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THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Omnibus Bill Re: Terrorism

Assistant Attorney General McConnell has submitted a proposed anti-terrorism bill to OMB for clearances. Title I of the bill would prohibit conspiring in the United States to commit a crime of violence against a foreign official outside the U.S. Title II outlaws providing technology and training to governments supporting terrorism or to terrorist groups. The President would identify covered governments and groups by proclamation. Title II also creates a new offense of falsely posing as a U.S. intelligence agency operative and under that guise inducing others to commit crimes. Title III provides for rewards for those furnishing information on terrorist acts. Titles IV and V implement treaties signed by the U.S. governing hijacking (ratified 1972) and the taking of hostages (awaiting ratification), respectively.

The bill represents the common views of the Departments of Justice and State, with the exception of Title III. The State Department has proposed a rewards bill of its own, covering only foreign terrorism and administered by the Secretary of State. Under Justice's bill rewards for domestic terrorism would also be available, and the program would be run by the Attorney General. In my view it makes sense to have the Secretary of State run the rewards program if it is limited to foreign terrorism, while the Attorney General should run it if it includes domestic acts. We have not yet been asked to "weigh in" on one side or the other.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Subject: Draft omnibus bill re: terrorism

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<u>CW Hall</u>	ORIGINATOR	83,05,13 th
<u>CWAT 18</u>	Referral Note: A	83,05,13 th
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 A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
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U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 12 1993

42962 *CU*

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed for your consideration and appropriate clearance within the Administration is a draft omnibus bill pertaining to terrorism. A section-by-section analysis and Speaker letter are also enclosed. The Speaker letter will serve to summarize the bill's provisions.

It should be noted that major portions of the bill have been approved in substance by the Administration in the past. For example, the provisions of Title IV and V which implement the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the United Nations Convention Against the Taking of Hostages, respectively, represent basic agreement between the Departments of Justice and State on various bills over the past several years. During the 97th Congress, the Montreal Convention legislation was introduced at the request of the State Department as H.R. 4847, and that Department prepared a bill implementing the Hostages Convention. Moreover, most of Title II dealing with the training and supporting of terrorism reflects agreement between State and Justice on the Administration's position concerning S. 2255 and H.R. 5211 in the 97th Congress.

Title III, providing for rewards for information leading to the arrest of a person who commits an act of terrorism or for information which prevents such an act, is a result of the efforts over the past year of the Departments of Defense, State, and Justice to draft such a bill. In the wake of the General Dozier kidnaping, the Defense Department first suggested such a provision, since its personnel and property are attractive targets for terrorists. However, earlier this year, the State Department submitted for your consideration a draft rewards bill that, while similar to Title III of this bill, contains some important differences. For example, their proposal would limit coverage to the payment of rewards for information concerning terrorism outside the United States which is not in violation of federal law, and would make the Secretary of State the official responsible for the program. We have concluded that an effective

rewards provision should cover domestic terrorism as well as terrorism overseas directed against United States persons or certain other defined United States interests, and that the Attorney General, as the nation's chief law enforcement officer, should have ultimate responsibility for what we view as a law enforcement program. Our disagreement with State on this point is discussed more thoroughly in our report on its draft bill.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Attached for your consideration and appropriate reference is a draft bill to deal with the problem of criminal terrorism. A section-by-section analysis is also enclosed.

The bill generally tightens existing criminal sanctions against acts frequently committed by terrorists and fills several gaps in the present law that have come to our attention in recent years. It also serves to carry out our obligations mandated by two treaties designed to combat terrorism, The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (24 U.S.T. 567), signed at Montreal on September 23, 1971, and ratified by the United States in November of 1972; and The International Convention Against the Taking of Hostages, adopted by the United Nations General Assembly on December 17, 1979 (18 International Legal Materials 1456). Aircraft hijacking and sabotage and the taking of hostages are among the most dangerous of all terrorist acts. Finally, the bill contains a provision for the payment of rewards to those persons who provide information, often at great personal risk, concerning an act of terrorism or which prevents such an act.

The bill is divided into five titles. Title I would make it a crime to conspire in the United States to kill or commit a crime of violence against an official of a foreign power outside of the United States. The title also slightly expands and brings up-to-date existing provisions prohibiting a conspiracy in the United States to destroy important types of property such as airports and factories in foreign countries.

Title II is closely patterned after S. 2255 and H.R. 5211 introduced in the 97th Congress. It is designed to prevent persons in the United States from providing technology and training to foreign governments that support terrorism and to international terrorist groups. The provision of such services by United States nationals overseas is also covered. The title also creates a new offense of falsely posing as a person employed by or working with a United States intelligence agency such as

the CIA and in that capacity inducing another person to commit a crime due to a belief that the offense was part of an authorized intelligence activity.

Title III provides for the payment of rewards for persons who furnish information about specific acts of terrorism. It is patterned after a similar reward provision for persons who relate information concerning the unauthorized acquisition or manufacture of nuclear materials, 50 U.S.C. 47a-47f, and authorizes the Attorney General to determine when persons are eligible for a reward.

Title IV of the bill is designed to implement the provisions of The Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, a copy of which is attached for easy reference. The Convention sets out the responsibilities of the signatory countries in responding to such common terrorist activities as aircraft hijacking and aircraft sabotage. This title fulfills our obligation, which we accepted by ratifying the treaty over a decade ago, to establish criminal jurisdiction over certain aircraft related offenses including extraterritorial jurisdiction over some offenses involving aircraft or air navigation facilities of other contracting countries if the perpetrator is found within our borders.

Title V is intended to implement the International Convention Against the Taking of Hostages, a copy of which is attached. This Convention was transmitted to the Senate on August 4, 1980, and is awaiting ratification. When it is ratified, the United States will incur an obligation to enact laws to provide sanctions against those persons who commit the offense of hostage-taking, a common tactic of terrorists in which a person is kidnaped and a threat is made to kill, to injure, or to continue to hold him to compel action on the part of a third party or government. This title makes appropriate modifications in the federal kidnaping statute to carry out this responsibility.

The draft bill we are submitting is designed to facilitate the carrying out by the federal government of its responsibility to prevent acts of terrorism and to deal appropriately with the perpetrators of those acts of terrorism that do occur. I urge that this proposal be given prompt and favorable consideration.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TITLE I - ACTS OF TERRORISM

Sec. 101. (a) Chapter 45 of title 18, United States Code is amended by adding at the end thereof the following new section:

"971. Conspiracy to kill, kidnap, or injure a foreign official

"(a) Whoever within the jurisdiction of the United States conspires with one or more persons to commit at any place outside of the United States an act that would constitute any of the following offenses if committed in the special maritime and territorial jurisdiction of the United States namely,

"(1) Murder

"(2) Kidnaping

"(3) Maiming

"(4) Assault with a dangerous weapon, or

"(5) Assault with intent to commit serious bodily

injury,

involving a victim who is an official of a foreign power with which the United States is not at war, shall, if he or one of such other persons in fact commits any overt act with intent to effect any object of the conspiracy, be punished as follows --

"(A) for murder or kidnaping by imprisonment for any term of years or for life or a fine of not more than \$250,000 or both;

"(B) for maiming by imprisonment for not more than thirty years or a fine of not more than \$150,000, or both;

"(C) For assault with a dangerous weapon or assault with intent to commit serious bodily injury by imprisonment for not more than twenty years or a fine or not more than \$100,000, or both

"(b) For purposes of this section

"(1) the term 'official of a foreign power' means a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity and any member of his family, then forming part of his household; and

"(2) 'international organization' means a public international organization designated as such pursuant to section one of the International Organizations Immunities Act (22 U.S.C. 288)."

"(b) the analysis of chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"971. Conspiracy to kill, kidnap, or injure a foreign official."

Sec. 102. Subsection (a) of section 956 of title 18 is amended to read as follows:

"(a) Whoever within the jurisdiction of the United States conspires with one or more persons to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is not at war, or any railroad, canal, bridge, airport, airfield or other public utility or public structure so situated, shall, if he or any such other person commits any act to effect the object of the conspiracy, be fined not more than \$50,000 or imprisoned not more than ten years, or both."

