terrorism training program. In November 1983 Congress approved the first U.S. anti-terrorism assistance program, aimed at helping “friendly governments counter terrorism by training foreign delegations at U.S. facilities in anti-terrorist policy, crisis management, hostage and barricade negotiations, airport security measures and bomb disposal methods.”³² Authority for running the program lay with the director of the Office for Combating Terrorism at the State Department. The under secretary of management swiftly increased the responsibilities of the office, which was established on February 4, 1984, to include emergency planning.³³ Within two years, the program had trained more than 1,500 government officials from thirty-two countries.³⁴ The curriculum expanded to include bankers, financiers, government officials and military and security personnel, and restrictions on the program gradually eased.³⁵ By September 2000, more than 20,000 officials from more than ninety-one countries had been trained in airport security, bomb detection, maritime security, VIP protection, hostage rescue and crisis management.³⁶ The State Department’s Office of Diplomatic Security now oversees this program, which in 1999 operated on a budget of \$17.8 million. Plans to expand it are under consideration. The administration requested \$38 million for this program for fiscal year 2001.³⁷ Plans for a Center for Antiterrorism and Security Training, to be established near Washington, D.C., accompanied this request. The Foreign Operations, Export Financing, and Related Programs Appropriations Acts provide annual renewal of funding for antiterrorist training programs.³⁸

³¹ Dennis A. Pluchinsky, Department of State Bureau of Diplomatic Security, Sept. 1, 2000.

³² U.S. Department of State, *Combatting [sic.] Terrorism: American Policy and Organization*, Department of State bulletin (August 1982), 4. Anti-terrorism training programs located in the 1983 Foreign Assistance Act, section 8.

³³ Celmer (note 9) p.31.

³⁴ Celmer, (note 9) p.32.

³⁵ For instance, the 1996 Anti-terrorism and Effective Death Penalty Act lifted restrictions in the law that allowed for only certain courses to be taught overseas and limited the amount of time instructors could be based abroad. (1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, Section 328)

³⁶ Pluchinsky (note 31).

³⁷ Michael A. Sheehan’s Senate Testimony on Terrorism commission Report, 15 June 2000 (<http://usinfo.state.gov>).

³⁸ See for instance the 1999 Foreign Operations, Export Financing, and Related Programs Appropriations Act (PL 105-277) and 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (PL 104-208).

Monetary incentives for information that either leads to the prevention of an act of terrorism against Americans or brings a terrorist to justice supplement these programs. The 1984 Act to Combat International Terrorism established the Rewards Program, which, under the 1986 Diplomatic Security and Antiterrorism Act, became housed in the Diplomatic Security Service (DSS) in the Department of State.³⁹ The program offers up to \$5 million reward and acceptance into the federal witness protection program for individuals who come forward with information. Between 1988 and 1998, the program paid out more than \$6 million in approximately twenty-five cases.⁴⁰ An interagency committee comprising individuals from the National Security Council (NSC), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), the Department of Justice (DOJ), and the Department of State (and others as necessary) identifies and recommends rewards to the secretary of state. The committee advertises through such varied media as television, the Internet, newspapers, magazines, posters, matchbooks, flyers, lottery tickets – even on fake \$20 bills – to encourage people to come forward with information about terrorist attacks on Americans.⁴¹ In concert with the DSS program, Congress also has initiated rewards programs. Its 1998 Extradition Treaties Interpretation Act provided rewards for information leading to the arrest and conviction of any individual found guilty of conspiring to act or engaging in acts of international terrorism.⁴²

The United States also has attempted to head off the cause of specific grievances held by groups engaging in terrorism by trying to influence conflicts spurring antipathy toward the United States. In the majority of these instances domestic concerns drove American involvement. Responding to pressure from minority groups, the United States has adopted a role of facilitation, negotiation and direct economic or military aid to encourage a peaceful resolution to the issues. This was the role the United States played regarding the dispute over Northern Ireland. Former U.S. Senator George Mitchell's key role in the negotiations, and the financial incentive provided by the Fund for Ireland, sought to alleviate tensions and prevent repercussions in the United States. American efforts in the Middle East negotiations can also be seen in this light. In the 1980s Palestinian groups launched the majority of terrorist attacks against U.S. citizens abroad. Efforts to protect Americans overseas, and strong lobbying by Jewish interest groups within the country, while not the sole reason for involvement, contributed to successive administrations' efforts to address violence in the Middle East.

³⁹ 1984 Act to Combat International Terrorism, PL 98-533; 1986 Omnibus Diplomatic Security and Anti-Terrorism Act, PL 99-399.

⁴⁰ 'The Counterterrorism Rewards Program,' Department of State Diplomatic Security Service, Dec. 1998.

⁴¹ The internet site, <http://www.heroes.net>, receives approximately 100,000 hits per month.

America has employed extensive publicity efforts to convey its view of international terrorism. Congress has mandated Voice of America broadcasts (for instance, in regard to the Iranian hostage crisis) to encourage captors to release American hostages. Other efforts include the printing and dissemination of materials stating the U.S. position on international terrorists or terrorist-sponsoring states in particular and international terrorism more generally, statements from government officials while abroad articulating the American perspective, and formal briefings and information exchanges with foreign dignitaries and civil servants. Not all of these activities are conducted through established outlets. For instance, in the mid-1980s the U.S. government, acting on reports from the CIA's Counterterrorist Center, issued a white paper revealing Abu Nidal's infrastructure in Eastern Europe, where import/export front companies acquired weapons for the group. Mysteriously leaked to the European press, the resultant negative publicity and overt pressure from the State Department forced some East European countries to shut down these front operations.⁴³

INTERNATIONAL COERCION

International diplomatic efforts, while central to the United States' counterterrorist program, have been limited in their effectiveness. At times it has been difficult to obtain ratification of the treaties or conventions. In an international arena characterized by competing needs and the existence of trade-offs, once ratification has occurred it has been hard to ensure that countries adhere to the documents. No country can enforce every agreement to which it is a party. New governments may decide to abandon their predecessors' commitments. Countries that want to comply might lack the resources to do so. Economic incentives and antiterrorism training might be insufficient. U.S. attempts to mediate conflicts that have fueled terrorism have been, with few exceptions, limited. Publicity guarantees nothing except that an American opinion is voiced. When these approaches prove insufficient, the United States resorts to more coercive measures, including specified and designated state sponsors of terrorism, military strikes, assassination, extraterritorial searches,⁴⁴ forced removal, and the designation of foreign terrorist organizations.

⁴² 1998 Extradition Treaties Interpretation Act of 1998, PL 105-323; amending the 1956 State Department Basic Authorities Act, PL 84-885.

⁴³ Pluchinsky (note 31).

⁴⁴ For discussion of extraterritorial powers in relation to foreign searches by U.S. federal officials of non-resident aliens see Mark Gibney, 'Policing the World: the Long Reach of U.S. Law and the Short Arm of the constitution,' *Connecticut Journal of International Law* 6/103.

The first category consists of specified – and later formally designated – state sponsors of terrorism. Section 6(j) of the 1979 Export Administration Act authorized the secretary of state to designate countries that had “repeatedly provided support for acts of international terrorism.”⁴⁵ In 1989 the Antiterrorism and Arms Export Amendments Act updated this statute by providing for the immediate imposition of sanctions on state sponsors of terrorism, whose names appear on a so-called terrorist list.⁴⁶ The aim is to prevent terrorists from seeking state-supported asylum and to keep states from sponsoring terrorist groups. (This category can be seen as a failure of extradition treaties, the inability of states to agree on a common definition of terrorism, and the failure to punish international terrorists). Although the criteria for designating suspected states is not specified by law, the legislative history (i.e., drawing on congressional committee reports) dictates that the secretary of state, in consultation with the Departments of Commerce, Treasury, Defense, and Transportation, take into account whether the country provides terrorists: “(a) sanctuary from extradition/prosecution, (b) arms, explosives and other lethal substances, (c) logistical support, (d) safe houses or headquarters, (e) planning, training or other assistance for terrorist activities, (f) direct or indirect financial backing, or (g) diplomatic facilities such as support or documentation intended to aid or abet terrorist activities.”⁴⁷ The president can remove a country from the list if s/he certifies to Congress forty-five days in advance that: “(i) the country does not provide support for international terrorism during the preceding 6-month period; and (ii) the country...provided assurances that it will not support acts of international terrorism in the future; or...(i) there is a fundamental shift in the leadership and policies of the country concerned, (ii) the government is not supporting acts of international terrorism, and (iii) the government has provided assurances that it will not support acts of international terrorism in the future.”⁴⁸

Possible penalties include political sanctions, the suspension of military sales and foreign aid,⁴⁹ the imposition of import and export controls,⁵⁰ prohibition on travel,⁵¹ bans on financial transactions,⁵² the

⁴⁵ 1979 Export Administration Act, PL 96-72, 50 U.S.C. App. § 2405 (6)(j).

⁴⁶ 1989 Anti-Terrorism and Arms Export Amendments Act, PL 101-222, 22 U.S.C.A. §§ 1732, 2364, 3371, 2753, 2776, 2778, 2780 and 50 U.S.C.A. § 2405.

⁴⁷ House Foreign Affairs Committee Report 101-296, p. 7 and Senate Foreign Relations Committee Report 101-173, p. 5

⁴⁸ Procedure secured by 1989 AAEAA.

⁴⁹ 1989 Arms Export Amendments Act, PL 101-222, 22 U.S.C.A., §§ 1732, 2364, 3371, 2753, 2776, 2778, 2780 and 50 U.S.C.A. § 2405 (banning military sales to terrorist list countries); 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 327 (requiring U.S. Executive Director of the International Bank for Reconstruction and Development, the International Development Association, the International Monetary Fund, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use America’s ‘voice and vote’ to oppose aid to any of the countries listed as state sponsors of terrorism). Prior to these measures, in the late 1970s Congress passed legislation prohibiting foreign assistance (1976), security assistance (1977), and other aid (1977 and 1978) to states supporting terrorism. Seen as ineffective, in 1979 congress introduced the Fenwick Amendment to the Export

freezing or confiscation of U.S. assets,⁵³ granting of extraterritorial jurisdiction for litigation,⁵⁴ extradition demands,⁵⁵ and renunciation orders. Other penalties consist of second-order bans on other countries or foreign companies doing business with states on the list.⁵⁶ The list currently includes Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. The 1989 Antiterrorism and Arms Export Amendments Act, intended to codify sanctions passed since mid-1970, imposed export controls and banned military equipment and foreign assistance to those on the terrorist list.⁵⁷ It amended the 1979 Export Administration Act and provided for designating terrorist sponsors under Section 40 of the Arms Export Control Act and the 1961 Foreign Assistance Act.⁵⁸ More than a dozen other acts, such as the 1990 Iraq Sanctions Act, the 1992 Iran-Iraq Arms Nonproliferation Act, and the 1996 Iran and Libya Sanctions Act, impose sanctions on nations employing terrorism or supporting terrorist individuals or organizations.⁵⁹ The State Department has also introduced mechanisms for monitoring states suspected of complicity in terrorist organizations' ability to conduct operations. Afghanistan's placement on the "not cooperating

Administration Act, requiring the Secretary of State to notify Congress before export licenses were extended to any items worth more than \$7,000 and en route to terrorist sponsors. Libya, Syria, Iraq, and south Yemen formed the first list of such states. [Pluchinsky (note 31)]

⁵⁰ See for instance E.O. 12924, Aug. 19, 1994, Continuation of Export Control Regulations.

⁵¹ See Lookout and Forged Documents Identification Programs. (U.S. Congress, Senate, Committee on Foreign Relations, International Terrorism: Hearings on S.873, p. 39) The first system, in which the Immigration and Naturalization Service played a key role, screened individuals for possible terrorist links. It derived from Nixon's directive in September 1972, that 'visa procedures, immigration laws and customs procedures...be immediately tightened to screen more carefully potential terrorists seeking to enter the United States.' [U.S. Department of State, President Nixon Established Cabinet Committee to Combat Terrorism, Department of State Bulletin (Oct. 23, 1972), p. 478] See also E.O. 12801, April 15, 1992, Barring Overflight, Takeoff, and Landing of Aircraft, Flying to or from Libya.

