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INTERNATIONAL TERRORISM AND THE UNITED STATES:
POLICY CONSIDERATIONS FOR THE 1990'S

BY

Lieutenant Colonel Thomas G. Wilson
Senior Service College Fellow
Georgetown University

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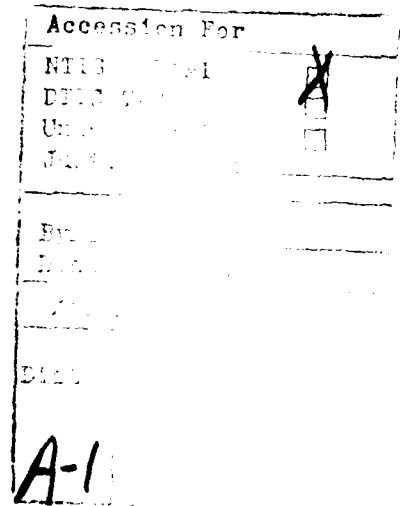
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LIEUTENANT COLONEL (P) THOMAS G. WILSON

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ABSTRACT

AUTHOR: Thomas G. Wilson, LTC (P), FA

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INTERNATIONAL TERRORISM AND THE UNITED STATES:
POLICY CONSIDERATIONS FOR THE 1990S

CHAPTER I

INTRODUCTION

Mayhem and death among the unsuspecting have traumatized civilizations since the beginning of time. It made no difference whether it was an Anarchist's bomb, a thrusting dagger from a hashish crazed Assassin, or the strangling rumal of a Thug, the affects were the same-- they induced anxiety and intense fear into segments of the society-- the society was effectively terrorized. The concept of terror and its use to achieve specific objectives is certainly not a modern technique. However, most of the literature on terrorism focuses on the period between the 18th Century and the problems of today's international terrorism. There are very few differences between terrorism today and the terrorism of the past. Technology has changed some of the weapons involved, and the growth and technological advances of the news media have allowed much greater publicity for a single incident, but the tactics (bombings, assassinations, piracy, etc...) and the

overall impact remain the same. The frustration and anger President Jefferson showed in dealing with Colonel Quachfi's forefathers, the Barbary pirates, was no different from the frustration and enmity President Reagan expressed for Quachfi. Jefferson, in writing to Nathaniel Greene regarding the problem of piracy, indicated "that the outrage left the faculty of his mind absolutely suspended between indignation and impotence."¹ That compares closely (although President Reagan was not as eloquent) to President Reagan's expressed feelings regarding the hostage situation in Beirut when he said "I'm as frustrated as anyone. I've pounded a few walls myself when I'm alone, about this."²

Frustration and anger on the part of the target government are characteristics of the response desired by terrorists. The purpose of this paper is to examine international terrorism, its effect on the U.S. and provide policy considerations to respond to terrorism in the coming decade. The terrorist massacres at the Munich Olympics and Lod Airport in 1972 represent the beginning of the development of the U.S.'s formal response to terrorism. Consequently, the discussion will focus on the period from 1972 to the present. This paper is organized into four chapters. Chapter one, the introduction, addresses the definitional problem, as well as the changing character of international terrorism. Chapter two examines the evolutionary process of policy development in the U.S.'s struggle against terrorism. Using chapter two as a foundation, chapter three outlines considerations for a credible policy to

eter Terrorism. Chapter four presents a brief conclusion.

THE DEFINITIONAL PROBLEM

Before moving into a discussion of terrorism and the U.S.'s response, it is necessary to define a few of the key terms associated with terrorism. Terrorism should be an easy term to define, but as Walter Laqueur points out (an author of a recent research guide....has collected 109 different definitions...of political terrorism provided by various writers between 1936 and 1981."³ Certainly, during the last nine years a few more have been added to that list. In an article for Terrorism: An International Journal, Christopher Joyner in addressing the definitional problem of terrorism summed it up by saying, although terrorism is hard to define "it is like pornography, you know it when you see it."⁴ Suffice it to say there are many definitions of terrorism, each tailored to a specific argument or theory. Since this paper focuses on the U.S. government's response to terrorism, the definition of terrorism as presented by the Vice President's Task Force On Combatting Terrorism will be used:

It is the unlawful use or threat of violence against persons or property to further political or social objectives. It is generally intended to intimidate or coerce a government, individuals

or groups to modify their behavior or policies.⁵

With this understanding of terrorism, international terrorism can be simply defined as "terrorism involving citizens or territory of more than one country."⁶ For the purpose of this paper when terrorism is discussed, the discussion will be referring to international terrorism as opposed to domestic terrorism). Two other terms that are critical to the understanding of terrorism and the U.S.'s response are the terms "antiterrorist" and "counterterrorist." There is a critical difference. Antiterrorist "denotes an offensive strategy employing a range of options to prevent terrorist acts from occurring."⁷ The key word is "prevent." Counterterrorist usually refers to "retaliatory measures, primarily the use of force, after the fact."⁸ The key words here are "retaliatory" and "after the fact." One finds that many commentators on the subject of terrorism, including many government officials, lack an understanding of the terms and often use them interchangeably. The misuse and lack of understanding helps promote a confused policy.

Although not directly related to the definitional problem of terrorism, the controversy regarding the differences between terrorists and insurgents often arises. The controversy is most often associated with the worn out cliché "one man's terrorist, is another man's freedom fighter." In the world today, the cliché boils down to "if they are ours, they are freedom fighters; if they are yours, they are terrorists."

However, a close examination of the characteristics of political terrorism and insurgency reveals distinct differences between the two. Certainly, most insurgents have resorted to terrorist tactics at one time or another during their campaigns, but these tactics are usually considered to be an aberration conducted in support of a larger operation usually to harass or agitate the government. The insurgents are conducting an armed revolt against a recognized government. Their targets are usually military or government related. Insurgents wear uniforms (the uniforms may only consist of some distinguishing symbol or feature, such as the scarfs of the Khmer Rouge) and operate in the open using military tactics. Their activities and interests are confined to a single state. Their operations are governed by the international rules of armed conflict. Terrorists, on the other hand, prefer their targets to be innocent civilians, they rarely attack military targets. Terrorists rely on the inducement of fear and anxiety through the threat or use of violence to accomplish their goals. Terrorists operations are usually international in character and rely on coercion and intimidation through kidnappings, hijackings, assassinations, and bombings instead of military confrontation. Mixing the distinction between terrorists and insurgents assists the terrorists in their attempt to claim the mantle of legitimacy accorded insurgents involved in recognized "wars of liberation" by the U.N. (the issue of terrorists and their quest for legitimacy is discussed in more detail in the second chapter).

THE CHANGING CHARACTER OF INTERNATIONAL TERRORISM

One of the primary contributors to the definitional problem of terrorism is its changing nature. Looking at terrorism during the period between 1972 and 1990, the major change that has occurred is the increase in what has become known as "state sponsored" terrorism. State sponsored terrorism can be defined as:

Those states that support international terrorist groups or engage in terrorist attacks to influence policies of other countries, to establish or strengthen regional or global influence, and, in some cases, to eliminate or terrorize dissident exiles and nationals from adversary countries.⁹

Many authors have described state sponsored terrorism as a cheap way for third world nations to conduct war against western democracies and not be held accountable for their actions. Currently the U.S. has identified six nations- Libya, Syria, Iran, South Yemen, North Korea and Cuba, as state sponsors of terrorism.¹⁰ Through an examination of the statistics kept by the State Department one can see the significant increase in state sponsored terrorism. There were

56 reported state sponsored terrorist acts between 1976 and 1983 (comprising 1.5% of the reported terrorist acts during that period), compared to 456 reported state sponsored terrorist acts between 1983 and 1987 (comprising 15.3% of the reported terrorist acts during that period).¹¹ The mere increase in the numbers of state sponsored incidents does not begin to portray the seriousness of the problem. The state sponsored incidents tended to be the most spectacular and deadly of the terrorist attacks. The year 1983 signaled the beginning of the major state sponsored terrorist attacks. During an 18 month period, between April 1983 and September 1984, Islamic Jihad, the covert and operational arm of Hizballah committed suicide car bomb attacks against: the U.S. Embassy and the U.S. Marine and French military barracks in Beirut; Israeli Headquarters in Tyre; U.S. and French Embassies in Kuwait; and concluded the bloody 18 month period with another suicide truck bombing against the U.S. Embassy Annex in east Beirut.¹² The most dramatic and spectacular attacks were the suicide bombings of the Marine and French military barracks. These attacks resulted in 296 deaths and many more wounded; they ultimately caused the withdrawal of the multinational peace keeping force and accelerated the internecine violence that dominates Lebanon today. All of these attacks were carried out with the assistance and sponsorship of Iran and Syria.¹³

For a terrorist organization, the advantages derived from state sponsorship cannot be overstated. The most significant

advantages are: the provision of a safe-haven; secure training areas; use of the host state's intelligence service; and use of diplomatic privileges. The most important of these advantages is a safe haven. Terrorist organizations without state sponsorship spend a great deal of time and resources evading capture. With state sponsorship, terrorist organizations can usually operate with impunity within the state. The safe-haven usually guarantees an abundance of training areas which may even include sophisticated training areas used by the host state's armed services. The terrorist may also have the use of the state run intelligence organization to assist in planning terrorist operations. The use of diplomatic privileges greatly enhances the terrorist ability to operate safely in foreign countries. Through the use of the diplomatic pouch to transport weapons and explosives, terrorists can evade the normal security procedures found at airports and other typical entry points. In addition to the use of the diplomatic pouch, terrorists can obtain numerous official passports providing an unlimited supply of false identification. The advantages offered through state sponsorship compared to a non-state sponsored environment are considerable.

The trend toward state sponsored terrorism is not the only element of international terrorism that is undergoing change. During the decade of the eighties the world witnessed the emergence of terrorist organizations for hire. Probably the most notorious and deadly is the Abu Nidal Organization (ANO) or as it is officially known "Fatah-the Revolutionary Council."

The ANO made its debut in 1973 but did not gain its deadly reputation until the early eighties.¹⁴ The ANO has frequently changed state sponsors, beginning with Iraq, then Syria, and most recently Libya.¹⁵ Although it has received state sponsorship the ANO has always maintained its own political agenda and conducted independent terrorist operations.¹⁶ The ANO may now be looking for new sponsorship as Qadhafi shows signs of beginning to move away from sponsoring terrorist organizations.¹⁷ Recently the ANO has shown signs of internal dissent, with purges being conducted within its own ranks.¹⁸ This may be a result of the ANO showing the difficulties of being a state sponsored terrorist organization while trying to remain a organization for hire with its own political agenda. The other major organization that has emerged as a group for hire is the Popular Front For The Liberation Of Palestine-General Command (PFLP-GC). The PFLP-GC is led by Ahmed Jibril and is sponsored primarily by Syria, with some backing by Libya.¹⁹ Although the investigation is not complete, the bombing of Pan Am Flight 103 appears to have been conducted by the PFLP-GC.²⁰ Jibril's group allegedly received 1.3 million dollars from Iran to bomb the Pan Am flight as retaliation for the Iranian Air Bus that was shot down by a U.S. warship in the Persian Gulf in July 1988.²¹

In an attempt to characterize the nature of terrorism that will face the U.S. in the 1990's, one would conclude that the two trends that emerged in the closing years of the 1980's, terrorist groups for hire and state sponsorship of terrorist

groups, will continue to be the major concern of the U.S.'s terrorism policy. The fact that terrorist groups may hide themselves out for operations that may not align with their traditional ideology or state sponsor, is significant because it makes it more difficult to determine which state or group is responsible for the operation. An example is the alleged Iranian complicity in the Pan Am Flight 103 bombing. The connection between Iran and the PFLP-GC was not immediately apparent since there were no previously established links between the two; however, if Islamic Jihad was responsible for the bombing it would have been logical to assume the connection to Iran, since Islamic Jihad is considered to be one of Iran's "proxies". The trend towards state sponsored terrorism is important because the U.S. needs to recognize it for what it is--a highly successful, cheap form of warfare that is very attractive to third world nations. Its success was clearly demonstrated in 1984 as the U.S. was forced to alter its foreign policy in the Middle East and along with its allies withdrew their forces from Lebanon.

Having discussed terrorism, its definitional problem and the trends of contemporary terrorism, it is important to view the problem of terrorism in context. In what some terrorists may consider as their most successful years, 1983-when 266 Americans were killed and 1988-when 189 were killed, terrorists still could not match the number of Americans gunned down by fellow Americans in major U.S. cities.²² Every year U.S. citizens prove that drunk drivers are better at killing

Americans that terrorists could ever hope to be. No administration has ever claimed that the national security of the U.S. has been threatened by terrorists. The question that often arises then, is why is the U.S. so concerned and preoccupied with the business of terrorism? The answer is not a simple one. The individual acts of terrorism are not as crucial as the U.S.'s response to the terrorist acts. Terrorism becomes critical to the U.S. when the response or lack of response demonstrates impotence or undermines the creditability of the U.S. The remainder of this paper will examine the problems of formulating a creditable U.S. policy addressing terrorism.