TITLE II - TRAINING, SUPPORTING AND INDUCING OF TERRORISM

Sec. 201. (a) Chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"972. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups

"(a) Except as provided in subsections (h) and (i), it shall be unlawful for any national of the United States, any permanent resident alien of the United States, or any United States business entity to willfully perform or attempt to perform any of the following acts:

"(1) serve in, or act in concert with, the armed forces or any intelligence agency of any foreign government, faction, or international terrorist group which is named in a proclamation in effect under subsection (d);

"(2) provide training in any capacity to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d);

"(3) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d); or

"(4) recruit or solicit any person to engage in any activity described in subparagraphs (1) through (3) of this paragraph.

There is extraterritorial jurisdiction over a violation of this subsection.

"(b) It shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to willfully perform or attempt to perform any of the following acts:

"(1) provide training in any capacity to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d);

"(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents of any foreign government, faction, or international terrorist group named in a proclamation in effect under subsection (d); or

"(3) recruit or solicit any person to engage in any activity described in subparagraphs (1) or (2) of this paragraph.

"(c) Whoever violates this section shall be fined not more than five times the total compensation received for such violation, or \$25,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(d) Whenever the President finds that the acts or likely acts of international terrorism of a foreign government, faction, or international terrorist group are such that the national security, foreign relations, or the physical security of the person or property of a private entity of the United States warrant a ban on the foreign government's, faction's or international terrorist group's receipt of services or other assistance in support of such acts as described in subsections (a) or (b), he may issue a proclamation naming such foreign government, faction, or international terrorist group for which such finding has been made. If the President finds that the conditions which were the basis for any proclamation issued under this section have ceased to exist, he may revoke such proclamation in whole or in part. Any such revocation shall not affect any action or

proceeding based on any act committed prior to the effective date of such proclamation. Any proclamation or revocation thereof issued pursuant to this section shall be published in the Federal Register and shall become effective immediately on publication.

"(e) For the purposes of this section, any finding of fact made in any proclamation issued pursuant to subsection (d) shall be conclusive. No question concerning the validity of the issuance of such proclamation may be raised by a defendant as a defense in or as an objection to any trial or hearing if such proclamation was issued and published in the Federal Register in accordance with subsection (d).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of any proclamation affecting such person if the act was performed pursuant to an agreement or contract entered into prior to the effective date of the proclamation.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States --

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title.

"(h) This section shall not be construed to prohibit the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(i) Nothing in this section shall be construed to create criminal liability for the conduct of United States intelligence activities which are properly authorized and conducted in accordance with federal statutes and Executive orders governing such activities.

"(j) for the purposes of this section--

"(1) the term 'foreign government' has the meaning given it in section 1116(b) (2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, body of insurgents, or other group which seeks to overthrow the government of, become the government of, or otherwise assert control over or influence any foreign country or

territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms:

"(4) the term 'group' means an association of persons, whether or not a legal entity;

"(5) the term 'international terrorist group' means a group which engages in international terrorism;

"(6) the term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c));

"(7) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plan or intention of governments, organization, or persons, in whole or in part by covert means;

"(8) the term 'United States business entity' means any sole proprietorship, partnership, company, or association composed in whole or in part of nationals or permanent resident aliens of the United States or any corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States,"

"(9) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(22)];

"(10) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in Section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C.1101(a)(20)]; and

"(11) the term 'private entity of the United States' means

"(A) an individual who is

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company or association composed in whole or in part of nationals or permanent resident aliens of the United States; or

"(D) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and any foreign subsidiary of such corporation."

(b) The analysis of chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new

"972. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups."

(c) Section 3238 of title 18, United States Code, is amended by --

(1) striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the "; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 972 of this title which is committed out of the jurisdiction of any particular State or district may be in any district. Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title."

(d) 5. Section 11 of title 18 is amended by inserting "972", after "sections 112, 878, 970,".

SEC. 202. (a) Chapter 43 of title 18, United States Code, is amended by adding at the end thereof the following new section:

918. Agents of the United States Intelligence Community

"(a) Whoever pretends to be an officer or employee of, or pretends to be acting under the authority of or in concert with, an agency within the United States Intelligence Community and in such pretended character requests or induces any other person to commit an offense punishable by imprisonment for one year or more under the laws of the United States, a State of the United States, a foreign government or a political subdivision of a foreign government, or to do an overt act to facilitate the

commission of any such offense shall be punished by imprisonment for not more than ten years or a fine of not more than \$50,000, or both.

"(b) It is not a defense to a prosecution under this section that

"(1) the offense or act requested or induced did not take place, or was not attempted, or

"(2) the agency in the United States Intelligence Community lacked the authority to request or induce such an act.

"(c) There is extraterritorial jurisdiction over an offense under this section.

"(d) For the purposes of this section the agencies within the United States Intelligence Community are:

"(1) The Central Intelligence Agency

"(2) The National Security Agency

"(3) The Defense Intelligence Agency

"(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs

"(5) The Bureau of Intelligence and Research of the Department of State, and

"(6) The Intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, and the Department of Energy.".

(b) The analysis of chapter 43 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"918 Agents of the United States Intelligence Community."

TITLE III - REWARD FOR INFORMATION CONCERNING TERRORIST ACTS

Sec. 301. (a) Title 18 of the United States Code is amended by adding the following new chapter:

"Chapter 204 - Rewards for Information
Concerning Terrorist Acts

"Sec. "3071. Information for which rewards authorized;
maximum, amount

"Sec. 3072. Determination of entitlement; consultation;
Presidential approval; conclusiveness.

"3073. Aliens; waiver of admission requirements.

"3074. Hearings; rules and regulations.

"3075. Certification; approval; payment; sealing.

"3076. Exception of governmental officials.

"3077. Eligibility for witness protection programs.

"3078. Definitions.

"Sec. 3071. Information for which rewards authorized: maximum
amount

"Any individual who furnishes information of the following
types namely

"(a) Information leading to the arrest or conviction in any
country of any individual or individuals for the commission of an
act of terrorism against a United States person or United States
property.

"(b) Information leading to the arrest or conviction in any country of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or United States property; or

"(c) Information leading to the prevention of an act of terrorism against a United States person or United States property;

may be rewarded in an amount not to exceed \$500,000.00

"3072. Determination of entitlement; consultation; Presidential approval; conclusiveness;

"The Attorney General shall, after advising and consulting with the Secretary of Defense, determine whether a person furnishing information to the United States pursuant to section 3071 is entitled to a reward and the amount to be paid. Before making a reward under this chapter in a matter involving international terrorism, the Attorney General shall also advise and consult with the Secretary of State. A reward of \$100,000 or more may not be made without the approval of the President. A determination made by the Attorney General or the President under this chapter shall be final and conclusive and no court shall have power or jurisdiction to review it.

"3073. Alien; waiver of admission requirements.

"If the information which would justify a reward under this chapter is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may determine that the

entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]

"3074. Hearings; rules and regulations

"The Attorney General is authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter. The provisions of Subchapter II, chapter 5 of title 5 United States Code, do not apply to this chapter.

"3075. Certification; approval; payment; sealing

"Any reward granted under this chapter shall be certified by the Attorney General and transmitted to the Secretary of Defense for payment out of funds appropriated for the operation of the Department of Defense. If necessary to protect the life of the recipient of a reward and of his immediate family, such portion as is necessary of the materials transmitted to the Secretary of Defense may be sealed by the Attorney General to protect the recipient's identity.

"3076. Exception for governmental officials

"No officer or employee of any governmental entity who, while in the performance of his official duties, furnishes the information or renders the services described in section 3071 shall be eligible for any monetary reward under this Act.

3077. Eligibility for witness protection programs

"Any individual who furnishes information which would justify a reward under this chapter and his immediate family may, in the discretion of the Attorney General, participate in the Attorney General's witness protection program authorized under Title V of the Organized Crime Control Act of 1970.

"3078. Definitions

"As used in this chapter the term -

"(a) 'Act of terrorism' means an activity that ---

"(1) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

"(2) appears 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 kidnaping.

"(b) 'international terrorism' means an act of terrorism which transcends national boundaries in terms of the means by which it is accomplished, the person or entity it appears intended to coerce or intimidate, or the locale in which the perpetrator operates or seeks asylum.

