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**IMPLEMENTATION OF THE INTERNATIONAL CON-
VENTION FOR THE SUPPRESSION OF TER-
RORIST BOMBINGS AND THE INTERNATIONAL
CONVENTION FOR THE SUPPRESSION OF THE
FINANCING OF TERRORISM**

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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PRESSION OF THE FINANCING OF TER-
RORISM**

WEDNESDAY, NOVEMBER 14, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:11 a.m., in Room 2237, Rayburn House Office Building, Hon. Lamar Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee on Crime will come to order. I appreciate the good attendance we have this morning, and all the Members who are here, I want to thank them for coming. I also want to say, as I said before, I always appreciate the Ranking Member, Mr. Scott, not only being on time but occasionally, as he was today, actually here before I was. I appreciate his promptness in that regard.

Today we are going to have a hearing and a markup on H.R. 3275, the Implementation Legislation for the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. That will be followed by a markup on H.R. 3209, the Anti-Hoax Terrorism Act of 2001.

I am going to recognize myself for the purposes of giving an opening statement, and my opening statement will serve for both the hearing and the markup because I hope that we will be able to proceed directly to the markup. And I would encourage Members to mention in their opening statement now what they might have mentioned in their opening statement for the markup as well.

International terrorism once threatened Americans only when they were outside this country. Today, every American must live their lives conscious of the fact that the war on terrorism is being fought not only in other countries, but also in our own.

International cooperation is one way to defeat terrorism and is critically important to our success. H.R. 3275 implements two treaties that have been signed by the United States and transmitted to the Senate. Both were initiated under the Clinton Administration.

The first treaty, the International Convention for the Suppression of Terrorist Bombings, was drafted by the United States in the wake of the bombing attack of the United States military personnel in Saudi Arabia in 1996. This treaty creates international jurisdiction over the unlawful and intentional use of explosives and other lethal devices in public places with the intent to kill or cause serious bodily injury, or with the intent to cause the extensive destruction of the public place.

The treaty requires nations to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses. Thirty-seven nations are currently party to the convention, which became effective internationally on May 23, 2001. Hopefully, of course, the United States will be the 38th country.

The second treaty is the International Convention for the Suppression of the Financing of Terrorism, which was drafted in 1998. This convention imposes binding legal obligations upon nations either to submit for prosecution or to extradite any person within their jurisdiction who unlawfully and willfully provides or collects funds with the intention that they be used to carry out terrorist activities. Nations also are required to take appropriate steps for the detention, freezing, seizure, or forfeiture of any funds used or allocated for the purposes of committing terrorist acts.

By approving this legislation, we will avoid any delay in implementing these treaties once they have been drafted by the required 22 nations.

Some might oppose this legislation because the bill provides for the possibility of the death penalty for those international terrorists who blow up public buildings and kill innocent people. Others might be opposed because these new terrorist laws will be added as predicate offenses to our laws on wiretaps, money laundering, and material support for terrorism.

However, we already have laws in place that provide for the death penalty for terrorists that murder innocent civilians, so the provisions of this bill are consistent with current law.

Furthermore, this bill simply amends current laws against terrorism to include crimes of terrorist bombings and financing terrorism.

Changing or delaying these conventions would handcuff our law enforcement officers in their efforts to bring terrorists to justice. These treaties, once they are ratified and implemented, will fill an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in bombings and financially support terrorist organizations. At a time when other nations are being asked to support our coalition efforts, we should act promptly to join them in these treaties to fight international terrorism.

I look forward to hearing from our witnesses today and will now recognize the Ranking Member, Mr. Scott, for his opening statement.

Mr. SCOTT. Thank you, Mr. Chairman.

Before I begin my statement, I would like to ask you to consider holding hearings on some of the recent actions by the Administration, including the idea that Government officials can listen in to attorney-client conversations and this more recent new kind of trial

in secret that has been in the press. I am not sure about the details of it, but I think we need to have hearings on that. They involve fundamental principles of law that have been well established over decades, and they appear to be summarily being set aside by Executive orders without any legislative consideration at all. And we ought to at least have hearings to see what is going on.

Having said that, Mr. Chairman, I am pleased to join you in convening this hearing on implementing legislation for the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. These treaties have been pending for some time, and I applaud the President's recent resolve in having them now ratified.

I am concerned that right on the heels of hurriedly enacting into law an anti-terrorism bill laden down with severe penalties and severe intrusions into traditional civil liberties, we are now asked to enact, again, in a hurry, yet another such bill.

