THE 99TH CONGRESS AND THE RESPONSE TO INTERNATIONAL TERRORISM *

OVERVIEW

For Congress the year 1986 ended in consternation over the revelation of secret U.S. arms sales to Iran, apparently in an attempt to win the freedom of American hostages held by pro-Iranian factions in Beirut as well as to improve diplomatic relations with Iran. Congressional concern centered on possible violations of U.S. law requiring notification of Congress of arms sales and covert activities and stated administration policy not to make concessions to terrorists and to impose sanctions on states that support terrorism. The possible diversion of profits to the Nicaraguan Contras despite a congressional ban on such assistance made the issue even more troubling. The Iran controversy obscured the record of accomplishment made by the 99th Congress in providing strong bipartisan support for the President's policy on terrorism, interpreted as "no concessions" to terrorist demands, the punishment of terrorists, and the implementation of coercive measures against states that support or condone terrorism. That record of accomplishment is the central theme of this chapter, which leaves the Iranian arms sales to be discussed as a major focus of Congress in 1987.

The decision by both Houses of Congress to create special select committees at the beginning of 1987 to investigate the Iran arms sales partially reflected recognition of the decentralized character of congressional responsibility in the area of international terrorism. In the 99th Congress, at least eighteen different committees (and more numerous subcommittees) had jurisdiction over some aspect of the issue.

In February 1986, Speaker Thomas P. O'Neill took the initiative in directing the Foreign Affairs, Public Works, Judiciary, and Merchant Marine and Fisheries Committees to draw up omnibus legislation dealing with terrorism. The result was the Omnibus Diplomatic Security and Antiterrorism Act of 1986,[1] which received overwhelming support. This legislation continued the pattern established the previous year with the International Security and Development Cooperation Act of 1985,[2] Title V of which was entitled International Terrorism and Foreign Airport Security. Its provisions were the product of the House Committees on Foreign Affairs and Public Works and Transportation and the Senate Committees on Foreign Relations and Commerce, Science and Transportation.

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[1] P.L. 99-399, approved August 27, 1986.

[2] P.L. 99-83, approved August 8, 1985.

Possibly at no time in the 20th century have so many questions been raised about the U.S. Government's ability to protect its citizens and property abroad. In the 1980's Americans came to feel increasingly at risk from terrorism. In 1983 and 1984, the bombings of the U.S. embassy in Kuwait and the U.S. embassy and military barracks in Beirut dramatically exposed the vulnerability of diplomatic and military missions and personnel. American citizens travelling abroad no longer felt secure in the aftermath of the 1985 hijackings of TWA flight 847 and of the cruise ship Achille Lauro, as well as the murderous attacks at the Rome and Vienna airports.

The scope and immediacy of the congressional response were linked to rising public alarm over this series of terrorist incidents. Congress answered mounting public frustration and fear by adopting legislation that reflected strong bipartisan support and close cooperation with the State Department and other executive agencies. The centerpieces of these efforts—the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and Title V of the International Security and Development Cooperation Act of 1985—were not distinctive in terms of novel policy solutions. With the exception of maritime security, previous Congresses had begun to fashion legislative approaches to the problems posed by terrorism. Rather, the achievements of the 99th Congress lay in the range of topics addressed, the comprehensiveness of measures mandated, and the provision of significant sums of money despite budgetary constraints.

Improving the protection of embassies, airports, and maritime facilities—among the most accessible targets for international terrorism—was a major interest of the Congress. Members of Congress agreed that existing security was inadequate, and that a swift and thorough response was required to reduce American vulnerability. Where effective security depends on the actions of foreign states, as aviation security does, Congress indicated that governments in those countries must be persuaded to respond promptly to American concerns. In addition, Congress looked ahead to the possibility of international nuclear terrorism and attempted to forestall attacks on nuclear materials in transit or storage abroad.

Congress was also sensitive to the plight of the victims of terrorism and their families. Legislation provided for compensation, including educational and medical benefits and awards based on per diem allowances, for both the victims themselves and their families, including civilian and military Government employees.

Moreover, congressional actions extended legislative direction and oversight beyond purely defensive or passive measures designed to protect American facilities and citizens from attack and looked to the construction of an active counter- terrorism policy to deter state-supported terrorism. Congress also showed keen interest in improving the coordination and administration of U.S. policy toward terrorism, as reflected in the organization of the State Department and in inter- agency cooperation.

Establishing the complicity of a foreign state in a terrorist act is usually difficult, but public admissions of such complicity by the Libyan government as well as other evidence linking Libya to anti-American attacks contributed to the broad support for diplomatic and economic sanctions against countries that support terrorism.

Congress voted to prohibit foreign aid and trade to states that assist terrorists and to restrict the use of diplomatic immunity by states known to support terrorism.

Combatting terrorism involves not only curbing state sponsorship but also apprehending and punishing individual terrorists. Congress took action to increase the legal powers of the U.S. Government to prosecute international terrorists. In the 99th Congress, the definition of crimes for which the United States can claim extraterritorial jurisdiction was broadened to include terrorist attacks on U.S. citizens and interests abroad. The Senate also gave its advice and consent to the Supplemental Extradition Treaty with the United Kingdom, which would facilitate the extradition to the United Kingdom by the United States of members of the Irish Republican Army. The revised treaty restricted the categories of crimes for which political asylum could be requested and limited the authority of U.S. courts to grant asylum.

By numerous actions Congress encouraged the administration to aid other governments in the fight against terrorism and especially to seek international cooperation to reduce terrorism. It approved the State Department's Antiterrorism Training Assistance program, under which training, financial support, and small arms and munitions are provided to foreign governments. It also required the State Department to pursue formally such measures as establishing an international coordinating committee on terrorism, negotiating an international terrorism control treaty, and enhancing aviation and maritime security through existing international organizations.

While Congress generally supported the President's April 1986 decision to use military force against Libya in retaliation for Libyan support for terrorism, there were misgivings over the lack of advance consultation. The 1973 War Powers Resolution calls for consultation with Congress when U.S. forces are introduced into hostilities abroad. However, some believe that this principle, designed to protect the balance of congressional and executive power, conflicts with the need for speed and flexibility in the response to terrorism. The 99th Congress was divided on how to respond to this dilemma. Some Members wished to strengthen the requirement that Congress be consulted. Others favored explicitly exempting counter-terrorist actions from the 1973 War Powers resolution. The disagreement has not been resolved.

The following sections look more closely at actions of the 99th Congress aimed at combatting international terrorism. The material is arranged by topic, with the activities of both 1985 and 1986 discussed under each topic.