ENDNOTES

1. Walter Laqueur, The Age of Terrorism, Boston, Little, Brown & Co, 1987, p. 298.

2. George J. Church, "An Attack On Civilization," Time, July 1, 1985, p. 8.

3. Laqueur, p. 143.

4. Christopher C. Joyner, "In Search Of An Anti-Terrorism Policy: Lessons from the Reagan Era," Terrorism: An International Journal, Vol 11, Number 1, 1988, p. 30.

5. Vice President's Task Force on Combatting Terrorism, Public Report of the Vice President's Task Force on Combatting Terrorism, Washington, D.C., Government Printing Office, February 1986, p. 1.

6. James B. Motley, "Target America: The Undeclared War" in Neil C. Livingstone's and Terrell E. Arnold's, Fighting Back, Lexington, Lexington Books, 1987, p. 79.

7. Ibid, p. 61.

8. Ibid.

9. Ibid, p. 79.

10. U.S. Laws, Statutes, etc. Public Law 96-72, 96th Congress, September 29, 1979. "The Export Administration Act of 1979." Section 6 (j) of the Act requires the Secretary of State to provide to Congress on an annual basis, a list of states that support terrorism. The states footnoted are the most recent designees as of January 21, 1990.

11. Cecilia Albin, "The Politics of Terrorism: A Contemporary Survey," in Barry Rubin's, The Politics of Terrorism: Terrorism as a State and Revolutionary Strategy, Washington, D.C., Johns Hopkins Foreign Policy Institute, 1989, p. 184.

12. U.S. Defense Intelligence Agency, Terrorist Group Profiles, Washington, D.C., Government Printing Office, January 1989, p. 15.

13. Over the years, many sources have attributed these attacks to terrorist groups operating with state support from Iran and Syria (primarily Hizballah and their affiliated organizations). Some sources are Eric Pace, "Car Bombing Has Become Favored Tactic of Terrorists in the Middle East", The New York Times, September 21, 1984, p. A-13; Robert Kupperman and Jeff Kamen, Final Warning, New York, Doubleday, 1989, p. 7; and Steven Emerson, Secret Warriors, New York, G. P. Putman's Sons, 1988, p. 230.

14. U.S. Defense Intelligence Agency, p. 6.

15. Ibid.

16. Ibid.

17. Jennifer Parmelee, "Libya Seen Cutting Support to Rebel Groups," The Washington Post, September 5, 1989, p. A-15. News Services, "Gadhafi: Libya Quit Funding Terror Groups," The Washington Post, October 27, 1989, p. A-26.

18. Jihan El-Tahri, "Terrorists Said to Seek Overthrow of Abu Nidal," The Washington Post, November 20, 1989, p. A-28.

19. U.S. Defense Intelligence Agency, p. 26.

20. The investigation is now over a year old and no individuals or organizations have been charged with the murder of the 270 people who were killed as result of the downing of Pan Am 103. Many sources (The Washington Times, The Washington Post, New Yorker Magazine and ABC News) have named the PFLP-GC, headed by Ahmed Jibril as the organization responsible for the bombing of the aircraft. On 30 November 1989 ABC News'

Primetime Live" presented an hour program, "The Truth about Pan Am 103", which detailed an investigation ABC had been conducting for eleven months. Their program discussed in great detail the plan supposedly used by Ahmed Jibril to destroy Pan Am 103. Other sources are Johan Rapp, "Suspect Named in Pan Am Bombing," The Washington Times, December 5, 1989, p. A-7; Bill Gertz, "Only mystery in Flight 103 case is how bomb got on plane," The Washington Times, December 21, 1989, p. A-2; David Cody and David B. Ottaway, "Pan AM Probe Focuses On Palestinian Held in Sweden," The Washington Post, December 5, 1989, p. A-1; and John Newhouse, "Annals of Intelligence", New Yorker, July 10, 1989, p. 7.

21. There appears to be some speculation about the amount of money Ahmed Jibril's PFLP-GC was to receive from Iran for the destruction of Pan Am 103. In Kupperman's Final Warning, he cites a May 1989 report in the German magazine "Quick" as saying Iran paid 1.3 million dollars to Jibril for the destruction of Pan Am 103. Kupperman also cites a Washington Post article on 11 May 1989 saying a CIA assessment confirmed Iran paid the PFLP-GC to down the Pan Am aircraft. On 30

November 1989, ABC's Primetime Live, in "The truth About Pan Am 103", indicated Jibril met with Ali Akbar Mushtashini,

Iran's Minister of Interior at the time, on the outskirts of Damascus during the summer of 1988. During the meeting, ABC alleged Mushtashini negotiated with Jibril the price of 10 million dollars to destroy one American plane in retaliation for the destruction of the Iranian Air Bus that was downed mistakenly by the U.S. in July 1988. In an article on 21 December 1989, Bill Gertz of The Washington Post wrote "Iran's Revolutionary Guards paid the PFLP-GC several million dollars to stage bombings in retaliation for the downing of the Iranian Air Bus in July 1988." Gertz went on to say, "electronic intercepts made by Western intelligence agencies in the Middle East confirmed that Iran was the sponsor of the attack and that the PFLP-GC carried it out."

22. Threat Analysis Division, Bureau of Diplomatic Security, U.S. Department of State, Significant Incidents of Political Violence Against Americans: 1988, Washington, D.C., U.S. Department of State, May 1989, p. 3.

CHAPTER II

EVOLUTION OF UNITED STATES POLICY

Writing in Neil Livingstone's Fighting Back, James Motley assessed the U.S.'s policy on terrorism saying "In short, as a nation, the United States does not understand terrorism, and as a government, it is not prepared to deal with terrorist violence. U.S. antiterrorist policy is declaratory; its strategic thinking is reactive."¹ Although Motley provided this assessment in the mid eighties, similar criticism has been directed at U.S. administrations from the early 1970s through the end of the 1980s. To better understand why many authors basically agree with Motley, it is necessary review how U.S. policy evolved.

THE EXECUTIVE BRANCH

The 1972 terrorist massacres at the Munich Olympic games and Tel Aviv's Lod airport awakened the world, and the U.S. in particular, to the threat of terrorism. In September of that year President Nixon established the first administrative structure to deal with the problem of terrorism.² It was called the Cabinet Committee to Combat Terrorism.³ The Committee was chaired by the Secretary of State and was supported by a working group of his personally designated senior representatives.⁴ It is important to point out that

although the working group was centered in the State Department, the Cabinet Committee was comprised of various cabinet members and was an executive committee. There was no formal structure set up in the State Department during this period to combat terrorism.

Having established the Cabinet Committee to Combat Terrorism, Nixon faced his first major terrorist incident on March 1, 1973. During the evening of 1 March eight members of the Black September Organization seized the Saudi Arabian Embassy in Khartoum.⁵ The U.S. Ambassador, Cleo Noel, and the Deputy Chief of Mission, George Moore, were present at the Saudi Embassy when it was seized.⁶ The terrorists demanded "the release of 60 Palestinians held in Jordan, all Arab women detained in Israel, Sirhan Sirhan, and imprisoned members of the Baader Meinhof Gang held in the Federal Republic of Germany."⁷ In response to the terrorists demands Nixon expressed what has become the foundation of U.S. policy through the 1980's: "The United States will not give in to terrorist blackmail. It will not pay ransom, release prisoners or bargain for the release of hostages."⁸ Although this policy was adopted because it was felt that concessions to the terrorists would jeopardize the lives and freedom of additional innocent people in the future, it was not without short term cost.⁹ Both Ambassador Noel and Deputy Chief of Mission Moore were murdered by the terrorists.¹⁰

Throughout the Nixon and Ford administrations the Cabinet Committee was inactive, meeting only once, shortly after it was

formed in 1973. In 1975 the Office for Combatting Terrorism was established at the State Department.¹¹ This gave the State Department two organizations involved in the fight against terrorism: the new Office for Combatting Terrorism and the working group that supported the older Cabinet Committee. One of the problems that began to emerge with the working group was the continuous change in the chairmanship of the group. Between the years 1972 and 1978 the chairmanship changed seven times.¹² It was also during this period that the working group saw its membership increase from its original ten members to thirty-one federal agencies and departments.¹³ With the dramatic increase in membership it was apparent that by the middle of the Carter administration the working group, designed to support the decision makers, had become a large and somewhat ineffectual bureaucracy.

In 1977 President Carter revised the administrative structure.¹⁴ He created the Special Coordination Committee to the National Security Council, making it responsible for overseeing the efforts of all governmental agencies involved in the fight against terrorism.¹⁵ He also replaced the old Cabinet Committee with a senior-level interagency group called the Executive Committee on Terrorism, and towards the end of his administration, in an effort to improve the operation of the cumbersome working group, he reorganized it along functional lines.¹⁶

Along with the changes made in the administrative structure, President Carter informally established the "lead

agency concept. Essentially, the concept involved dividing the terrorist incidents into three categories (international incidents, domestic incidents and aircraft hijackings) and assigning governmental departments and agencies operational responsibility for a particular category. The Department of State was assigned responsibility for international incidents, the Department of Justice and the FBI were assigned responsibility for domestic incidents, and the Federal Aviation Administration was assigned responsibility for hijackings.¹⁷ This basic policy was later codified by President Reagan when he issued National Security Decision Directive (NSDD) 30 and the policy remains in effect today.¹⁸

One of two issues that plagued the Carter administration was the context in which the problem of terrorism was viewed. The administration was accused of viewing terrorism as a symptom of the human rights problem- violence that had its roots in poverty, injustice and political repression."¹⁹ However, as Robert Kupperman pointed out, this flew in the face of what the administration had just been confronted with in the Iranian Hostage crisis- terrorism as a function of low intensity warfare, sponsored by a state, not a group; and even if it were true that small groups, not states were primarily responsible for terrorism, "the U.S. could not have single-handedly swept away the historical injustices, or economic and social tragedies that give rise to terrorism."²⁰ However, the Carter administration had difficulty recognizing that.

The second issue dealt more with how President Carter personally handled the problems of terrorism. During the last year of his administration he was confronted with the first major case of state supported terrorism. In November 1979 militant Iranian "students" took over and occupied the U.S. Embassy in Terhan, holding 52 hostages for 444 days.²¹ President Carter allowed himself to become inextricably involved in the fate of the hostages. Once he signaled the government of Iran that the success of his administration was tied to the release of the hostages, his fate and the fate of the administration was sealed. In April of 1980 President Carter authorized a daring rescue attempt to obtain release of the hostages. Unfortunately the attempt ended in disaster. A refueling aircraft and troop carrying helicopter collided at an Iranian desert check point, resulting in the death of eight of the rescuers.²² From a policy standpoint the decision to conduct a rescue mission was an important step in the fight against terrorism. It demonstrated that the U.S. would not hesitate to violate another country's sovereignty to rescue its citizens and punish terrorists. If the rescue mission had been successful President Carter would have certainly become an extremely popular President, and Iranian sponsored kidnappings would have probably decreased. However, with the failed rescue mission, Carter's problems were compounded; not only had his administration failed in its diplomatic efforts to obtain the release of the hostages, but the failed mission demonstrated the military's ineptitude for planning and executing a rescue

mission. For 444 days the Iranian government continuously demonstrated the impotency of the U.S. Had Carter played down the importance of the hostages by separating the Presidency from the hostage issue and leaving the negotiations and public statements to the governmental organizations he created, the outcome may have been different. Unfortunately, the problem of establishing linkage directly between the President and the release of the hostages was to be repeated, although to a lesser extent, by President Reagan during the hostage crisis in Lebanon in the 1980's.

The 52 hostages, after being held in captivity for 444 days, were released on President Reagan's inauguration day. President Reagan began his presidency with tough rhetoric promising "swift and effective retribution" against terrorists.²³ His Secretary of State, Alexander Haig, using the same tough rhetoric promised that the fight against terrorism would receive the same priority as the battle for human rights did in the Carter administration.²⁴ Unfortunately, the Reagan administration was characterized as one in which the action taken against terrorists never matched the rhetoric.

The administrative structure that supported the fight against terrorism in the Reagan administration closely paralleled the structure that was in place at the end of Carter's administration. Basically all that took place was some name changes among the organizations and a few minor changes in membership : The Special Coordination Committee

became the Special Situation Group, with the Vice President as chairman; the Executive Committee on Terrorism became the Interdepartmental Group on Terrorism.²⁵ As in the formation of any new organization, the changes were made to suit the operating style of the new administration.