⁵² See for instance 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 321; E.O. 13067, Nov. 3, 1997, blocking Sudanese government Property and Prohibiting Transactions with Sudan; E.O. 13059, Aug. 19, 1997 Prohibiting Certain Transactions with Respect to Iran; E.O. 12959, May 6, 1995, Prohibiting Certain Transactions with Respect to Iran; E.O. 12957, March 15, 1995, Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources; E.O. 12543, Jan. 7, 1986, Prohibiting Trade and Certain Transactions involving Libya; E.O. 12538, Nov. 15, 1985, Imports of Refined Petroleum Products from Libya.

⁵³ See for instance E.O. 12544, Jan.8, 1986, Blocking Libyan Government Property in the United States or Held by U.S. Persons.

⁵⁴ This has been one of the most contentious areas, as recent legislation allows U.S. citizens to sue foreign corporations doing business with countries on the terrorist list. The assumption of such extraterritorial powers is abhorrent both to allied and non-allied countries alike.

⁵⁵ For discussion of extradition and criminal cases resulting from failure of states to extradite see Remarks, 'Extraterritorial Application of Criminal Law,' *American Society of International Law Proceedings* (1991) pp.383-400.

⁵⁶ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 325 (assistance), 326 (military aid), 329 (defining assistance). These sections include a waiver for instances in which the assistance is determined to be in the national interest of the United States.

⁵⁷ Arms Export Amendments Act of 1989 (PL 101-222) 22 U.S.C.A., §§ 1732, 2364, 3371, 2753, 2776, 2778, 2780 and 50 U.S.C.A. § 2405.

⁵⁸ Arms Export Control Act (22 U.S.C. 2780, § 40) and 1961 Foreign Assistance Act § 620A (22 U.S.C. 2371). {Export Administration Act of 1979, § 6(j) [PL 96-72, 50 U.S.C. App. § 2405 (6)(j)]}

⁵⁹ 1990 Iraq Sanctions Act, PL 101-513; 1992 Iran-Iraq Arms Non-proliferation Act, as amended, Title XVI of PL 102-484; and 1996 Iran and Libya Sanctions Act, PL 104-172.

fully” list for harboring Osama bin Laden following the 1998 attacks against the U.S. embassies in Nairobi and Dar es Salaam provides one such example. In 1996 the Antiterrorism and Effective Death Penalty Act (AEDPA) made it illegal for defense items to be sold to countries determined by the president to be on this list.⁶⁰

Direct military action in the form of missile strikes and the forced removal of individuals suspected of participation in terrorist acts make up the second and third categories of coercive tools. Examples of the former include the United States’ 1986 bombing of Libya, 1993 bombing of Iraq and 1998 bombing of Afghanistan and Sudan.⁶¹ Incidents of forced removal range from hiring foreign agencies to kidnap and transfer suspected terrorists to U.S. care to snatching suspected in international zones.⁶² For instance, in a joint 1987 effort the FBI and the CIA lured Fawaz Younis off the coast of Cyprus into international waters where the FBI arrested him.⁶³ Supreme Court rulings on this matter suggest that the manner in which the individual was brought to this country matter less than the fact that they at one point appear here, thus making them eligible for prosecution. When faced with a lack of assistance, the United States has relied on military operations and agreements with third countries to effect a forced removal. American jet fighters’ interception of the Egyptian aircraft carrying the hijackers from the *Achille Lauro* and their diversion of the plane to Italy provides one such example.⁶⁴

The fourth category, assassination, only recently reappeared for consideration as a weapon in the government’s coercive counterterrorist arsenal. Immediately following the August 1998 attacks on the U.S. embassies in Africa, on September 4, members of Senate Judiciary Committee asked the director of the FBI, Louis Freeh, to research the legality of assassinating foreign terrorist leaders. The debate revolved around whether Executive Order (E.O.) 12333, prohibiting assassination of heads of state, also

⁶⁰ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, Section 330.

⁶¹ Note that Operation El Dorado Canyon, the strikes against Libya initiated after the 1985 Le Belle disco bombing, resulted in an increase in Libyan terrorist attacks against Americans.

⁶² See Christopher Harmon, *Terrorism Today* (London: Frank Cass 2000).

⁶³ This incident was the most expensive apprehension of a criminal in the history of American law enforcement. [Pluchinsky, (note 31)]

⁶⁴ For discussion of the incident and the consequent fallout see *Washington Post*, Oct. 17, 1985, p.1, col. 5; *New York Times*, Oct. 22, 1985, p.A1, col. 6, and *Newsweek*, Oct. 21, 1985, p.32. For discussion of extraterritorial jurisdiction in relation to forced removal see Arthur E. Shin, ‘On the Borders of Law Enforcement – the Use of Extraterritorial Abduction as a Means of Attaining Jurisdiction over the International Criminal,’ *Whittier Law Review* 17/327; Jeanne M. Woods, ‘Presidential Legislating in the Post-Cold War Era: a Critique of the Barr Opinion on Extraterritorial Arrests,’ *Boston University International Law Journal* 14/1; Catherine Collier Fisher, ‘Recent Development: U.S. Legislation to Prosecute Terrorists: Antiterrorism or Legalized Kidnapping?,’ *Vanderbilt Journal of Transnational Law* 18/915; Jimmy Gurulé, ‘Terrorism, Territorial Sovereignty, and the Forcible Apprehension of International Criminals Abroad,’ *Hastings International and Comparative Law Review* 17/457.

applied to terrorist leaders.⁶⁵ President Ronald Reagan had issued this order in 1981. It provided that, “No person employed by or acting on behalf of the U.S. government shall engage in, or conspire to engage in, assassination.” Additionally, “No agency of the intelligence community shall participate in or request any person to undertake activities forbidden by this order.” This directive was itself based on an order signed by President Gerald Ford in 1976 after the CIA had been implicated in several plots to kill foreign leaders: E.O. 11905 prohibited government officials and agents from engaging in assassination.⁶⁶ President Jimmy Carter reissued Ford’s dictate, changing “political assassination” to “assassinations” generally.⁶⁷ Within a month of the request to Freeh for clarity, the Clinton administration stated that the executive order banning assassination did not require the United States to limit military strikes to infrastructure. The Executive Branch and the army interpreted the order to mean that military commandos or undercover agents had the authority to use deadly force against leaders of organizations that had hurt or threatened to hurt Americans. The government made the claim under Article 51 of the UN charter, which provides for self-defense. In targeting terrorists, a state must publicly acknowledge any assassination attempt it makes (in the past, such acknowledgment has been less than forthcoming).⁶⁸

In the fifth category, search and surveillance, the U.S. has conducted operations against non-resident aliens overseas. The federal government has also made use of the powers included in the Foreign Intelligence Service Act to monitor citizens and non-citizens located within the U.S. and having potential criminal ties to foreign states or terrorist groups.⁶⁹

In the mid-1990s the federal government took steps to designate foreign terrorist organizations. The sixth category, these measures seek to reduce the resources available to the organizations and to draw attention to their activities. Strictures that accompany this designation include: the freezing of suspected groups’ U.S.-based assets, limitations on their ability to publicize their aims, criminalization of any interaction with targeted groups, extradition and renunciation demands, bans on formal government contact, demands for weapons elimination, and specific political requirements. Such designations take one of two forms: as congressional legislation requiring that certain organizations fall subject to particular restrictions, or as executive orders that name particular organizations.⁷⁰

⁶⁵ ‘Senators Ask Legality of Assassinating suspected Terrorists,’ *Dallas Morning News*, Sept. 4, 1998, p.13A, E.O. 12333 3 C.F.R. 213 (1981).

⁶⁶ E.O. 11905, 3 C.F.R., section 5(g) at 90,101 (1977).

⁶⁷ E.O. 12036, 3 C.F.R. Section 2-305, at 112, 129 (1978).

⁶⁸ Paul Richter, ‘Deadly force Against Terror Leaders is Legal, Administration Says,’ *Miami Herald*, Thursday, Oct. 29, 1998. <http://www.herald.com:80/world/digdocs/072848.htm>.

⁶⁹ Foreign Intelligence Surveillance Act, PL 95-511; 50 U.S.C. 1801(a).

⁷⁰ Also of importance but not here discussed in the legislative realm has been the use of the Racketeer Influenced and Corrupt Organizations Act (RICO) in seizing organizations’ money and assets upon defendant’s conviction for

Congress first passed legislation making it a crime to provide material support or resources to terrorists in September 1994.⁷¹ It regarded resources as “currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.” Congress deliberately omitted from the list humanitarian assistance to persons not directly involved in such violations from the list. The next attempt to regulate foreign terrorist organizations came on January 24, 1995, when President Bill Clinton issued E.O. 12947: “Attempts to disrupt the Middle East peace process through terrorism by groups opposed to peace have threatened and continue to threaten vital interests of the United States, thus constituting an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”⁷² The order named twelve foreign terrorist organizations that had threatened violence against the peace process: the Abu Nidal Organization, the Democratic Front for the Liberation of Palestine, Hizb’allah, the Islamic Gama’at, the Islamic Resistance Movement, Jihad, Kach, Kahane Chai, Palestinian Islamic Jihad – the Shiquaqi faction, the Palestine Liberation Front – Abu Abbas faction, the Popular Front for the Liberation of Palestine and the Popular Front for the Liberation of Palestine – General Command. It froze all property held by these organizations in the United States and forbade all transactions between both private and public sectors in America and these groups. It also prohibited all attempts to skirt these requirements and further banned donations for humanitarian causes. EO 12947 empowered the secretary of state, in coordination with the secretary of the treasury and the attorney general, to apply this designation to other groups as well. On January 25, 1995, the Department of the Treasury issued a notice identifying thirty-one additional entities whose assets it blocked because they acted for, or on behalf of, the twelve groups identified in E.O. 12947. The notice identified eighteen leaders of the groups and nine name variations or pseudonyms. By March 1995 federal agencies had frozen approximately \$800,000 in funds held by Palestinian groups. On January 21, 1998, the president issued notices continuing enforcement of the order. Following the strikes in Afghanistan and Sudan, President Clinton signed another executive order requesting that the Treasury Department add Osama bin Laden to the list of designated terrorists.⁷³ This directive expressly forbids all Americans and U.S. companies from engaging in financial transactions with bin Laden. Most recently, as

pattern of criminal activity related to an organization. This statute has been applied to cases involving generic criminal acts that were part of a terrorist agenda, and it is expected that it will be used more heavily in the future. See for instance Bryan Denson, ‘Two Oregon House Members Propose to Punish Offenders Under the State’s Racketeering Law,’ *The Oregonian*, Wednesday, Feb. 16, 2000.

⁷¹ 18 U.S.C. Section 2339A.

⁷² E.O. 12947, 3 C.F.R. 319, 319-320 (1996). Quote from ‘President’s Message to the Congress on Terrorists Who Threaten to Disrupt the Middle East Peace Process’, PUB. PAPERS 95, 95 (1995).

⁷³ E.O. 13099, 63 Fed Reg at 45,167.

was previously mentioned, E.O. 13129 placed similar sanctions on the Afghan Taliban in an effort to persuade the group to relinquish its protection of bin Laden.⁷⁴

Subsequent to Clinton's issuance of the first executive order, the House of Representatives considered the administration-sponsored 1995 Comprehensive Anti-Terrorism Act. Although this bill did not pass, in 1996 many of its provisions became incorporated into AEDPA, which requires that designated organizations be foreign based and engaged in terrorist activity [as defined by Section 212(a)(3)(B) of the Immigration and Nationality Act]. Placement on the list makes it illegal for a person in the United States or subject to the jurisdiction of the United States to provide funds or other material to the group thus named. Representatives and members of a designated foreign terrorist organization (FTO), if aliens, can be denied visas or otherwise excluded from the United States. Finally, American financial institutions became obliged to block funds of designated FTOs and their agents and to report this action to the Office of Foreign Assets Control in the Department of the Treasury.