Security from Terrorism

Both sessions of the 99th Congress enacted legislation attempting to increase protection of American diplomatic personnel and tourists from terrorist activities abroad.

AMERICAN DIPLOMATIC MISSIONS

Since 1968, when the American ambassador was assassinated in Guatemala, diplomats have been increasingly at risk from mob at-

tacks, terrorist bombings, and hostage-takings. Early efforts to protect U.S. embassies included a "Public Access Control Program," which primarily provided for the installation of metal detection devices. In 1980, in the wake of mob attacks on U.S. embassies in Teheran, Islamabad, and Tripoli, Congress had passed a five year "Security Enhancement Program," and total funding for diplomatic security during fiscal years 1980–1986 exceeded $1.3 billion.[3]

These steps proved insufficient. The car bomb detonated at the U.S. embassy in Beirut on April 18, 1983, killed 63, including 17 Americans, and wounded over 100.[4] Before security provisions were completed, the new facility in Awkar, East Beirut was car-bombed September 20, 1984, killing 23, including two Americans, and wounding 71, of whom 20 were Americans.[5]

The vulnerability of U.S. missions and personnel overseas was widely viewed as a crisis. In January 1984, before the second Beirut embassy bombing, the House Committee on Foreign Affairs had created a Staff Task Force on International Terrorism and Diplomatic Security. The task force subsequently issued five reports that influenced legislation in the 98th and 99th Congresses. Concurrently, Secretary of State George Shultz had convened the Advisory Commission on Overseas Security, chaired by retired Admiral Bobby R. Inman, whose membership included Senator Warren Rudman and Representative Dan Mica. The Inman Commission worked closely with Members and staff of the House Foreign Affairs Committee and its Subcommittee on International Operations, chaired by Representative Mica. The legislative process reflected bipartisan agreement in both the House and the Senate and significant cooperation with the State Department. The result of this consensus was the "Diplomatic Security Act," Titles I–IV of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, P.L. 99–399, hereafter referred to as the Omnibus Act.

In June 1985 the Inman Commission issued its report, consisting of 91 recommendations, most of which concerned diplomatic security. Approximately 30 of these recommendations were classified. In hearings before the Foreign Affairs Committee on July 16, 1985, Representative Mica reported that Secretary Shultz endorsed nearly all of the recommendations in principle.

Having been assured of the support of the administration for the diplomatic security program, the Foreign Affairs Committee expected the administration to submit promptly a legislative package designed to implement the Inman Commission recommendations. However, the package was not forthcoming. Displeased with what the committee considered to be the tardiness of the administration, the committee held further hearings November 13 and 20 designed to elicit a proposal from the administration. At the latter hearing, Representative Mica announced his intention to move the Inman

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[3] U.S. House. Committee on Foreign Affairs. The Omnibus Diplomatic Security and Anti-terrorism Act of 1986. Report together with Congressional Budget Office Estimate on H.R. 4151. House Report No. 99–494, 99th Cong., 2d Sess. Washington, U.S. G.P.O., 1986. p. 5–6.

[4] U.S. Library of Congress. Congressional Research Service. Terrorist Incidents Involving U.S. Citizens or Property 1981–1986: A Chronology. Issue Brief No. IB86096, by James P. Wootten, February 2, 1987 (continually updated). Washington, 1987.

[5] See U.S. Congress. House. Committee on Foreign Affairs. Congress and Foreign Policy—1984. Congress and the Withdrawal of the Marines from Lebanon. Committee Print, 99th Cong., 1st Sess. Washington, U.S. G.P.O., 1985.

Commission recommendations forward, with or without a legislative proposal from the administration. And, on December 16, 1985, Representative Mica and the ranking minority Member of the International Operations Subcommittee, Representative Olympia Snowe, introduced their own bill, H.R. 3946.

Three days later the administration forwarded its own legislative package. Senator Richard Lugar, chairman of the Senate Foreign Relations Committee, introduced the administration proposal (S. 2015) on January 23, 1986. Thus, the prodding by the Committee on Foreign Affairs appeared to quicken the pace of the legislative process with regard to the Inman Commission proposals on diplomatic security.

Another contribution of the House Foreign Affairs Committee was its support for a multi-year authorization for the embassy building program. The Inman Commission had expressed concern that one-year authorizations would result in construction delays and increased costs. The Commission had proposed, therefore, a long-term capital budget construction program. The House adopted a five-year authorization as an alternative.

This multi-year authorization proved controversial in hearings before the Senate Foreign Relations Committee. Several Senators raised questions about the length of the House authorization schedule as well as particular embassy projects proposed by the Department of State. The Senate therefore recommended a two-year authorization and reduced the authorization about 20 percent from the House level. The conference committee accepted the lower annual construction levels of the Senate bill, while accepting the five-year authorization program of the House bill.

As a result of the Omnibus Act, the Department of State now has a long- term schedule for the acquisition of new diplomatic facilities and the renovation of existing ones, with funding levels designed to meet the Inman Commission recommendations. Roughly half of all U.S. embassies and consulates are scheduled for renovation or new construction, with traffic barriers and building setbacks designed to control access and forestall car-bombs.

The Omnibus Act ultimately authorized a total of $808 million for fiscal years 1986 and 1987, the first two years of the construction program. In the FY 1986 Supplemental Appropriations Act (P.L. 99-349, approved July 2, 1986), Congress subsequently approved $702 million for the acquisition and maintenance of U.S. diplomatic facilities abroad. The continuing appropriations resolution for fiscal year 1987 (P.L. 99-591, approved October 30, 1986), continued support for the building security program by earmarking $227 million in new funds specifically for "diplomatic security" in five facilities in Istanbul, Lima, Bogota, Pretoria, and Cairo.

In appropriating these funds, Congress recognized that the cost of the new diplomatic facilities would be significantly higher than most public building projects. The typical new embassy facility was anticipated to cost four times the amount of comparable office space in Washington. About 25 percent of the construction funds were intended to secure the new buildings against electronic espionage. Many Members of Congress were particularly concerned that some U.S. facilities were in the same office buildings as Eastern bloc countries. A related congressional concern was the location of

USIA and AID offices in some embassy facilities. Visitors to a USIA exhibition, for example, create security problems for the embassy. The location of their personnel in embassies also increases the number of people at risk. Separating U.S. facilities and protecting the new facilities against espionage result in cost increases.