"(c) 'United States person' means -

"(1) a national of the United States as defined in Section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(22)];

"(2) an alien lawfully admitted for permanent residence in the United States as defined in Section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)(20)];

"(3) any person within the United States;

"(4) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(5) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

"(6) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and a foreign subsidiary of such corporation.

"(d) 'United States property' means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any federal or State governmental entity of the United States.

"(e) 'United States' _

"(1) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

"(2) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

"(f) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

"(g) 'government entity' includes the government of the United States, any State or political subdivision thereof, any foreign country, and any state, province, municipal or other political subdivision of a foreign country.

"(h) 'Attorney General' means the Attorney General of the United States or that official designated by the Attorney General to perform his responsibilities under this Act."

(b) The chapter analysis of Part II of title 18, United States Code, is amended by adding after the item relating to chapter 203 the following new item:

"204. Rewards for information concerning terrorist acts....3071".

TITLE IV - IMPLEMENTATION OF THE MONTREAL
CONVENTION FOR THE SUPPRESSION OF THE UNLAWFUL ACTS AGAINST
THE SAFETY OF CIVIL AVIATION

Sec. 401. This title shall be cited as the "Aircraft Sabotage Act."

STATEMENT OF FINDINGS AND PURPOSE

Sec. 402. The Congress hereby finds that:

(a) The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified by the United States on November 1, 1972) requires all State parties to it to establish jurisdiction over certain offenses affecting the safety of civil aviation;

(b) Such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations;

(c) The purpose of this Title is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities.

Sec. 403. (a) Section 31 of Title 18, United States Code, is amended --

(1) in the first paragraph by

(A) striking out "and" before the term "spare part" and inserting "and 'special aircraft jurisdiction of the United States'" after the term "spare part "; and

(B) striking out "Civil Aeronautics Act of 1938" and inserting in lieu thereof "Federal Aviation Act of 1958";

(2) by striking out "and" at the end of the third undesignated paragraph thereof;

(3) by striking the period at the end thereof and inserting in lieu thereof"; and"; and

(4) by adding at the end thereof the following new paragraphs:

"In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property aboard; and

"'In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight."

(b) Section 32 of Title 18, United States Code, is amended to read as follows:

"§32. Destruction of aircraft or aircraft facilities

"(a) Whoever willfully --

"(1) sets fire to, damages, destroys, disables, or interferes with the operation of or makes unsuitable for use any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

"(2) places a destructive device or substance in, upon, or in proximity to any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft;

"(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

"(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive substance in, upon, or in the proximity of, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection

with the operation, maintenance, or loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

"(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft in service;

"(6) communicates information that the communicator knows to be false, thereby endangering the safety of any such aircraft in flight; or

"(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection -- shall be fined not more than \$10,000 or imprisoned not more than 20 years or both.

"(b) Whoever willfully -

"(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

"(2) destroys a civil aircraft registered in a country other than that the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

"(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

"(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection -- shall, if the offender is later found in the United States, be fined not more than \$10,000 or imprisoned not more than 20 years, or both."

(c) Section 101(38)(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(38)(d)), relating to the definition of the term "special aircraft jurisdiction to the United States", is amended --

(1) in clause (i), by striking out "; or " and inserting in lieu thereof a semicolon:

(2) at the end of clause (ii), by striking out "and" and inserting in lieu thereof "or;" and

(3) by adding at the end thereof the following new clause:

"(iii) regarding which an offense as defined in subsection (d) or (e) of Article I, Section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, September 23,

1971) is committed if the aircraft lands in the United States with an alleged offender still on board; and".

(d)(1) Chapter 2 of Title 18, United States Code, is amended by adding at the end thereof the following new section:

"§36. Imparting or conveying threats

"Whoever imparts or conveys any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination and will to carry the threat into execution shall be fined not more \$5,000 or imprisoned not more than five years, or both."

(2) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats."

Sec. 404. (a). Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsections:

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this Act,

shall be subject to a civil penalty of not more than \$1,000 which shall be recoverable in a civil action brought in the name of the United States.

"(d) Except for law enforcement officers of any municipal or State government or the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or interstate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than \$1,000 which shall be recoverable in a civil action brought in the name of the United States.

(b) Section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(m)) is amended to read as follows:

"(m)(1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), or (1)(2) of this section, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

(c) Subsection (a) of section 1395 of Title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) or 901(d) of the Federal Aviation Act of 1958, all process against any defendant or witness may be served, regardless whether authorized under the Federal Rules of Civil Procedure, in any judicial district of the United States upon an ex parte order for good cause shown."

(d) The second sentence of section 903(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1473(b)(1)) is amended by striking out "Such" and inserting in lieu thereof "Except with respect to civil penalties under sections 901(c) and (d) of this Act, such".

TITLE V - IMPLEMENTATION OF THE INTERNATIONAL CONVENTION
AGAINST THE TAKING OF HOSTAGES

Sec. 501. This title shall be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking".

STATEMENT OF FINDINGS AND PURPOSE

Sec. 502. The Congress hereby finds that:

(a) the International Convention Against the Taking of Hostages (adopted by the United Nations, December 17, 1979) requires all States parties to it to prohibit the offense of hostage-taking as defined in the Convention;

(b) hostage-taking affects domestic tranquility, endangers national security, affects interstate and foreign commerce, and is an offense against the law of nations;

(c) the purpose of this title is to fully implement the International Convention Against the Taking of Hostages.

Sec. 503. (a) Section 1201 of title 18, United States Code, is amended --

(1) by deleting "or" at the end of subsection (a)(3);

(2) by deleting "," at the end of subsection (a)(4) and inserting "; or" in lieu thereof;

(3) by adding a new subsection (a)(5) after subsection (a)(4) as follows:

"(5) a threat is made to kill, injure or to continue to detain the person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the person,";

(4) by amending subsection (d) to read as follows:

"(d) Whoever attempts to violate subsection (a)(4) or subsection (a) (5) shall be punished by imprisonment for not more than twenty years.";

(5) by amending subsection (e) to read as follows:

"(e) If the victim of an offense under subsection (a) is an internationally protected person, or if a threat is made to kill, injure, or to continue to detain the victim to compel a third party to do or abstain from

doing any act as an explicit or implicit condition for the release of the victim, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)).";

(6) by amending subsection (f) to read as follows:

"(f) In the course of enforcement of subsection (a)(4) or subsection (a)(5), and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4) or subsection (a)(5), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule or regulation to the contrary notwithstanding."; and

(7) by inserting a new subsection (g) to read as follows:

"(g) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, commonwealth, territory or posses-

sion of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law, nor shall anything in subsection (a)(5) of this section be construed as authorizing the United States to exercise jurisdiction over an offense occurring in the United States in which the alleged offender is the parent, child, spouse, brother or sister of any victim or in which the alleged offender and any victim live in the same household and are related by blood or marriage."

(b)(1) The heading of section 1201 of title 18, United States Code, is amended to read as follows:

"§1201. Kidnaping and hostage-taking".

(2) The analysis for chapter 55 of title 18, United States Code, is amended by deleting the item relating to section 1201 and inserting in lieu there of the following new item:

"1201. Kidnapping and hostage-taking."

Sec. 504. Paragraph (a) of section 2518(7) of title 18 of the United States Code is amended to read as follows:

"(a) an emergency situation exists that involves --

"(i) immediate danger of death or serious physical injury to any person.

"(ii) conspiratorial activities threatening the national security interest, or

"(iii) conspiratorial activities characteristic of organized crime,

that requires a wire or oral communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and".

EFFECTIVE DATE

Sec. 505. Sections 501, 502, and 503 of this title shall become effective only when the International Convention Against the Taking of Hostages has come into force and the United States has become a party to it.