In determining which groups are put on the list, the secretary of state must consult with the attorney general and secretary of the treasury. Groups can be added or removed at any time. Congress has the power to revoke the legislation. Although an administrative record of each recommendation exists, because of concern that intelligence sources and methods would be compromised by their publication, they remain secret. The State Department provides classified summaries of the records to Congress, and unclassified descriptions of the organizations appear in the State Department's annual Patterns of Global Terrorism.⁷⁵ Figure 2, below, lists those organizations designated in 1997 as FTOs.

⁷⁴ E.O. 13129, July 4, 1999, Blocking Property and Prohibiting Transactions with the Taliban.

⁷⁵ At time of writing this document is available on the web at: <http://www.state.gov/www/global/terrorism>.

Figure 2. Designated Foreign Terrorist Organizations 1997

Abu Nidal Organization (ANO)	Kurdistan Workers' Party (PKK)
Abu Sayyaf Group (ASG)	Liberation Tigers of Tamil Elam (LTTE)
Armed Islamic Group (GIA)	<i>Manuel Rodriguez Patriotic Front Dissidents*</i>
Aum Shinrikyo	Mujahedin-e Khalq Organization (MEK, MKO, etc.)
Basque Fatherland and Liberty (ETA)	National Liberation Army (ELN)
<i>Democratic Front for the Liberation of Palestine*</i>	Palestine Islamic Jihad-Shaqqi Faction (PIJ)
HAMAS (Islamic Resistance Movement)	Palestine Liberation Front – Abu Abbas Faction (PLF)
Harakat ul-Mujahidin (HUM)	Popular Front for the Liberation of Palestine (PFLP)
Hizb'allah (Party of God)	PFLP-General Command (PFLP-GC)
Gama'a al-Islamiyya (Islamic Group, IG)	Revolutionary Armed Forces of Colombia (FARC)
Japanese Red Army (JRA)	Revolutionary Organization 17 November (17 November)
al-Jihad	Revolutionary People's Liberation Army/Front (DHKP/C)
Kach	Revolutionary People's Struggle (ELA)
Kahane Chai	Shining Path (Sendero Luminoso)
<i>Khmer Rouge*</i>	Tupac Amaru Revolutionary Movement (MRTA)

* Indicates organizations dropped from the list in 1999

Of the thirty original organizations on the list, the executive branch dropped three organizations during its two-year review in 1999. The government cited lack of terrorist activity to justify its elimination of the Manuel Rodriguez Patriotic Front Dissidents and the Democratic Front for the Liberation of Palestine. The executive order signed by President Clinton in January 1995, however, that barred financial transactions with the Democratic Front and blocked its assets in the United States, remained in effect. The State Department also dropped the Khmer Rouge, as it was no longer viable as a terrorist organization. Following the bombings of the U.S. embassies in Nairobi and Dar es Salaam, the State Department added al-Qa'ida, believed to be lead by bin Laden, to the list.

The designation of such organizations has not been without opposition. Both the Peoples' Mujahedin Organization and the Tamil Tigers of Tamil Elam have challenged the constitutionality of the legislation. In June 1999, however, a federal appeals court upheld the State Department's authority to designate terrorist groups. The designation of certain groups and omission of others, such as the Irish Republican Army, suggests that the government does not treat all such organizations equally. The designation of state sponsors of terrorism and foreign terrorist organizations remains deeply political.

OVERSEAS PERSONNEL AND OPERATIONS

As part of its counterterrorist strategy, the United States has assigned government personnel overseas and engaged in a variety of foreign operations. These include providing overseas security, building intelligence operations, strengthening incident management, and opening overseas investigations of terrorist attacks.

In regard to the first category, overseas security, in May 1976 the Department of Defense issued a directive requiring each of the services to create programs to protect American personnel at U.S. facilities abroad.⁷⁶ Following the takeover of the embassy in Iran on November 4, 1979, concern for the safety of diplomatic personnel and American installations accelerated.⁷⁷ In April 1983 a suicide attack on the U.S. embassy in Beirut resulted in the deaths of seventeen Americans and forty-six others.⁷⁸ Between 1979 and 1993 over 460 attacks on U.S. diplomatic personnel, buildings and vehicles occurred, generating increasing attention to this issue. In the attacks fifty-five diplomats were injured and twenty-five others died. Terrorists also targeted military personnel. Six months after the embassy bombing in Beirut, a Hizb'allah suicide attack on the U.S. Marine barracks in the same city killed 241 U.S. Marines.⁷⁹

Concerned about the risk to Americans abroad, the Reagan administration ordered that 15 per cent of the State Department budget be used to increase overseas security. Criticism, however, continued to plague efforts to secure U.S. facilities. A 1982 General Accounting Office (GAO) report declared that inadequate State Department planning, coordination, and property management had delayed critical

⁷⁶ May 1976 Department of Defense Directive 2000,12. U.S. Department of the Army, *Personal Security Precautions against Acts of Terrorism*, 1978, I-1, cited in Richard H. Shultz, Jr., 'The State of the Operational Art: A Critical Review of Anti-terrorist Program,' *Responding to the Terrorist Threat: Security and Crisis Management*, ed. By Richard H. Shultz Jr. and Stephen Sloan, (New York: Pergamon Press 1980), p.21.

⁷⁷ Celmer (note 9) p.33.

⁷⁸ Pluchinsky (note 31).

⁷⁹ Jay Robert Nash, 'The American Response to Terrorism,' *Terrorism in the 20th century : a narrative encyclopedia from the anarchists, through the weathermen, to the unabomber*. (New York: M. Evans & Co. 1988), p.644, and Simon, op. cit., pp. 176-86.

improvements at American embassies.⁸⁰ In response the secretary of state convened an Advisory Panel on Overseas Security in 1984 to examine a range of issues related to improving the security of U.S. interests abroad and protecting foreign visitors at home. Congress also responded to the GAO report by passing a bill in October 1984 to provide \$110 M in emergency funds for fiscal year 1985. A change in the administrative structure overseeing embassy security accompanied the funding increase.⁸¹ On August 12, 1986, Congress approved another \$2.4 billion for fiscal years 1986 to 1990 to improve embassy security.⁸² By 1986 the federal government had implemented recommendations relating to organizational changes, responsibility, personnel systems, training, equipment, accountability and physical strengthening of facilities. Following the 1998 attacks on the embassies in Nairobi and Dar es Salaam, Congress approved another \$588.2 million to bolster U.S. security overseas. The money is earmarked for physical and technical security upgrades, involving bomb detection equipment, armored vehicles, public access controls, residential security, mobile security support training, research and development, intrusion detection systems and local guard programs.⁸³

The Bureau of Overseas Security at the Department of State runs the Diplomatic Security Service, which gives protection to diplomatic personnel, investigates terrorist incidents, provides counterintelligence and conducts threat analysis. More than 240 of its regional security officers are assigned to 131 countries to manage security.⁸⁴ These officers work with the Marine Security Detachments, the Navy Seabees, guards, local investigators, and security engineering officers posted at U.S. missions. One hundred two officers focus more exclusively on information security technology.⁸⁵ These individuals protect spoken and electronically processed classified information from cyberterrorism and other forms of technical attack.⁸⁶ The Secret Service, through the Office of Executive Protective Services, protects visiting dignitaries, the president, vice president and any other federal officials designated by the president. The service provides physical security for foreign diplomatic installations, focusing on office installation security, residential security, and security while traveling.

⁸⁰ 'GAO Found Delays in Security Improvements,' *The Washington Post*, Sept. 30, 1984, A27, cited in Celmer (note 9) p.42.

⁸¹ In January 1985 the State Department sought to eliminate the high degree of overlap—and consequent confusion—by creating the Bureau of Administration and Security.

⁸² The Department of State focused on installations in Cyprus, Jordan, and Honduras. [Celmer (note 9) p.34]

⁸³ Pluchinsky (note 31).

⁸⁴ 'Program Guide for the Bureau of Diplomatic Security,' U.S. Department of State Bureau of Diplomatic Security, June 1997, p.9.

⁸⁵ *Ibid*, p.23.

⁸⁶ *Ibid*, p.24.

The second category, covert and overt intelligence operations, similarly resulted in the placement of U.S. personnel overseas. During the Carter administration, E.O. 12036 specified that the role of the intelligence community was to “coordinate the collection, analysis and dissemination of covert information and intelligence on terrorists and their potential targets.”⁸⁷ Upon assuming office, President Reagan issued E.O. 12333, revoking the earlier order and altering the intelligence community’s role. The new order seeks “to enhance human and technical collection techniques, especially those undertaken abroad and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities.”⁸⁸ It instructs the intelligence community to collect information about terrorism and to protect U.S. citizens against terrorism and “other hostile activities directed against the United States by foreign powers, organizations, persons and their agents.”⁸⁹ The CIA and the FBI currently have general intelligence-gathering capacity in this area.⁹⁰ In addition, the Bureau of Intelligence and Research at the State Department, the Defense Intelligence Agency, the National Security Agency, and intelligence units of the armed services share responsibility for the collection and dissemination of information related to the terrorist threat. The intelligence community assembles resources and conducts operations overseas, including buying assets, engaging in espionage, infiltrating terrorist organizations, distributing propaganda, and taking preventative measures.

In the third category, incident management, the Carter administration followed the 1976 Israeli rescue of hostages in Entebbe, Uganda and the 1977 German rescue of hostages at Mogadishu, with directions to the military to create a hostage rescue force. The army later changed the name of this organization from Operation Blue Light to Delta Force. The subsequent failure of this unit during Operation Eagle Claw (aimed at rescuing the American hostages held in Tehran), though, dampened enthusiasm for the use of such a unit. In the mid-1980s, the FBI assumed responsibility for domestic and foreign terrorist incidents involving Americans. Drawing on special weapons assault teams and a special hostage rescue team, the bureau’s jurisdiction extends to investigation of nuclear incidents relating to terrorism, possible violations of the Atomic Energy Act and hijackings when aircraft are not yet airborne or ready for takeoff.⁹¹ In the event of a terrorist attack, the State Department dispatches an emergency support team to the country. Included in the group are intelligence operatives, special operations personnel, communications

⁸⁷ U.S. Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Federal Capabilities in Crisis Management and Terrorism*, 16 Aug. 1978, 36.

⁸⁸ U.S. President, E.O. 12333, § 1348.

⁸⁹ *Ibid.*, § 1338.

⁹⁰ The FBI is required to follow the Attorney General’s foreign counter-intelligence guidelines against, ‘foreign inspired terrorists or foreign based terrorists.’ (U.S. Congress, Senate, Committee on Governmental Affairs, *An Act to Combat International Terrorism: Hearings on S. 2236*, Feb. 22, 1978, p.223.)

⁹¹ See U.S. Congress, Senate, Committee on Governmental Affairs, *An Act to Combat International Terrorism: Hearings on S. 2236*, 23 March 1978, p.349.

specialists, and at least one senior diplomat. This body serves in an advisory role to the U.S. ambassador and to the host country, maintaining close links to Washington, D.C. In the midst of an incident, the United States assigns personnel to any number of management roles. Special operations, rescue missions, delay tactics and compensation arrangements mark ways in which a situation might be approached.

Contrary to its public rhetoric, the United States has also engaged in negotiations and offered concessions. The former has been more common in domestic situations. During the Nixon administration, for example, U.S. officials negotiated with the PFLP, who were holding American hostages in Dawson's Field. Negotiations also marked the Carter administration's handling of the Tehran embassy situation, and the Reagan administration's treatment of the Iran-Contra affair. Concessions have been used both during and after terrorist events. For instance, in February 1984, four months after the Hizb'allah attack on the U.S. Marine barracks in Beirut, the United States withdrew the Marines from Lebanon. The United States also has used concessions by third parties to ensure the safety of U.S. citizens. During the hijacking of four planes by the PFLP in 1970, thirty-eight Americans were held hostage. Eventually, they were released in exchange for Palestinian terrorists in prisons in Switzerland, Germany and the United Kingdom. Other kinds of third party arrangements have also been used. For example, following the 1985 hijacking of TWA Flight 847 by Lebanese Islamic militants, the executive branch enlisted the Syrian government to pressure the hijackers to release the hostages. The *Achille Lauro* takeover ended only with the intercession of the Palestinian Liberation Organization and the Egyptian government. Provision or denial of access to media is yet another way in which incidents can be handled. In the case of a domestic terrorist attack, personnel from the FEMA, DOD, the DEA, ATF, and the FBI may all be involved.