The $4 billion building program authorized in the House version of the Omnibus Act is nearly equal to the previous total annual budget of the Department of State. If fully funded, the budget would have greatly exceeded targets established under the Gramm-Rudman-Hollings guidelines.[6] Yet, even in a period of budgetary stringency, the large expenditures for the diplomatic security program enjoyed wide support. Representative Tom Lantos captured the mood with his observation " . . . in an age of Gramm-Rudman, a $4 billion program is sailing through with no difficulty, no obstacles, universal accolades, and general applause." [7]

A second major concern of the Inman Commission was the creation in the Department of State of a professionally trained staff structure charged with assuring the safety of diplomats and missions. Historically, the mission of the Department of State has been the conduct of foreign affairs, and foreign policy has dominated the training and attention of its senior staff. Title I of the Omnibus Act increases the priority given to diplomatic security and creates a new Bureau of Diplomatic Security, headed by an Assistant Secretary for Diplomatic Security. Title II creates a new Diplomatic Security Service within this bureau, to be directed by a senior executive trained in security and law enforcement. The effect of this legislation is to provide the Department of State with its own resources for protecting U.S. diplomats, rather than assigning the responsibility to the Department of Treasury's Secret Service, which did not wish to take on this additional burden.

The Inman Commission Report, at Representative Mica's instigation, also emphasized the concept of accountability in diplomatic security [8] and recommended that ambassadors be held responsible if there is loss of life or property at their posts. Title III of the Omnibus Act requires the Secretary of State to convene an Accountability Review Board made up of four members appointed by the Secretary of State and one appointed by the director of the CIA to investigate cases involving such losses at missions abroad.

CIVIL AVIATION SECURITY

Passage of legislation on airport security provides a particularly apt example of the rapidity of legislative responses to terrorist incidents shown by the 99th Congress. The hijacking of the TWA 847 flight from Athens to Beirut in June 1985 and the destruction of an Air India Boeing 747 en route from Toronto, an act of suspected sabotage by Sikh extremists which killed 329 passengers and crew including 19 Americans, stimulated legislative activity in several

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[6] Targets established under new procedures of the Balanced Budget and Emergency Deficit Control (Gramm-Rudman-Hollings) Act (P.L. 99-177).

[7] U.S. Congress. House. Committee on Foreign Affairs. The Diplomatic Security Program. Hearings and Markup on H.R. 4151, 99th Cong., 1st Sess., March 5, 1986. Washington, U.S. G.P.O., 1986. p. 159-160.

[8] U.S. Congress. House. Committee on Foreign Affairs. Diplomatic Security. Hearings, 99th Cong., 1st Sess., July 16, 24, 1985. Washington, U.S. G.P.O., 1985.

committees in both chambers. In one 5-day period at least 10 measures were proposed in the House and Senate to improve airport security and prevent further acts of terrorism against Americans.[9]

An airport security bill (H.R. 2796) passed the House quickly and unanimously on June 19, 1985. At the same time the Subcommittee on Aviation of the Senate Commerce, Science and Transportation Committee held a hearing on several bills relating to airport security that were pending before the committee. Senator Nancy Kassebaum, chair of the subcommittee, introduced S. 1436, a bill that incorporated the provisions of several of the proposed measures. The Senate Commerce, Science and Transportation Committee incorporated the provisions of S. 1436 into H.R. 2796, and the Senate passed the amended H.R. 2796 unanimously, 96–0. This bill was joined with another measure withholding foreign aid to any country failing to meet international airport security standards. These provisions were ultimately included in foreign aid legislation, the International Security and Development Cooperation Act of 1985, P.L. 99–83, approved August 8, 1985.

The provisions on airport security, which amend Section 1115 of the Federal Aviation Act, make up Title V, Part B, of P.L. 99–83. The most important of these are as follows:

(1) Travel Advisories: The new airport security provision requires the Secretary of Transportation to assess security at foreign airports and to determine whether the airports meet the international standards of the International Civil Aviation Organization (ICAO). The Secretary is directed to report these results to Congress and to the foreign governments in which the airport is located. Foreign governments are then given 90 days to correct deficiencies noted in the report. If the corrections are not made, the Secretary, after consultation with the Secretary of State, is required to issue a travel advisory that the airport does not meet international security standards. Travel advisories are to be posted at U.S. airports and printed on airline tickets.

Two such travel advisories were issued during the 99th Congress. Before the legislative provision was signed into law, the Secretary of State issued an advisory June 19, 1985, for all travel through the Athens airport. The advisory was described as "an intermediate step stopping short of suspending air service." [10] The advisory was cancelled July 22, after the Federal Aviation Administration found the airport had come into compliance with international security standards. Another advisory was issued for the Manila airport on August 7, 1986, and was lifted less than a month later, on August 30.

(2) Suspension of Commercial Flights: Title V of P.L. 99–83 also authorizes the President to suspend U.S. commercial flights to airports that are not in compliance with ICAO standards and that do not correct the deficiencies within 90 days. The President may waive this requirement if the suspension would harm the national

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[9] U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Air Traveler Protection Act of 1985. Report to accompany H.R. 2796. House Report No. 99–113, 99th Cong. 1st Sess. Washington, U.S. G.P.O., 1985. p. 2.

[10] U.S. Library of Congress. Congressional Research Service. Foreign Airport Security: Diplomatic Framework and U.S. Policy. Issue Brief No. IB85162, by Marjorie Ann Browne and Ellen C. Collier, March 4, 1987, (continually updated). Washington, 1987. p. 6.

interest. President Reagan had suspended U.S. commercial flights into Lebanon July 1, 1985, citing as authority section 1114 of the Federal Aviation Act. Title V also authorizes the Secretary of Transportation to terminate service by specific foreign carriers to U.S. airports. On July 1, 1985, all Lebanese airlines were prohibited from landing in the United States.

(3) Suspension of Aid: If the measures above are unsuccessful, the Act directs the President to cut off all foreign assistance provided under any of several acts: the foreign aid bill itself, the Agricultural Trade Development Act of 1954 (P.L. 480), the Peace Corps Act, or the Arms Export Control Act. The Act gives the President the authority to waive this requirement if he determines and reports to Congress that national security interests or a humanitarian emergency requires a waiver.

(4) Air Marshals: Section 553 of Title V also directs the Secretary of Transportation to study the need for an expanded air marshal program on all international flights of U.S. air carriers. The Secretary is directed to report the results of this study within six months from the law's enactment.[11] The law also authorizes air marshals to carry firearms and to make arrests without warrants. The major issue that the air marshal program raises is whether the added protection an air marshal affords outweighs the risk to passengers from a shootout between a hijacker and a marshal. Such an incident occurred in the November 1985 takeover of Egypt Air flight 648. A related security provision in P.L. 99-83 also authorizes $5 million without fiscal year limitations for research on the development of airport security devices or techniques for detecting explosives. P.L. 99-88, the Supplemental Appropriations Act of 1985, appropriated $2 million for an expanded program.