One of the first major terrorist incidents to have an impact on Reagan's administration was the kidnaping of Brigadier General (BG) James Dozier by the Italian Red Brigades on December 17, 1981. The important issue that emerged from this incident was the resulting confusion over which governmental agency was in charge of the operation.²⁶ Steven Emerson contends that the bureaucratic infighting between the U.S. Ambassador to Italy, the Commander in Chief European Command, Joint Special Operations Command and the Joint Chiefs of Staff endangered BG Dozier's rescue.²⁷ The confusion led the President to issue NSDD 30 which formalized the "lead agency" concept President Carter had adopted during his administration.²⁸

As discussed in the first chapter, major terrorist attacks, sometimes of a spectacular nature, were conducted against the U.S. during the 1980's. The problem the Reagan administration encountered was living up to its tough rhetoric, especially the promised "swift and effective retribution." Controversy began to emerge within the administration concerning how much and what type of intelligence was required before the U.S. could strike back at the terrorists. Central to the controversy were the questions of "certainty, proof,

morality and matters of practicality.²⁹ One of the more often discussed examples which illustrates the controversy was the intelligence acquired after the 1983 car bombings of the U.S. Marine and French military barracks in Beirut. Most of the intelligence implicated the Iranian backed Hizballah, acting with assistance from Syria, as being responsible for the attacks.³⁰ Following the attacks on the barracks, the administration secretly debated for weeks whether the intelligence collected was adequate to conduct combined air strikes with the French on terrorists base camps in the Bekaa Valley.³¹ The debate was finally ended on November 17, 1983 when the French, tired of U.S. hesitation, acted alone and struck terrorists targets in the Bekaa Valley.³² The U.S. took no action against the terrorist groups responsible for this incident or the incidents that followed in the early 1980's. The questions of "certainty, proof, morality and matters of practicality" continued to plague the Reagan administration's policy of "swift and effective retribution."

The suicide car bombings, airplane hijackings, assassinations of governmental officials, and attacks at international airports continued. The accumulative effect of these incidents caused the Reagan administration to announce a major shift in the U.S. policy regarding terrorism. In April 1984 President Reagan issued NSDD 138, which in essence proclaimed that the U.S. "would consider military action in advance of actual incidents to prevent them from occurring or to punish terrorists in the aftermath of an attack."³³ This

policy pronouncement fueled the intelligence controversy over how much proof was necessary to strike the terrorists, and remnants of the controversy are still with us today. Secretary of State Shultz, a proponent of this proactive policy, made several speeches across the country in support of the new doctrine. In one of his most famous speeches, the one many felt further aggravated the intelligence controversy, Shultz told his audience at the Park Avenue Synagogue in New York City, in October 1984:

The United States must be ready to use military force to fight international terrorism and perhaps even retaliate before all the facts about a specific terrorist attack are known,...we may never have the kind of evidence that can stand up in an American court of Law...the United States should also be prepared to accept the loss of some innocent lives as a collateral result of its retaliation....We cannot allow ourselves to become the Hamlet of nations,...worrying endlessly over whether and how to respond. A great nation with global responsibilities cannot afford to be hamstrung by confusion and indecisiveness. Fighting terrorism will not be a clean or pleasant contest, but we have no choice to play it.³⁴

Both Secretary of Defense Weinberger and Vice President Bush

disagreed with Schultz's views. Weinburger promoted a more cautious approach concerning the use of the Armed Forces in the fight against terrorism. He went so far as to adopt six conditions that should be met prior to employing force.³⁵ Unlike the Secretary of Defense, the Vice President did not necessarily disagree with the policy enunciated in NSDD 138; he disagreed with how Secretary Schultz was interpreting the policy and arousing emotions within the administration.³⁶

It was not until April 1986 that the Reagan administration actually conducted an attack against terrorists. Through the use of signal intelligence the U.S. was able to implicate the Libyan government in the April 5, 1986 terrorist attack on the "La Belle" disco in West Berlin. That attack resulted in two deaths and sixty four injuries to American soldiers.³⁷ The "La Belle" disco incident combined with Colonel Qadhafi's numerous claims to support terrorist groups that have attacked U.S. citizens and interests abroad was reason enough for President Reagan to take action. On April 15, 1986 U.S. air and naval forces attacked Libyan target areas in Tripoli and Benghazi, killing thirty seven Libyans and injuring ninety three.³⁸ The action taken by the U.S. represented the high point of the Reagan administration's fight against terrorism. It was important for three reasons. First, it boosted U.S. morale which had sagged due to the U.S.'s inability to strike back at terrorists. Second, it demonstrated that the U.S. would act alone, if necessary, to retaliate against those states that sponsored terrorism. Finally, and probably most important of

the three, it shocked our western allies into supporting U.S. efforts to combat terrorism or face the probability of more unilateral military action by the U.S.

If the raid on Libya represented the high point of the Reagan administration's fight against terrorism, the low point was its effort to obtain the release of the hostages in Beirut. As mentioned earlier, one of the criticisms of the Carter administration was the close association between the President and the effort to free the hostages in Iran. President Reagan became entangled in the same morass, but to a lesser degree. There were a rash of kidnappings of Westerners in Beirut beginning in March 1984.³⁹ Most of the kidnappings were conducted by Hizballah. In return for their hostages Hizballah demanded the release of the seventeen Hizballah and Iraqi al-Dawa party terrorists convicted by a Kuwaiti court of the 1983 terrorists attacks on various U.S., French and Kuwaiti interests.⁴⁰ Among the Hizballah hostages were several Americans, and among the Americans was CIA Station chief, William Buckley (As Terrell Arnold points out, it was rather ironic that this hostage situation was a result of an action Iran took to deter Kuwait from their support of Iraq, in the Iran-Iraq War, and not an action taken to reduce the influence of the U.S. in the Middle East).⁴¹ By early 1985 the President had become obsessed with getting the hostages back, and CIA Director Casey was very concerned about the release of Buckley.⁴² During the same period of time the Israeli government had informed Robert McFarlane, of the National

Security Council, that they were in touch with what appeared to be personnel who represented moderate elements of the Iranian government that may be able to gain the release of the hostages.⁴³ Using Israel as an intermediary the Reagan administration explored the option.⁴⁴ What began with Israel selling arms to the Iranians for the release of hostages in the fall of 1985, culminated in a Presidential Finding in January 1986 authorizing the U.S. to sell arms in exchange for hostages.⁴⁵ Three hostages were released as a result of the Arms sales.⁴⁶ The exposure of the secret arms for hostages deal had a disastrous effect on the administration's terrorism policy. Parker W. Borg, a former Deputy to the Ambassador-at-Large for Counterterrorism, assessed the impact, saying:

Anger, disappointment, and cynicism were among the international reactions to the recent U.S. arms deals with Iran, for two reasons: because the Reagan administration had taken the moral high ground on terrorism, becoming one of the strongest critics of efforts of other countries to seek accommodation with terrorist groups, and because the exchanges involved transfers of military equipment (rather than prisoners or money, the normal commodities for such secret transfers) to one protagonist in a brutal war where official U.S. policy was to stem the flow of arms.⁴⁷

The most damaging impact of the Iran-Contra affair was the U.S. loss of credibility with its allies in the fight against terrorism.

During the same period of the Iran-Contra affair, the Reagan administration took an important step in the development of U.S. policy to combat terrorism. The administration conducted an "in-house review" of their policy and organizational structure to combat terrorism. The "in-house review" was prompted by another poor performance by the U.S. in a hijacking and hostage situation. On June 14, 1985 TWA flight 847 was hijacked enroute from Athens to Rome. For seventeen days Hizballah's Islamic Jihad moved the aircraft back and forth between Algeria and Beirut, torturing and murdering one young U.S. Navy diver and brutalizing the other thirty-nine American hostages.⁴⁸ The humiliation suffered by the Reagan administration was similar to that experienced by Carter's administration during the Iranian hostage crisis. In July 1985 President Reagan tasked Vice President Bush to chair a Cabinet-level Task Force on Combatting Terrorism.⁴⁹ In Vice President Bush's introductory letter to the Public Report of the Vice President's Task Force on Combatting Terrorism, he stated the purpose of the review was not simply a "mandate to correct specific deficiencies, but one to reassess U.S. priorities and policies, to ensure that current programs make the best use of available assets, and to determine if our national program is properly coordinated to achieve the most effective results."⁵⁰ The Task Force concluded after six

months of study that 'the U.S. policy and program to combat terrorism is tough and resolute...Our national program is well conceived and working.' 51 The review conducted by the Task Force accomplished many things, but its most important accomplishment was the broad focus of the review itself. By not limiting the scope of the review to one or two issues, such as special operations forces and the U.S.'s ability to retaliate, or the lack of intelligence, the Task Force was able to adopt a broad focus looking across the full spectrum of issues and conclude with a number of important recommendations. The status of the recommendations will be discussed in a later section of this chapter. It should be noted however that five years after the review a few of the recommendations have not been implemented and are still bogged down in the political process.⁵²

President Bush and his administration's policy on terrorism will be discussed in a later section that looks at current policy.

THE LEGISLATIVE BRANCH

Like the Executive Branch, Congress has been involved since the early 1970s in the evolutionary process of policy development to combat terrorism. In the early seventies much of the work done by Congress focused on problems of domestic terrorism. Congress devoted much time and effort investigating international links between such domestic groups as the Weather

Underground, Black Panthers, Symbionese Liberation Army, and international supporters of terrorism such as Cuba, North Korea and the Soviet Union.

Congress's primary function is to enact legislation. In doing so, Congressional committees conduct many hearings concerning proposed legislation. This hearing process, particularly the open hearings, provide a forum for discussion of many divergent views. During the 1970s and 80s these Congressional hearings helped shape U.S. policy on terrorism.

Unfortunately, the "help" provided by Congress was not always beneficial to the formulation of policy to combat terrorism. In 1975 and 76 Senator Frank Church's Select Committee to Study Governmental Operations with respect to Intelligence Activities and Representative Otis Pike's Select Committee on Intelligence conducted hearings that would have grave consequences on the intelligence community.⁵³ The hearings of these Congressional Committees combined with the personnel reductions directed by the newly appointed CIA Director, Admiral Stansfield Turner, caused an atmosphere of gloom to permeate the intelligence community.⁵⁴ The extent of the damage done to the collection capability of human intelligence (HUMINT) would not be fully realized until eight years later, when the U.S. recognized its inability to prevent or assess the responsibility for terrorist attacks in the Middle East. As a consequence of Senator Church's and Representative Pike's Committee Hearings two permanent Congressional committees were created: in May 1976 the Senate

Permanent Select Committee on Intelligence was created, and a year later the House created the Permanent Select Committee on Intelligence.⁵⁵ These committees were created to reign-in the CIA. Both committees were to be informed of all covert operations. Although the approval of the Committees was not a prerequisite for covert operations, the Committees concern over a particular operation was usually enough to convince the CIA not to conduct it.

The limitations Congress placed on the intelligence community had a direct impact on U.S. policy to combat terrorism, and its impact became apparent in the 1980s. President Reagan quickly realized that with a very limited HUMINT collection capability, he could not prevent terrorist attacks from occurring, collect timely and accurate information on hostage locations, or easily determine which state or group was responsible for terrorists attacks against U.S. interests. It was these limitations on the intelligence community more than any other factor that were primarily responsible for the inability of the President to provide the promised "swift and effective retribution" against terrorists.

Unlike the hearings of the 1970s that adversely affected the intelligence community, the hearings conducted on international terrorism in the 1980s actually had a beneficial affect on policy. The progress made in the eighties was due primarily to the foundation laid in the 1978 hearings before the Senate Committees on Foreign Relations, Commerce, Science and Transportation and the Select Committee on Intelligence and

their attempts to assist the executive branch in compiling a list of states that support terrorism.⁵⁶ Although the hearings did not result in legislation in 1978, the Export Administration Act passed in 1979 required the Secretary of State to provide Congress on an annual basis a list of states that support terrorism. This Act continues to play a vital role in the fight against terrorism, as it provides the mechanism for the U.S. to officially designate those state that support terrorism.