The United States has also built an international administrative capacity in a fourth category, the pursuit of suspected terrorists. With cooperation from the country in which an attack has taken place, the United States has opened a number of formal investigations to collect evidence and additional information. The bombing of Pan Am flight 103, the destruction of the Marine barracks in Saudi Arabia and the recent destruction of the USS Cole in Yemen provide some examples of this kind of cooperation. Investigators work with local security forces to uncover forensic and other evidence, and in some cases the suspects are brought back to the United States to stand trial. Formal investigations may also lead to the pursuit of suspects through the domestic or regional court system of the country in which the atrocity was committed. The recent trials in the Netherlands of two Libyan suspects in the bombing of Pan Am flight 103 illustrate this approach.

To facilitate this type of follow-up, the United States in the late 1970s began a concerted drive to place U.S. representatives in the country. Arriving on the scene after the event, these individuals encourage the foreign government to pursue the investigation, remind the host country about their international counterterrorist obligations, and seek the extradition of suspects.⁹² They work with a task force at the State Department's Office for Counterterrorism and Emergency Planning. Additionally, the United States places legal attachés from the FBI at U.S. embassies. These individuals coordinate overseas investigation into acts of international terrorism involving U.S. citizens or property.

DOMESTIC CRIMINAL LAW

From the early 1960s through the early 1990s, U.S. counterterrorist policy focused on international terrorist incidents affecting American citizens or property overseas. This is not to say that no domestic terrorist events occurred during that time. For instance, the Weathermen, founded in 1969 and later known as the Weather Underground, conducted thirty bombings in the United States.⁹³ Other violent anti-establishment organizations, such as the Symbionese Liberation Army, also operated during this period. On the nationalist front, the Armed Forces of Puerto Rican National Liberation and Omega-7, an anti-Castro Cuban organization, conducted operations within the United States through the 1980s. Generally, however, domestic law enforcement agencies handled these cases.

With the dawn of international terrorism on U.S. soil, however, in the 1990s concern over domestic terrorism increased. The government brought forward measures related to immigration procedures and adjustments to criminal law that affect both foreign citizens brought to trial in the United States and American citizens accused of terrorist activity. Interestingly, the federal government has refrained from creating a crime of terrorism. In part this reflects the clear political role that the term plays and the association of the word with acts that are international in character. Domestic terrorist acts are treated as criminal acts, regardless of their political motivation. International acts of terrorism on U.S. soil have, historically, been treated in the same manner. The focus on national security that increasingly accompanies any discussion of terrorism at a federal level is shifting this approach to domestic terrorism. This is not to say that no attempts to define terrorism exist. Rather, general definitions of terrorism guide the number and nature of provisions that are then applied at a federal level to recalcitrant states, organizations, and individuals. The State Department's central role in issues related to the international arena and counterterrorism led to the widespread acceptance of that agency's description. Section 140 of the State Department Authorization Act defined terrorism as "premeditated, politically motivated violence

⁹² Celmer (note 9) p.32.

⁹³ Nash (note 79) p. 641.

perpetrated against noncombatant targets by sub-national groups or clandestine agents.”⁹⁴ According to the legislation “International terrorism” involved “citizens or the territory of more than [one] country.” A “terrorist group” was “any group [that practiced], or which [had] significant subgroups which practice[d], international terrorism.” This tied terrorism to acts international in character and made a terrorist act virtually any violent act or threat of violence that served to intimidate, leaving its specific application open to political interpretation.

Legislation crafted by other government agencies offered relevant definitions that again focused on the international element. For instance, the Foreign Intelligence Surveillance Act defines terrorist organizations as entities “engaged in or preparing for international terrorism activities.”⁹⁵ It identifies international terrorism as activities that:

1. Involve violent acts or acts dangerous to human life, that are a violation of the criminal laws of the United States or any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
2. Appear to be intended – (a) to intimidate or coerce a civilian population; (b) to influence the policy of a government by intimidation or coercion; or (c) to affect the conduct of a government by assassination or kidnapping; and (3) occur totally outside the United States, or transcend national boundaries.⁹⁶

The “Long Arm Statute”, Section 1202 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, captures snippets of this definition. This legislation makes it a crime to murder, attempt or conspire to murder, or to cause serious injury to Americans in terrorist acts abroad if in the judgment of the Attorney General the offense was “intended to coerce, intimidate or retaliate against a government or civilian population.”⁹⁷ The Immigration and Naturalization Act of 1990 included fundraising, the provision of weapons, training, or other material aid, solicitation for membership, and assistance in preparing for terrorist attack in its description of terrorist activity. The Senate-House conference committee, which handled the final drafting of the legislation, indicated that such activity included but

⁹⁴ 1987 State Department Authorization Act, PL 100-204, 22 U.S.C. § 2656f.

⁹⁵ 1977 Foreign Intelligence Surveillance Act, PL 95-511; 50 U.S.C. § 1801(a).

⁹⁶ 1977 Foreign Intelligence Surveillance Act, PL 95-511; 50 U.S.C. § 1801(a), subsection (c).

⁹⁷ 1986 Omnibus Diplomatic Security and Anti-terrorism Act, PL 99-399, § 1202: Extraterritorial Jurisdiction over Terrorist Acts Abroad Against U.S. Nationals, 18 U.S.C. § 2332.

was not limited to acts prohibited by international conventions to which the U.S. was signatory.⁹⁸ Notably, while these definitions describe the qualities of a terrorist act or a terrorist organization, they do not include clear-cut criteria for when the term should be applied.

In regard to the first category under domestic criminal law, immigration procedures, precedent exists in the United States for the use of exclusion and expulsion to meet a foreign threat. In the eighteenth century, for instance, alien and sedition acts served this purpose. Later statutes related to espionage and the internal security set similar standards. Although the legislature did not design these earlier statutes to prevent terrorism, the majority allowed for the exclusion and monitoring of individuals labeled as dangerous to national security.⁹⁹ Precedent also exists for alterations in immigration procedures to meet, more specifically, a terrorist threat. In the early twentieth century statutes designed to thwart anarchist terrorism relied on alterations in immigration.¹⁰⁰ In the modern era of terrorism, alterations in immigration extend beyond exclusion and expulsion to the creation of special courts, use of secret evidence and relaxation of the writ of habeas corpus. Most of the changes took place in the final decade of the twentieth century.

In 1990 the Immigration Act permitted the exclusion of individuals found guilty of participating in terrorist activities.¹⁰¹ Six years later, AEDPA amended the statute to establish procedures allowing the Department of Justice to petition for special exclusion and deportation hearings.¹⁰² The legislation

⁹⁸ The conference clearly stated that participation in a past terrorist activity was not necessary for a group planning terrorist operations to be considered a terrorist organization. Point made by Michael Kraft, citing Congressional Record, Oct. 26, 1990, Page H 13239. Note also that the 1994 Violence Crime Control and Law Enforcement Act, PL 103-322, while it does not define terrorism, cites legislation implementing international agreements. Statute of Limitations, Sec. 120001 extends the statute of limitations for certain terrorism crimes to 8 years, and Material Support, Sec. 120005, makes it a crime to provide material support for acts of terrorism. (Michael Kraft, "Existing U.S. Legal Authorities Relating to Terrorism," Dec. 1999, 18) Outside of federal circles, in their study of the field of terrorism, Alex P. Schmid and Albert J. Jongman found over 100 different working definitions of terrorism in the literature on the subject. [Alex P. Schmid and Albert J. Jongman, *Political Terrorism: a new guide to actors, authors, concepts, data bases, theories and literature*. With the collaboration of Michael Stohl, Jan Brand, Peter A. Flemming, Angela van der Poel and Rob Thijsse. (Oxford: North-Holland Publishing Company), 1988, esp. 5, 6]

⁹⁹ Alien Act of 25 June 1798 [1 Stat. 570 (expired 1800)]; Alien Act of July 6, 1798 [1 Stat. 577]; The Sedition Act of July 14, 1798, [1 Stat. 596 (expired 1801)]; Section 1; Espionage Act of 15 June 1917 [PL 24, c. 30, 40 Stat. 217 (1917)]; 1950 Internal Security Act [c. 1024, 64 Stat. 987 (1950)].

¹⁰⁰ Immigration Act of 3 March 1903, c. 1012, 32 Stat. 121 [PL 162, c. 1012, 32 Stat. 1213 (1903)]; 1940 Alien Registration (Smith) Act [c. 439, 54 Stat. 670 (1940)]; 1952-53 Immigration and Nationality (McCarran-Walter) Act [8 U.S.C. Sections 1101-1525 (1953)]. See also court cases: *United States ex. Rel. Turner v. Williams*, 194 U.S. 279, 291 (1904); *Communist Party of the United States v. Subversive Activities Control Bd.*, 367 U.S. 1, 103, 114 (1961).

¹⁰¹ 1990 Immigration Act, PL 101-649.

¹⁰² 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 411 {amending the 1952-53 Immigration and Nationality (McCarran-Walter) Act [8 U.S.C. §§ 1101-1525 (1953)], § 212(a)(3)(B) to provide for aliens associated with designated FTOs}.

established a special court composed of federal district judges that could remove aliens suspected of committing terrorist crimes in the United States, and deny entry to aliens representing terrorist organizations. The statute revised the procedures for expediting the deportation of criminal aliens, authorized federal law enforcement agencies access to confidential information in immigration files, and designated specific immigration-related offenses as predicate crimes under the Racketeer Influenced and Corrupt Organizations Act. This legislation, which empowers the government to seize an organization's assets upon a defendant's conviction for criminal activity related to the organization, has been applied to cases involving generic criminal acts that were part of a terrorist agenda, and is likely to be used more heavily in the future.¹⁰³

Changes in the second category, criminal law, break down into four main areas: alterations in surveillance measures, pursuit of suspected terrorists through the judicial system, increased penalties associated with terrorist activity, and the introduction of weapons-specific initiatives. Information about U.S. surveillance tactics during the Cold War and the Vietnam protests left many Americans with a sense of disillusionment.¹⁰⁴ Notorious operations such as the FBI's Counterintelligence Program (COINTELPRO) and the CIA's Operation Chaos led to the collection of information on thousands of U.S. citizens involved in the antiwar protest movement or other "subversive" activities.¹⁰⁵ Responding to calls for an investigation, the Senate convened the Select Committee to Study Governmental Operations with Regard to Intelligence. The Supreme Court eventually concluded that the government and intelligence community had overstepped their bounds and rejected the application of such detailed scrutiny as had been directed against communists and foreigners when the target was U.S. citizens. The ruling led to a brief suspension of aggressive surveillance. That restraint, however, has steadily shrunk under claims that more extensive powers are needed to combat terrorism – including wider latitude in placing wire taps, special provisions for information access, and special alterations to account for digital technology. Thus, in 1993 for example, an Act entitled the FBI Access to Telephone Subscriber Information amended the Electronic communications Privacy Act, allowing the FBI to obtain certain telephone subscriber information without a court order or subpoena for use in foreign counter-intelligence and international terrorist investigations.¹⁰⁶

¹⁰³ See for instance Denson (note 90).

¹⁰⁴ Vietnam protests that had been active in the 60s were put under government surveillance. See Roberta Smith, 'America Tries to Come to Terms with Terrorism: the U.S. Anti-Terrorism and Effective Death Penalty Act of 1996 v. British Anti-terrorism Law and International Response,' *Cardozo Journal of International and Comparative Law* 5 (1997) pp.249, 259.

¹⁰⁵ COINTELPRO opened over 500,000 domestic intelligence files, while Operation Chaos, led to the creation of 13,000 files and the collection of various materials. Smith (note 104) p.259]

¹⁰⁶ FBI Access to Telephone Subscriber Information 1993, PL 103-142; Electronic Communications Privacy Act, 18 U.S.C.