The anti-terrorism bill we just enacted was represented by the Administration as a comprehensive anti-terrorism bill designed to address terrorism threats in this country. Included in the bill, however, were unprecedented extensions of wiretap, RICO asset forfeitures, and punishments which were enacted into law, many of which had nothing to do with terrorism. Some of the wiretap provisions, in fact, had nothing to do with any crimes.

This bill before us provides for further extensions of these drastic measures and even goes further by adding additional death penalty provisions with no indication that such measures are required for or have anything to do with the ratification of treaties which have been pending before the Senate since 1999.

Indeed, Mr. Chairman, from a cursory review of the treaty requirements, I am wondering what is required by the treaty that is not already a crime under our laws.

So, Mr. Chairman, I look forward to the testimony of our witnesses and for the light they will shed on these questions and concerns, and I join you in welcoming them to this hearing.

Mr. SMITH. Thank you, Mr. Scott.

Are there other Members who have opening statements? Anyone else? If not, we will proceed. Again, I welcome the witnesses, and let me introduce them in the order in which they will testify.

First is Mr. Michael Chertoff, Assistant Attorney General, Criminal Division, U.S. Department of Justice; and Mr. Sam Witten, Deputy Legal Adviser, U.S. Department of State.

Gentlemen, I have one comment for you that I hope you will take in the spirit in which it is offered, and it is this: One of two things is going to happen. Either I am going to have to retract all those things I said about Administration witnesses under the Clinton Administration who didn't get their testimony to us on time, or this Administration is going to have to change its habits.

We need a little bit better cooperation both in securing witnesses and in getting your testimony because if we don't get them in a timely fashion, basically you inconvenience a lot of people, including the Crime Subcommittee staff and others. And it is also not fair to the Members not to get information in a timely fashion. And I hope you all understand that.

Okay. No response is required, but I would like an affirmative reply at some point that we can change the habits of this current Administration.

Thank you for listening to that comment, and, Mr. Chertoff, we will begin with you.

STATEMENT OF MICHAEL CHERTOFF, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

Mr. CHERTOFF. Thank you, Mr. Chairman. Speaking from my corner of the world, we will change our habits and try to make sure we get material to you in a timely fashion. And I apologize if we were late in this instance.

Mr. Chairman, Ranking Member Scott, Members of the committee, I am pleased to be here today to speak in favor of this legislation which would implement two important anti-terrorism conventions: the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. In the view of the Department of Justice, both of these instruments are critical to our continuing efforts to prevent, deter, and combat terrorist acts.

We have provided a statement, and I would ask, Mr. Chairman, with your consent, to have it be made part of the record.

Very briefly, just last month, I testified in the Senate to endorse the Senate's advice and consent to the ratification of these conventions. Both of these instruments are designed to strengthen the international alliance against terrorism, and they aim at a seamless network of zero tolerance for terrorist acts and their financing. And there are really two provisions or two conventions we are talking about here.

The first is the Terrorist Bombings Convention which addresses the most utilized form of terrorism, which is the bombing of public places and State and Government facilities, et cetera, with the intent to cause death or serious bodily injury. This proposed implementing legislation would enact a new section 2332(f) of title 18 to make terrorist acts that are covered by the convention a crime.

The heart of the provision would make it a Federal offense to unlawfully deliver or detonate an explosive or other lethal device in a place of public use, Government facility, public transportation system, et cetera, with the intent to cause death or serious bodily injury, and significantly, the phrase "explosive or other lethal device" covers biological, chemical, or radiological weapons, as well as conventional explosives.

Notable as well under the law is the broad extraterritorial jurisdiction over offenses committed outside the United States, to include situations where, for example, a victim or perpetrator is a national of the U.S. abroad or the perpetrator is found in the United States. And I should observe that there are exemptions from jurisdiction for activities of armed forces during armed conflict that are governed by the law of war, and for activities undertaken by military forces of a state in the exercise of official duties.

Let me turn briefly now to the Financing Convention. That, of course, addresses the lifeblood of terrorism, which is funding of terrorism, and it embodies the recognition that those who pay for ter-

rorism are as guilty and as culpable as those who actually pull the trigger or press the detonator on the bombs.