The hearings of the eighties were important because they formed the basis of legislation that was eventually enacted, but more importantly they produced a plethora of public testimony from expert witnesses on the nature and character of terrorism. A Congressional Committee that was instrumental in the awakening of Congress, and the public in general, to the problems of terrorism was the Sub-Committee on Security and Terrorism of the Senate Judiciary Committee. During the 1980s through the hard work of its chairman, Senator Jerem the committee heard testimony from many of the most knowledgeable individuals on various aspects of terrorism. Through the work of Congressmen like Senator Denton and others, Congress enacted a number of important pieces of legislation that helped shape U.S. policy to combat terrorism. A number of the more important are listed below:

1984

One of the first pieces of legislation Congress passed specifically to deal with terrorism was the 1984 Act to Combat International Terrorism. It gave the Secretary of State authority to offer rewards leading to the arrest of terrorists and also approved the ratification of two U.N. Conventions-- one dealing with aircraft sabotage and the other dealing with the taking of hostages.⁵⁷

Another piece of legislation passed that year was the Comprehensive Crime Control Act of 1984. This act, among other things, gave the "FBI investigative jurisdiction both inside and outside the U.S. in hostage events in which U.S. citizens or interests are involved."⁵⁸

1985

An important Act that dealt with international airport security was the International Security and Development Act of 1985. Title V of this Act was called the Foreign Airport Security Act. It permitted the Federal Aviation Administration to inspect foreign airports and issue travel advisories for those airports whose security was not up to standard.⁵⁹ Under the provisions of this Act, travel advisories were issued twice: once for Athens after the hijacking of TWA flight 847 in June 1985, and once for the Philippines in August 1986.⁶⁰

1986

In 1986 Congress enacted what is still regarded as the most comprehensive piece of legislation dealing with terrorism it has ever considered. Entitled the Omnibus Diplomatic Security and Antiterrorism Act of 1986, it included ten titles that, among other things, provided measures to improve security of overseas diplomatic missions, set standards for international ship and seaport security (a quick reaction to "Achille Lauro" sea-jacking), and more importantly made the murder or assault of an American overseas a felony in U.S. Courts.⁶¹

INTERNATIONAL LAW AND ITS INFLUENCE ON U.S.POLICY

International law produced two issues that had substantial impact on the formulation of the U.S.'s policy to combat terrorism. The first relates to the definitional problem of terrorism. In the international community the threat or use of violence to accomplish political goals or objectives is not a universally accepted definition of terrorism. On the international level, what is often brought into the definitional discussion is the previously mentioned cliché, "one man's terrorist is another man's freedom fighter." In a world community that operates within the confines of international law, one finds many terrorist groups and state sponsors seeking the legitimacy associated with the phrases, "...self-determination of peoples, and wars of liberation to

free the people from a colonialist or racist regime."⁶² The legitimacy of these phrases stem from the 1973 U.N. General Assembly Resolution 3103 which stated, "armed conflicts involving the struggle of peoples against colonial and racist regimes are to be regarded as international armed conflicts...., the resolution made no distinction between liberation wars and terrorist acts."⁶³ The resolution was problematic for the U.S.'s policy on combatting terrorism because it effectively limited the pragmatic options available to the U.S. to fight terrorism in the U.N. Early efforts by the U.N. to pass resolutions in the General Assembly condemning acts of terror were normally rejected as efforts to assign legal limits to revolutionary armed struggle.⁶⁴ This lack of global consensus on the prohibition of terrorism was one of the primary reasons the U.S. focused on regional arrangements, as well as its own legal system to develop laws and agreements to combat terrorism. It was not until December 1985, after an intense two year period of suicide car-bombings, hostage-taking incidents, and sea and aircraft hijackings, that the U.N.'s General Assembly and Security Council were both able to pass resolutions condemning terrorism.⁶⁵

The second issue that was to substantially affect the development of U.S. policy was the limitations the Charter of the U.N. placed on the use of force. In an introductory essay to the 1987 Spring edition of the Case Western Reserve Journal of International Law, Professor Oscar Schacter wrote:

International society has reached for the

same goal during this century. It has adopted a set of basic rules in the Charter of the United Nations (to which nearly all States adhere), and it has given more concrete meaning to those rules through declarations, resolutions, and treaties. The rules make it clear that national states are no longer free to use force 'against the political independence of territorial integrity' of a state or in any manner contrary to the Charter of the United Nations.⁶⁶

The U.N. Charter contains two Articles that place limitations on the use of force: Article 2(4) requires "all members refrain from the threat or use of force against any territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations;" and Article 51 "preserves the inherent right of individual or collective self defense if an armed attack occurs against a member."⁶⁷ (One of the major issues with the U.N.'s Charter, particularly the articles that preclude or limit the use of force, was the premise of a functioning Security Council to enforce the Charter. Unfortunately, the Security Council does not function as intended- it still lacks an enforcement capability.) As U.S. policy to combat terrorism evolved and various administrations considered appropriate responses for certain acts of terrorism, discussions concerning the legal use of force normally ensued. Whether President Carter was

Addressing retaliation for the Iranian hostage crisis or President Reagan was considering air strikes against targets in the Bekaa valley in retaliation for the Marine Barracks bombing, each President was concerned with being able to defend their actions in terms of what was permissible under international law.

Without going into an extended discussion on the principles of international law, essentially two concepts were affecting the development of U.S. policy regarding the formulation and justification of appropriate responses to terrorists acts. The first concept was that of "anticipatory self-defense." This concept was well recognized and respected in the world community as being valid under international law. Its legitimacy flows directly from Article 51 of the U.N. Charter. Guy Roberts, in an article on Self-Defense and Peacetime Reprisals, concluded "The right of self-defense may arise in order to counter the use of force, an immediate threat of the use of force, or to respond to a continuing threat."⁶⁸ Under most circumstances, this concept provides enough latitude to allow it to be cited as justification for using force in response to acts or threats of terrorism. The second concept, that of "peacetime reprisals" can be defined as "methods adopted by states to secure redress from another state by taking retaliatory measures."⁶⁹ The concept of "peacetime reprisals" is not grounded in the Charter of the U.N. and, therefore, lacked the legitimacy that "anticipatory self-defense" enjoys. The U.S. has "taken the categorical

position that reprisals involving the use of force are illegal under international law.⁷⁰

The problem of justifying the U.S. response to terrorists acts was clearly demonstrated in the wake of the U.S. attack on Libya in 1986. Obviously, administration officials were confused about U.S. policy regarding justification of responses to terrorists acts. After the strike on Libya the U.S. Ambassador to the U.N., Vernon Walters, justified the attack using solely the principles permitted within the context of "anticipatory self-defense."⁷¹ President Reagan, on the day after the attack, said "he ordered the strikes in retaliation for the bombing of the Berlin disco."⁷² One month before the raid Vice President Bush commented "that American policy on combatting terrorism would be one of a willingness to retaliate."⁷³ By using the word retaliate, the Reagan administration was associating the justification more with the concept of "peacetime reprisals" than "anticipatory self-defense." This resulted in the U.S. sending mixed signals to the international community regarding the justification of the U.S. response policy.

INTERNATIONAL AGREEMENTS

As previously mentioned, the lack of a global consensus on the prohibition of terrorism in the U.N. caused the U.S. to focus its efforts on regional agreements in its fight against terrorism. On the multilateral level, the most successful

forum in the fight against terrorism has been the annual meetings of the seven industrialized democracies known as the Summit Seven. These nations (the U.S., Canada, Britain, France, Italy, West Germany and Japan) meet primarily to discuss economic issues. However, beginning with the 1978 meeting in Bonn, "declarations of intentions for joint actions against terrorism" were produced from several of the conferences.⁷⁴ The declarations covered many terrorist activities--hijackings, hostage-taking, acts against diplomatic personnel, abuses of diplomatic immunity, and state support of terrorism.⁷⁵ Although these declarations can be viewed as successful from a policy standpoint, they were essentially statements of political resolve rather than endorsements of specific actions against terrorism.⁷⁶ Given numerous opportunities to act in support of their declarations, the 'Seven' rarely did so. In some cases their actions actually aided terrorists. In October 1985 Imad Mughniyah (a Hizballah terrorist who is thought to have been responsible for planning the suicide car bombings of the U.S. Embassy and the Marine and French military headquarters in Beirut in the early 1980s, the kidnapping of the CIA Chief of Station in Beirut, William Buckley, who was later tortured and murdered, and the hijacking of TWA flight 847) was located on the south coast of France.⁷⁷ The French who initially indicated that they would probably not extradite Mughniyah to the U.S., but would try him themselves for his part in the 1983 attack on the French military headquarters in Beirut, inexplicably took Mughniyah to the

airport and put him on the first plane to the Middle East.⁷⁸ The French later claimed that it was a case of mistaken identity and the individual they believed to be Mughrayah was really not.⁷⁹ However, most authors who have written on the episode believe that the individual who was under surveillance and eventually whisked off to the airport was really Mughrayah.⁸⁰ Even considering such incidents as this, the Summit Seven declarations continued to represent a unified position against terrorism.

Working individually with foreign governments seemed to offer more advantages than multilateral discussions. In one form or another, the U.S. has entered into cooperative agreements with some sixty governments on a bilateral basis, covering such issues as exchange in intelligence information, sharing information regarding suspected terrorists movements, mutual protection of property, extradition treaties that close "political offense" loop holes, adoption of common approaches to terrorist incidents and Antiterrorism Training Assistance Programs (more than 7,000 police and security personnel from around the world have participated in this program since its inception).⁸¹ On the international level, these "one on one" agreements produced more beneficial results than any other type of international agreement.

CURRENT POLICY

In dealing with terrorism, President Bush had a distinct

advantage over his predecessor as the Chairman of the Vice President's Task Force on Combatting Terrorism. Vice President Bush not only had the opportunity to examine the problem of terrorism and its effect on the U.S., but was able to conduct a thorough review of the governmental structures and policies used to conduct the fight against terrorism. In theory his administration should be the best prepared to conduct the fight against terrorism.

Following the example of his predecessor, President Bush made only minor changes in the administrative structure, primarily name changes. Within the State Department, the Ambassador-at-Large for Counterterrorism became the Coordinator for Counterterrorism. The Policy Review Group of the National Security Council became the National Security Council Deputies Committee. The Interdepartmental Group/Terrorism became the Policy Coordinating Committee, chaired by the Coordinator for Counterterrorism (the Coordinator for Counterterrorism holds Ambassadorial rank).⁸² Although the names of these organizations changed, the responsibilities remained the same. Two other changes in the administrative structure were made early in the Bush administration. First, President Bush apparently chose not to involve his Vice President in the business of terrorism.⁸³ At least for the present, he seems to be retaining a personal interest in terrorism issues.⁸⁴ The second change was made in the wake of the Pan Am 103 bombing. A new committee, the Presidential Commission on Aviation Security and Terrorism, was formed primarily to address issues

in aviation security. The Commission is headed by Ann McLaughlin, a former Secretary of Labor. The paucity of change in the administrative structure is logical considering Vice President Bush completed a thorough review of the structure and implemented many of the desired changes during the final years of the Reagan administration.

One may logically conclude that the Bush administration's terrorism policy was founded on his 1986 Task Force review and the subsequent recommendations to combat terrorism. In the conclusions of the Task Force's review, they indicated:

....Our national interagency system and Lead Agency concept for dealing with incidents are soundly conceived. However, the system can be substantially enhanced through improved coordination and increased emphasis in such areas as intelligence gathering, communications procedures, law enforcement efforts, response option plans, and personal and physical security.⁸⁵

A brief look at the status of the Task Force's recommendations assists in understanding the focus and direction of the current administration in their efforts to combat terrorism. There were actually two reports from the 1986 Vice President's Task Force on Combatting Terrorism: The public report printed by the GPO in February 1986; and the classified report, containing a complete list of all recommendations. This discussion will center on the recommendations in the Public Report (the difference between the Reports is the classified Report

contains the specific recommendations to fix or improve various components of the "antiterrorist" and "counterterrorist" programs as well as the general recommendations. The recommendations were divided into five functional areas: National Policy and Program Recommendations, International Cooperation Recommendations, Intelligence Recommendations, Legislative Recommendations, and Communications Recommendations.⁸⁶ The status of the recommendations generally fall into one of three categories: implemented, working, or no longer a viable recommendation. With the exception of one functional area, Legislative Recommendations, all recommendations have been implemented or are "working." Recommendations that are considered "working" require continuous evaluation and attention; examples include: Pursue Additional International Agreements, Evaluate and Strengthen Airport and Port Security, Increase Collection of Human Intelligence, and Work with the Media. The recommendations are reviewed annually and their status is reported to the President.

Five of the recommendations that required legislative action have not been implemented:

- * Prohibit Mercenary Training Camps
- * Stop Terrorist Abuse of the Freedom of Information Act (FOIA) (FOIA refers to both the FOIA of 1966 as amended in 1974, and 1986, and the Privacy Act of 1974)
- * Determine if Certain Private Sector Activities Are Illegal (payment of ransom by individuals or companies)

- + Form a Joint Committee on Intelligence
- + Establish the Death Penalty for Hostage Murders

Of these five, the first four are no longer considered viable recommendations, and the fifth is being debated in Congress. By most accounts these recommendations are considered to be inconsequential. However, the rationale that rendered the non-viable is worth examination as it provides insight into the administration's current views regarding terrorism.