The United States has also pursued a policy of bringing suspected terrorists to justice through the American judicial system. Before the 1986 Iran-Contra affair, the United States emphasized using a military response to terrorism. Afterward, however, the NSC became more estranged from counterterrorist policy, and the government concentrated on a judicial response. Identification, tracking, international conventions, apprehension, extradition, rendition, and prosecution came to the fore. Between 1980 and 1996, the state brought 327 cases against individuals suspected of involvement in terrorist activities.¹⁰⁷ Of these, 255 related to domestic terrorist groups and 72 to international organizations.¹⁰⁸ The dominant approach in these cases, particularly in the 1980s, was to avoid direct discussion of the political aims of those standing trial and, instead, to handle all aspects of the prosecution along strictly criminal lines.¹⁰⁹ In the 1980s cases that did seek to punish the political-terrorist aspect of the crimes met with little success. For example, the May 19th Communist Organization and the United Freedom Front trials resulted in the acquittal or mistrial of almost all of the defendants.¹¹⁰ More recently, the Provisional IRA trials in Arizona resulted in acquittal. Nevertheless, there is some recent evidence that making reference to the political motivation of suspected terrorists on trial may be a successful strategy – the World Trade Center case being a case in point.¹¹¹

Obstacles to information collection, international cooperation, and extradition, as well as diplomatic sensitivities, have hampered efforts to extradite suspected terrorists. For instance, between 1993 and 1998 only four suspects were extradited back to the United States to stand trial.¹¹² Renditions, a less complicated form of extradition, have numbered only eight.¹¹³ In many instances the United States has pursued a policy of grand jury indictments *in absentia*: for instance, following the Lockerbie bombing a grand jury in Washington, D.C. indicted suspects in the bombing.¹¹⁴ On November 3, 1998 a federal grand jury in the Southern District of New York indicted Osama bin Laden on conspiracy, 224 counts of

¹⁰⁷ Brent L. Smith and Kelly R. Damphousse, 'The Prosecution and Punishment of American Terrorists: 1980-1996.' Presented at the Terrorism and Beyond...the 21st Century conference, hosted by RAND and the Oklahoma City national Memorial Institute for the Prevention of Terrorism, in Oklahoma City, Oklahoma, April 17, 2000, Table 6.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, p.9. See also Austin Turk. *Political Criminality: the Defiance and Defense of Authority* (Newbury Park: Sage 1982).

¹¹⁰ Smith and Damphousse (note 107) p.13.

¹¹¹ Ibid.

¹¹² Pluchinsky (note 31).

¹¹³ The U.S. State Department claims twelve cases of extradition and rendition. The FBI cites thirteen. (Statistics obtained from Dennis Pluchinsky, U.S. Department of State, Nov. 27, 2000).

¹¹⁴ David Johnston, 'U.S. and British Demand the Two Libyans', *New York Times International*, Nov. 28, 1991, p.A3; *Libya v. UK*, 1992 I.C.J. at 11, para 28.

murder, and leadership of al-Qa'ida. The Classified Information Protection Act, witness protection programs, and the extensive use of reward programs to generate information related to terrorist incidents have contributed further to the successful prosecution of terrorists.

The federal government has also taken steps to increase the penalties of acts typical of terrorist attack, with the proviso that the extensions in sentencing apply when the acts are conducted as part of a terrorist operation. For instance, AEDPA criminalizes acts of terrorism (killings, kidnappings, maimings, assaults with a dangerous person, attacks on property, or attacks against government employees) that transcend national boundaries.¹¹⁵ The statute makes it illegal for anyone in the United States to provide material support for certain acts of terrorism¹¹⁶ or to conspire to harm persons or property overseas, as long as one of the conspirators is present in the United States.¹¹⁷ It extends U.S. criminal jurisdiction overseas for airline incidents in which a U.S. citizen was involved or would have been involved or if the perpetrator is found in the United States following the event.¹¹⁸ Federal measures also increase penalties associated with terrorist acts in general,¹¹⁹ or involving identity theft,¹²⁰ the use or threatened use of weapons of mass destruction,¹²¹ the targeting of government employees,¹²² money laundering, and the destruction of natural resources as a result of a terrorist act.

Finally, the federal government has instituted measures in relation to firearms, taggants for explosives, and tracking of biological agents to minimize the ability of terrorist organizations to acquire such weapons and to enable the federal government to trace the possible use of such items back to the perpetrator. For instance, AEDPA has revised criminal laws regarding the unlawful possession, use, transfer, or trafficking in nuclear materials and has provided for the implementation of the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Regarding terrorist acquisition and use of weapons of mass destruction abroad, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 amended the Export Administration Act of 1979 to require the secretary of commerce to establish and maintain a list of “goods and technology that would directly and substantially

¹¹⁵ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 702.

¹¹⁶ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 323 (material support defined as ‘currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials’).

¹¹⁷ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 704.

¹¹⁸ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, § 721.

¹¹⁹ 1994 Violent Crime Control and Law Enforcement Act, PL 103-322, §120004.

¹²⁰ 1998 Identity Theft and Assumption Deterrence Act, PL 105-318.

¹²¹ 1996 Anti-terrorism and Effective Death Penalty Act, PL 104-132, §§ 502, 511, 521; 1989 Biological Weapons Anti-terrorist Act (PL 101-298), § 2.

¹²² Act for the Protection of Foreign Officials and Official Guests of the United States, PL 92-539.

assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons.” The legislation dictates that if the program is determined to be effective, the secretary of commerce maintain a list of countries for which exporters must obtain validated export licenses.

Different agencies and departments are available to respond depending on their expertise, the type of weapon used, and the target of the attack. For instance, three agencies in the United States deal with terrorist threats to nuclear facilities: the Department of Defense has jurisdiction over technical matters, the Nuclear Regulatory Commission controls technical problems in the event that a terrorist incident involving the civilian application of nuclear material occurs, and the Department of Energy (DoE) has the lead for incidents relating to military nuclear supplies not yet in weapon form.¹²³ DoE is also involved in planning and responding to the possible terrorist use of a nuclear device, with Nuclear Emergency Search Teams assisting and providing technical help to the FBI in the event of an attack. For terrorist incidents involving explosives, the Bureau of Alcohol, Tobacco and Firearms (ATF) represents the Department of the Treasury. A memorandum of understanding with FBI delineates specific jurisdiction (with the FBI supervising, and ATF dealing with technical matters).¹²⁴

NON-CRIMINAL DOMESTIC MEASURES

On the non-criminal domestic front the United States has instituted measures relating to aviation security and congressional review. “Housekeeping” measures, which deal with logistics immediately following terrorist attacks, and provisions for domestic preparedness further comprise this area. Finally, the federal government has established an administrative structure to address the terrorist threat and created mechanisms for advice to individuals and corporations confronted with possible threats to security.

Changes in the first category, aviation security, as a direct response to actual – or perceived – terrorist incidents have been numerous. The sky marshal program in the early 1970s, for instance, sought to deal with the hijacking problem until stricter airport security measures could be adopted. The 1974 Transportation Security Act required U.S. civilian air carriers to implement new security standards. The federal government proved willing to pick up the cost of this program, estimated at between \$75 and \$80

¹²³ U.S. Congress, Senate, Committee on Governmental Affairs, An Act to Combat International Terrorism: Hearings on S. 2236, Feb. 22, 1978, p.200.

¹²⁴ U.S. Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, Federal Capabilities in Crisis Management and Terrorism, 16 Aug. 1978, p.58.

million.¹²⁵ Other incidents, such as the June 1985 hijacking of TWA 847 (in which U.S. Navy diver Robert Stethem was executed) kept the issue at the top of the government's agenda.¹²⁶ More recently the crash of TWA 800 off of Long Island, New York, on July 17, 1996, although later determined not to be a terrorist incident, led to the creation of the White House Commission on Aviation Security.¹²⁷ Thirty of the fifty-seven commission recommendations related to counterterrorist airline security.¹²⁸ Congress later implemented many of the recommendations, ranging from federal purchase of detection equipment, background checks on security screeners, and vulnerability assessments at airports, to increased use of dogs for detecting explosives and the establishment of the Computer-Assisted Passenger Screening system.

Structurally, the FAA oversees civil aviation security programs and incidents involving hijackings. It works with the International Air Transportation Association to ensure that minimum standards set by the Civil Aviation Organization are implemented. In addition to providing sky marshals, tightening airport security, and strengthening administrative structures, the government has introduced certification requirements, weapons detection equipment, passenger profiling, background checks on airport personnel, baggage matching systems, and cargo and security reports to reinforce its airline security. America also has agreements with other countries and, when other countries have failed to uphold the 1970 Hague Conventions, the U.S. has severed U.S. flights to and from the region in question.

In the second category the United States has instituted requirements for congressional reports relating to progress on counterterrorist programs and issues. Official reports issued on either a temporal or notification basis mark areas such as aviation security, the list of state sponsors of terrorism, designated foreign terrorist organizations, progress in the Middle East peace talks and associated sanctions levied on countries and organizations in the region, the use of chemical or biological weapons by foreign states or organizations, and the state of domestic preparedness for terrorist attack. For instance, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 requires the president, at the request of the chair of the House Foreign Affairs Committee or Senate Foreign Relations Committee, to report whether a specified government has used chemical or biological weapons. If such use is determined, the legislation triggers a series of sanctions, including a cutoff in foreign aid, arms sales and military

¹²⁵ U.S. Congress, Senate, Committee on Governmental Affairs, *An Act to Combat International Terrorism: Hearings on S. 2236*, Jan. 25, 1978, p.54.

¹²⁶ Celmer (note 9) p.44.

¹²⁷ The subsequent inquiry into the crash determined that a short circuit transferred excess voltage into a fuel tank, causing the explosion. (Eric Malnic, 'Fuel tank explosion led to TWA Flight 800 crash, probe finds,' *The Boston Globe*, Wednesday, 23 Aug. 2000, p.A7)

¹²⁸ Report available at: <http://www.aviationcommission.dot.gov212fin~1.html>.

financing, U.S. government credit or other financial aid, and exports of any controlled national security goods and technology. These reports provide a check on administrative programs designed to address the terrorist threat.

In the third category, the government has introduced measures to mitigate the effects of terrorist attacks. Many of these link to procedural issues that need to be approved in the course of recovery. Included in this category are visa extensions, such as that granted via the 1998 Immigrant Visa Processing Period Extension Act of 1998, which extended the visa processing period for individuals whose applications were interrupted by the 1998 U.S. embassy bombings in Nairobi and Dar es Salaam.¹²⁹ Also included are provisions for the building of memorials, such as that erected under the Pan Am Flight 103 Memorial Act, which authorized the placement of a memorial cairn in Arlington Cemetery to honor the 270 victims of the bombing.¹³⁰ The Oklahoma City Memorial Act established an Oklahoma City national memorial as a unit of the national park system and the Oklahoma City National Memorial Trust to manage the structure that commemorates the victims who died in the Alfred P. Murrah Federal Building.¹³¹ After the Oklahoma City incident, the federal government accelerated the introduction of measures relating to building security and introduced provisions related to recovery assistance for the businesses and local and state municipalities affected as a result of the explosion. In some instances legislation has ensured the extension of life and medical insurance for American hostages held overseas. For example, the Foreign Relations Authorization Act, FY 1992 and FY 1993 extended life and health insurance eligibility for U.S. hostages in Lebanon, Iraq, and Kuwait.¹³²

The federal government has also provided for the compensation of victims of international terrorism through direction for restitution, allowance for claims against foreign governments, and funding for complications arising from terrorist attack overseas. The Federal Courts Administration Act established a civil cause of action in federal court for victims of terrorism.¹³³ More recently, the 1996 AEDPA amended the Foreign Sovereign Immunities Act to allow U.S. citizens to bring civil actions against terrorist list states for cases involving aircraft sabotage, torture, extra-judicial killing, and hostage taking.¹³⁴ Cases within the purview of this legislation have been largely symbolic. For example, in March 1998 the U.S. District Court for the District of Columbia found Iran culpable for the death of Alisa

¹²⁹ 1998 Immigrant Visa Processing Period Extension Act, PL105-360.

¹³⁰ 1993 Pan Am Flight 103 Memorial Act, PL103-158.

¹³¹ 1998 Oklahoma City Memorial Act, PL 105-58.

¹³² 1992 Foreign Relations Authorization Act, FY 92 and FY 93, PL 102-138.