Again, the implementing legislation would enact a new criminal provision, 18 U.S.C. 2339C, making it a crime to unlawfully and willfully provide or collect funds with the intention or knowledge that the funds will be used to commit an offense under a specified treaty or to carry out any act intended to cause death or serious bodily injury to a civilian, when the purpose of the act is to intimidate a population or compel a government or international organization to do or abstain from doing an act. And, again, we have broad jurisdiction over offenses that take place in the U.S. where there is some kind of international connection or over an offense that takes place outside the U.S. if there is some connection with the United States.

Let me conclude by saying, Mr. Chairman, that the Administration is convinced that adoption of these proposals is important to the ongoing war against international terrorism. Not only do they provide the Federal Government with important and useful tools but, more important, I think here they send a very significant message to the international community that we are going to try to move in lockstep and in a uniform fashion in taking those measures that are necessary to combat both terrorism and terrorist financing.

Accordingly, we urge Congress to adopt these legislative proposals as soon as possible, and I am happy to answer any questions.

[The prepared statement of Mr. Chertoff follows:]

PREPARED STATEMENT OF MICHAEL CHERTOFF

Mr. Chairman and Members of the Committee, I am pleased to be here today to speak in favor of legislation that would implement two important anti-terrorism conventions, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. In the view of the Department of Justice, both instruments are critical to the efforts of the United States to prevent, deter and combat terrorist acts.

Just last month, I testified in the Senate to endorse its advice and consent to the ratification of these conventions. Both instruments serve to strengthen the international norm against terrorism and reinforce the international community's intolerance for, and condemnation of, terrorist acts and their financing. Each Convention explicitly recognizes that there is no justification, no rationale that will excuse the commission of terrorist acts or the financing and support of those acts.

The Terrorist Bombings Convention addresses the most utilized form of terrorism, the bombing of public places, state or government facilities, public transportation systems or infrastructure facilities, with the intent to cause death or serious bodily injury. The proposed Terrorist Bombings Convention Implementation Act of 2001 would enact a new section 18 U.S.C. §2332f that would make terrorist acts covered by the Convention a crime.

The heart of this provision, proposed subsection 2332f(a), would make it a federal offense to unlawfully deliver or detonate an explosive or other lethal device in a place of public use, a government facility, a public transportation system, or an infrastructure facility with intent to cause death or serious bodily injury, or with the intent to cause extensive destruction where such destruction results in or is likely to result in major economic loss. Notably, the phrase "explosive or other lethal device" covers biological, chemical, or radiological weapons, as well as conventional explosives. Attempts and conspiracies are also criminalized.

Jurisdiction over these offenses is spelled out in proposed subsection 2332f(b). Under that subsection, there is broad extraterritorial jurisdiction over offenses committed outside the United States, to include situations where a victim or perpetrator is a national of the United States or the perpetrator is found in the United States. Jurisdiction over offenses that take place in the United States extends to situations,

such as where the offense is committed against a foreign government or the offense is committed in order to compel the United States to do or abstain from doing any act. Also, pursuant to proposed section 2332f(d) and the Convention, there are exemptions from jurisdiction for activities of armed forces during an armed conflict that are governed by the law of war, and for activities undertaken by military forces of a State in the exercise of their official duties.

Commensurate with the heinous nature of a terrorist bombing, the statutory penalty for the proposed offense is any term of years or life imprisonment, and if death results, the death penalty is an option.

The Terrorist Bombings Convention entered into force internationally on May 23, 2001. Pending Senate advice and consent, the United States is a signatory but not yet a party. Hence, section four of the implementing legislation provides that the operative provisions of the legislation will go into effect on the date that the Terrorist Bombings Convention enters into force for the United States. It should be noted that other state and federal laws criminalize terrorist bombings (see, *e.g.*, 18 U.S.C. §§ 844(i); 18 U.S.C. § 2332a), and this legislation will supplement, and in no way supplant or restrict, those other statutes.

I turn now to implementation of the Terrorist Financing Convention. That Convention addresses a common element of every terrorist act—financing and other support. It embodies the important recognition that the financiers of terrorist acts are as reprehensible as those who commit the terrorist acts themselves, and that such financing must be deterred and punished.

The Suppression of the Financing of Terrorism Convention Implementation Act of 2001 would enact a new criminal provision, proposed 18 U.S.C. § 2339C, making it a crime to unlawfully and willfully provide or collect funds with the intention or knowledge that such funds are to be used to 1) commit an offense under a specified antiterrorism treaty, or 2) carry out any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or international organization to do or abstain from doing any act. Attempts and conspiracies would also be criminalized.