The issue of mercenary training camps gained a great deal of public attention in 1985, when Sikh terrorists attended Frank Camper's Recondo School near Warrior, Alabama.⁸⁷ The Sikhs were allegedly acquiring skills to be used in an assassination attempt on Indian Prime Minister Rajiv Gandhi.⁸⁸ The issue the government faced was how to regulate camp businesses that provided this type of service. The issue was problematic for the government because it often negotiates contracts with some of the more reputable businesses to provide assistance in training foreign security forces.⁸⁹ If the government chose to prohibit individuals and companies from providing these services, then it would eliminate an important training resource available to the government. Instead of enacting legislation that prohibited mercenary training camps, the government chose to use existing regulatory requirements in the International Trafficking of Arms Regulations to regulate the operations of mercenary training camps.⁹⁰

The issue of terrorists abusing the Freedom of Information Act (FOIA) was a two part issue: there was fear that terrorists

would be able to gain information useful in planning their operations, and there was fear that the U.S. government would be unable to protect their intelligence sources, particularly intelligence passed from foreign governments. The Task Force recommendation was based on the possibility of an abuse occurring, not an actual occurrence (the State Department, after much research into the issue, could not find a single case of terrorist abuse of the FOIA).⁹¹ Since there was no systematic abuse, Congress simply amended the Act in October 1986 to provide the government additional flexibility to withhold information pertaining to law enforcement records. The problem anticipated by the Task Force never developed, and legislation designed specifically to prevent terrorist abuse of the FOIA was never required.

The recommendation to determine if certain private sector activities were illegal, with the primary focus on the payment of ransoms by individuals and companies, was a contentious issue from the start. There were immediate problems concerning the victim's civil rights, problems concerning the enforcement of proposed legislation, and anticipated legal questions dealing with comparisons between the legalities of ransom payment in domestic cases verses ransom payment in international cases.⁹² Consequently, there was no support for any legislation in Congress.

Like the recommendation on private sector activities, the recommendation to form a Joint Committee on Intelligence received little Congressional support. Since the initial

recommendation was made, both Standing Committees on Intelligence have taken action to correct many of the concerns that caused the recommendation to be included in the report.⁹³ Additionally, the President seems to be satisfied with the current operations of the committees.⁹⁴

The recommendation to establish the death penalty for hostage murders is unique because it falls into two categories. Although the issue is still before Congress and therefore a "working" recommendation, it is no longer considered by many officials involved in the business of fighting terrorism to be a viable recommendation. Legislation allowing federal courts to impose the death penalty for the murder of Americans during terrorist incidents abroad was passed by the Senate and sent to the House of Representatives on October 26, 1989.⁹⁵ The House has not yet taken action on the legislation. The legislation becomes problematic for its opponents and many government officials due to the adverse impact anticipated on the extradition of terrorists. Many foreign governments have indicated a reluctance to extradite terrorists if there is a possibility that the terrorist will receive the death penalty. Consequently, it is felt that the death penalty for hostage murders will impede the process of bringing terrorists to justice in U.S. courts, and for that reason the recommendation is no longer considered viable.⁹⁶

One of the areas of greatest concern is the Task Force's recommendations regarding intelligence. Because the recommendations are classified, it is difficult to assess their

effectiveness. However, discussions with personnel from the Office of the Coordinator for Counterterrorism indicate that actions addressing the Task Force recommendations regarding the intelligence community are underway.⁹⁷

By closely examining the rationale used in rendering a few of the legislative recommendations non-viable, one can detect two emerging trends the Bush administration will apparently use to combat terrorism. The first trend is a reliance on Federal Statutes to combat terrorism. The reliance on Federal Statutes supports the second trend- the apprehension and prosecution of international terrorists in U.S. Federal Courts. An indication of the first trend can be seen in the attempt to prohibit mercenary training camps. The government, reluctant to eliminate an important training resource, was able to use the International Trafficking in Arms Regulations to combat terrorist activity. A more recent example of the trend was seen in a Justice Department legal opinion in 1989. The Justice Department found "that federal agents have the authority to seize fugitives abroad without the consent of the country involved" (this concept is sometimes associated with the term "extraterritorial apprehension").⁹⁸ The opinion was requested by the FBI undoubtedly to clarify their authority under the Comprehensive Crime Control Act of 1984 and the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Omnibus Antiterrorism Act). As discussed earlier, the Comprehensive Crime Control Act gave the FBI jurisdiction in hostage incidents, and the Omnibus Antiterrorism Act extended

their jurisdiction to terrorist incidents involving assault, murder or conspiracy to commit either against U.S. citizens. Although not in the same category as the statutes above, the recently approved Palestine Liberation Organization (PLO) Commitments and Plans Act of 1989 represents an attempt by the U.S. to influence and possibly reduce terrorists activity.⁹⁹ One of the intentions of the Act is to hold the PLO to its commitment of renouncing terrorism.¹⁰⁰ This Act requires the Secretary of State to provide Congress, within thirty days of enactment, a report citing any incidents of terrorist activities on the part of the PLO and follow-up reports every 120 days.¹⁰¹ Clearly, the Bush administration has established, through two Federal Statutes, a Justice Department legal opinion, and the recently enacted PLO Commitments and Plans Act, its authority and intent to use legislation in the fight against terrorism.

The second trend can be seen in the controversy over the proposed legislation calling for the death penalty for hostage murders. The concern over the adverse effect the death penalty will have on the extradition process underscores the importance the Bush administration has attached to prosecuting international terrorists in U.S. Federal Courts. The administration would prefer to prosecute international terrorists in U.S. courts and have the option of capital punishment where appropriate. However, when the capital punishment option appears to reduce the chances of extradition, then the significance of capital punishment for hostage murders

becomes secondary to the issue of extradition of the terrorists. Simply stated, the Bush administration appears to be interested in prosecuting as many terrorists as possible, knowing if they are found guilty they will probably serve lengthy prison terms and not be subject to the "prisoner exchanges" or pardons that are offered to many terrorists by some of our allies.

A fairly recent development that appears to be in its seminal stages is the liaison between the intelligence organizations of the U.S. and the Soviet Union. During the first year of the Bush administration, personnel from the intelligence community and "experts" in the field of terrorism attended meetings in Moscow and California.¹⁰² The purpose of the meetings was to initiate linkage to exchange information that would be useful to each country in combatting terrorism. On the surface, such a liaison would appear to be beneficial for each country. Theoretically, the U.S. could obtain useful information regarding the terrorist support structure established by the Soviet Union and its Eastern Block allies. However, what becomes problematic for the administration is responding to a possible Soviet Union reciprocal request for information regarding the activities of various groups within the Soviet Union that may have direct or indirect links to our allies and possibly the U.S. Another variable in this equation is the rapidly changing character of the Eastern Block and the Soviet Union. A few of the Eastern Block nations have begun dismantling or reorganizing their intelligence organizations,

and many of the governments are in a period of transition, including the Soviet Union. Until stability returns to Eastern Europe and the Soviet Union, the administration will probably move slowly in developing the future and direction of this initiative.

To this point in the discussion various aspects of the Bush administration's policy regarding terrorism have been examined: the administrative structural changes, the status of recommendations from the Vice President's Task Force, the emerging trends of relying on legislation to combat terrorism and prosecuting terrorists in U.S. Federal Courts, and developing a liaison with the Soviet Union to exchange terrorist information. All of these play a role in determining the shape of the Bush administration's policy regarding terrorism, but the single event that will firmly establish the position of the administration is how it reacts to the investigation results of the Pan Am 103 bombing. Preliminary results, as reported in the media, indicate that the bombing was requested and paid for by the Iranian government and accomplished by the PFLP-GC, operating from Syria. After looking at the current policy trends, one would expect the administration to use "extraterritorial apprehension" or extradition to bring the accused terrorists to trial in U.S. Federal Courts. What remains unknown is how the administration will deal with what appears to be a clear case of state sponsored terrorism on the part of Iran and to a lesser degree Syria. While the administration has made clear how it intends

to deal with terrorists (individuals or groups), it has not laid the same policy foundation regarding sponsors of state terrorism. The administration has already begun to apply strong pressure on Syria to expel the PFLP-GC, although without much success. If the final results of the investigation reveal the bombing was a case of state sponsored terrorism, one would expect the American people to demand strong punitive action be taken against the sponsors.

At this point it would be pure speculation to try to predict how the Bush administration will react to a documented case of state sponsored terrorism. Whether they would opt for economic sanctions and "quiet diplomacy" agreeable to the "Summit Seven" allies or replicate the Reagan administration's policy of military reprisal is not clear. What is clear is that the administration has failed to articulate its overall policy regarding terrorism, and that may have been intentional so as to provide increased flexibility. However, if the policy is to deter terrorism, it has to be made public for the deterrence to be effective and appropriate action must follow the rhetoric.

The following chapter discusses proposed elements of U.S. policy to deter terrorism in the 1990's. It discusses what type of actions are required to deter terrorism and what type of actions are required when deterrence fails; additionally, crucial supporting programs such as intelligence, media relations, and supporting foreign policy will be examined.

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CHAPTER III

POLICY CONSIDERATIONS

Those charged with formulating U.S. policy regarding terrorism have an incredibly difficult task. The policy not only has to be effective in combatting terrorism, but it must be acceptable to the American people, Congress and our allies. Guy Roberts, writing in the Case Western Reserve Journal of International Law, described the difficulty, saying:

Policy makers realize that the choice which confronts them in the war on terrorism will not always be clear and discernible. What is legal may not always be moral and vice versa. Furthermore, that which is considered both moral and legal may not be politically feasible. Policy formulation requires evaluation of all three factors.¹

An example that illustrates the moral and legal issues involved in policy development is the frequently discussed Israeli "Wrath of God" operation. The operation consisted of covert "hit teams" sent by the Israeli government to assassinate the Black September leadership in the wake of the terrorist assault on Israeli athletes during the Munich Olympic Games in 1972. The operation is often cited as an example of a highly successful counterterrorist action. The success cannot be disputed; by the end of the operation the Black September

Organization had been decimated, its leadership dead or in hiding. In considering such a policy for the U.S., policy makers would have to decide whether the American people and Congress would accept a policy that proposes the assassination of terrorists. There are obvious moral and legal issues associated with this type of policy (not the least of which is a Presidential Executive Order prohibiting assassinations. The prohibition will be discussed in more detail later in the chapter). In the environment of the 1990s it is unlikely that even such a highly successful policy would be acceptable. In his 1985 opening statement to the Joint Hearings before the Committee on Foreign Relations and the Committee on the Judiciary, Senator Jeremiah Denton, in describing the U.S. response to terrorism, said- "Our response--the punishment must fit the crime; it must be consistent with International Law, and with our national character."² Denton's reference to "our national character" is very significant. The U.S. is a nation of laws, and one of the principle concepts of the legal system is "due process." In a society that often affords an individual, convicted by a jury of his peers and sentenced to die for his crimes, in some cases up to ten years to appeal his sentence, it is unlikely that this same society would approve of the government sending agents out to murder terrorists. It is simply not within "our national character." Consequently, what may be effective for Israel may be unthinkable for the U.S.

Secrecy plays an important role in the formulation of an

effective policy to combat terrorism. Obviously, a policy debated and formulated in a public forum would be ineffective in combatting terrorism. Consequently, not all policy regarding terrorism is public; much of NSDD 138 remains classified, as does a portion of the report from the Vice President's Task Force on Combatting Terrorism, along with many other government documents dealing with the fight against terrorism. In discussing the element of secrecy in U.S. terrorism policy, one frequently comes across two terms that are used interchangeably but have quite different meanings. The terms "covert" and "clandestine" are normally used when referring to an operation or activity. The major difference is a clandestine operation is conducted when the intent is to keep the activity secret, but if discovered acknowledged as a U.S. activity. A covert action is executed in such a manner to conceal the identity of the sponsor or to permit plausible denial by the government.³ The "Wrath of God" operation mentioned earlier is a good example of a covert operation. The Israelis still officially deny any responsibility. The U.S. has used, and will probably continue to use, both types of operations. The advantages of covert operations in fighting terrorism are obvious--since U.S. involvement would be concealed and the government would deny any involvement, theoretically the policy would not have to be acceptable to anyone. However, in reality covert operations sometimes do not go as planned and obvious government involvement is detected, or at least perceived involvement by the government is a