¹³³ 1992 Federal Courts Administration Act, PL 102-572.

¹³⁴ 1996 AEDPA, PI 104-132, Section 231.

Flatow, an American citizen killed in a 1995 Palestine Islamic Jihad attack on a bus in Tel Aviv.¹³⁵ The court ordered that Iran pay \$247 million in damages to her family. Two other cases resulted in \$187.5 million being awarded to relatives of unarmed members of a Cuban exile group shot down by Cuban jets in 1996, and \$65 million to three men held in the mid-1980s by Iranian-backed militias in Beirut.¹³⁶ Although the United States has seized some \$3.4 billion from state sponsors of terrorism, the executive branch has been reluctant to release this money, instead using it as leverage to convince the states to modify their behavior. The 1996 AEDPA allows the president to block the return of funds in the name of national security. Concern also exists that if the money is released to the claimants, U.S. companies and diplomats might become the targets of further terrorist action. This concern has not stemmed attempts to pursue court cases against recalcitrant states. The most recent congressional initiative in this area, S. 1796, seeks to make it easier for victims of state-sponsored terrorism to collect judgments won in U.S. courts.¹³⁷ AEDPA further requires federal judges to order certain criminal offenders to make restitution to persons harmed physically, emotionally, or financially as a result of their crimes and provides for supplemental federal grants to be administered through the states to compensate and assist victims of terrorism.¹³⁸

In the fourth category, domestic preparedness, as was previously mentioned, the United States' federal expenditures leapt from roughly zero in 1995 to around \$1.5 billion in FY 2000.¹³⁹ These resources focused on reducing U.S. vulnerability to, particularly catastrophic terrorism – that is, incidents involving mass casualties and likely to involve chemical, biological, nuclear, or radiologic weapons. This was not the first attempt to address the preparedness issue. During the Nixon administration the executive established a Nuclear Emergency Support Team to handle incidents involving terrorist use of nuclear material.

The Aum Shinrikyo Tokyo subway attack in March 1995 played a catalytic role in stimulating U.S. concern about possible terrorist use of chemical or biological weapons. Following this incident, the executive issued Presidential Decision Directive (PDD) 39, the Marine Corps created a new Chemical and Biological Incident Response Force, and the Office of Emergency Preparedness within the Department of

¹³⁵ Steven Flatow v. the Islamic Republic of Iran et al., Order and Judgment, U.S. District Court for the District of Columbia, CA. No. 97-396 (RCL), 4 March 1998.

¹³⁶ Pluchinsky (note 31).

¹³⁷ Tom Raum, 'Terrorism Bill,' Washington, D.C., Associated Press, 3 March 2000.

¹³⁸ 1996 Anti-terrorism and Effective Death Penalty Act Title II, subtitle A: Mandatory Victims Restitution Act of 1996 and subtitle C: Justice for Victims of Terrorism Act of 1996, PL 104-132.

¹³⁹ Richard A. Falkenrath, 'The Problems of Preparedness: Challenges Facing the U.S. Domestic Preparedness Program. Executive Session on Domestic Preparedness Discussion Paper, John F. Kennedy School of Government, 2000, p.1.

Health and Human Services developed the Metropolitan Medical Response System program. The Department of Defense launched a study on WMD terrorism and, in March 1998, created ten Rapid Assessment and Initial Detection Teams (later renamed Weapons of Mass Destruction Civil Support Teams). The FBI sought and obtained a rapid increase in its counterterrorist budget (from \$256 million in 1995 to \$581 million by 1998),¹⁴⁰ and Congress approved the initiation of a new domestic preparedness program. The resultant Defense against Weapons of Mass Destruction Act, passed in September 1996, subsequently gave the Department of Defense responsibility for coordinating this program.¹⁴¹ In 1997 the program began to train first responders in 120 cities. The legislation provided for the transfer of the program in two years to a different agency, presumably the Federal Emergency Management Agency (FEMA). Because of objections from FEMA, however, the program was transferred to the Department of Justice instead.¹⁴² Other government initiatives include the issuance of PDD 62,¹⁴³ the creation of the Office of State and Local Domestic Preparedness,¹⁴⁴ and the development of exercises such as Topoff and NCR 2000.¹⁴⁵

Virtually every branch of government, including the military, is involved in domestic preparedness in some way, whether through research and development, training, provision of supplies and equipment, tracking of agents or weapons, or offering assistance during and following an actual attack. For instance, in relation to research and development, almost all the national laboratories run by the Department of Energy are involved in WMD non-proliferation research projects. Oakridge, Sandia, Los Alamos, Lawrence Livermore, INEL, Pacific Northwest, and Oregon National all have programs in this area. The Department of Defense, the Justice Department, the FBI, Department of Health and Human Services, the Department of Agriculture, and the White House also play a role. The Department of Defense's Defence Advance Research Projects Agency (DARPA) is heavily into biological weapons research. The National Institute of Justice at the Department of Justice has been the recipient of funds to develop counterterrorist

¹⁴⁰ General Accounting Office, *Combating Terrorism: FBI's Use of Federal Funds for counterterrorism-related Activities 1995-98*. GAO-GGD-99-7, Nov. 1998, p.2.

¹⁴¹ Defense Against Weapons of Mass Destruction Act as lodged in FY 1997 Defense Authorization Act, PL 104-201.

¹⁴² On April 6, 2000 the Executive Branch officially transferred this program to the Department of Justice. <http://www.whitehouse.gov/library/ThisWeek.cgi?type=p&date=1&briefing=6>.

¹⁴³ Presidential Directive 62: Protection Against Unconventional Threats to the Homeland and Americans Overseas.

¹⁴⁴ OSLDPS programs include financial assistance to state and local jurisdictions, training, technical assistance, assessment mechanisms, and exercises. See <http://www.ojp.usdoj.gov/osldps>.

¹⁴⁵ Topoff, an abbreviation for Top Officials, consisted of a set of exercises held during a 10-day period in May 2000 in Portsmouth, NH, Washington, DC, and Denver, Colorado. Run by the Office for State and Local domestic Preparedness Support within the Office of Justice Programs, these exercises tested the degree of preparedness at a local level for a possible WMD terrorist incident. NCR-2000 (National Capital Region 2000), was conducted in the District of Columbia and Prince George's County, MD as separate, but concurrent exercises with Topoff. For more information on these programs see <http://www.ojp.usdoj.gov/osldps/230ag2.htm>.

technology for law enforcement personnel. The FBI Laboratory is involved in similar efforts. Health and Human Services' Center for Disease Control and National Institute of Health both conduct research into vaccines and antibiotics to respond to possible exposure to biological agents. At the White House, the Office of Science and Technology also has taken the issue on board. The national coordinator for counterterrorism, Richard Clark, oversees a working group on research and development technology, as does the NSC. The Marine Corps' Chemical and Biological Incident Response Force focuses on medical help and incident containment. The Army's Technical Escort is arguably the center of expertise for dealing with chemical and biological weapons, and the FBI runs a special hazardous materials response team and WMD office. An interagency organization, the Technical Support Working Group, also works in this area. Encompassing some fifty government agencies, this group issued its first government manual on the possibility of chemical or biological terrorism in 1987. Additionally, the State Department runs bilateral research and development programs with Israel, the United Kingdom, and Canada.

Military forays into the domestic preparedness realm have raised serious questions with regard to the issue of *posse comitatus*.¹⁴⁶ The 1878 Posse Comitatus Act prohibits the willful use of the armed forces to uphold the law unless specified by either an act of Congress or the Constitution.¹⁴⁷ Statutory exceptions include Coast Guard law enforcement powers, Presidential use of the military to suppress insurrection, and the Department of Defense's provision of information and equipment to federal, state, and local police.¹⁴⁸

In the fifth category, the United States has introduced administrative changes to respond to the perceived terrorist threat. The first such structure arose in 1972. Following the 1970 PFLP capture of four aircraft and the 1972 Black September attacks on Israeli athletes at the Munich Olympics, President Nixon established a cabinet-level committee, chaired by the secretary of state, to study ways to combat terrorism. More specifically, the body had as its mission to prevent terrorism within the United States and overseas, to coordinate a national policy, to provide the lead in the collection of counterterrorist

¹⁴⁶ The 1878 Posse Comitatus Act prohibits willful use of the armed forces to uphold the law unless specified by either an act of Congress or the Constitution. The Act and subsequent legislation applies to the Army, Air Force, Navy and Marines and the National Guard when employed in federal service. Statutory exceptions include Coast Guard law enforcement powers, Presidential use of the military to suppress insurrection, and the Department of Defense's provision of information and equipment to federal, state, and local police. (10 U.S.C. 331-334 and 10 U.S.C. 371-381) For discussion of the use of the military in the event of terrorist attack and the principle of *posse comitatus* see Charles Doyle, *The Posse Comitatus Act and Related Matters: the Use of the Military to Execute Civilian Law*, Congressional Research Service, Sept. 2, 1995, and Gregory D. Grove, 'The U.S. Military and Civil Infrastructure Protection: Restrictions and Discretion under the Posse Comitatus Act,' Center for International Security and Cooperation, Stanford University, 1999.

¹⁴⁷ The Act and subsequent legislation applies includes the Army, Air Force, Navy and Marines and the National Guard when employed in federal service.

information, to oversee the protection of U.S. personnel and facilities abroad, and to determine the manner in which the government would respond to a terrorist attack. As a result of infighting and marginalization, the committee did very little. In five years, it met only once. A working group on terrorism that emerged from the committee, however, met more than a hundred times between 1972 and 1977. The group addressed such issues as visa reform, allocation of responsibility in the event of a terrorist incident, intelligence sharing within the United States and with allies, the security of overseas installations, aviation security, diplomatic security, the protection of nuclear materials, the tagging of explosives and weapons, and abuses of diplomatic pouch privileges.¹⁴⁹ During the Ford administration, no real institutional changes occurred, even though the structure that Nixon established had proven ineffective.

When President Carter assumed office, he replaced the Nixon committee with what he believed to be a more responsive program coordinated by the NSC. Its aim of this organization was to ensure interagency coordination. Carter also established the lead agency concept for managing terrorist incidents, a function that continues today. The State Department became the lead for overseas incidents, DOJ and the FBI for attacks within the United States, and the FAA for domestic aircraft hijackings. In the event of a significant attack the NSC would establish a Special Coordination Committee, with routine matters delegated to two interagency groups: the Working Group on Terrorism and the Senior Executive Committee. Owing to an institutional “need” to be part of the formal response to terrorism, Carter’s ten-member executive committee evolved into a group of more than thirty government organizations, which he subsequently attempted to restructure along more functional lines. In 1978 the working group divided into six standing committees: research and development, domestic security policy, foreign security policy, contingency planning/crisis management, public information, and international initiatives. These bodies continued to be plagued by interagency rivalry and lack of cooperation.

During its first year, the Reagan administration established an organizational structure focused on crisis management. Chaired by the vice president, interagency working groups provided support. Although many of the same committees and feedback mechanisms in place during the Carter administration remained, the information flow changed: instead of data filtering through the Cabinet, it would go directly to the President through the NSC and the secretary of state.¹⁵⁰ The former policy committees, deemed ineffective, became incorporated into the Interdepartmental Advisory Group on Terrorism, chaired by the Secretary of State. This group dealt with issues such as international cooperation, research and

¹⁴⁸ 10 U.S.C. 331-334 and 10 U.S.C. 371-381.