Section by Section Analysis

Title I - Acts of Terrorism

Section 101 adds a new section 971 to Title 18 to proscribe a conspiracy in the United States to murder, maim, kidnap or assault an official of a foreign power outside of the United States. The new section fills a void in the law that remains despite the provisions of 18 U.S.C. 1116 and 18 U.S.C. 956. 18 U.S.C. 1116 proscribes the murder or attempted murder of foreign officials, official guests, or internationally protected persons, and sections 112 and 1201(a)(4) proscribe, respectively, an assault upon or kidnapping of such persons. These statutes, however, apply only when the official guest or foreign official is in the United States or, in the case of an "internationally protected person," when the victim is outside of his own country or the offender is present in the United States. 18 U.S.C. 956 prohibits a conspiracy in the United States to commit certain types of property destruction in a foreign country with which the United States is at peace. It does not cover conspiracy to commit crimes against the person.

The new section 971 expands on section 956 to cover conspiracy to commit crimes against the person of high-level foreign officials. This type of crime is often committed by terrorists and is an offense as potentially harmful to our foreign relations as an attack on such a foreign official actually committed on American soil.

Section 971 would apply to conspiracies to commit one of the enumerated offenses against a foreign official where at least one of the conspirators is inside the United States. The other member or members of the conspiracy would not have to be in the United States nor would an overt act to carry out the conspiracy have to be committed in the United States. The section would apply, for example, to two individuals who consummated an agreement to kill a foreign official in a foreign country where only one of the conspirators was in the United States and the agreement was reached by telephone conversations or letters, and where all the overt acts were undertaken by the party in the foreign country. In such a case the agreement would be reached at least in part in the United States. The gist of the crime of conspiracy is, of course, the agreement to commit a crime plus an overt act in pursuance thereof. The overt act may be that of only one of the conspirators and need not itself be a crime.

Section 971 is limited to conspiracies to commit crimes against high echelon foreign officials because conspiracies against only such persons are felt to have serious foreign relations consequences. The foreign officials protected are the Chief of State or head of government of a foreign power, a cabinet officer or person of equivalent or higher rank of a foreign power, an ambassador of a foreign power, the chief executive officer of an international organization, any person who previously served in such a capacity, and any relative by blood or marriage who is a part of his household.

An international organization is defined as one of the international organizations in which the United States participates designated by the President as a public international organization pursuant to 22 U.S.C. 268 for purposes of entitlement to certain privileges and immunities.

Section 102 slightly revises subsection 956(a) of title 18 dealing with a conspiracy in the United States to destroy property in a foreign country. The revision is principally to eliminate the present requirements that the overt act to effect the object of the conspiracy be committed in the United States and that both conspirators have to be in the jurisdiction of the United States. As discussed in connection with the previous section, these requirements are not necessary, and their retention could unjustifiably result in serious foreign policy problems if they were to prevent federal prosecution of a conspiracy that has resulted in major property damage. In addition, the penalty is raised from the present maximum of three years imprisonment and a \$5,000 fine to ten years imprisonment and a \$50,000 fine. The increased punishment more accurately reflects the harm done to our foreign relations from such an offense.

The terms "airport" and "airfield" are added to the list of "public utilities" presently set out in section 956(a), the destruction of which must be the object of the conspiracy, since they are particularly attractive targets for terrorists.

Finally the phrase "public structure" is added to the list of targets to make it clear that the statute covers a conspiracy to destroy a structure where persons assemble for work -- such as a store, factory or office building -- or for purposes of government, education, religion, or entertainment, and that the phrase "public utility" does not limit the statute's application to a conspiracy to destroy such property as transportation lines or power generating facilities.

Title 11 -- Training, Supporting, and Inducing Terrorism

Section 201 of the bill adds a new section 972 in Chapter 45 of title 18 dealing with foreign relations entitled "Military and intelligence assistance to certain foreign governments, factions, and international terrorist group." This section is designed to prevent the harming of our foreign relations by United States nationals or businesses, or by other persons within the United States, who seek to provide training and technology to certain governments that support terrorism or to international terrorist groups. The President is given the authority to name the forbidden recipients of such training and technology by proclamation if he determines that their acts or support for international terrorism are such a threat to our national security, foreign relations, or the physical security of the persons or property of private United States entities that they should not benefit from American expertise used for such reprehensible ends. It is expected that few governments or groups will be named and the section is not intended to interfere with the legitimate international trade in which many United States suppliers of

services and technology engage. Rather, it is intended to complement the provisions of the Arms Export Control Act (AECA), 22 U.S.C. 2778, which authorize the President to control the importation and exportation of "defense articles and defense services" and to provide foreign policy guidance to United States persons involved in such importing and exporting.

Pursuant to the AECA, and comparable authority previously granted to the President under section 414 of the Mutual Security Act of 1974, the Department of State promulgated the International Traffic in Arms Regulations (ITAR) 22 CFR subchapter M. While the regulations specify a number of articles and technical data in relation thereto which are subject to control, the provisions in the ITAR do not generally encompass the "mercenary" type of activities such as the providing of training, logistical, and support services which would be covered by the new section.

Subsection (a) of the new section 972 makes it unlawful for any United States national, permanent resident alien, or business entity to perform any of several enumerated acts in aid of a foreign government, foreign faction, or international terrorist group named in a Presidential proclamation. The prohibited acts are to serve in or to act in concert with the armed forces or an intelligence agency of one of the named governments, factions, or group; to provide training for their armed forces or intelligence agencies; to provide logistical, mechanical, maintenance or similar services for their armed forces or intelligence agencies; or to recruit or solicit any person to do any of the above. The subsection also provides for extraterritorial jurisdiction over a

violation inasmuch as harm to our foreign relations or world peace can occur when Americans provide such aid overseas as well as domestically.

Subsection (b) is designed to cover persons who are not United States nationals or permanent resident aliens but who use the United States as a base from which to supply the technology of terrorism to certain other countries, foreign factions or international terrorist groups. It makes it unlawful to provide training in the United States to the armed forces or an intelligence agency of a foreign government, foreign faction, or international terrorist group named in a Presidential proclamation; to provide in the United States logistical, mechanical, maintenance or similar support services to their armed forces or intelligence agencies; or in the United States to recruit or solicit any person to do any of the above acts.

Subsection (c) sets out the penalty for a violation of the new section. It would extend to a fine of \$25,000 or an amount five times the total compensation received, whichever is greater, or imprisonment for up to ten years, or both, for each offense.

Subsection (d) is the triggering mechanism to implement the prohibitions of subsections (a) and (b). It provides that the President may, when he determines that it is warranted in the interests of national security, foreign relations, or the physical security of the person or property of United States private entities, issue a proclamation naming a foreign government, foreign faction, or terrorist group as one for which there is a ban on the provision of services described in subsections

(a) and (b). Any proclamation is to be published in the Federal Register and becomes effective immediately. Actual knowledge of the proclamation is not, however, an element of the offense and need not be proven. This subsection also provides for Presidential revocation of the proclamation by similar publication in the Federal Register.

As indicated, it is expected that few governments, factions or terrorist groups will be named pursuant to this section, which is limited to addressing the problems of United States nationals or business entities providing the technology of terrorism for use abroad and of the United States being used by foreigners for such a purpose. The fact that a foreign government, faction, or terrorist group is not listed in a proclamation under this section is of no significance in other contexts. For example, the fact that a government, faction, or group is not named in, or is removed from, a Presidential proclamation under the new section 972 of title 18 would have no bearing on whether an Executive Branch official could certify under the provisions of the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq., that it was a proper target for surveillance under the terms of the Act, nor would the omission or removal of such a group from a proclamation in any way affect any order of the Foreign Intelligence Surveillance Court authorizing surveillance of it.

Subsection (e) provides that any finding of fact made in a Presidential proclamation under subsection (d) shall be conclusive and no question concerning the validity of the proclamation may be raised by a defendant at a trial or hearing.

Subsection (f) provides for an affirmative defense for any act committed by a person outside of the United States within thirty days of a proclamation affecting his activities if the act is performed pursuant to an agreement or other contractual relationship entered into prior to the effective date of the proclamation. This underscores the fact that the section is not designed to interfere with legitimate overseas business interests and that there are persons who make their livings by exporting military and intelligence training and expertise. Moreover, the failure of these persons to perform services already agreed upon could, in certain overseas situations, expose them to physical danger. Therefore, once the President determines that such activities with respect to a particular country or group adversely affect our national security or foreign relations, or the physical security of the person or property of United States private entities, a provider of such services would have thirty days to terminate this overseas activity and must cease affected operations in the United States at once.