The basic concern regarding airport security issues notwithstanding, there continues to be conflict over security standards. For example, H.R. 2796 as originally drafted had held foreign carriers to U.S. security standards. A subsequent staff report submitted to the House Foreign Affairs Committee observes that U.S. carriers serving Frankfurt, Rome, London/Heathrow, and Athens "maintain higher security standards and procedures than the other foreign air carriers (with the possible exception of El Al)." [12] The staff report noted that foreign carriers are not required to institute security procedures as stringent as those U.S. regulations demand of U.S. carriers, in spite of the large number of Americans they carry. In addition, Representative Mica of the Foreign Affairs Committee has previously argued that foreign carriers serving the United States should be required to meet U.S. security standards, rather than the less strict international standards of the ICAO.[13]

The staff report also noted the administration had not submitted on a timely basis reports required by Title V, the Foreign Airport Security Act. These included the semiannual foreign airport assessments (due June 1, 1986) and the study on the air marshal program (due in February 1986).

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[11] This report submitted to Congress on May 13, 1987.

[12] U.S. Congress. House. Committee on Foreign Affairs. Antiterrorism Measures: The Adequacy of Foreign Airport Security. Staff report to the Committee on Foreign Affairs. Committee Print, 99th Cong., 2d Sess. Washington, U.S. G.P.O., 1986. p. vii.

[13] Congressional Quarterly Weekly Report, June 29, 1985: 1253.

MARITIME SECURITY

The passage of the International Maritime and Port Security Act (Title IX of the Omnibus Act) is directly traceable to the October 1985, Achille Lauro hijacking that resulted in the death of an American citizen, Leon Klinghoffer. The Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries had held two hearings on the cruise ship industry prior to the hijacking, but had not raised the issue of security from terrorism. Immediately after the hijacking both the Subcommittee on Merchant Marine and the House Committee on Foreign Affairs held hearings on the hijacking's implications for maritime security. Congress fashioned the International Maritime and Port Security Act of the Omnibus Act to parallel closely the approach embodied in the Foreign Airport Security Act.

Both airport and maritime security have been regulated to varying degrees by specialized U.N. agencies, airline security by the ICAO, and the cruise ship industry by the International Maritime Organization (IMO). In the wake of the Achille Lauro hijacking, the IMO adopted a resolution calling upon governments and the cruise ship industry to review their security provisions.[14] The IMO resolution also directed its own Maritime Safety Committee to issue guidelines for the protection of vessels, passengers, and crew. The most important principle in these guidelines is that the primary responsibility for maritime security is placed on the ports, rather than on the cruise ships. Airport security similarly places primary responsibility on airports rather than the air carriers.

(1) Domestic Port Security: The parallels between air and maritime security are partly deceptive. Although most cruise ships sail under foreign flags, the industry is dominated by American passengers embarking from American ports. Seventy-four percent of all departures in 1985–1986 were from American ports, and 34 percent of these American departures were from the port of Miami, most sailing the Caribbean.[15] Thus, some of the maritime security problem can be dealt with through action at U.S. ports.

The International Maritime and Port Security Act brings the security issue under the Ports and Waterways Safety Act of 1972. It authorizes the Secretary of Transportation to "carry out or require measures, including inspections, port and harbor patrols . . . to prevent or respond to acts of terrorism." Primary responsibility is placed on the Coast Guard.

(2) Travel Advisories on Foreign Ports: The International Maritime and Port Security Act also encourages the President to seek agreements with other countries on seaport and shipboard security through the IMO and directs the Secretaries of State and Transportation to report to Congress on their progress. With provisions that closely parallel the airport security legislation, the act directs the Secretary of Transportation to determine whether a safety condi-

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[14] Moore, Robert G. The Price of Admiralty: Regulatory Responses to Maritime Terrorism. TVI Report, v. 7, 1986: 27.

[15] U.S. Congress. House. Committee on Foreign Affairs. Overview of International Maritime Security. Hearing, 99th Cong., 1st Sess. October 23, 1985. Washington, U.S. G.P.O., 1986. p. 47, 54. These figures are for cruises scheduled to depart between October 1, 1985, and September 30, 1986.

tion exists at a foreign port. If so, the Secretary of State is instructed to issue and widely publicize a travel advisory warning potential travelers of the problem.

(3) Suspension of Passenger Services: Whenever he determines that another nation "arms, aids, or abets" a terrorist group, under the act the President may "without notice or hearing and for as long as the President determines necessary" suspend passenger services to any port in that nation. Persons in violation of this prohibition are subject to civil penalties.

THREAT OF NUCLEAR TERRORISM

In contrast to airport security, where experience has taught policymakers many lessons, in the nuclear security area a sustained threat has yet to materialize. Nevertheless, it is accepted that the consequences of successful nuclear terrorism could be catastrophic.

The 1986 Omnibus Act reflects the concern, particularly of the Foreign Affairs Committee, about the need for more effective steps to prevent an incident of nuclear terrorism. The international transportation of special nuclear materials is one of the weakest links in the fuel cycle chain and one of the areas least susceptible to national controls. Congress was strongly interested in protecting nuclear materials, especially of weapons-grade quality, in transit or storage abroad.

Existing international standards for shipments of materials are based on the Convention on the Physical Protection of Nuclear Materials, a treaty negotiated under the auspices of the International Atomic Energy Agency (IAEA) in 1979, signed by the United States in 1980, unanimously approved by the Senate in 1981, and implemented by legislation in 1982 (P.L. 97-351). In Title VI of the 1986 Omnibus Act, International Nuclear Terrorism, Congress declared its intention that the United States take the lead in both bringing about adherence to the Convention and improving its standards. The Act, for example, directs the President to conduct an interdepartmental review of the IAEA physical protection recommendations, made in 1977, to see if they are still adequate and report the results to the IAEA.

Further, the legislation expressed the sense that the United States should not engage in nuclear cooperation with states that have not ratified the Convention.[16] The legislation also directs the President to seek the agreement of the United Nations Security Council for (1) a regime of sanctions to be imposed on states or subnational organizations that conduct or sponsor international nuclear terrorism and (2) measures to coordinate the response to acts of nuclear terrorism and to clean-up after an incident. Congress reaffirmed its oversight responsibilities by requiring an annual report on progress made in achieving these objectives and called for an international conference on the subject.