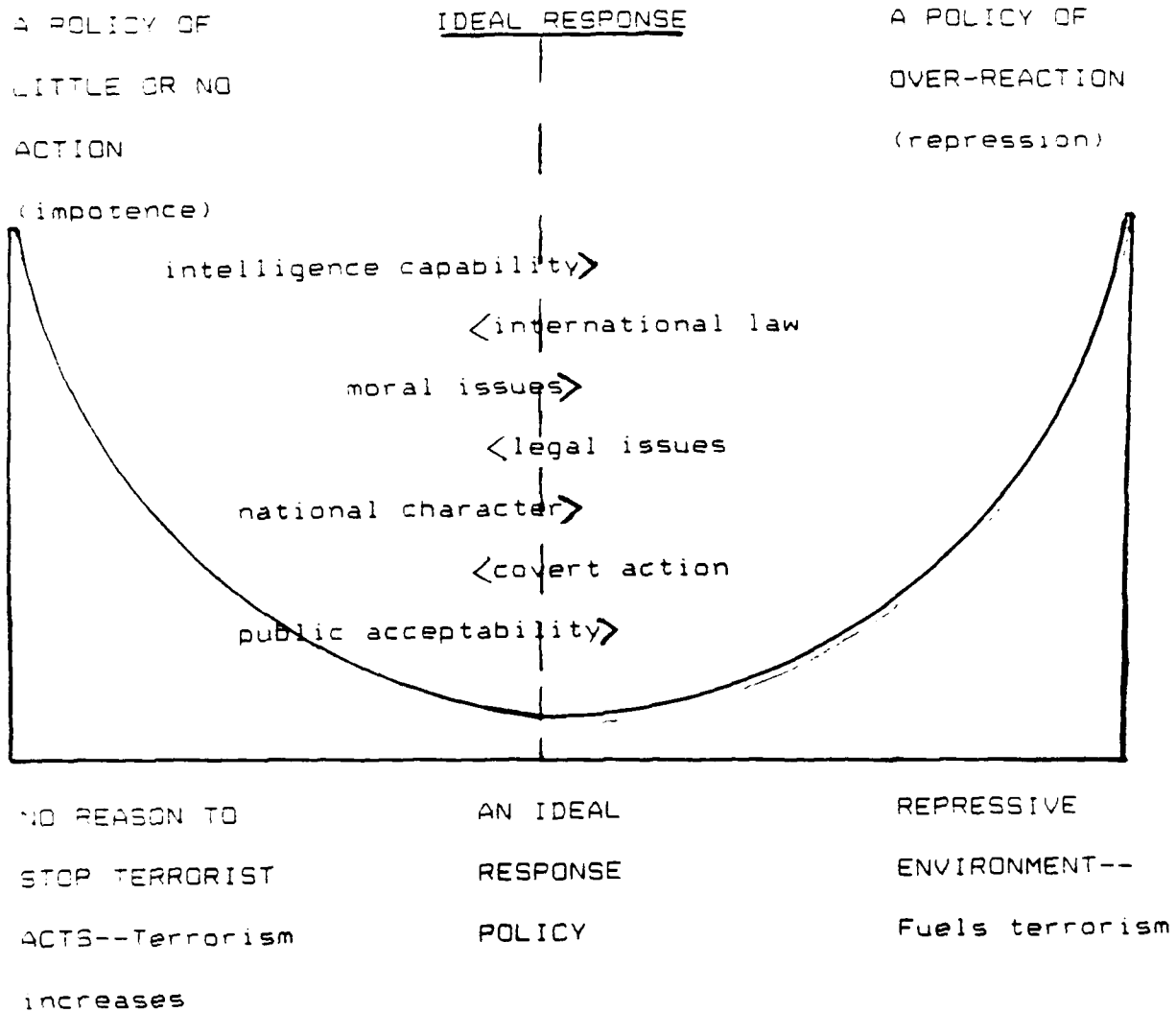
result. Two examples come to mind: the 1985 car bombing outside Sheikh Fadiallah's Beirut home, which some felt was a U.S. backed attempt to assassinate Sheikh Fadiallah by a CIA trained group of Lebanese nationals; and secondly, the Iran-Contra episode that involved the covert trading of guns and money for U.S. citizens held hostage in Beirut.⁴ The Sheikh Fadiallah incident caused some public consternation and was investigated by Congress (Congress found no U.S. involvement).⁵ The Iran-Contra episode grabbed the nation's attention and held it for many months. Certainly, there was more to the Iran-Contra crisis than a covert operation gone astray, but at the heart of the affair were covert operations in direct contravention of official U.S. policy to combat terrorism. What both of these examples clearly demonstrated was that catastrophic results can easily occur if, what Senator Denton refers to as, "our national character" is not considered in the formulation of U.S. policy to combat terrorism, especially covert and clandestine operations. Simply stated, the American people do not react well to being deceived by the government.

Another problematic issue confronting policy makers is the case of established insurgents using terrorist tactics to achieve their goals. As discussed in the first chapter there is a significant difference between terrorists and insurgents. The use of terrorist tactics by insurgents is normally seen as an aberration. However, when a spectacular terrorist incident committed by insurgents receives a high degree of media attention, the government frequently labels the group

terrorists. Recent examples are "Sendero Luminoso" (Shining Path) of Peru and the Farabundo Marti National Liberation Front (FMLN) of El Salvador. Both of these organizations have used terrorist tactics in the past and will probably continue to do so in the future as long as they promote their political cause. The U.S. government's current policy to combat terrorism is too narrow in focus to address the problems of these insurgences and is designed primarily to combat terrorists, not insurgents. The problems of insurgences are best handled through the developing strategies addressing Low Intensity Conflicts.

Up to this point several of the dilemmas facing policy makers have been discussed. All of these dilemmas boil down to one "bottom line"--what is the ideal U.S. response policy to combat terrorism? In the theoretical model of the "Spectrum of Response" depicted below, the ideal response to terrorism is shown (in a simplistic form) as the mid-point between "little or no action" and "over-reaction" by the government. The problem facing the policy maker is to align the variables (intelligence capability, public acceptability, covert action, national character, legal considerations, moral considerations, and international law-- to name a few) in such a way to cause the U.S. policy to fall into the "ideal response" range-- not an easy task.

SPECTRUM OF RESPONSE



POLICY CONSIDERATIONS FOR THE 1990'S

For any policy to be effective it has to have an objective. The objective should be able to answer the question-- what is the policy trying to accomplish ? Using the example of nuclear deterrence policy, the objective is simple--

prevent the occurrence of nuclear war. Once it is clear what is to be accomplished, the formulation of policy becomes less difficult. Like the nuclear deterrence example, the objective of U.S. policy regarding terrorism should be simple--prevent the occurrence of terrorism against the U.S. and its interests. The "deterrence theme" adapts nicely to U.S. policy on terrorism. If the objective is to prevent the occurrence of terrorism against the U.S. and its interests, then the act of discouraging or restraining another (group or state) from acting (in a terroristic manner) or proceeding (with terrorist activities against the U.S.) through fear or doubt seems to be a more than satisfactory approach for formulating a policy to combat terrorism.⁶

There are many components to an effective policy to deter terrorism. First and foremost, the policy must be credible in the eyes of the groups and states that practice terrorism. To insure credibility several conditions are required; the most critical are listed below:

- * The policy must be articulated clearly and openly.
- * The policy must be realistic (within the capabilities of the U.S.).
- * The "will" must exist to carry out the policy.
- * The "means" must exist to carry out the policy.

In order to dissuade or discourage terrorists from acting against the U.S., its policy of deterrence must be made public and it must be clear. Since all terrorists are not state sponsored, a private policy working through normal diplomatic

channels would not suffice. Groups such as the Red Army Faction (RAF), Action Direct and the Japanese Red Army do not maintain contact with most governments, and a secret or private policy to deter these groups would be futile.

Important components of a realistic policy are having the "will" and "means" to carry it out. First, the policy must align with the "national character" of the U.S. A deterrent policy that states "the U.S. will kill ten terrorists or terrorist sympathizers for every American killed or injured" would not be very credible. The traditional American legal system would not support such action, and it is unlikely that Congress or the American people would support such a policy. Many authors have argued that throughout the 1980's western governments have possessed the "means" to deter terrorism, but lacked the political "will" to do so. Without the political "will" to take action a deterrent policy to combat terrorism is worthless. Likewise, the "means" must exist to support the "will" to act. For the U.S., possession of the "means" (here, defined as the resources--military and civilian forces capable of overt or covert action to combat terrorism) has not been a problem. Since the failure to rescue the hostages in Terhan, the U.S. has expended considerable effort and funds to acquire the "means" to combat terrorism.

With the evolutionary development of U.S. policy (discussed in Chapter II) as the foundation, the policy that has the greatest potential for success to combat terrorism in the 1990's is one based on credible deterrence.

A DETERRENT POLICY TO COMBAT TERRORISM IN THE 1990'S

The objective of the deterrent policy, as mentioned earlier, is to prevent the occurrence of terrorism against the U.S. and its interests. With that in mind, the discussion can focus on the three categories of programs that comprise the deterrent policy: Antiterrorist programs, Counterterrorist programs and Supporting programs.

ANTITERRORIST PROGRAMS

Antiterrorist programs are the principle components of the deterrent policy. They are offensive in nature and designed primarily to prevent terrorism. Generally speaking, the legitimacy of these programs is based on the "rational interpretation" of Article 51 of the U.N. Charter--the inherent right to individual and collective self-defense, and the right of self-defense as it existed in prior customary international law (prior refers to customary international law as it existed before the League of Nations and the U.N.).⁷ Antiterrorist programs are divided into two categories: prosecution of terrorists and preemptive action against terrorists.

The terrorists prosecution program is similar to the program the Bush administration is currently pursuing, however to support an effective policy of deterrence the program discussed here is more aggressive. The initial phases of the

extradition of the terrorists. Locating terrorists have always been one of the more difficult aspects of the equation. The location problem is more of an intelligence issue and will be discussed with other intelligence issues in the Supporting programs section. The apprehension of terrorists can be accomplished in one of two ways; historically, a host nation is made aware of the terrorists presence and makes the arrest; or as supported by recent Justice Department legal opinions, the U.S. can use Federal Agents or military forces to apprehend terrorists in other nations without the consent of the host nation (this concept was previously defined as "extraterritorial apprehension" in Chapter II; however, the Justice Department legal opinion refers to the process as "rendition"). Once the terrorist is apprehended he must be returned to the U.S. for trial. If, as a result of extraterritorial apprehension, the terrorist is in U.S. custody the problem becomes less difficult. The preferred method of returning terrorists to the U.S. is by military means, staying in international airspace and waters to avoid questions of sovereignty and jurisdiction that may arise through the use of civil aircraft and international airports. Although certainly difficult to plan and execute, the use of military assets has proved to be highly successful as demonstrated in "Operation Goldenrod"--the return of terrorist Fawaz Younis to the U.S. for trial in 1987. If the terrorist is not apprehended by the U.S., then the U.S. must begin extradition proceedings to

obtain custody. One of the considerations in deciding which apprehension method to use is whether the host nation has an extradition treaty with the U.S., and if so, whether the host nation will extradite the terrorist upon request. If the answer to either of these questions is no, then extraterritorial apprehension is probably the preferred method. Much has been written about the disadvantages of extraterritorial apprehension. The most frequently discussed disadvantage is the fear of reciprocity by those nations that support terrorism. Iran has already indicated that it will "arrest" Americans anywhere in the world and bring them to trial in Iran in retaliation for any U.S. attempts at extraterritorial apprehension of Iranians. Threats of this nature should not preclude the U.S. from using this means of apprehension (the Iranian threat is no different in principle from the threat made by the Colombian drug lords against the Barco government of Columbia concerning the drug lords extradition to the U.S. The Barco government stood its ground and continues to extradite the drug lords; to do anything else would have resulted in anarchy). The most significant advantage of extraterritorial apprehension, besides the obvious advantage of U.S. custody, is the creation of an alternative for nations with weak governments that cannot give in to U.S. pressure for prosecution or extradition of terrorists for domestic reasons. Publicly the nation can express outrage over an apparent violation of its sovereignty, while privately it can celebrate having not given in to the U.S. requests or

alienated its citizens or terrorist groups.

For the terrorist apprehension program to be an effective component of the deterrence policy it has to be pursued aggressively. Every known terrorists must be apprehended and brought to trial preferably in the U.S. Terrorists have to fear apprehension and a non-negotiable prison term or worse. They have to be concerned about being apprehended anywhere in the world, whether its Baalbek, Damascus, Tripoli, Frankfurt, Manila or the Upper Huallaga valley. The terrorists must have the perception that once they are apprehended and brought to trial they will serve a lengthy prison sentence. Those western nations that have demonstrated that they are willing to prosecute terrorists and award appropriate sentences which will not be commuted or become part of a prisoner exchange, fill the same deterrent role as U.S. courts. The Federal Republic of Germany and Italy appear to fall into this category with the recent sentencing in Germany of Mohammed Hamadei to a life term for his role in the hijacking of TWA flight 847 and the murder of Robert Stethem, and the sentencing in Italy of Ali Molqi to a thirty year term for his role in the hijacking of the Achille Lauro and the murder of Leon Klinghofer. Whether Molqi's sentence was strong enough is certainly debatable, but as long as the sentence runs the full term it serves a deterrent role. If either sentence is reduced or commuted or the prisoners are exchanged for hostages, then there is no deterrent value, and in future cases involving these nations, the U.S. should use extraterritorial apprehension as the primary means to obtain

custody.

The difference between the suggested terrorist prosecution program and the Bush administration's program is the lack of enforcement on the part of the administration. Although the administration has clearly established the legal mechanism and possesses the required forces to implement extraterritorial apprehension, it has failed to do so. This lack of action translates into a lack of political will, and without the will to carry it out, the policy fails the credibility test.