Subsection (g) provides for the criminal forfeiture of property constituting or derived from the proceeds obtained as a result of a violation of the section and of property used or

intended to be used in the commission of a violation. The procedures used in the forfeiture action are to be governed by the provisions of 18 U.S.C. 1963, the RICO forfeiture provisions.

Subsection (h) provides that the section shall not be construed to prohibit the providing of medical supplies or medical training for humanitarian purposes.

Subsection (i) provides that properly authorized and conducted intelligence activities of the federal government are excluded from the section's coverage.

Subsection (j) provides definitions for such items as "foreign government," "faction," "international terrorist group," "international terrorism," "national of the United States," and "permanent resident alien of the United States." Where possible, existing statutory definitions for these terms are employed. For example, "foreign government" is defined by reference to 18 U.S.C. 1116(b)(2) which defines the term as the "government of a foreign country, irrespective of recognition by the United States." Because the focus of the new section is on international terrorism, and "international terrorist group" is defined as one which engages in "international terrorism," which term in turn is defined by reference to the Foreign Intelligence

Surveillance Act of 1978 (50 U.S.C. 1801 (c)).^{1/} That section casts the definition in terms of violent acts or acts dangerous to human life that would be a criminal violation if committed within the jurisdiction of the United States or of any state and are intended to intimidate or coerce a civilian population or influence or affect the policies of a government by intimidation, coercion, kidnaping or murder.

^{1/} 50 U.S.C. 1801 (c) provides:

"(c) 'International terrorism' means 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 of 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 kidnaping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

The term "United States business entity" defines those American business groups which cannot furnish services or training proscribed by section 972 to a foreign government, foreign faction, or international terrorist group listed in a Presidential proclamation issued pursuant to subsection (d). It does not include the foreign subsidiary corporations of U.S. corporations. It is thus limited to those business entities which the United States has the ability to control directly and avoids the delicate issue of interference in the domestic affairs of foreign countries. American nationals and permanent resident aliens who work for foreign corporations would, however, still be personally precluded from furnishing such services on behalf of their employer to any named country, faction, or group.

"Private entity of the United States" is defined so as to include as the possible victims of terrorist attacks any national or permanent resident alien of the United States, any employee or contractor of the United States Government (regardless of nationality) if the act of terrorism is brought about by virtue of such relationship to the United States, any unincorporated association of United States nationals or permanent resident aliens, and any corporation incorporated within the United States and its foreign subsidiaries. Thus the term "private entity" is intended to protect the commercial, religious, educational, and recreational activities and interests engaged in by the American people outside the United States. Where the "victim" of the terrorist activity overseas is the U.S. Government, its property, or its officials, such coverage is primarily encompassed within

the terms "national security" or "foreign relations" of the United States. The three criteria, however, are not totally separate and overlap in many respects. Together, however, they are intended to describe the totality of the overseas interests of both the nation and its people. Foreign subsidiaries of U.S. corporations are specifically covered because they are often the targets of terrorist attacks.

Section 202 of the bill adds a new section 918 to title 18 to create the offense of falsely posing as an officer, employee, or as a person otherwise acting in concert with a United States, intelligence agency, such as the CIA, and in that capacity inducing or persuading another person to commit a crime due to a belief that the act was a properly authorized intelligence operation. The important work and reputation of United States intelligence agencies is harmed by such false personation, and crimes committed in the belief that they were, in effect, ordered by the United States necessarily have a serious impact on our foreign relations. The existing personation statutes in chapter 43 of title 18 do not completely cover this offense. While 18 U.S.C. 912 proscribes pretending to be an officer or employee of the United States if one "acts as such," this section is limited to officers and employees and may not cover persons claiming to be otherwise affiliated with an intelligence agency. Moreover, the penalty for a violation of present section 912 is only a \$1,000 fine and three years' imprisonment, which is not

sufficient for the harm done by one who poses as a United States intelligence operative and in that capacity requests another person to commit a crime.

Subsection 918(a) sets out the new offense. It prohibits any person from falsely posing as an officer or employee of, or falsely claiming he is acting under the authority of or in concert with an agency of the United States Intelligence Community and in such a false role requesting or inducing any other person to commit an offense against the United States punishable by imprisonment for one year or more, an offense against a state of the United States punishable by imprisonment for one year or more, an offense against a foreign government so punished under foreign law, or an overt act to facilitate the commission of such an offense. The gist of the offense is posing as an intelligence operative to induce or persuade another person to commit an act that would constitute an offense punishable by imprisonment for a year or more under any law -- federal, state, or foreign -- applicable at the place where it is committed or intended to be committed, or an overt act to facilitate the commission of such an offense. The overt act itself need not be an offense. For example, the subsection would cover the actions of X in New York City who falsely claimed he was a CIA agent in an attempt to get Y to steal or lawfully rent a car to use in a kidnaping plot in Mexico. The penalty is imprisonment for up to ten years and a fine of up to \$50,000.

Subsection (b) prohibits two defenses. First, it is not a defense that the offense or act requested or induced did not actually take place or was not even attempted. The offense is complete when the person posing as an intelligence operative requests another person to commit the offense or an overt act to facilitate its commission, or acts in any manner to persuade him to do so. Second, it is not a defense that the intelligence agency that the person falsely claims to be acting for or in concert with had no authority to order, induce, or otherwise participate in the requested crime.

Subsection (c) provides that there is extraterritorial jurisdiction over a violation of subsection (a). Thus, any person, including a foreign national who falsely claims to be an officer or employee of or affiliated with one of the United States intelligence agencies for the purpose of inducing one of the described offenses, whether in this country or abroad, would be subject to the section.

Subsection (d) lists the agencies within the United States Intelligence Community whose integrity from interlopers is covered by this section. They are the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs; the Bureau of Intelligence and Research of the Department of State; and the intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, and the Department

of Energy. This list of agencies is the same as that set forth in Part 3.4 (f) of Executive Order 12333 of December 4, 1981, 3 CFR p. 200, 215, providing for the effective conduct of United States intelligence activities.

TITLE III - Rewards for Information Concerning Terrorism

Title III deals with rewards for persons who provide information concerning acts of terrorism. Section 301 adds a new chapter 204 to title 18 entitled "Rewards for Information Concerning Terrorist Acts." The new chapter consists of eight sections, 3071-3078. The chapter is closely related to and patterned after a similar reward provision for persons who provide information concerning the unauthorized acquisition or manufacture of atomic weapons and special nuclear materials, 50 U.S.C. 47a-47f. It provides for a determination by the Attorney General that certain persons are entitled to rewards for furnishing information about specific acts of terrorism. Rewards would then be paid out of funds appropriated for the Department of Defense since the rewards provision is principally, although not exclusively, to protect Defense Department property or personnel which are especially attractive targets for terrorists.

Section 3071 provides that any person who furnishes information of one of three types may be given a reward. Whether a reward is paid is totally discretionary with the Attorney General although he is required to receive the advice of the Secretary of Defense since Defense Department funds are involved, and in certain cases involving large rewards the President must make the

final determination. The three types of information that may warrant the payment of a reward are, first, that which leads to the arrest or conviction in any country of any person for the actual commission of an act of terrorism against a United States person or United States property; second, information leading to the arrest or conviction in any country of any person for a conspiracy or an attempt to commit an act of terrorism against a United States person or United States property; and third, information leading to the prevention of an act of terrorism against a United States person or property.

Section 3072 provides that the Attorney General shall make the determination as to whether a particular person is entitled to a reward after advising and consulting with the Secretary of Defense. In a case of international terrorism the Attorney General is also required to advise and consult with the Secretary of State, but the decision of the Attorney General is always final. Rewards of \$100,000 or more may only be made after the Attorney General receives the approval of the President, a feature also found in the Atomic Weapons and Special Nuclear Materials Rewards Act.

Section 3073 is included because an alien who provides information concerning terrorism may be in severe danger of retaliation in his own country. Hence, this section provides that if the information for which a reward is authorized is furnished by an alien, the Attorney General, again after consulting with the Secretary of State, may admit the alien and members of his immediate family into the United States as

permanent resident aliens notwithstanding the requirements of the Immigration and Nationality Act. It is anticipated that not many individuals will be admitted under this provision and that the Attorney General will use extreme caution in exercising this authority.