Although the field of nuclear power is one that is strongly regulated by governments, nuclear exports are part of a commercial industry. The United States is a leading exporter. Title VI of the 1986 Omnibus Act requires that licenses issued by the Nuclear

[16] The Convention entered into force February 8, 1987.

Regulatory Commission for the export of special nuclear materials be reviewed by the Department of Defense, relying on information provided by the Central Intelligence Agency, if necessary. If the Department of Defense should determine that there is a terrorist threat to the export or transit of the materials, it must furnish an assessment of the danger and recommendations for averting it to designated agencies. The Act also requires individual reports to the Foreign Affairs and Foreign Relations Committees from five Government agencies involved in decisions on the shipment and storage outside the United States of special nuclear materials (plutonium and enriched uranium) subject to U.S. prior consent rights.[17]

The Victims of Terrorism

Many Members of Congress hold the view that it is the Government's obligation to provide for victims of terrorism whose position as employees of the U.S. Government placed them in danger. Legislation passed by the 99th Congress made significant strides in providing compensation for employees of the U.S. Government who are held hostage, including educational and medical benefits for their families.

In 1980, during the Iran hostage crisis, Congress had passed the Hostage Relief Act (P.L. 96-449, approved October 14, 1980), a temporary measure modelled on legislation treating prisoners of war from the Vietnam War period and the crew of the U.S.S. Pueblo seized by North Korea in 1968. However, no compensation had been available to hostages seized in other subsequent incidents.

The Victims of Terrorism Compensation Act passed by the House, H.R. 2851, and later incorporated in the Omnibus Act, reflected a firm congressional view that the Government should adequately compensate the victims of terrorism. The legislation provided a much higher level of benefits in this area than the administration favored, although both Congress and the executive agreed that hostages and their families deserve equitable treatment and that foreign nationals working for the U.S. abroad should receive the same benefits as U.S. citizens. The State Department supported making the Hostage Relief Act permanent, applying its provisions only to hostage-taking incidents abroad, implementing a 30-day waiting period before salaries would be placed in interest-bearing accounts, and making all benefits and cash payments discretionary. The House, on the other hand, taking its lead from the Civil Service Subcommittee of the Post Office and Civil Service Committee, insisted that domestic cases be covered, that there be no waiting period before a captive's salary was placed in an interest- bearing account, that payments be mandatory, and that compensation be provided in the event of death or disability.[18]

With the consent of the Armed Services Committee, the House Foreign Affairs Committee in its consideration of H.R. 2851 (jointly

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[17] These directed respondents are the Secretaries of Energy, Defense, and State, the Director of the ACDA, and the NRC.

[18] U.S. Congress. House. Committee on Post Office and Civil Service. H.R. 1956 and H.R. 2019, Benefits to Federal Employees who are Victims of Terrorism. Joint Hearings before the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits and the Subcommittee on International Operations of the Committee on Foreign Affairs. Hearings, 99th Cong., 1st Sess., June 12, 24, 1985. Washington, U.S. G.P.O., 1985.

referred to the Foreign Affairs and Post Office and Civil Service Committees) broadened the scope of the legislation to cover military personnel, as the administration had asked. An area that had remained unsettled since 1981 was the amount of cash payment to the hostages held in Iran from 1979 to 1981 (who had not been released at the time of the Hostage Relief Act). The 99th Congress rejected the administration's plan to compensate the hostages with only $12.50 per day. The Civil Service Subcommittee favored a payment of $50,000 each for those hostages who spent the entire period (444 days) in captivity, with a payment of the maximum per diem for the region at the time otherwise. The Foreign Affairs Committee changed this payment simply to the per diem rate.[19] The House version of the bill made the cash payment provision the amount of the worldwide average per diem rate. However, in conference on the Omnibus Act this provision was altered again, to offer a $50 per day cash payment for the 1979–81 period and after 1981 not less than one-half of the worldwide average per diem.

In sum, the result of congressional initiative is a significant package of benefits for anyone taken captive as a result of his or her relationship with the U.S. Government. The legislation extends educational and medical benefits to the families of hostages, in recognition of the strain and hardship imposed on them. These benefits can extend after the period of captivity. Death and disability benefits are also provided. Members of the uniformed services are included, unless they are otherwise covered by prisoner-of-war legislation. The Act amends Title 5 of the U.S. Code, making benefits a permanent entitlement, no longer discretionary but required by law.

Counter-Terrorism Policy

The intent of legislative efforts in the 99th Congress was to insure that the United States take an active lead in the struggle against terrorism. Many observers believe that the lack of an effective response to terrorism had damaged American credibility, and that it was essential to construct a coherent and consistent national policy that would increase the costs of sponsoring terrorism for states and non-states alike.

POLICYMAKING AND THE STATE DEPARTMENT

One approach was to tighten U.S. policy organization. In 1985 and 1986, the International Operations Subcommittee of the House Foreign Affairs Committee often questioned the coordination and continuity of American policy. Members of the Subcommittee and the Advisory Panel on Overseas Security (the Inman Commission) doubted that terrorism was given a sufficiently high policy priority. The need for a unified chain of command anchored in the State Department was frequently mentioned. Both groups feared a fragmentation of responsibility and erosion of accountability that would

[19] The estimated cost of the bill for 1986 and 1987 was $1.6 billion, according to the Congressional Budget Office in 1985. U.S. Congress. House. Committee on Foreign Affairs. Victims of Terrorism Compensation Act. Report together with additional Views to Accompany H.R. 2851. House Report No. 99-201, 99th Cong., 1st Sess., Part 2. Washington, U.S. G.P.O., 1985. p. 24.

impair the State Department's ability to use the resources Congress had provided.[20]

The original objective of the subcommittee, implementing the Inman Commission Report, was to transfer many of the functions of the existing Office of Counter- Terrorism and Emergency Planning (the successor to an office established in 1972 to chair the inter-agency working group on terrorism) to the new Bureau of Diplomatic Security and to shift its remaining policy authority to the Under Secretary for Political Affairs. At Secretary of State Shultz's recommendation, supported by Committee Chairman Dante Fascell, a compromise was reached in which the post of Ambassador at Large for Counter-Terrorism was created through executive authority rather than legislation. The Ambassador reports directly to the Secretary of State, rather than through the Under Secretary for Management.

