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Author(s): Claudia Wright

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The Prohibition Against the Training or Support of Terrorist Organizations Act of 1984

Introduction by Claudia Wright

The latest move by the Reagan administration in the campaign against what it calls international terrorists and state-sponsored terrorism represents potentially one of the most anti-Arab initiatives US officials have recently devised. In drafting this new legislation, the administration has ignored its own Federal Bureau of Investigation (FBI) figures, showing a decline in terrorist incidents in the US; concealed a major terrorist bombing attempt at the US Congress by an Israeli citizen; and overridden objections to the terms of the new legislation by leading officials in the FBI and Congress.

Following the October 1983 attack on the US Marine barracks in Beirut, the administration tried to divert public unhappiness with administration policy in Lebanon to condemnation of international terrorists in general, and to Libya, Syria and Iran in particular as states sponsoring terrorist attacks. The Defense Department's commission of inquiry into the Beirut attack concluded in December that "international terrorist acts endemic to the Middle East are indicative of an alarming world-wide phenomenon that poses an increasing threat to US personnel and facilities," and recommended an "active national policy which seeks to deter attack or reduce its effectiveness."

In the weeks that followed, a variety of public options were debated and approved by the President. On April 3, he signed National Security Decision Directive No. 138, which provided broad authorization for a policy of counter-intelligence and pre-emptive military operations planning which the Defense Department commission had called for. The State Department's April 26 legislative package on terrorism was drafted as part of this effort.

This was done with considerable haste, leaving unresolved objections within the Justice and State Departments over the scope of the legislation. The principal advocates were the State Department's Office for Combating Terrorism, headed by Ambassador Robert Sayre, and the Deputy Assistant Secretary of Defense for International Security Affairs, Noel Koch; Sayre's background is in Central and South American affairs; Koch was the Washington lobbyist for the Zionist Organization of America before he joined the Pentagon. At the FBI there were factions opposed and factions in favor of the new proposals, while the FBI Director, Judge William Webster, tried to play down the seriousness of the domestic threat without undermining the administration's public position.

Two of the four bills sent to Congress are padding. They deal with hostage-taking and aircraft sabotage and implement international conventions the US agreed to several years ago. Until now neither the administration nor the Congress considered them urgent enough to put into US law. A third bill would increase the cash rewards and promises of attracting intelligence on conspiracies to attack US citizens and facilities at home and abroad.

No one can dispute the fact that the Reagan administration has attracted a degree of hostility and violence that is unprecedented for Americans in the Middle East; in Mr. Reagan's three years, more Americans have been killed in international conflict than since the end of the Vietnam war. Administration officials want to believe they are dealing with a new type of violence they call international terrorism. What they call terrorism, however, others call civil warfare, national liberation, or resistance to military intervention or invasion. The label of "state terrorism" applied by the administration to acts by Arabs in Lebanon is used by others for US government policy in Central America. Controversies like these have made it impossible in the past for the US government to legislate a definition of international terrorism for purposes of criminal prosecution and extradition.

This is what makes the fourth bill the State Department has drafted so

significant. For the first time, the US is planning to adopt a definition of terrorism and of unlawful assistance to terrorism that covers a wide range of political, economic and military acts, whether carried out in a state of war or not. If enacted, the effect would be to ignore the political and military context in which US forces have intervened in order to target only those groups, political parties and states which are opposed to the intervention. It grants the State Department discretion, unchecked by Congress, to brand some activities as terrorist, while supporting others of the same kind. In the President's message to Congress, Mr. Reagan made clear how one-sided his view of terrorism is. Referring to the reason for the new legislation, he spoke of "the tragic deaths of our diplomats and Marines, as well as French and Israeli soldiers in Lebanon"—the legality of the Israeli presence in Lebanon was assumed; the deaths of many hundreds of Arabs as a result of the Israeli invasion totally ignored.