Section 3074 authorizes the Attorney General to hold hearings and make necessary rules for carrying out the provisions of the chapter. However, he is not required to establish set rules or to follow such rules in all cases but may decide appropriate cases on an ad hoc basis. The provisions of the Administrative Procedure Act, the Privacy Act, and the Freedom of Information Act are specifically made inapplicable to this chapter.

Section 3075 provides that rewards granted under this chapter shall be certified and transmitted to the Department of Defense for payment. If necessary to protect the recipient and his family, information concerning his identity may be sealed and withheld from public and unnecessary internal disclosures.

Section 3076 provides that government employees who furnish information concerning terrorism in the performance of their official duties are not eligible for a monetary reward under this chapter. They would, however, be eligible for the provisions allowing admission into the United States (Section 3073) and participation in the Witness Protection Program (Section 3077).

Section 3077 provides that an individual who furnishes information which would justify a reward under this chapter may be given the benefit of the Witness Protection Program in the discretion of the Attorney General.

Section 3078 contains definitions that apply to the new chapter. The definitions of "terrorism" and "international terrorism" closely follow the definition of "international terrorism" in the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801(c). The same definition is used to define "international terrorism" in Title II of the bill. As in that title, the definition of "terrorism" is cast in terms of violent or dangerous acts that would be crimes if committed in the United States and that are committed to intimidate or coerce a civilian population or to influence the policy or conduct of a government or political subdivision of a government by intimidation or coercion. "International terrorism" is defined as an act of terrorism that transcends international boundaries in terms of the means by which it is accomplished, the persons or entity it appears intended to coerce or intimidate or the locale in which the perpetrators operate or seek asylum.

The term "United States person" is defined to include citizens, persons owing permanent allegiance to the United States, any person in the United States, permanent resident aliens, United States government employees or contractors who are victims or intended victims of terrorism because of their

employment, various business entities consisting in whole or in part of United States nationals and permanent resident aliens, and United States corporations and their foreign subsidiaries.

The term "United States property" is defined to include all real or personal property within the United States regardless of ownership, and any real or personal property outside of the United States, the actual or beneficial ownership of which rests in a federal or State governmental entity of the United States or in a United States person.

Title IV of the bill is designed to implement the provisions of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. The Convention deals with such common terrorist acts as aircraft piracy and aircraft sabotage. It was ratified by the United States in November of 1972. Under its terms the contracting countries are obliged to establish criminal jurisdiction over certain aircraft-related offenses, including extraterritorial jurisdiction over some offenses involving aircraft or air navigation facilities of other contracting countries if the perpetrator is found in a signatory country.

Section 402 is a statement of findings and purpose of the Congress. It indicates that enactment of the title is an exercise of the treaty power, of the power to regulate interstate and foreign commerce, and of the power to punish offenses against the laws of nations.

Section 403 sets forth amendments to sections 31 and 32 of title 18, section 1301(38) of title 49, and adds a new section 36 to title 18, to ensure that these laws dealing with aircraft destruction, hijacking, and related offenses, are in conformity with our obligations under the Montreal Convention.

Section 403(a) contains a number of technical amendments to 18 U.S.C. 31, a definitional section for the chapter concerned with crimes against aircraft and motor vehicles, and adds to it the definitions of "in flight" and "in service." These definitions are necessary because the terms have specific meanings in the Montreal Convention and are used in 18 U.S.C. 32 as amended in the next subsection.

Section 403(b) amends 18 U.S.C. 32, "Destruction of aircraft or aircraft facilities," in order to comply fully with Article 5, section 1(a) of the Montreal Convention which requires that a country party to the treaty establish jurisdiction over the offenses listed in Article 1 when they are committed in the territory of that country. Current federal law generally covers the Article 1 offenses which involve such things as destroying an aircraft, committing an act of violence against a person on board an aircraft in flight if the act is likely to endanger its safety, and conveying false information about a bomb threat against an aircraft. The proposed amendments provide extra-territorial jurisdiction over these offenses and do not lessen the scope of present law.

The first paragraph of new subsection 32(a) essentially incorporates the first paragraph of existing 18 U.S.C. 32 --which now covers the destruction of civil aircraft used in interstate, overseas, or foreign air commerce -- and expands its scope to include any civil or military aircraft in the "special aircraft jurisdiction of the United States".^{2/}

^{2/} The term "special aircraft jurisdiction of the United States is defined in 49 U.S.C. 1301(38) as follows:

"(38) The term 'special aircraft jurisdiction of the United States' includes --

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States --

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a force landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

The second paragraph of new subsection 32(a) incorporates portions of the second, third, and fourth paragraphs of the current section 32 to prohibit the placing of a destructive device or substance in or near an aircraft or any part or material used in connection with the aircraft. The new provision does not contain the requirement that the proscribed act be done with intent to damage or disable the aircraft, a requirement of current law. Rather it requires only that the placing of the destructive device or substance be likely to damage or destroy the aircraft or any part or other materials used with it. The omission of the intent element is necessary to avoid a requirement of proof of those offenses which would be greater than that required by the Montreal Convention. ^{3/} The phrase "any part or other materials used or intended to be used in connection with the operation of such aircraft" is meant to include liquids and lubricants which might be damaged by a destructive substance. These materials, such as fuel and hydraulic fluid, are individually listed in the current statute.

The third paragraph of new subsection 32(a) is a new provision which encompasses acts against air navigation facilities, such as terminals or hangers, now mentioned in paragraph 4 of current section 32. The element of intent to damage or disable an aircraft is also omitted from this paragraph.

^{3/} Article 1 of the Convention describes a person as committing an offense if he places a device or substance on an aircraft which is likely to destroy it or damage it to the extent it is either incapable of flight or dangerous to safety while in flight.

The fourth paragraph of new subsection 32(a) essentially incorporates the second, third, and fourth paragraphs of current section 32 (except for the provisions mentioned in paragraphs two and three of new subsection 32(a)) to prohibit destructive acts affecting property such as machinery and ramps used in association with aircraft on the ground. The phrase listing all of the various types of property including "other material used, or intended to be used in connection with the operation, maintenance, or loading or unloading or storage of any such aircraft ..." is meant to include all of the various types of property and material which are individually listed in the current statute. The element of intent to affect an aircraft is retained in this paragraph.

The fifth paragraph of new subsection 32(a) replaces paragraph 5 of current section 32 to prohibit acts against individuals. It adds passengers to the protected category of persons as required by Article 1, section 1(a) of the Montreal Convention. Since the conduct proscribed by this paragraph could likely endanger the safety of the aircraft at times prior to and after the time such aircraft is "in flight", the jurisdictional base has been extended to cover not only those times when the aircraft is "in flight" but also the period of time while the aircraft is "in service". Although paragraph 5 of the current statute requires that the conduct be accompanied with an intent to damage, destroy, disable, or wreck any such aircraft, the

substituted paragraph omits this element of proof because it would establish an offense requiring proof exceeding the requirements established by the Convention.

The sixth paragraph of new subsection 32(a) has been added to meet the requirements of article 1, section 1(e) of the convention that a person commits an offense if he intentionally "communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight." Currently, the only statutory provisions covering false information are 18 U.S.C. 35(a) and (b) with regard to bomb hoaxes and 49 U.S.C. 1472(m) with regard to hijacking hoaxes. However, neither of these provisions has a requirements of endangering the safety of an aircraft while "in flight" as does Article 1, section 1(e) of the Convention. Currently, 18 U.S.C. 35(b) and 49 U.S.C. 1472(m) carry maximum jail terms of five years and fines of \$5,000, but do not require a showing of endangering the safety of the aircraft. Where the additional element of endangering the aircraft is present, increased sanctions are appropriate, and this paragraph increases the sanctions to a maximum of twenty years' imprisonment and a \$10,000 fine.

The seventh paragraph of new subsection 32(a) contains the attempt provision and replaces the sixth paragraph of current 18 U.S.C. 32. The penalties for violations of the amended statute are the same as those provided in the current law which adequately reflect the gravity of the offense, as required under the Convention.