PENALIZING STATE SPONSORSHIP

A second approach was to discourage state support of terrorism. The Subcommittee on Security and Terrorism of the Senate Judiciary Committee (a subcommittee that functioned from 1981 to 1986) was especially concerned with exposing links between terrorism and states hostile to U.S. interests. In this area, the primary policy options available to the United States are diplomatic and economic sanctions. Coercive sanctions are often considered to be more effective if they result from multilateral coordination, which is frequently lacking among western powers. However, sanctions can be implemented unilaterally.

Title V of the International Security and Development Cooperation Act of 1985 strengthened the prohibition on American foreign assistance to states named as supporting terrorism. It broadened the assistance programs covered and required prior notification of the House Foreign Affairs and Senate Foreign Relations Committees to waive the prohibition. The states named in 1986 as supporters of international terrorism were Iran, Syria, Libya, South Yemen, and Cuba. None receives official U.S. aid.

The Omnibus Act of 1986 authorized the Secretary of State to restrict security assistance services to the states that repeatedly provided support for terrorism abroad. This provision referred to services provided to the military, police, and intelligence agencies of foreign states, a form of assistance particularly susceptible to diversion for terrorist purposes. The conference report made clear, however, that any imposition of controls on such services be clearly linked to their relevance to terrorism.[21]

Issuing travel advisories warning American citizens not to travel to countries that support or permit terrorism can be considered another form of official diplomatic sanction. The conference commit-

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[20] U.S. Congress. Committee on Foreign Affairs. International Terrorism: 1985. Hearings and Markup on H.R. 2822. Hearings, 99th Cong., 1st Sess., March 5, 21, and June 25, 1985. Washington, U.S. G.P.O., 1985. Also The Diplomatic Security Program. Hearings and Markup on H.R. 4151. Hearings, 99th Cong., 2d Sess., November 13, 20, 1985; March 5, 6, 1986. Washington, U.S. G.P.O., 1986.

[21] U.S. Congress. Committee of Conference. Omnibus Diplomatic Security and Antiterrorism Act of 1986. Conference Report to Accompany H.R. 4151. House Report No. 99-783, 99th Cong., 2d Sess. Washington, U.S. G.P.O., 1986.

tee report on the 1986 Omnibus Act expressed the concern on the Foreign Affairs and Foreign Relations Committees that the need to inform American citizens of unsafe conditions be balanced against the possibly punitive implications of such warnings. In particular, the Foreign Affairs Committee was interested in seeing that travel advisories were issued for countries where states (Libya and Iran were named) used their official diplomatic or trade missions to support attacks on Americans. A practical effect of this measure would be to encourage countries to close Libyan People's Bureaus, surrogates for embassies widely thought to have functioned as command posts for state terrorism. The conference committee deleted this "sense of Congress" provision, but its report stressed the dangers of state sponsorship and abuse of diplomatic privilege.

Members of Congress expressed concern that the U.S. Government and businesses not profit from trade with states that support terrorism, or benefit those states in any way. There was also concern that the United States have "clean hands" in urging European allies to apply mutually costly sanctions to Libya.[22] For example, Congress supported the President's January 7, 1986, Executive order declaring a state of national emergency and extensively restricting trade with Libya. The 1985 foreign aid act (P.L. 99–83) authorized the President to prohibit imports and exports of goods or technology to or from Libya. It also authorized the President to prohibit imports from and exports to any states supporting terrorism. In such cases, a report to Congress was required. The conference committee expressed particular interest in prohibiting exports to Libya that could be used to generate hard currency reserves necessary for Libya to carry out a campaign of terrorism.[23]

The 1986 Omnibus Act (Section 509 of Title V) prohibited exports of any item on the Arms Export Control Act's Munitions List to states identified as supporting terrorism under the terms of the Export Administration Act. The prohibition could be waived only if the President certifies to Congress that the export is important to the national interest. Such waivers expire after 90 days unless Congress enacts a law extending the waiver. In addition, the same section of the Omnibus Act amended the Export Administration Act to reduce from $7 million to $1 million the value of licensed exports to countries designated as supporters of international terrorism that must be reported to Congress.

APPREHENSION AND PUNISHMENT OF TERRORISTS

A third approach was to ensure that individual terrorists responsible for attacks on Americans be punished. The apprehension and punishment of terrorists has proved to be a serious obstacle to effective counter-terrorist policy, since many international terrorist actions committed abroad were not crimes under U.S. law. Legislation implementing the international treaties regulating aircraft hi-

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[22] U.S. Congress. Committee on Foreign Affairs. Subcommittee on Europe and the Middle East. Developments in the Middle East, May 1986. Hearing, 99th Cong., 2d Sess., May 6, 1986. Washington, U.S. G.P.O., 1986.

[23] U.S. Congress. House. Committee of Conference. International Security and Development Cooperation Act of 1985. Conference Report to Accompany S. 960. Senate Report No. 99–34, 99th Cong., 1st Sess. Washington, U.S. G.P.O., 1985. p. 124.

jacking and attacks on diplomats extended national jurisdiction to certain categories of crimes in 1976 and 1984. However, the fact that the United States did not have grounds for prosecuting those persons responsible for the murder of Leon Klinghoffer during the seizure of the Achille Lauro in October 1985 illustrated the limits of American legal jurisdiction.

Legislation passed in the 99th Congress extended the legal mechanisms for combatting terrorism by broadening the range of crimes for which the United States can claim extraterritorial jurisdiction. The Omnibus Act of 1986, incorporating a proposal forwarded by the Senate Judiciary Committee (S. 1429), made the murder of American citizens abroad and terrorist assault against Americans or attacks on U.S. property abroad crimes punishable under U.S. law. In a display of the congressional-executive cooperation that often characterized legislative initiatives with regard to terrorism, the Justice Department supported this provision, as long as its scope was clearly specified and brought into conformity with existing domestic law governing criminal prosecutions.

Efforts were also made to impose the death penalty for murder in connection with hostage-taking (S. 1508, introduced by Senator Specter). The difficulties of establishing constitutional procedures for applying the death penalty left these initiatives unresolved. Some expressed concern that requiring the death penalty for terrorism would make it more difficult to secure the extradition of terrorist suspects, since many states prohibit extradition when the death penalty will be sought. On the other hand, imprisoning terrorists may increase a nation's vulnerability to further hostage-seizures.