The preemptive action program is just what its name implies-- actions, either overt or covert, taken against terrorists groups or state sponsors to prevent or preempt a terrorist incident from occurring against the U.S. or its interest. In order to stay within the confines of the "national interpretation" of Article 51 of the U.N. Charter, preemptive actions would have to be proportional and appropriate in relation to the anticipated terrorist incident. There is no standard preemptive action. Actions can vary from psychological operations and disinformation campaigns to actions requiring special operations forces in an assault role and the use of conventional forces in a raid on a state sponsor. The key to determining what type of preemptive action is required is the consideration of what is appropriate and proportional, but still allows a high degree of success for mission accomplishment at minimum risk. Like the terrorist prosecution program, the U.S. has the required forces to conduct preemptive action against either terrorists groups or

their state sponsors. At each end of the spectrum, whether they are individual case officers from the CIA, special operations forces from the Joint Special Operations Command, conventional Navy or Air Force units, the personnel are highly skilled and trained.

Another action that belongs in the realm of antiterrorist programs is the rescission of the prohibition against assassinations in Executive Order 12333. The rescission encompasses both the antiterrorist and counterterrorist programs. Although there is much debate about the definition of assassination, most authors agree that it generally applies to "political personalities." Many terrorists and government officials of states that sponsor terrorism fall into the category of "political personalities". Terrorists such as Ahmed Jibril and Yasir Arafat, and officials like Ali Akbar Mostashimi, Muammar Qadhafi and Sheik Fadlallah come to mind. As discussed earlier, for deterrence to function effectively terrorists have to be dissuaded or discouraged through fear and doubt. Currently, they are not afraid of assassination by U.S. forces because they are aware that assassinations are prohibited. The rescission of the prohibition against assassinations increases the fear and doubt on the part of the terrorists. If for moral and ethical reasons the administration and Congress wanted to retain the prohibition, they could still publicly rescind the prohibition and secretly retain the ban on assassinations. The objective is to increase the anxiety level of the terrorists, and their perception that

they could be assassinated would assist in that endeavor.

The difficulty in executing the two basic components of the antiterrorist program cannot be understated. It is highly probable that U.S. personnel and foreign nationals will lose their lives during the execution of extraterritorial apprehension and preemptive actions. The administration has to insure that Congress and the American people understand the cost involved in establishing a credible antiterrorist deterrence program. Along with the trauma associated with the cost in human lives is the difficulty in accurately locating terrorists and determining what their future plans include. The difficulty of gathering information about the terrorists will be discussed in the intelligence section of the Supporting programs.

COUNTERTERRORIST PROGRAMS

Like antiterrorist programs, counterterrorist programs are also offensive in nature. The major difference between the two is that counterterrorist programs are initiated when deterrence has failed. Counterterrorist programs are not designed to prevent terrorism, although they often provide a preventative collateral effect. Counterterrorist actions are designed primarily as reprisals. Reprisals are defined as "methods adopted by states to secure redress from another state by taking retaliatory measures...a sanction, a weapon to enforce a change in the opponent's policy."⁸ Currently, the U.S. has

renounced the use of peacetime reprisals as a violation of international law. As discussed in Chapter II, some government officials mix the terms reprisal and retaliation with the concept of self-defense, resulting in attempts to justify retaliatory actions as "self-help" measures. In order to effectively use counterterrorist programs as part of the overall deterrent policy, the U.S. should abandon its renunciation of peacetime reprisals. The use of reprisals as a sanction to enforce change in an opponent's policy has been deemed legitimate as long as the reprisals were "reasonable."⁹

The role counterterrorist programs play in the deterrence of terrorism is one of intimidation. Terrorists groups and states that sponsor terrorism have to be made aware that if they conduct terrorist actions against the U.S. or its interests they will be punished for their actions, and that it is very probable the punishment will include military action. The 1986 raid against Libya, although justified as self-defense, can easily be seen as a reprisal in retaliation for terrorist acts conducted and supported by the Libyan government during the early 1980's. For counterterrorist actions to function as intended they have to be applicable to all practitioners of terrorism; particularly those state sponsors where retaliatory actions would significantly increase the level of risk--such as Iran and Syria. The U.S. has to demonstrate that it will conduct reprisals against any terrorist group or state sponsor of terrorism, not just groups or states that represent a low level of risk. Although both

Iran and Syria have been implicated in many terrorists attacks against the U.S. In the 1980's, no serious punitive action has been taken against either. Consequently, terrorist groups sponsored by these nations continue to operate with relative impunity. Neither Iran nor Syria has been dissuaded or discouraged from conducting or sponsoring terrorist attacks against the U.S. On the contrary, the lack of action on the part of the U.S. has reinforced their feelings of invulnerability towards the U.S.

Counterterrorist actions have to be reasonable as well as appropriate and proportional. The targets of counterterrorist action should be directly related to the terrorist group or their support base (i.e., individual terrorists, terrorist group leadership, training areas, barracks, communications facilities, etc.); in the case of the state sponsor, the targets should be related to the type of assistance provided the terrorists (i.e., if the support was financial, the targets should be related to the economic structure of the state--oil production, seaports, etc; if the support was military, then the targets should be military). The type of actions appropriate for counterterrorist programs, like the antiterrorist program, cover the entire spectrum. Depending on the incident that justified retaliation, activity could range from small unit action to major conventional strikes against targets deep in the sponsor state. In selecting the appropriate type of counterterrorist action it is important to keep in mind the objective of reprisals-- to enforce a change

in an opponent's policy through the use of a retaliatory measure.

In conducting reprisals, a question that plagued the Reagan administration and appears to be having the same effect on the Bush administration is what type of proof is required to retaliate? The question can be answered by stating what type of proof is not required. Proof required in a court of law is not necessary to conduct a reprisal. Although it would certainly be nice to have, a photograph of a terrorist attack in progress revealing the identity of the terrorists and their state sponsor will undoubtedly never be available. The proof associated with the proverbial "smoking gun" is just about as rare. The proof required for retaliation is information gathered through normal intelligence sources (whether HUMINT or technical) and through the results of investigations (like the ongoing Pan Am 103 investigation). When this information is evaluated by national personnel and they conclude that the information indicates the identity of specific groups or state sponsors, that is all the proof required to retaliate.

At this point in the discussion it is worthwhile to digress somewhat and talk about the role Congress should play in the deterrence of terrorism. For the antiterrorist and counterterrorist programs to be effective Congress has to play an active role in their implementation. There can be no doubt that in the formulation of appropriate antiterrorist and counterterrorist actions the requirements of either or both the War Powers Resolution and the Intelligence Oversight Act of

1980 will have to be considered. If past history is examined to identify trends in the relationship between the Executive Branch and Congress regarding antiterrorist and counterterrorist programs, the only identifiable trend to emerge would unfortunately be one of mistrust and lack of cooperation. In an October 1985 speech to the Johns Hopkins School of Advanced International Studies, Senator Dave Durenberger described his assessment of the working relationship between Congress and the Executive Branch regarding the War Powers Resolution, The Intelligence Oversight Act of 1980 and antiterrorist and counterterrorist programs saying:

My problem with the War Powers and Intelligence Oversight frameworks is that they will more often operate to inhibit rather than encourage consultation, because of the intricate legal (gamesmanship) that inevitably results.

The Executive Branch spends its time figuring out whether and how a particular activity fits into either framework, when we might be conducting a more meaningful exchange of ideas on the wisdom of underlying basic policy, or even the advisability of a particular operation as a whole.

This is not a theoretical problem. It exists today. In the view of the Administration, notification

of Congress is tantamount to public disclosure. Therefore, in shaping the options available to counter a terrorist threat, planners in the executive department limit their consideration to actions which do not fall under the War Powers Act. What may be the most effective course of action from the military or political point of view may be rejected because of the current requirements for notification.

In short, the Administration may prefer to do the wrong thing in secret, rather than doing the right thing with Congressional knowledge.

The system has truly been stood on its head-- and the effect could be disastrous.¹⁰

The gamesmanship, mistrust and lack of cooperation between the Executive Branch and Congress has to be eliminated. As Senator Cuenberger pointed out, antiterrorist and counterterrorist actions have to be formulated on the basis of what is the most appropriate course of action, not on the basis of what will not require consultation with Congress. The Bush administration has made some progress in this area, with a recent informal agreement to notify Congress within 48 hours of a Presidential Finding authorizing covert action.¹¹ However, more progress needs to be made, if the U.S. is to effectively implement

antiterrorist and counterterrorist actions that will involve both clandestine and covert actions. Appropriate members of Congress should be actively involved in the planning stages of these actions.

SUPPORTING PROGRAMS

Supporting programs can be defined as programs that provide support and assist in the execution of the primary deterrence programs (the antiterrorist and counterterrorist programs). There are many programs that fall into this category, such as intelligence programs, the role of the media and supporting foreign policy, but none is more important than the intelligence programs.

INTELLIGENCE PROGRAMS

The intelligence programs represent the linchpin of the deterrence policy against terrorism. Without an effective intelligence program neither antiterrorist nor counterterrorist programs can be implemented with any assurance of success. The tasks for the intelligence community are formidable:

- * Antiterrorist programs-- To support extraterritorial apprehension the intelligence community has to determine the precise location and maintain surveillance of individual terrorists. To support preemptive actions it has to determine when and where the terrorists are going to strike.

* Counterterrorist programs--To support reprisals the intelligence community has to assist in two areas: in the determination of which terrorist group and/or state sponsor was responsible for an incident; and in the location of the targets for the reprisal.

The difficulty in accomplishing these tasks is considerable. Chapter II discussed some of the problems experienced by the intelligence community during the 1970's. Remnants of these problems still exist today. The controls instituted to reign in covert action and the reduction in personnel had a "purge-like" effect on many of the personnel experienced in covert action and the collection of intelligence from human sources. While intelligence gathered through technical means can assist in locating terrorist training camps and help identify support provided by state sponsors, it cannot be of much assistance in determining the terrorists intentions. In the case of the Middle East, the ability to collect intelligence from human sources was further damaged when personnel representing practically all of the intelligence expertise in the area were killed during the 1983 suicide car bombing of the U.S. Embassy in Beirut.¹²

To accomplish the tasks mentioned above the intelligence community has to rely on all of its resources. Intelligence gathered from DOD, State, the National Security Agency (NSA), CIA, and DEA and the intelligence obtained through liaisons with foreign governments all play an important role in supporting the deterrence of terrorism. Intelligence gained

from liaisons with foreign governments and organizations like the ARVN Group are important because they help fill the void created by inadequate U.S. HUMINT sources.

HUMINT sources are invaluable because they represent the sole source of intelligence that provides timely and accurate insight into the intentions of terrorist groups; without HUMINT, it is unlikely that antiterrorist preemptive actions can be initiated, much less be successful. However, care must be taken to avoid depending solely on HUMINT sources since it may cause a tendency to neglect other sources that can corroborate or disprove the HUMINT source. To assure success, the intelligence program needs to be a blend of all the normal sources of intelligence--HUMINT and technical (SIGINT, ELINT, PHOTINT, etc.), working through a single processing point. The Counterterrorism Center (CTC) at the CIA, established in the mid-eighties, was to serve as, among other things, that processing point. Intelligence collected from human sources is the most often discussed method of collection regarding terrorism for two reasons: first, the HUMINT method was the method most severely affected by terrorist actions and the changes mandated by Congress and the Carter administration in the 1970's; and secondly, due to the nature of HUMINT collection, it is the most difficult to implement against terrorists groups because of their closed nature. The chances of infiltrating terrorist groups are remote. Normally, the best to be hoped for is a terrorist informer or an informer that is a terrorist sympathizer. Consequently, the improvement

and global build-up of the U.S. capability to develop HUMINT sources is crucial to the successful implementation of the U.S.'s deterrence policy against terrorism.

To begin the global build-up of the capability to develop HUMINT sources, the U.S. must establish a system to gather intelligence from human sources in geographical regions where terrorism poses the greatest threat to the U.S. Currently, the focus for the U.S. should be on the following regions: the Middle East, Central America, South America, Africa, East Asia and the island nations of the Pacific. One of the goals of the build-up should be self reliance. The U.S. should not have to depend solely on liaisons with foreign governments to provide intelligence collected from human sources. The inherent problem with intelligence derived from liaisons with foreign governments is the authenticity of the intelligence. There is always a question of whether the intelligence has been slanted by the foreign government to produce a U.S. reaction favorable to the foreign government. However, the U.S. will probably not be in a position to be self reliant in any of the target regions for another generation. This places added importance to the establishment of liaisons with foreign governments, in spite of the inherent problems, as the primary means to procure intelligence from human sources in the target regions.

THE ROLE OF THE MEDIA

Many authors argue that the media have actually had an

adverse effect on the fight against terrorism. To better understand what the media's role should be in supporting the fight against terrorism, it is necessary to examine a few of the problems attributed to the media.