Section 403(b) also adds a new subsection 32(b) to title 18 of the United States Code which is designed to implement Article 5, section 1(c), in part, and Article 5, section 2. Article 5, section 1(c) requires each contracting country to establish jurisdiction over the offenses of Article 1 "when the aircraft on board which the offense is committed lands in its territory with the alleged offender still on board." This was accomplished to some extent by adding the term "special aircraft jurisdiction of the United States" to the scope of new subsection 32(a). Article 5, section 2 also requires each contracting State to establish jurisdiction over the offenses listed in Article 1, sections 1(a), (b) and (c), and in Article 1, section 2 insofar as that section^{4/} relates to offenses listed in sections 1(a), (b) and (c), "where the alleged offender is present in the country's territory and the country does not extradite ...". Normally the United States would lack jurisdiction to bring such individuals to trial. Thus, jurisdiction is established in new subsection 32(b) over anyone who commits one of the offenses listed in the subsection -- such as aircraft destruction or acts of violence -- on or against a civil aircraft registered outside of the United States and who is afterwards found in this country. Obviously this includes those rare instances where the alleged offender would still be on board the aircraft when it lands in the United States, as well as those instances where the offender would subsequently enter the United States and be found here.

^{4/} Article 1, section 2 provides that a person commits an offense if he attempts to commit an offense in section 1 or is an accomplice of a person who commits an offense in section 1.

New subsections (b)(1), (2) and (3) of section 32 enumerate the offenses of Article 1, section 1(a), (b) and (c) as required by Article 5, section 2. It should be noted that Article 5, section 2 of the Convention does not require that the offenses of section 1(d) and 1(e) of Article 1 be covered, so the obligations of Article 5, section 1(c) are met in the new subsection only to the extent of covering the offenses of Article 1, sections 1(a), (b) and (c). Subsection (b) (4) of new section 32 covering attempts to commit the proscribed acts is required by Article 5, paragraph 2 of the Convention.

Section 403 (c) implements Article 5, section 1(c) to the extent that it is not implemented in the new subsection 32(d) discussed above. This is accomplished by an amendment to the definition of "special aircraft jurisdiction" as set forth in section 101(38) of the Federal Aviation Act of 1958 by adding the new subsection (d)(iii).

Section 403(d) adds a new section 36 to chapter 2 of Title 18, United States Code. This new addition prohibits the conveyance of threats to destroy, damage or disable aircraft or related facilities by creating a felony offense where the threatening words or actions are delivered with an apparent determination and will to perform the threatened act. Presently, only the conveyance of false information regarding attempts violative of section 32 is proscribed. Thus, the amendment corrects a lapse in present law by including within the prosecutorial sphere such conduct or words which do not constitute an attempt but neverthe-

less are menacing and disruptive. Because of the serious nature of such conduct the maximum penalty is five years imprisonment and a \$5,000 fine.

Section 404 sets forth amendments to existing law to facilitate civil and criminal prosecutions for certain offenses committed aboard aircraft.

Subsection 404(a)(1) amends section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) by adding a new subsection (c) which contains a proscription, enforceable by a civil penalty, against the conveyance of false information when such information is known to be false regarding any attempt to commit a violation of section 902(i), (j), (k), or (l) of the Act, (49 U.S.C. 1472 (i)-(l)). The conduct aimed at includes an aircraft passenger's statement, perhaps intended in jest but understandably not so taken by the aircraft's crew, that he might like to hijack the plane or that he is carrying a weapon; a passenger's threatening or offensively touching a flight attendant; or a passenger's engaging in a physical altercation with another passenger.

The new subsection 1471(c) restates the language found currently in section 902(m)(1) of the Act and provides for a maximum fine of \$1,000 to be recoverable in a civil action. Currently, only a misdemeanor offense exists for the hoax or conveyance in jest of false information regarding aircraft hijacking offenses. Past attempts at prosecution have encountered a reluctance either by prosecutors themselves or the courts

to process these offenses for criminal penalties. Provision for a civil penalty provides a more appropriate vehicle to assure enforcement of violations in this area.

The new subsection 1471(d) authorizes a maximum fine of \$1,000 recoverable in a civil action where an unauthorized person attempts to board or boards an aircraft while carrying a concealed deadly or dangerous weapon. This new subsection allows for the sanction of conduct which, under certain extenuating circumstances, would not warrant criminal prosecution but should, nevertheless, warrant an action for the recovery of a civil penalty. This section responds to unique problems arising from the boarding area discovery of weapons by providing an alternative to the criminal prosecution which is presently authorized by 49 U.S.C. 1472(1).

Section 404(b) of the bill amends section 902(m) of the Federal Aviation Act of 1958 by replacing the misdemeanor offense of conveyance of false information concerning air piracy and other related offenses with the offense of willful and malicious conveyance of false information concerning such offenses as presently set forth in section 902(m)(2) of the Act. This retains the felony hijack hoax offense as described above while removing from the ambit of criminal prosecution the type of conduct presently encompassed by the misdemeanor hijack hoax provisions.

Subsection 404(c) of the bill amends 28 U.S.C. 1395(a) to facilitate the enforcement of the civil penalty provisions contemplated in 18 U.S.C. 35 (a) and proposed sections 901 (c)

and (d) of the Federal Aviation Act of 1958 (49 U.S.C. 1471-1472). The change would permit process against any defendant or witness to be served in any judicial district of the United States upon an ex parte order for good cause shown. Thus, civil proceedings may be instituted not only at the place of residence of the defendant as presently authorized under existing law, but also at the place where the violation occurred.

Subsection 404(d) of the bill amends section 903(b)(1), (49 U.S.C. 1473(b)(1)) of the Federal Aviation Act of 1958 by inserting certain exclusionary words to remove the collection of any civil penalties imposed under proposed section 901(c) and (d) of the Act from conformance with the procedures utilized in civil suits in admiralty. This subsection allows a greater flexibility in the prosecution of these civil violations and the collection of judgments therefrom. In effect, the venue provision for collection proceedings is expanded in consonance with the broadened scope for enforcement of the legislation to ensure that all actions related to sections 901(c) and (d) are swiftly processed at the location most conducive to the efficient and economical handling of the case.

Title V is intended to implement the International Convention Against the Taking of Hostages, a Convention transmitted to the Senate on August 4, 1980 and still awaiting ratification. When it is ratified, the United States will incur an obligation to enact domestic laws to provide sanctions against those who commit the offense of hostage taking. Thus, this title amends the federal kidnaping statute (18 U.S.C. 1201) to provide for

federal jurisdiction over any kidnaping in which a threat is made to kill, injure, or continue to detain the victim in order to compel a third party to do or abstain from doing something, a common ploy of terrorists.

Section 501 provides that, on enactment, the title may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking."

Section 502 is a statement of the findings and purposes of the Congress in enacting the legislation. It is based on an exercise of the treaty power and of the power to punish offenses against the law of nations, as well as on the power of Congress under the commerce clause and other provisions of the Constitution.

Section 503 amends the federal kidnaping statute (18 U.S.C. 1201) to create federal jurisdiction over those kidnapings that also constitute hostage-taking. Section 1201 now prohibits kidnaping when the victim is transported in interstate commerce or is an internationally protected person or when the offense is committed in the special maritime, territorial, or aircraft jurisdiction of the United States. These existing offenses have been left unchanged.

The present federal kidnaping statute creates a rebuttable presumption that a victim who has not been released within twenty-four hours is presumed to have been transported in interstate commerce. The primary purpose of this provision is to allow the Federal Bureau of Investigation to investigate cases in which it is not known whether the victim has been transported in

interstate commerce. It should be noted that, under the proposed legislation, the FBI would have the authority to act once a ransom or other demand were received. The rebuttable presumption provision is left in effect, however in order to allow FBI jurisdiction in kidnaping cases in which no ransom or other demand is made and it is not known whether the victim has been transported in interstate commerce.