The jurisdictional bases for the proposed offense are set forth in proposed 18 U.S.C. § 2339C(c). Essentially, there is jurisdiction over an offense that takes place in the United States if: 1) there is some type of international nexus (*e.g.*, the perpetrator was a national of another state or the perpetrator is found outside the United States); or 2) there is a nexus with interstate or foreign commerce. There is jurisdiction over an offense that takes place outside of the United States if there is a nexus with the United States (*e.g.*, the perpetrator is an United States national or is found in the United States). Finally, there is also jurisdiction over an offense when the offense is committed on board a U.S. ship or aircraft, or where the underlying terrorist act is being committed in an attempt to compel the United States to do or abstain from doing any act.

The proposed legislation creates another offense, proposed 18 U.S.C. § 2339C(b), which would enhance the ability of U.S. law enforcement authorities to combat the financing of terrorists and their organizations. Specifically, proposed section 2339C(b) would criminalize knowingly concealing or disguising the nature, location, source, ownership or control of: 1) any funds provided or collected in violation of proposed subsection 2339C(a); 2) any proceeds of such funds; and 3) any material support or resources provided to a designated foreign terrorist organization in violation of 18 U.S.C. § 2339B. Concealing or disguising such terrorist assets impedes law enforcement, and it is important to deter and punish such activity.

Commensurate with the seriousness of these offenses, the penalty for violating proposed section 2339C(a) is up to 20 years imprisonment, and the penalty for violating proposed section 2339C(b) is up to 10 years imprisonment.

In addition to the new criminal offenses, the implementing legislation would also create a new civil penalty. Proposed subsection 2339C(f) creates a civil penalty of at least \$10,000 payable to the United States against an American corporation or other legal entity, if any person responsible for its management or control has, in that capacity, committed an offense set forth in proposed subsection 2339C(a). This subsection implements Article 5 of the Terrorist Financing Convention.

The Terrorist Financing Convention is not yet in force internationally, but will enter into force after twenty-two states have ratified it. The Convention was transmitted to the Senate for its advice and consent to ratification on October 12, 2000. Thus, section four of the implementing legislation provides that two jurisdictional provisions, based on the presence alone of the offender within the United States and on no other nexus with the United States, will not go into effect until the Terrorist Financing Convention enters into force for the United States. However, the effective

date for all remaining provisions of the Act would be upon enactment. This is because Congress currently has constitutional authority to enact those provisions, including the commerce and foreign relations powers.

In conclusion, Mr. Chairman, the Administration is convinced that adoption of these proposals implementing of the Terrorist Bombing and Terrorist Financing Conventions is important to the ongoing war against international terrorism. They will provide the federal government with important and useful new tools to combat terrorist acts and those who finance them. In addition, enactment will send an significant message to the international community regarding the importance of taking necessary steps to become a party to the Terrorism Financing Convention. I urge the Congress to enact these legislative proposals as soon as possible. Thanks you, and I would be happy to answer any questions you might have.

Mr. SMITH. Thank you, Mr. Chertoff.
Mr. Witten.

**STATEMENT OF SAMUEL M. WITTEN, ACTING DEPUTY LEGAL
ADVISER, UNITED STATES DEPARTMENT OF STATE**

Mr. WITTEN. Thank you, Mr. Chairman, Ranking Member Scott. I would like to begin by echoing Mr. Chertoff's comments. We apologize that our statements arrived late, as I understand it, and we will do everything we can to provide documents and statements to you in a more timely way.

Mr. Chairman, with your permission I would like to submit my complete statement for the record and summarize my comments.

Mr. SMITH. Without objection, both of your complete opening statements will be made a part of the record.

Mr. WITTEN. Thank you, Mr. Chairman.

I am pleased to appear before you today, following Assistant Attorney General Chertoff, to speak in support of the Administration's proposed implementation legislation for the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

The State Department worked closely with the Justice Department in the negotiation of these conventions at the United Nations between 1997 and 1999. Mr. Chertoff has provided an overview of the Administration's draft legislation. I will now provide some additional background on the history and purpose of these new international law enforcement conventions so as to put them in context for the committee.

As a preliminary matter, I note that two steps are to be taken before the United States becomes a party to these two conventions. Because these are treaties, they have been submitted to the United States Senate for advice and consent to ratification. The Senate Foreign Relations Committee held a hearing on the conventions on October 23, 2001, and we hope will soon make a favorable recommendation of advice and consent to the full Senate.