In the bill, the administration proposed to empower the Secretary of State to designate states, "factions" (a term defined to include political parties) and groups as supporting international terrorism. No appeal or challenge to the factual basis of a designation is permitted. Once made, it would be unlawful for American citizens, companies or residents to "serve or act in concert with" such states or groups, provide "training," "logistical, mechanical, maintenance or similar support services," or "recruit or solicit" others to do these things. The legislation makes these activities criminal, and subject to fines and imprisonment, wherever *in the world* they are committed. In addition, non-US nationals would be subject to criminal prosecution if they provided such services to designated states or groups in the US.

There are several new elements in the legislation. Previous attempts to define international terrorism in Senate bills of 1979 and 1981 carefully distinguished terrorist violence from acts committed in the context of a civil war or insurgency, and from acts "committed in the course of military or parliamentary operations directed essentially against military forces or military targets of a state or an organized group." These bills failed to pass. Under the 1979 and 1981 legislation, the attack on US Marines in Lebanon would not legally be a case of international terrorism. Under the new proposal, the Secretary of State can ignore the political context and the legality of the American military presence in a foreign state in which violence occurs.

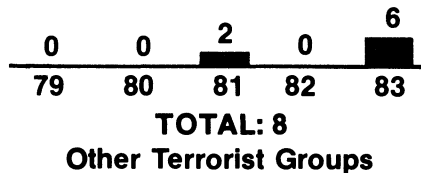
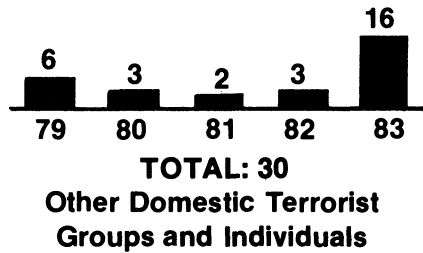
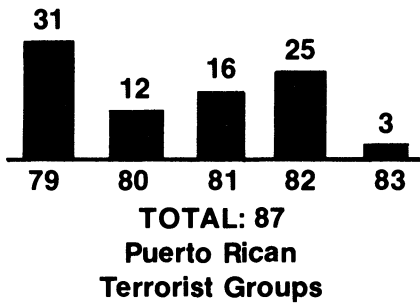
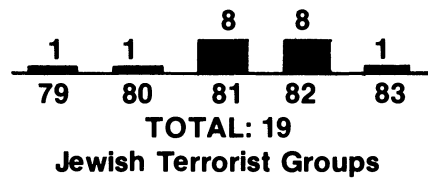
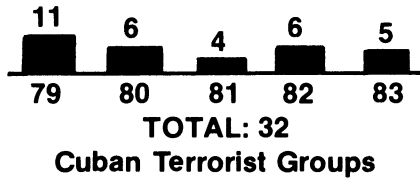
Extra-territoriality is another new element in the legislation. As the administration has attempted to do in its export and trade embargo proposals, the legislation aims to sanction acts even if they occur under the jurisdiction of foreign states. For US companies, this means that the provision, say, of telephone or telex services to an organization like the PLO, which may be designated a terrorist group, could be subject to criminal prosecution, whether the service is provided in Washington, at the United Nations in New York, or anywhere outside the US. If Libya, Syria and Iran are designated as states supporting terrorism, the language of the bill is so broad that their nationals could be subject to prosecution if they visit the US. Palestinians belonging to any of the constituent units of the PLO or the Palestine National Council would be equally at risk. So too members of Polisario, Swapo, the African National Congress, the Irish Republican Army or Armenian organizations.

Given the anti-Arab bias in the administration's initiative, it is unlikely that if the bill becomes law, the Secretary of State would designate the Israeli terrorist groups recently uncovered by the Shin Bet or their American supporters and fund-raisers as terrorists within the meaning of the law. Legally, however, there should be no difference between the activities of Americans supporting the Irish Republican Army, which the FBI has identified as illegal support of terrorism, and those of American Jews who work in the same way on behalf of Gush Emunim, Terror Against Terror (TNT), and other Zionist terrorist groups operating against Arabs in the occupied territories.