Rewards for information are another method of facilitating the apprehension of terrorists. Intelligence is often considered to be a key to effective counter- terrorism policy. The 1984 Act to Combat International Terrorism had previously authorized rewards of up to $500,000 for information leading to the arrest or conviction of terrorists or their conspirators. Although the House wished to increase this amount to $1,000,000 in the 1986 legislation, the proposal was deleted in conference.[24] One reason given for not increasing the amount is that no funds have yet been spent under this program even though rewards have been offered. This consideration leads to two sets of questions: whether the program is being effectively administered, and whether offering rewards is a feasible way for apprehending terrorists. It should be noted that in 1986 the rewards program was specifically extended to acts of "narcoterrorism" abroad, the product of linkages between drug trafficking and terrorism. The House was also interested in drawing up a "most wanted" list of international terrorists (as the West German government does for domestic terrorists), but the State Department was not enthusiastic and the requirement was dropped in the conference committee consideration of the 1986 Omnibus Act.

Perhaps the most delicate political issue involved in apprehending and punishing international terrorists is the extradition of ter-

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[24] U.S. Congress. Committee of Conference. Omnibus Diplomatic Security and Antiterrorism Act of 1986; Conference Report to Accompany H.R. 4151. House Report No. 99-783, 99th Cong., 2d Sess. Washington, U.S. G.P.O., 1986. p. 69.

rorist suspects by the countries holding them. Extradition depends on the cooperation of foreign states, whose political interests and domestic legal systems differ from those of the United States. Furthermore, international law has provided both an exception to and a substitute for extradition. If a crime is considered to be political, a government can refuse an extradition request. Most treaties also allow states to punish rather than extradite if they so choose. In general, the process of extradition is regulated by bilateral treaties. The Department of State had long expressed the desire to renegotiate bilateral treaties with allies in order to facilitate the extradition of terrorists. The U.S.-U.K. extradition treaty was of particular concern not only to the State Department but also to the British Government, especially as it applied to the extradition from the United States of suspected members of the Irish Republican Army (IRA). Historically the United Kingdom had experienced difficulty in securing the extradition of IRA suspects because U.S. courts might find their offenses to be political rather than purely criminal.

In June 1985, the United States and the United Kingdom signed the Supplemental Extradition Treaty, which "would, for all intents and purposes, have eliminated the political exception for acts of violence and with it the traditional role of U.S. courts to deny extradition in connection with alleged political offenses." [25] After hearings by the Foreign Relations and Judiciary Committees, the Foreign Relations Committee tried to strike a balance between the need to combat terrorism and the individual right of due process. Attempts were unsuccessfully offered to distinguish between attacks on civilian and on military personnel. The result was a compromise that narrowed the list of offenses a court may define as political (e.g. hostage-taking, bombing, or murder are excluded) but that authorized courts to deny extradition where charges are obviously "trumped-up" or where the individual might not receive a fair trial because of race, religion, nationality or political opinions. This compromise worked out by Senators Lugar and Eagleton was approved by both British and American Governments. In July 1986, in the wake of the British Government's support for the American bombing raid on Libya, the treaty was approved by a vote of 87-10.

INTERNATIONAL COOPERATION

A fourth approach was to seek international cooperation in combatting terrorism. Legislation in both 1985 and 1986 supported the State Department's bilateral antiterrorism assistance programs. These programs at first provided only training and specialized equipment for the civilian agencies of friendly foreign governments, but in 1985 they were expanded (at the administration's request) to include furnishing small arms and munitions. To assure that such transfers of defense articles were strictly regulated, the 1986 Omnibus Act required a 15-day advance notification to Congress.

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[25] U.S. Senate. Committee on Foreign Relations. Supplementary Extradition Treaty with the United Kingdom. Executive Report to Accompany Tr. Doc. 99-8. Washington, U.S. G.P.O., 1986, p. 2.

Congressional support for such assistance programs (in 1986 renamed "terrorism-related" rather than "antiterrorism") was combined with interest in seeing that U.S. policy toward terrorism be placed firmly under the authority of the Secretary of State. In 1985, the Secretary was required to provide an annual report (classified if necessary) to Congress on terrorism-related assistance from all agencies. However, the conference report on the 1986 Omnibus Act stated that the first annual report (due February 1, 1986) had been unsatisfactory, since apparently the activities of some agencies were omitted from the report. The Foreign Affairs and Foreign Relations Committees expressly declared that intelligence activities were not to be excluded.

Both the 1985 and 1986 legislation urged the President to seek the establishment of an international anti-terrorism committee of Western nations (NATO members and Japan) and any others caring to participate. In 1986 the Omnibus Act (Section 701) suggested that the first step in this direction be the establishment of a standing political committee in NATO, to work closely with the North Atlantic Assembly.[26] Such a committee would examine international terrorism, review opportunities for international cooperation, and make policy recommendations to national governments. So far, however, America's allies have proved reluctant to undertake such a commitment within the framework of NATO.

The 1986 Omnibus Act dealt with other specific and practical areas of combatting terrorism. For example, it "urged" the President to seek international agreement on information-sharing on passports and visas. The House version of the legislation consistently "directed" the President to implement the requirements of the law, but the conference version changed the language to "urged." It expressed congressional concern over the possible danger to American citizens of a passport entry stating place of birth and asked for a study of the implications of omitting this information. The Omnibus Act also urged the President to work through the United Nations in restricting abuses of diplomatic privilege and immunity for terrorist purposes.

The International Security and Development Cooperation Act of 1985 called for the negotiation of a comprehensive international terrorism control treaty. The aims it mentioned were to define terrorism, establish intelligence-sharing mechanisms and joint training procedures, and develop uniform national laws on subjects such as extradition. It also required the Secretary of State to seek agreements to improve aviation security. Terrorism has not so far proved an easy issue for close international cooperation, even among allies, and the idea of such a general treaty has not been carried out. Nevertheless, Section 605 of the 1986 Omnibus Act urged the President to seek an international conference to review the problem of nuclear terrorism.

To follow up on these admonitions to the executive branch, Section 705 of the 1986 Omnibus Act required a progress report on increasing multilateral cooperation from the President by February

[26] The Working Group on Terrorism established in 1985 by the Political Committee of the North Atlantic Assembly issued its Final Report in February 1987. (North Atlantic Assembly Paper)

1, 1987. The Act also expressed satisfaction at the declaration on international terrorism issued by the 1986 Tokyo Economic Summit, a statement which many Members hoped would be a point of departure for strengthened international cooperation.