¹⁴⁹ Pluchinsky (note 31).

development, legislation, public diplomacy, training programs, and antiterrorist exercises. To determine who would be responsible in the event of a particular incident, in 1982 the Reagan administration refined the specific lead agency responsibilities. The Department of State retained accountability for incidents outside U.S. territory, the Department of Justice (via the FBI) for events on domestic soil, and the FAA for incidents aboard aircraft within special jurisdiction of the United States. These agencies were brought under the Special Situation Group, chaired by a member of the NSC. Memorandums of understanding became the chosen mechanism to manage institutional overlap. Despite these alterations in policy, criticism that the U.S. approached terrorism in an uncoordinated manner proliferated. During the presidential campaign and in multiple Senate and House hearings, claims to the disorganized nature of the federal response to terrorism continued. For instance, at the conclusion of three days of Senate hearings, Edward A. Lynch from the National Forum Foundation told the Judiciary and Foreign Relations Committees, “that the U.S. has neither a comprehensive nor a realistic policy on terrorism. Current policy is fragmented and not fully developed...No coherent strategy to either retaliate against terrorist attacks or to prevent their occurrence, was apparent.”¹⁵¹

Despite the disarray of the administrative component of the counterterrorist organization, and reflecting the decrease in the number of terrorist incidents against U.S. citizens and property, the Bush administration maintained the structures put in place under President Reagan. Significant change occurred during the Clinton administration, though, in large part as a response to the growing recognition that terrorism represented more than just a foreign phenomenon. President Clinton instituted alterations in the State Department’s role as the coordinator of the federal government’s international counterterrorist efforts. In 1995 he issued PDD 39, naming the FBI as the lead agency for domestic terrorism and the key supporting agency for international terrorist incidents.¹⁵² FBI counterterrorist activities centered on preventive and crisis management efforts to detect and investigate terrorism against U.S. persons and property in the United States and abroad, as well as forensic and other support functions.¹⁵³ In 1998 the

¹⁵⁰ Celmer (note 9) p.31.

¹⁵¹ Edward A. Lynch, ‘International Terrorism: the Search for a Policy,’ *Terrorism: an International Journal* 9/1 (1987) p.2, cited in Celmer (note 9) p.25, fn. 52. This failure was due less to organizational inadequacies and more to characteristics of terrorism itself that confounded efforts to establish a predetermined hierarchy with ultimate accountability vested in one individual.

¹⁵² PDD No. 39 (1995). PDD 39 allocated \$300 million for sole use for chemical and biological defense, with another \$100 million to be put towards distributing diagnostic, detection, protective equipment to state and local agencies. As with past bureaucratic reorganization, the primary component of this directive was to enhance communication and coordination. The emphasis in this case, however, was not just between different branches of the federal government, but between federal and local government, international organizations, and the United States and foreign governments.

¹⁵³ The Bureau manages joint terrorism task forces in 18 cities across the States, with particular emphasis on intelligence and operations.

Department of State's central role definitively shifted, with the issuance of PDD 62.¹⁵⁴ This directive, aimed at developing a comprehensive strategy for preparation and response, established a national coordinator for security, infrastructure protection and counterterrorism within NSC.

The coordinator is charged with constructing a “new and systematic approach to fighting the terrorist threat of the next century.”¹⁵⁵ The degree to which this position can require agencies to institute changes is limited. For instance, it lacks budgetary “pass-back” authority, which might otherwise provide leverage. The program's first coordinator, Richard Clarke, outlined a four-part program that included: coordinating local agencies, arranging federal agencies' roles, intercepting the flow of weapons and equipment used by terrorist organizations, and disrupting terrorist groups. Although calls for the establishment of this type of program date to the 1970s, it was not until the 1990s that a national coordinator – and not just an international coordinator – was deemed necessary.¹⁵⁶ Whether Clarke's tenure will be lengthy remains to be seen. The frequent rotation of individuals through counterterrorism coordination positions plagued previous structures. For instance, twelve acting directors led the Department of State's Office for Counterterrorism and Emergency Planning (formerly Office for Combating Terrorism, then Office of the Ambassador-at-Large for Counterterrorism) between 1972 and 1987, with an average tenure of twelve months each.¹⁵⁷

On the same day that Clinton issued PDD 62, he also released PDD 63, which seeks to protect America's critical infrastructures, that is, physical and cyber-based systems so fundamental that a break in operation would debilitate the United States. Electrical power, gas and oil, telecommunications, banking and finance, transport, vital government operations, emergency services, and water supply systems provide examples of such installations. Federal attempts to determine overall responsibility for terrorism continue. The latest effort, HR 4210, seeks to develop further the federal counterterrorist bureaucracy.

Congress also has instituted administrative and procedural changes to answer increasingly urgent calls for protection against terrorism. Special bodies such as the House Task Force on Terrorism and Unconventional Warfare have joined more traditional legislative committees – such as the Senate Appropriations Committee, Armed Services Committee, Foreign Relations Committee, and Judiciary Committee and House Armed Security Committee, Intelligence Committee, International Relations

¹⁵⁴ PDD No. 62 (1998).

¹⁵⁵ <http://www.fas.org/irp/offdocs/pdd-62.htm>.

¹⁵⁶ See U.S. Congress, Senate, Committee on Governmental Affairs, *An Act to Combat International Terrorism: Hearings on S. 2236, Jan. 27, 1978*, p.107.

¹⁵⁷ Celmer (note 9) Appendix A, p.119.

Committee, and Judiciary Committee – to gain more information about this issue. The number of resultant hearings has skyrocketed from less than six in 1995 to an average of some forty in 2000.

In the final category, portions of the federal government have advised American citizens and the private sector. The Department of Commerce, for example, offers advice to American businesses faced with the possibility of terrorist incidents (kidnapping, ransom, etc.). The Department of State issues information on travel and conditions in certain regions and maintains an electronic notice board for industry and nongovernmental organizations. The Bureau of Diplomatic Security provides unclassified briefings on security threats to U.S. business executives based overseas. In 1985 the secretary of state established the Overseas Security Advisory Council to promote discussion between the federal government and the U.S. private sector. The council, which comprises twenty-five representatives from government and the largest U.S. firms overseas, operates a database that is accessible to some 1,500 American companies overseas.¹⁵⁸ The government also provides information to the public in the form of unclassified government reports (such as the annual *Patterns of Global Terrorism*, published by the State Department), occasional white papers, guest speakers, and Internet web sites.

CONCLUSION

One of the difficulties in the current counterterrorism discussion is that dynamics driving the discourse have led to the assumption that the United States does not have adequate counterterrorist measures in place. Attacks, when they occur, are seen as a system failure, a lack of vigilance that can be fixed only by the introduction of new measures. To some extent this perception rests on the nature of such acts: terrorism places states on the defensive. It attacks the political legitimacy of the state. And the illusion of the offensive is critical in such situations. A liberal, democratic polity must be *seen* to respond to protect the life and property of its citizens. Moreover, terrorism does not present just one challenge to the government. Wielded by individuals, groups, and states with disparate aims, grievances, targets, and audiences, the repercussions of one attack may be felt by any number of government institutions entrusted with the safety of the citizenry. In the wake of the demand for ever more stringent counterterrorist measures, not just one but many areas of the government respond to each event. And so the legislature legislates, the White House negotiates international agreements, and the military introduces new counterterrorist strike teams. The result is an unwieldy and ever-expansive compilation of counterterrorist measures that confuses efforts to evaluate America's total terrorist response. Over the past forty years such a wide variety of responses have been initiated that it is difficult to get a handle on

¹⁵⁸ 'Program Guide for the Bureau of Diplomatic Security,' U.S. Department of State Bureau of Diplomatic Security, June 1997.

the range of options already available. Whether some of these areas need to be strengthened is an argument for another day. In many cases careful consideration of current powers and constitutional norms may suggest otherwise.

Left unchecked, the steady expansion of counterterrorist measures gives rise to at least four concerns. First, the rationale and measures previously applied in the international arena threaten American civil liberties. Reason of state, at the heart of national security, assumes a level of catastrophe that justifies incursions into this realm. Yet it is precisely civil liberties that terrorism assaults and that ultimately provide the best weapon that America has against the challenge posed by terrorism. When the legitimacy of the government is under attack, relinquishing another area where legitimacy is intact plays into the hands of those opposing the state. The need for the government to be seen to protect the life and property of the citizens does not have to be treated as a zero-sum trade-off between liberty and safety. But as the dynamics have taken over America's response to terrorism, this is what has occurred, and a battle between civil liberties, on the one hand, and vulnerability to terrorism, on the other, has emerged. This clash can be seen in the intense debate over issues such as passenger profiling, roving wire taps, surveillance measures, tracking systems, and immigration.¹⁵⁹ Special courts, secret evidence, classified deportation proceedings, and special rules of evidence speak not to an open, liberal, democratic society, but to one cloaked in secrecy. Proposals to erode *posse comitatus*, alter assassination policies, use criminal informants, and widen powers of information gathering proliferate.

Second, these incursions into civil liberties risk alienating groups within the United States. Ethnic minorities subject to degrading and disproportionate security checks and procedures, or militia organizations that monitor the degree to which the government becomes involved in the lives of the citizens may become further marginalized and mobilized by the introduction of stringent counterterrorist law. In the immigration realm, more than twenty people have been detained based on secret evidence, some of whom have been held for two or more years. The overwhelming majority is Arab or Muslim.¹⁶⁰

¹⁵⁹ See House Judiciary Committee hearings on HR 2121 "Secret Evidence Repeal Act of 1999, Tuesday May 23, 2000; Juliette N. Kayyem, National Commission on Terrorism, Letter to Senator Kyl, United States Senate Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information, June 27, 2000 (relating to FISA, wiretaps, and secret evidence).

¹⁶⁰ Letter from Juliette N. Kayyem, National Commission on Terrorism, to Senator Jon Kyl, United States Senate Committee on the Judiciary, Subcommittee on Technology, Terrorism, and Government Information. June 27, 2000.

In other societies, such as Northern Ireland, the application of similar measures led to the alienation and radicalization of portions of the population, creating a volatile social and political situation that has proven difficult to neutralize.¹⁶¹

Third, while national security concerns can be used to justify the introduction of increasingly repressive measures, the practical affect of this may be to heighten the number and effectiveness of terrorist acts against U.S. citizens and property.¹⁶² Both at home and abroad the increasing repressiveness of measures adopted may strengthen the resolve of those who find fault with government policy. Decisions to engage in activities particularly in the coercive realm must be carefully considered. Acts such as missile strikes,¹⁶³ forced removal,¹⁶⁴ foreign searches of U.S. federal officials,¹⁶⁵ assassination,¹⁶⁶ judicial proceedings within the United States,¹⁶⁷ and economic sanctions have had this effect. They have spurred charges of increased recruitment to terrorist movements, heightened danger to U.S. citizens, damaged relations with other countries, impact on the internal workings of other countries, and a lessening in international support for U.S. counterterrorist efforts.¹⁶⁸

For instance, following the hijacking of the *Achille Lauro*, four U.S. fighter jets intercepted the Egyptian plane carrying the perpetrators. The American planes forced the airliner to land in Italy, where the hijackers were immediately charged with, among other crimes, the murder of U.S. citizen Lean

¹⁶¹ Laura K. Donohue, *Emergency Powers and Counterterrorist Law in the United Kingdom, 1922-2000*, (Dublin: Irish Academic Press), 2000.

¹⁶² See for example threats issues by Iraq attached to U.S. missile strikes Lee Hockstader, "Extremists Issue Threat to Israel; Hamas Warns of Strike if U.S. Attacks Iraq," *The Washington Post*, Feb. 18, 1998.

¹⁶³ For Clinton Administration's assertion of right to bomb state sponsors of terrorism see, "U.S. asserts right to bomb regimes that harbor terrorists," CNN Interactive, Feb. 7, 1999, <http://cnn.com:80/US/9902/08/us.terrorism.ap/>.

¹⁶⁴ For discussion of extraterritorial jurisdiction in relation to forced removal see Arthur E. Shin, "On the Borders of Law Enforcement – the Use of Extraterritorial Abduction as a Means of Attaining Jurisdiction over the International Criminal," 17 *Whittier L. Rev.* 327; Jeanne M. Woods, "Presidential Legislating in the Post-Cold War Era: a Critique of the Barr Opinion on Extraterritorial Arrests," 14 *B.U. Int'l L. J.* 1; Catherine Collier Fisher, "Recent Development: U.S. Legislation to Prosecute Terrorists: Antiterrorism or Legalized Kidnapping?," 18 *Vanderbilt Journal of Transnational Law* 915; Jimmy Gurulé, "Terrorism, Territorial Sovereignty, and the Forcible Apprehension of International Criminals Abroad," 17 *Hastings Int'l & Comp. L. Rev.* 457.

¹⁶⁵ For discussion of extraterritorial powers in relation to foreign searches by U.S. federal officials of non-resident aliens see Mark Gibney, "Policing the World: the Long Reach of U.S. Law and the Short Arm of the constitution," 6 *Conn. J. Int'l L.* 103.