According to statistics on terrorism prepared by the FBI's Terrorist Research and Analytical Center, Zionist groups in the US like the Jewish Defense League (JDL), and its offshoots have been the *third most active* source of domestic terrorist incidents for several years. Despite extensive media campaigns regarding Libyan, Lebanese and Shi'ite hit squads said to have targeted US officials for assassination, Arab terrorism, according to the FBI, has been almost non-existent in the US.

There is a curious omission in the FBI statistics for 1983. Although they include a bomb explosion which took place in a Senate area of the US Capitol on November 7, there is no reference at all to an attempted bombing in the gallery of the House of Representatives three weeks before, on October 18. The FBI has reported that the November 7 incident was the work of a little-known group called the Armed Resistance Unit (ARU), which also claimed responsibility for bombings early in 1983 at Fort McNair and the Navy Yard, two military installations

Table I*
Trends in Terrorist Activity
in the U.S. 1979-1983
1983 Number of Incidents: 31



*Tables I and II are excerpted from the current FBI *Annual Terrorist Report*.

According to the US Capitol police, in the earlier incident a man stood up in the visitors' gallery of the House of Representatives and was arrested by police. He was then found to have on his body a Molotov cocktail-type bomb which was improperly wired and could not be detonated. The man was identified as Israel Rabinowits, a 22-year old Israeli citizen. Had the bomb exploded, police think it might have caused burning and physical

harm to both visitors and members of the House assembled on the floor below the gallery. Rabinowits was not branded as a terrorist, and the incident received very little publicity. He was convicted of a relatively minor offense and released for deportation to Israel.

The administration's anti-terrorism bill has been criticized by the American Civil Liberties Union (ACLU), the *Washington Post*, and several Congressmen, including Don Edwards, Chairman of the House Subcommittee on Civil and Constitutional Rights. Opposition to the bill was so strong in the subcommittee and in the full House Judiciary Committee that the administration could find no Democrat willing to introduce it at the President's request. It was forced to appeal for support to members of the House Foreign Affairs Committee, where the pro-Israel faction is strongest.

Critics of the broadness of the new bill have pointed out that existing statutes cover all of the criminal acts contemplated under the new act; the difference, they say, is that the new legislation creates an entirely new class of criminal activity based on an ideological judgement made within the State Department. There is likely to be strong opposition in Western Europe to the extra-territorial jurisdiction claimed by the US. In the atmosphere created by the recent Anglo-Libyan crisis, and by the general Iranian threat to the Gulf Arabs, it is unlikely the Arab states or the Arab-American organizations will want to oppose the legislation too forcefully or visibly, however suspicious they may be of becoming the targets of the legislation later on.

The administration has tried to assuage these concerns by claiming that "few governments or groups will be named and the section is not intended to interfere with the legitimate international trade in which many US suppliers of services and technology engage."

The *Washington Post* responded editorially by saying that:

labeling large categories of people as unacceptable associates is a dangerous precedent. Giving a single individual the power to designate those groups and to criminalize conduct in association with the group is irresponsible . . . Violent acts that occur in this country, or on American ships and planes, can be dealt with using existing statutes. Congress should decide what acts—not what groups—abroad should be tied to the American criminal justice system.

By mid-June despite the administration's effort to publicize and lobby for its proposals, opponents in Congress were able to force officials who had been lukewarm in backing the original legislation, to offer a compromise. The State Department proposed naming only states under

Table II
1983 Terrorist Incidents by Terrorist Group,
Number and Type of Incident