PROBLEMS

Technology and the growth of the media are the main causes for much of the criticism leveled at the media regarding their coverage of terrorism. In the 1950's there were three TV networks in the U.S. and the BBC could arguably be considered their equivalent in Britain. In those days, if the occasion warranted, the U.S. and Britain could have enforced their will upon the networks and obtained a consensus over what type of coverage certain events would receive.¹³ However, because of the increase in technology, a truly global media community exists today. Technology has made the "mini-cam" and the satellite uplink available to almost anyone for a relatively inexpensive fee.¹⁴ In addition to the major networks around the world there are numerous independent news networks that provide coverage, much of it live, on a 24 hour a day basis. As a result, in today's environment the chances are remote that the U.S. and its western allies could ever attain a consensus among the global media community addressing guidelines for media coverage of terrorism. To understand why a consensus among the global media community would be difficult, particularly among those TV networks that provide news

coverage, one has to understand that news coverage is not a "public service" as it is often advertised.¹⁵ It is a business, and as a business it has to be competitive to be successful. To be competitive, news programs have to attract viewers. Around the world, there are two subjects proven to attract and hold a viewer's attention: sex and violence.¹⁵ In the U.S. subjects concerning sex are normally kept off the air through censorship. However, violence is not, and it normally dominates the U.S. nightly news programs. The violence and drama associated with terrorist hijackings and bombings represent the most coveted "media bytes" among the competing network news programs. A look at the most heavily reported news events of the past decade would surely include the following: The hostage rescue at "Princess Gate"; the suicide car bombings of the American Embassy, the Marine barracks, and the American Embassy Annex in Beirut; the hijacking of TWA Flight 847; the Rome and Vienna Airport massacres; the sea-jacking of the Achille Lauro and the ensuing capture of the terrorists; the murder of LTC William R. Higgins; and the bombing of Pan AM Flight 103. Consequently, technology has allowed the smallest independent media organization to be competitive with the major news networks, and this competitiveness to be the first to break a story has caused major problems in how terrorists incidents are reported.

The actual coverage of terrorist incidents by the TV media by can only be described as poor. The one characteristic that seems to surface during the coverage of each incident is a lack

of balance in the reporting.¹⁷ In those instances where an interview of a hostage or a terrorist was conducted, most news organizations failed to provide the "administration's view" or even an editorial comment remarking on the possibility that the hostage may have been under duress, or that the terrorist may not be telling the truth or representing the people he claims. In their efforts to assure coverage of the entire story, news organizations usually insist on interviewing the victim's family as soon as possible. In a 1987 speech to the Association of Airline Security Officers, the Ambassador-at-Large for Counterterrorism, L. Paul Bremer spoke of the intrusion into the tragedy of the victim's families, recounting the story of a former victim, who said "My teenage son received a telephone call at 2 a.m. The journalist calling had a question: The latest reports indicate that your father will be executed in 2 hours. Any response?"¹⁸ The media has demonstrated on numerous occasions a lack of concern for the victim's families. In addition to the coverage being poor, live TV coverage can often serve as a means of intelligence for the terrorist. The advances in technology mentioned earlier allow terrorists to use a variety of media receiving devices during a terrorist incident. A terrorist today can easily put a cellular telephone, a two-way radio, a shortwave receiver and a television in one ordinary briefcase.¹⁹ Technology allows the terrorist to monitor everything that is being said about the incident, which in the past has included personal information about the hostages and rumored information

regarding the movement of military rescue forces. An incident that had the potential for disaster was the 1980 SAS rescue of the Iranian hostages at the Iranian Embassy in Princess Gate, London. The incident received live TV coverage and during the report SAS rescuers were shown rappelling down the Embassy walls and through the windows during the assault. If the terrorists would have been watching TV, they would have been warned of the assault and perhaps given enough time to murder more hostages.²⁰

THE MEDIA AS A SUPPORTING PROGRAM

The remedy most frequently discussed as having the greatest potential to solve many of the problems inherent to the media coverage of terrorist incidents is the prohibition of live coverage. Some authors contend that the existence of a "decent interval" between the taping of the action and the actual broadcast of the coverage would go a long way in solving many of the problems.²¹ However, as discussed earlier, attaining a voluntary consensus from the global media community is unlikely. It is just as unlikely that any type of governmental censorship would provide a total prohibition against live coverage because of the value attached to freedom of the press in the U.S. and by the governments of our western allies. Consequently, although an ideal solution, prohibition of live coverage is not a pragmatic solution.

For the media to effectively function as a supporting

program of the policy to deter terrorism some guidelines and objectives must be established. The objective of the guidelines is to provide an element of governmental control in situations that in the past have needlessly endangered innocent citizens, while at the same time allow the media to continue to provide news coverage on a competitive basis. The right of free press and free speech have never guaranteed an individual or an organization the right to endanger another citizen's life. No one has ever had the right to yell "fire" in a crowded theater.

Since a complete prohibition against live coverage is admittedly unattainable, the following guidelines should be adopted for use by the media in covering terrorists incidents:

- * No real-time, live interviews with hostages or terrorist would be permitted.
- * "Live" interviews with hostages or terrorists would require a minimum delay prior to broadcasting to allow necessary or appropriate editing by the news media.
- * All interviews would be followed by either an "administration view" or appropriate editorial comment.
- * All real-time, live coverage would be from an agreed upon distance (agreed upon by members of the media and the officials responsible for handling the incident).
- * Reports regarding the movement of military forces

would be prohibited.

As a supplement to the above guidelines, each news network, major and independents, should be encouraged to require its editors and journalists to adopt a set of questions or checklists to remind them of the issues, as well as the far reaching and immediate consequences of their coverage on terrorist incidents. In his speech to the Association of Airline Security Officers, Ambassador Bremer suggested eight such questions:

- * Have my competitive instincts run away with me?
- * What is the benefit in revealing the professional and personal history of a hostage before he or she is released?
- * Regarding statements made by hostages and victims:
Have I given sufficient weight to the fact that all such statements are made under duress? If I go ahead with the report, have I given my audience sufficient warning?
- * Should I use statements, tapes and the like provided by the terrorists?
- * How often should I use live coverage? (prohibited by recommended guidelines)
- * Am I judging sources as critically as I would at other times?
- * Should I even try to report on possible military means to rescue the hostages? (prohibited by recommended guidelines)

- * What about honest consideration for the family members of victims?22

In addition to his eight questions, Ambassador Bremer recommended "that journalists covering a terrorist incident in progress take a point from the Hippocratic oath: first, do no harm."23

For any rules, regulations or guidelines to be effective, they have to be followed. The guidelines recommended here permit a degree of real-time live coverage and only minimum intrusion into the live interview process for hostages and terrorists. The difficulty of attaining a consensus among the global media community notwithstanding, these guidelines should be presented and discussed with the community. The U.S. and its allies should strongly recommend the adoption of these guidelines to the global media community. Incentives should be offered by the U.S. and its allies to encourage the media community to adhere to the guidelines. Incentives would include the use of government assets (the combined assets of western governments involved in the terrorists incident) in editing and filing reports and providing overall coverage. The creation of penalties for non-compliance would depend on the success of the voluntary adoption of the guidelines by the media community. The range of penalties could vary from non-admittance to government news briefings and government action to jam (interfere with) network communications (satellite up-link and radio telephone) at the site of the terrorist incident, to the passage of legislation requiring

heavy fines for networks that failed to follow the established guidelines.

FOREIGN POLICY AS A SUPPORTING PROGRAM

It is not the intent to imply that U.S. foreign policy functions solely to support the deterrence of terrorism. However, the implementation of routine foreign policy programs does provide support to the policy of deterring terrorism. The previously mentioned Antiterrorism Training Assistance Program continues to provide valuable training to security forces around the world involved in the fight against terrorism. This program should certainly be continued. With recent reports of terrorist organizations such as Hizballah operating from African nations (Ivory Coast, Senegal, Gabon, and Zaire) and the rise of terrorist activity in East Asian and Pacific Nations (New Caledonia and Papua New Guinea), the U.S. should place increased emphasis on providing support through the Antiterrorism Training Assistance Program to the nations of these geographical regions.²⁴

The critical role the State Department plays in the continuing pursuit of extradition treaties without "political offense" loopholes further strengthens the terrorist prosecution efforts of the antiterrorist program. Additionally, within the State Department, the Bureau of Diplomatic Security has made significant strides overseeing the

security training of diplomatic personnel and supervising the efforts to "harden" diplomatic facilities. Since the Bureau's inception in the mid-eighties, the number of successful attacks against diplomatic facilities has decreased dramatically. All of these programs are required to support an effective antiterrorist program.

There is one specific supporting program that falls within the purview of foreign policy that needs to be expanded and pursued more aggressively--the identification and elimination of the "root causes" of specific terrorist movements. Admittedly, it sounds very idealistic. However, there are foreign policy initiatives currently underway that have the elimination of "root causes" of specific terrorist movements as their objective. The administration's effort to bring the Palestinians and the Israelis to the negotiating table is an example of such an effort. Certainly, not all terrorist movements have "root causes" that are amenable to elimination through foreign policy initiatives. Those terrorists movements whose "root causes" are anarchic, nihilistic or stem from criminal enterprise can only be dealt with effectively through the antiterrorist and counterterrorist programs described in this chapter. These foreign policy initiatives should not be viewed as an effort to identify and separate "good" from "bad" terrorist groups. The point was made in the first chapter that there are no "good" terrorist groups. The purpose here is to attempt to identify those terrorist organizations whose "root cause" may be able to be eliminated (or at least reduced in

importance to the point where it no longer attracts popular support; at the negotiating table if both parties can be brought together. The success of these initiatives will depend to a large extent on the ability of the U.S. to exert pressure on foreign governments to meet with representatives from terrorists organizations to address the "root cause" of the movement. It can be expected that the pressure from the U.S. will not be well received by many of these nations, especially close allies such as Britain and Israel. The initiatives to identify and eliminate "root causes" are not designed as a substitute for any portion of the antiterrorist or counterterrorist programs. Those programs would continue to function as described. The "root cause" initiatives are designed to supplement the overall policy to deter terrorism; the objective is the same--prevent the occurrence of terrorism (in this case by eliminating the "root cause" of the movement through negotiations).

ENDNOTES

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a Proactive Counterterrorism Measure" in Neil C. Livingstone's and Terrell E. Arnold's, Beyond the Iran-Contra Crisis, Lexington, Lexington Books, 1989, p. 274.

11. David Hoffman and David B. Ottaway, "Panel Drops Covert-Acts Notification," The Washington Post, October 27, 1989, p. A-1.

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22. Bremer, p. 2-3.

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CHAPTER IV

CONCLUSION

The recommended policy to combat terrorism in the 1990's, a policy based on the concept of deterrence, will go a long way in reducing the problems terrorism causes for the U.S., but it will not eliminate terrorism. History has shown that the use or threat of violence to achieve political purposes has been around for thousands of years, and there is no reason to expect it to disappear in the future. As long as the U.S. continues to be a world power whose citizens are concerned with the promotion of democratic ideals and basic human rights, it can expect to be victimized by terrorism. Knowing that terrorism will continue to be a problem for the U.S. reinforces the argument for a strong national policy to fight terrorism. It is not enough to have a declaratory, reactive policy that details procedures in response to terrorist acts. There must be a policy aimed at the prevention of terrorism. The terrorist prosecution and the preemptive action programs are components of the antiterrorist policy designed specifically to prevent terrorism. When the deterrence of the prevention programs fail there must be strong counterterrorist programs ready to be implemented. The retaliatory measures that comprise the counterterrorist programs must be reasonable, as

well as appropriate and proportional. To be effective the antiterrorist and counterterrorist programs must be supported by a strong and imaginative intelligence community, capable of collecting and utilizing intelligence from all sources, and it must be particularly adept at collecting and utilizing intelligence gathered from human sources. Federal Statutes should enhance the efforts to deter terrorism, not impede their development. Consequently, Congress must play an early role in the formulation of antiterrorist and counterterrorist programs. The media must be made aware of the critical role they play in the fight against Terrorism. Guidelines, established by the government and accepted by the media, which provide for the safety of terrorist's victims must be in place prior to the implementation of the deterrence policy. Supplementing the overall policy to deter terrorism, are the foreign policy initiatives aimed at the identification and elimination of the "root causes" of specific terrorist movements. These foreign policy initiatives are necessary to demonstrate that while the U.S. condemns all forms of terrorism, it may recognize the legitimacy of some of the political objectives associated with some organizations.

Over the years people involved in the U.S. fight against terrorism have often written about the overwhelming frustration experienced in dealing with the problem. Their experience usually involved an after the fact, ad-hoc Cabinet or NSC level meeting called to determine how, or in what way should the U.S. respond to the terrorist act. It is the contention of this

paper that as long as the U.S. remains reactive, with no clearly articulated policy, frustration will remain the hallmark of the U.S. policy to combat terrorism. To avoid the frustration so characteristic of past U.S. involvement with terrorism, this paper argues for consideration of the deterrent policy discussed in the previous chapters as having significant potential for success in the fight against terrorism in the coming decade of the nineties.

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