The Issue of Military Retaliation

In April 1986, President Reagan ordered an aerial bombing raid against targets in Libya in retaliation for Libyan support of anti-American terrorism in Western Europe. The resort to military force reflected longstanding frustration in the administration over the failure of other measures, such as unilateral sanctions, to influence Libyan activities. Issues raised by forceful retaliation against state sponsors of terrorism include the constitutional balance of power between the executive branch and Congress. Because secrecy and speed are often critical factors in responding successfully to a terrorist incident, reconciling these requirements with a foreign policy based on democratic principles is an important subject for congressional attention.

There was broad congressional support for the April 14 air strike against Libya, whose defiance of the rules of international order was undisguised. However, some congressional leaders felt that Congress had not been adequately consulted. In March, House Foreign Affairs Committee Chairman Dante Fascell had written a letter to the President to protest the lack of consultation on the deployment of American naval forces in the Gulf of Sidra, an action that was followed by a brief military confrontation with Libya, which claims the Gulf as Libyan territory. Contending the actions were routine naval maneuvers in international waters, the White House denied Chairman Fascell's claim that the War Powers Resolution applied.

On April 11, three days before the air strike, eight Senators and Representatives sent a telegram to the President reminding him of his obligations under the War Powers Resolution (P.L. 93-148). Section 3 of the Resolution requires the President to consult with Congress in every possible instance before introducing U.S. forces into hostilities or into situations where hostilities are imminent. They argued that since the initiation of military action appeared likely, advance consultation was required. Despite these appeals, selected congressional leaders were not briefed until late in the afternoon on April 14, after American bombers were airborne. To some Members of Congress this consultation was adequate and justified by circumstances; to others it was unsatisfactory.

Congress was divided in response to these events.[27] On the one hand, some leaders wished to amend the War Powers Resolution so as to facilitate consultation during terrorist crises. To them, the Resolution was applicable and sound in principle, but needed modifications to correct apparent operational deficiencies in the statute, such as a lack of clarity about who in Congress is to be informed. For example, Senators Robert Byrd and Claiborne Pell, among others, introduced legislation to establish a permanent consultative

[27] U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Arms Control, International Security and Science. War Powers, Libya, and State-Sponsored Terrorism. Hearings, 99th Cong., 2d Sess., April 29, May 1, 15, 1986. Washington, U.S. G.P.O., 1986.

U.S. Congress. House. Committee on Public Works and Transportation. Subcommittee on Aviation. Oversight of airport and airline security programs. Hearing, 99th Congress, 1st session. July 11, 1985. Washington, U.S. G.P.O., 1985. 101 p.

body (S.J. Res. 340). Senator Lugar was willing to support the idea of a committee if it were small and informal. So, too, was Secretary of State Shultz.[28] Whether such a committee should be established by statute or by congressional rules was another unresolved issue, as was the question of whether the committee should meet regularly or only when required for consultation. Regular meetings might be in order because otherwise any unusual contact between Congress and the President might invite press speculation. Critics of administration action also felt that accusations that Congress could not maintain confidentiality were unsubstantiated, but that having a committee designated in advance would make it easier to maintain secrecy.

On the other hand, supporters of the President wished to absolve him from any obligations under the War Powers Resolution when dealing with terrorism. They felt that state-sponsored terrorism is a new threat not foreseen by the drafters of the 1973 legislation, and that it requires the utmost flexibility in response. In their view the use of military force to combat terrorists and their state supporters should not be governed by existing rules for ordinary military interventions.

Although the administration considered that legislation was not necessary, Senate Majority Leader Robert Dole, Senator Jeremiah Denton, and Representatives Joe Barton, Duncan Hunter, and Bob Livingston introduced the Antiterrorism Act of 1986 (S. 2335 and H.R. 4611). This act would have superseded the War Powers Resolution where actions against terrorism are concerned. The President would not have been obliged to consult Congress in advance, nor did the bill provide for a cut-off date for the use of military forces without a congressional authorization of a continued commitment. However, he would be required to report within 10 days (rather than 48 hours as in the War Powers Resolution).

The administration position was that consultation had occurred prior to the April 14 strike,[29] and that the War Powers Resolution applied to such use of military force in self-defense against another sovereign state. However, the administration held that it did not extend to the deployment of specialized military antiterrorist units because they are not conventional military units nor are their missions normal military missions. Military attempts to rescue hostages, they contended, did not require advance consultation with Congress. Nor was the War Powers Resolution considered by the administration to apply to the conduct of routine military exercises in international waters or airspace such as in the Gulf of Sidra.

Arms Transfers to Iran

In November 1986, after the 99th Congress adjourned on October 18, 1986, Congress and the public discovered through press reports originating in Lebanon that American weapons had been secretly sold to Iran by Israel and the United States. After an inquiry by the Attorney General, the administration admitted many of these allegations, including the charge that some profits from the arms

[28] Congressional Quarterly Weekly Report, May 10, 1986: 1021.
[29] See the hearings cited above, War Powers, Libya, and State-Sponsored Terrorism.

sales might have been transferred to the anti-Sandinista guerrillas in Nicaragua, the so-called "Contras," during the time that a congressional ban on aid was in effect.

The affair had important implications for the credibility and coherence of American counter-terrorist policy. Although the administration denied that the primary purpose of providing arms to Iran (against the public position of neutrality in the Iran-Iraq war) was to secure the release of American hostages held by pro-Iranian factions in Lebanon, the U.S. Government appeared to its critics to be following a double standard, stating officially that it would not yield to terrorists but in practice doing so.

Questions were also immediately raised about possible violations of the laws regarding arms transfers, covert intelligence activities, commerce with states who sponsor terrorism, and aid to the Contras. The U.S. foreign policy-making system—the respective roles of the National Security Adviser and Council, the Central Intelligence Agency, and especially the State Department, as well as the extent of Presidential involvement—came under congressional scrutiny as a result of the Iran controversy.

Congress began its attempt to discover the facts behind the arms transfer policy through a series of hearings from November 21 through December 12, 1986.[30] While the intelligence committees of both Houses held only closed hearings, the House Foreign Affairs Committee held open hearings which were nationally televised on December 8 and 9, 1986.

Some Members of Congress called for a special session, but others argued successfully that there was insufficient time for a full examination of the facts. On the other hand, opponents of deferring consideration until 1987 considered that the delay would draw out the investigation unnecessarily, and since the control of the Senate had shifted to the Democratic party after the November elections, supporters of the President feared a partisan treatment of the issue. However, congressional criticism of the administration cut across party lines. Leaders agreed to establish special select committees for each House to investigate the affair thoroughly upon the convening of the 100th Congress in January 1987.

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[30] Congressional Quarterly Weekly Report, December 13, 1986: 3041.

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