	Actual Bombing	Attempted Bombing	Actual Firebombing	Hijacking	Attempted Robbery	Armed Robbery	Rocket Attack	Kidnapping	Takeover	Arson	Assassination	Assault	Injured	Killed	Total Incidents
Cuban Terrorist Groups															
Omega Seven	4	1													5
Jewish Terrorist Groups															
Jewish Defense League (JDL)	1														1
Puerto Rican Terrorist Groups															
Ejercito Popular Boricua—Macheteros (EPB—Macheteros)			1	1	1									1	3
Other Domestic Terrorist Groups and Individuals															
*Armed Resistance Unit (ARU)	3														3
Individuals' Actions			1						1						1
Republic of Revolutionary	1														1
Revolutionary Fighting Group (RFG)	1														1
Sheriff's Posse Comitatus (SPC)											1				1
United Freedom Front (UFF)	4	1													5
Unknown Group—FUQRA		1							1	1					3
Other International Terrorist Groups															
Ejercito Revolucionario del Pueblo (ERP)															6
Unknown Haitian Group		4													4
Unknown Philippine Group														1	1
Totals	14	7	1	1	1	1	1	1	1	1	1	1	1	1	31
															4
															6

*One of these bombings was claimed jointly with the Farabundo Marti Liberacion Nacional.

**It should be noted that 2 additional deaths resulted from the arrest of a SPC member on 6/3/83.

the new legislation, and abandoned language in the draft bill that would have allowed designation of groups or factions.

This was still unacceptable to US civil rights groups. Instead, pro-Israel members of the House Foreign Affairs Committee, who did not want to vote against their civil rights supporters, suggested the entire bill dealing with training and support of terrorism be scrapped; in its place it was recommended the administration enlarge the existing export control law and create a licensing system for a broadly defined category of services that US companies, subsidiaries and individuals provide foreign states.

Under a 1979 amendment of the Export Administration Act—known after its sponsor as the Fenwick Amendment—the State Department already designates each year countries it judges to be involved in repeated acts of terrorism. Iraq was listed until 1982, and pro-Israel Congressmen have been seeking to reinstate it on the “terrorism list”; Cuba, Iran, Libya, Syria and Yemen (PDRY) are currently listed. The law empowers the pro-Israel bloc to exercise strong pressure to stop licenses being issued for US exports to Arab states, particularly for goods like light aircraft and heavy trucks that can be considered to have potential military applications.

The new State Department proposal reduces the original scope of the administration attack, but it still represents a major new weapon against regular American contacts and trade with the Arab world. It expands the Israel veto and increases the scope for arbitrary anti-Arab action, since under the proposed compromise the Secretary of State would have the power to define in regulation, not only what countries are covered, but what types of services would require licensing. Satellite and cable communications, for example, banking, insurance, information-gathering, charitable fund-raising, and publishing may all be affected. Congress has lost its former power to veto government regulations, and if the anti-Arab objectives of the legislation can be accomplished without directly intruding on American civil rights, there may be enough Congressional support—if not immediately, then after the elections—to give the government what it wants.

DOCUMENT

A bill to prohibit the training, supporting, or inducing of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SEC. 1. *This Act may be cited as the "Prohibition Against the Training or Support of Terrorist Organizations Act of 1984."*

SEC. 2. *Title 18 of the United States Code is amended by adding the following new chapter after chapter 113:*

CHAPTER 113A—TERRORISM

SEC. 2331. *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 anywhere in the world 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 determination in effect under subsection (d);

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

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

"(b) Except as provided in subsections (h) and (i), 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 or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

“(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination 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 \$100,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

“(d) Whenever the Secretary of State 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 determination naming such foreign government, faction, or international terrorist group for which such finding has been made. If the Secretary of State finds that the conditions which were the basis for any determination issued under this subsection have changed in such a manner as to warrant revocation of such determination, or that the national security or foreign relations of the United States so warrant, he may revoke such determination in whole or in part. Any determination issued pursuant to this subsection shall cease to have any effect one year from the date of its publication unless renewed at or before that time by the Secretary of State. Any determination, or the renewal or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately upon publication. Any revocation or lapsing of a determination shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

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

section (d).

“(i) Nothing in this section shall be construed to create criminal liability for any activities conducted by officials of the United States Government, or their agents, 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)). . . .”

[The Foreign Surveillance Act of 1978 (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 kidnapping; 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.”]