Section 503(a) of the bill sets out the offense of hostage taking by amending 18 U.S.C. 1201. It first adds a new subsection (5) to 18 U.S.C. 1201(a). In substance the subsection's definition of the offense tracks its definition in the Hostage Convention, that is, any seizure or detaining of a person, coupled with a threat to kill, to injure or to continue to detain the victim "in order to compel a third party to do or abstain from doing any act". The Convention's description of a third party, namely, "a State, an international inter-governmental organization, a natural or juridical person, or a group of persons," is omitted from the legislation. This was done in order to make clear that attempts to influence third parties not expressly listed in the definition, such as U.S. state governments and unincorporated local governments, would violate the statute. There is no need to define "third parties" in the legislation, since the phrase speaks for itself and is intended to have the broadest possible meaning.

The penalty for the new offense of hostage taking is the same as that now prescribed in 18 U.S.C. 1201 for other federal kidnaping offenses, imprisonment for any term of years or for

life. Attempted hostage taking is also made an offense by an amendment to 18 U.S.C. 1201 (d) which already covers attempted kidnaping of internationally protected persons. The punishment may extend to imprisonment for up to twenty years.

18 U.S.C. 1201(e) is amended to provide for extraterritorial jurisdiction over the offense of hostage-taking similar to that already provided in section 1201 for kidnaping an internationally protected person. Congress's power to assert such jurisdiction derives from the Convention.

18 U.S.C. 1201(f) is amended to give the Attorney General the authority to ask for assistance from other civilian and military agencies when necessary to enforce the hostage-taking statute. The Attorney General may request assistance, notwithstanding any statute, rule, or regulation to the contrary, including the Posse Comitatus Act (18 U.S.C. 1385). This authority parallels the authority already existing for other exceptionally grave offenses, such as attacks on diplomats (18 U.S.C. 1201(f)), Members of Congress, Cabinet officers and Supreme Court Justices (18 U.S.C. 351 (g)), the President, the Vice President, and high level white house staff members (18 U.S.C. 1751). This authority is not necessary to implement the Convention, and it would, of course, not be used in most situations. Nevertheless, there may be exceptional circumstances, such as mass hostage-takings, in which the Department of Justice would need assistance.

A new subsection (g) is inserted at the end of 18 U.S.C. 1201 to make it clear that the new provision on hostage taking is not intended to usurp the authority of state and local law enforcement authorities. It is expected that most kidnapings and hostage-takings will continue to be handled by those authorities and that the federal government will not unnecessarily intervene in situations that local authorities can handle. In addition, the subsection specifically prevents the use of federal investigative and prosecutorial resources in domestic altercations that are traditionally the responsibility of the states. In the unlikely event that terrorists were to take their own relatives hostage in the United States, the exercise of state jurisdiction would satisfy our obligations under the Convention.

Section 504 amends section 2518(7) Of title 18 (part of title III of the Omnibus Crime Control and Safe Streets Acts of 1968) to provide for emergency interceptions of wire or oral communications in life endangering situations. A similar provision was included in S. 829 and in S. 1640, 97th Cong., as passed by the Senate on March 25, 1982.

Generally, Title III requires prior court authorization of an interception of communications. However, 18 U.S.C. 2518(7) permits an emergency interception without such prior authorization under two types of emergency situations when there is not

time to obtain a court order: those involving either "conspiratorial activities threatening the national security" or "conspiratorial activities characteristic of organized crime." The absence of similar specific authority to intercept communications in emergency situations in which there is an imminent threat to human life has been of grave concern of law enforcement authorities. Section 504 would amend 18 U.S.C. 2518(7) to provide such authority.

As noted in the Senate Report on S. 1640 (S. Rept. 97-319, 97th Cong., 2d Sess., 1982) there have been situations where the need for such emergency authority was necessary and these situation may, unfortunately, arise again. For example, terrorists or other felons, while holding hostages, may use an available telephone to arrange with associates a strategy to force action on their demands or a plan of escape. Similarly, there may be situations in which plans for an imminent murder are learned, but the location or identity of the victim is unknown or law enforcement authorities are otherwise unable to take measures to assure his safety. In such situations, the interception of communications may be necessary to protect the lives of the hostages or victims, yet time for obtaining a court order may not be available.

Section 505 provides that the provisions concerning hostage taking (sections 501-503) will not become effective until the Hostages Convention comes into effect for the United States. This is because much of the authority of Congress to prohibit hostage-taking flows from the Convention and the purpose of those

sections are to implement it. The emergency wiretap provision, however, will become effective on enactment since it is in no way dependent on the Hostage Convention.

UNITED NATIONS
GENERAL
ASSEMBLY

A/C.6/34/L.23
4 December 1979

ORIGINAL: ENGLISH

Thirty-fourth session
SIXTH COMMITTEE
Agenda item 113

DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST
THE TAKING OF HOSTAGES

Federal Republic of Germany: draft resolution

The General Assembly,

Considering that the progressive development of international law and its codification contribute to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Mindful of the need to conclude, under the auspices of the United Nations, an international convention against the taking of hostages,

Recalling its resolution 31/103 of 15 December 1976 by which it established an Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages and requested it to draft at the earliest possible date an international convention against the taking of hostages,

Further recalling its resolutions 32/148 of 16 December 1977 and 33/19 of 29 November 1978,

Having considered the draft convention prepared by the Ad Hoc Committee in pursuance of the above-mentioned resolutions, 1/

Adopts and opens for signature and ratification or for accession the International Convention against the Taking of Hostages, annexed to the present resolution.

1/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 39 (A/34/39), sect. IV.

*[Reproduced from U.N. Document A/C.6/34/L.23 of December 4, 1979.

[The draft was approved by the Sixth Committee (Legal) of the General Assembly on December 7, without vote. The General Assembly adopted it as Resolution 34/146 on December 17, 1979, without vote. There was a separate vote on Article 9, with 125 in favor to 10 against, with 3 abstentions. It will be opened for signature on December 18.]

ANNEX

International Convention against the Taking of Hostages

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

- (a) attempts to commit an act of hostage-taking, or
 - (b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking
- likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(a) in its territory or on board a ship or aircraft registered in that State;

(b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) in order to compel that State to do or abstain from doing any act; or

(d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with

laws, take him into custody or take other measures to ensure his presence such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) the State where the offence was committed;

(b) the State against which compulsion has been directed or attempted;

(c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(d) the State of which the hostage is a national or in the territory of which he has his habitual residence;

(e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(f) the international intergovernmental organization against which compulsion has been directed or attempted;

(g) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-

General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(a) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(b) that the person's position may be prejudiced:

(i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth

in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on ...

C O N V E N T I O N
 FOR THE SUPPRESSION OF UNLAWFUL ACTS
 AGAINST THE SAFETY OF CIVIL AVIATION
 Signed at Montreal on 23 September 1971

C O N V E N T I O N
 POUR LA REPRESSION D'ACTES ILLICITES
 DIRIGES CONTRE LA SECURITE DE L'AVIATION CIVILE
 Signée à Montréal le 23 septembre 1971

К О Н В Е Н Ц И Я
 О БОРЬБЕ С НЕЗАКОННЫМИ АКТАМИ, НАПРАВЛЕННЫМИ
 ПРОТИВ БЕЗОПАСНОСТИ ГРАЖДАНСКОЙ АВИАЦИИ
 Подписана в Монреале 23 сентября
 1971 года

C O N V E N I O
 PARA LA REPRESION DE ACTOS ILLICITOS
 CONTRA LA SEGURIDAD DE LA AVIACION CIVIL
 Firmado en Montreal el 23 de septiembre de 1971



MONTREAL
 23 September 1971

MONTREAL
 23 septembre 1971

Монреаль
 23 сентября
 1971 года

MONTREAL
 23 de septiembre de 1971

CONVENTION

FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
THE SAFETY OF CIVIL AVIATION

The States Parties to this convention

CONSIDERING that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

ARTICLE 1

1. Any person commits an offence if he unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he:
 - (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or
 - (b) is an accomplice of a person who commits or attempts to commit any such offence.

ARTICLE 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation

tion until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

ARTICLE 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

ARTICLE 4

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or
(b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

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ARTICLE 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

ARTICLE 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

ARTICLE 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

ARTICLE 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting

State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

ARTICLE 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

ARTICLE 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 10, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

ARTICLE 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

ARTICLE 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.