¹⁶⁶ For discussion of the legality of assassination of terrorists overseas see Paul Richter, "Deadly force against terror leaders is legal, administration says," *Miami Herald*, Thursday, Oct. 29, 1998, <http://www.herald.com:80/world/digdocs/072848.htm>.

¹⁶⁷ See "Notes: Constructing the State Extraterritorially: Jurisdictional Discourse, the National Interests, and Transnational Norms," 103 *Harvard L. R.* 6, April 1990; Adam W. Wegner, "Extraterritorial Jurisdiction under International Law: the *Yunis* Decision as a Model for the Prosecution of Terrorists in U.S. Courts," 22 *Law and Policy in International Business* 409.

Klinghoffer. America's forceful actions sparked tension between the United States, Egypt, and Italy, with the Egyptian President calling the American interception of its plane an "act of piracy" that had placed a "coolness and strain" on U.S.-Egyptian relations.¹⁶⁹ Subsequent collapse of the Italian, pro-U.S. government also was blamed on U.S. actions in relation to the *Achille Lauro*.¹⁷⁰ The *New York Times* and other papers subsequently asserted that the U.S. government had paid a high price for its focus on the capture of the hijackers, and dismissal of Egypt's national dignity.¹⁷¹

Similar charges have accompanied other coercive international measures. There may be times appropriate to the use of such measures against foreign states or terrorist organizations; but sensitivity to the timing of the measure and the degree to which the U.S. is acting in concert with other powers needs to be maintained. Here the normalization of extreme measures is of consequence. For example, as the country engages in missile strikes with a watered-down factual standard, international support for and recruits to movements opposed to the United States may expand, increasing the threat posed to the United States. Simultaneously, as our allies and as non-allied powers become upset with the unilateral nature of American actions, future counterterrorism assistance may diminish.

Further, by heightening public awareness and fear of terrorism, government officials and media commentators may be playing a role in bringing that day closer. Terrorism serves as one way to draw attention to a cause. Locked into a national security dialogue, such acts go beyond criminal to a national security concern, catapulting the cause into the public spotlight. This becomes particularly serious in regard to WMD. The anthrax hoaxes 1998-2000 provided insight into this phenomenon. The more attention ascribed to the hoaxes, the more frequent they became. Conversely, the less publicity afforded them, the fewer incidents occurred. Here the peculiar relationship between terrorism and communications, whether it be the media, the government, or the public at large, comes to the fore. The government must be careful not to set up terrorism – and particularly WMD terrorism – as the holy grail.

Not only may terrorist acts be perceived as effective by individuals who decide to engage in such behavior, but the threat or actual occurrence of acts themselves may have a greater impact on the

¹⁶⁸ For general discussion of extraterritorial powers see Tyler Raimo, "Note and comment: Winning at the Expense of Law: the Ramifications of Expanding Counterterrorism Law Enforcement Jurisdiction Overseas," 14 *Am. U. Int'l L. Rev.* 1473.

¹⁶⁹ Catherine Collier Fisher, "U.S. Legislation to Prosecute Terrorists: Antiterrorism or Legalized Kidnapping?" 18 *Vanderbilt Journal of Transnational Law* 917; *Time*, Oct. 21, 1985, at 24; *Washington Post*, Oct. 18, 1985, at A1, col. 6 (cited in Fisher, fn 4).

¹⁷⁰ See *Washington Post*, Oct. 17, 1985, col. 5; *New York Times*, Oct. 22, 1985, A1, col. 6, and *Newsweek*, Oct. 21, 1985, 32.

¹⁷¹ *New York Times*, Oct. 20, 1985, section 4 (the Week in Review), at 1, col. 1.

population. In brief, terrorists will be more likely to succeed. During the millennial celebrations people cancelled or changed their plans not because of an actual, ongoing terrorist campaign (it had been nearly five years since the last significant event within the United States) – but because of the fear instilled by officials and government agencies issuing cautions. Despite a relative dearth of reference to terrorism in the media in the preceding four months, following a State Department terrorism alert issued December 11, 1999, every night for the next three weeks the major networks covered the issue. Most of these reports cited government officials' warnings.¹⁷² Three events placed the U.S. government on "high alert" and were later heralded in justification of the strong warnings: the mid-December arrest of a terrorist cell in Jordan that was planning attacks against western tourists; the capture on December 14, 1999 of two Algerian nationals bringing approximately fifty pounds of explosives and detonators into the U.S. from Canada; and the hijacking December 14-31 of Indian Airlines Flight 814 by Harkat ul-Mujahideen.¹⁷³ Only one of these directly related to a possible attack within the U.S. Of not inconsequential importance in generating concern amongst the population was the increasing attention paid to terrorism through ballooning budgets and intense public rhetoric. As politicians and decision-makers seek to play up their role in protecting the life and property of the citizens – particularly at a time when no immediate, ongoing campaign exists, it provides the act, when it actually does occur, a legitimacy (i.e., a criminal act becomes elevated to a national security concern) and a publicity beyond what it deserves. Terrorism already is more effective than it was in the mid-1980s. Aum Shinrikyo provides a telling example: essentially a failed attempt by a well-educated and well-funded foreign organization to levy a biological attack overseas ignited such fear in the U.S. that the government currently spends \$1.4 billion dollars a year to meet this threat.

Finally, caught up in the dynamics driving counterterrorist policy, the U.S. is spending increasingly more time and money on the issue. Here the national security dialogue assumes a level of threat that justifies extensive resource allocation. The state is assumed to be under attack, and so reason of state justifies spending more and more money on the issue. But the nature of terrorism makes it difficult to determine if the resources are being spent effectively: in the event of an attack, immediate calls for more resources to be spent proliferate. In its absence, the secretive nature of terrorism – the possibility that it might occur –

¹⁷² See for instance CBW Evening News, 1999.12.12 "State Department – World Terrorism," 5:04:50-5:06:50 Noting that Secretary of State Madeleine Albright is concerned about the threat posed to Americans abroad.

¹⁷³ Michael A. Sheehan, Coordinator for Counterterrorism, U.S. Department of State. "Post-Millennium Terrorism Review." Speech at the Brookings Institution Washington, DC, Feb. 10, 2000.

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leaves much to the imagination. In a post-Cold War era of declining budgets and lack of a clear enemy, the bureaucratic incentive is there to continue to build the threat and act to steadily increase the range of American counterterrorist measures.

Executive Session on Domestic Preparedness
John F. Kennedy School of Government
Harvard University

The John F. Kennedy School of Government and the U.S. Department of Justice have created the Executive Session on Domestic Preparedness to focus on understanding and improving U.S. preparedness for domestic terrorism. The Executive Session is a joint project of the Kennedy School's Belfer Center for Science and International Affairs and Taubman Center for State and Local Government.

The Executive Session convenes a multi-disciplinary task force of leading practitioners from state and local agencies, senior officials from federal agencies, and academic specialists from Harvard University. The members bring to the Executive Session extensive policy expertise and operational experience in a wide range of fields - emergency management, law enforcement, national security, law, fire protection, the National Guard, public health, emergency medicine, and elected office - that play important roles in an effective domestic preparedness program. The project combines faculty research, analysis of current policy issues, field investigations, and case studies of past terrorist incidents and analogous emergency situations. The Executive Session is expected to meet six times over its three-year term.

Through its research, publications, and the professional activities of its members, the Executive Session intends to become a major resource for federal, state, and local government officials, congressional committees, and others interested in preparation for a coordinated response to acts of domestic terrorism.

For more information on the Executive Session on Domestic Preparedness, please contact:

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John F. Kennedy School of Government
Harvard University

BCSIA is a vibrant and productive research community at Harvard's John F. Kennedy School of Government. Emphasizing the role of science and technology in the analysis of international affairs and in the shaping of foreign policy, it is the axis of work on international relations at Harvard University's John F. Kennedy School of Government. BCSIA has three fundamental issues: to anticipate emerging international problems, to identify practical solutions, and to galvanize policy-makers into action. These goals animate the work of all the Center's major programs.

The Center's Director is Graham Allison, former Dean of the Kennedy School. Stephen Nicoloro is Director of Finance and Operations.

BCSIA's *International Security Program (ISP)* is the home of the Center's core concern with security issues. It is directed by Steven E. Miller, who is also Editor-in-Chief of the journal, *International Security*.

The *Strengthening Democratic Institutions (SDI)* project works to catalyze international support for political and economic transformation in the former Soviet Union. SDI's Director is Graham Allison.

The *Science, Technology, and Public Policy (STPP)* program emphasizes public policy issues in which understanding of science, technology and systems of innovation is crucial. John Holdren, the STPP Director, is an expert in plasma physics, fusion energy technology, energy and resource options, global environmental problems, impacts of population growth, and international security and arms control.

The *Environment and Natural Resources Program (ENRP)* is the locus of interdisciplinary research on environmental policy issues. It is directed by Henry Lee, expert in energy and environment. Robert Stavins, expert in economics and environmental and resource policy issues, serves as ENRP's faculty chair.

The heart of the Center is its resident research staff: scholars and public policy practitioners, Kennedy School faculty members, and a multi-national and inter-disciplinary group of some two dozen pre-doctoral and post-doctoral research fellows. Their work is enriched by frequent seminars, workshops, conferences, speeches by international leaders and experts, and discussions with their colleagues from other Boston-area universities and research institutions and the Center's Harvard faculty affiliates. Alumni include many past and current government policy-makers.

The Center has an active publication program including the quarterly journal *International Security*, book and monograph series, and Discussion Papers. Members of the research staff also contribute frequently to other leading publications, advise the government, participate in special commissions, brief journalists, and share research results with both specialists and the public in a wide variety of ways.

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Taubman Center for State and Local Government
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The Taubman Center for State and Local Government focuses on public policy and management in the U.S. federal system. Through research, participation in the Kennedy School's graduate training and executive education programs, sponsorship of conferences and workshops, and interaction with policy makers and public managers, the Center's affiliated faculty and researchers contribute to public deliberations about key domestic policy issues and the process of governance. While the Center has a particular concern with state and local institutions, it is broadly interested in domestic policy and intergovernmental relations, including the role of the federal government.

The Center's research program deals with a range of specific policy areas, including urban development and land use, transportation, environmental protection, education, labor- management relations and public finance. The Center is also concerned with issues of governance, political and institutional leadership, innovation, and applications of information and telecommunications technology to public management problems. The Center has also established an initiative to assist all levels of government in preparing for the threat of domestic terrorism.

The Center makes its research and curriculum materials widely available through various publications, including books, research monographs, working papers, and case studies. In addition, the Taubman Center sponsors several special programs:

The Program on Innovations in American Government, a joint undertaking by the Ford Foundation and Harvard University, seeks to identify creative approaches to difficult public problems. In an annual national competition, the Innovations program awards grants of \$100,000 to 15 innovative federal, state, and local government programs selected from among more than 1,500 applicants. The program also conducts research and develops teaching case studies on the process of innovation.

The Program on Education Policy and Governance, a joint initiative of the Taubman Center and Harvard's Center for American Political Studies, brings together experts on elementary and secondary education with specialists in governance and public management to examine strategies of educational reform and evaluate important educational experiments.

The Saguaro Seminar for Civic Engagement in America is dedicated to building new civil institutions and restoring our stock of civic capital.

The Program on Strategic Computing and Telecommunications in the Public Sector carries out research and organizes conferences on how information technology can be applied to government problems -- not merely to enhance efficiency in routine tasks but to produce more basic organizational changes and improve the nature and quality of services to citizens.

The Executive Session on Domestic Preparedness brings together senior government officials and academic experts to examine how federal, state, and local agencies can best prepare for terrorist attacks within U.S. borders.

The Program on Labor-Management Relations links union leaders, senior managers and faculty specialists in identifying promising new approaches to labor management.

The Internet and Conservation Project, an initiative of the Taubman Center with additional support from the Kennedy School's Environment and Natural Resources Program, is a research and education initiative. The Project focuses on the constructive and disruptive impacts of new networks on the landscape and biodiversity, as well as on the conservation community.

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