In this connection, Mr. Chairman, we learned this morning that the Foreign Relations Committee has included these two conventions on its agenda at a meeting that is starting in 5 minutes, at 10:30, and is scheduled to report them out favorably. We won't know that that has happened until action is complete, but our information from Senate staff this morning is that the business committee meeting is going forward as scheduled.

The conventions will need to be approved by the full Senate after the Foreign Relations Committee completes its work before the

President can ratify them. In addition to the Senate process, U.S. domestic implementing legislation is being proposed to cover the offenses described in Article 2 of the convention. This legislation must be passed by both Houses of Congress and signed by the President before the United States will deposit its instruments of ratification. The legislation under consideration today by the Subcommittee on Crime is intended to address the second requirement.

These two conventions follow the general models of prior terrorism conventions negotiated by the United States at the United Nations or its Specialized Agencies, including, for example, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1979 Convention Against the Taking of Hostages, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

Nations that become a party to these conventions commit themselves to criminalize the conduct identified in the convention and to cooperate with one another in the investigation and prosecution of the offenses. Each of these prior conventions has also required implementing legislation enacted by both Houses of Congress in addition to U.S. Senate advice and consent to ratification.

These two conventions have distinct histories. The UN General Assembly adopted the International Convention for the Suppression of Terrorist Bombings, commonly called the "Terrorist Bombings Convention," on December 15, 1997. The United States initiated the negotiation of the convention in July 1996 in the aftermath of the June 1996 bombing attack on U.S. military personnel at the Khobar Towers facility in Dhahran, Saudi Arabia, in which 17 U.S. Air Force personnel were killed. That attack followed other terrorist attacks in 1995 and 1996, including poison gas attacks in Tokyo's subways, bombing attacks by Hamas in Tel Aviv and Jerusalem, and a bombing attack by the IRA in Manchester, England. The convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in such bombings and similar attacks.

The Terrorism Financing Convention has a different history. It was adopted by the UN General Assembly on December 9, 1999. France initiated the negotiation of this convention in the fall of 1998, with strong support and input from the United States, as part of the Group of Eight Industrialized Nations initiative to combat terrorist financing. The convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in financing terrorism.

Mr. Chairman, the State Department joins the Justice Department in asking that the committee act favorably on the Administration's proposed implementing legislation so that the United States will be able to become a party to these two law enforcement conventions in the very near future.

I will be happy to answer any questions the committee may have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Witten follows:]

PREPARED STATEMENT OF SAMUEL M. WITTEN

Mr. Chairman and Members of the Committee:

I am pleased to appear before you today, following Assistant Attorney General Michael Chertoff, to speak in support of the Administration's proposed implementation legislation for the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

The State Department worked closely with the Justice Department in the negotiation of these Conventions at the United Nations between 1997 and 1999. Mr. Chertoff has provided an overview of the Administration's draft legislation. I will provide additional background on the history and purpose of these new international law enforcement conventions so as to put them in context for the Committee.

As a preliminary matter, I note that two steps are to be taken before the United States becomes a party to these two Conventions. Because these are treaties, they have been submitted to the United States Senate for advice and consent to ratification. The Senate Foreign Relations Committee held a hearing on the Conventions on October 23, 2001, and we hope will soon make a favorable recommendation of advice and consent to the full U.S. Senate. The Conventions will need to be approved by the full Senate before the President can ratify them. In addition to the Senate process, U.S. domestic implementing legislation is being proposed to cover the offenses described in Article 2 with respect to the offenses described in the Conventions. This legislation must be passed by both Houses of Congress and signed by the President before the U.S. will deposit its instruments of ratification. The legislation under consideration today by the Subcommittee on Crime is intended to address the second requirement.

These two Conventions follow the general models of prior terrorism conventions negotiated by the United States at the United Nations or its Specialized Agencies to which the United States is already a party, such as the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1979 Convention Against the Taking of Hostages, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Nations that become a party to these Conventions commit themselves to criminalize the conduct identified in the Convention and to cooperate with one another in the investigation and prosecution of the offenses. Each of these prior Conventions has also required implementing legislation enacted by both Houses of Congress in addition to U.S. Senate advice and consent to ratification.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

The UN General Assembly adopted the International Convention for the Suppression of Terrorist Bombings, commonly called the "Terrorist Bombings Convention," on December 15, 1997. The United States signed the Convention on January 12, 1998, the first day it was open for signature. The Convention entered into force in May 2001.

The United States initiated the negotiation of the Terrorist Bombings Convention in July 1996 in the aftermath of the June 1996 bombing attack on U.S. military personnel at the Khobar Towers in Dhahran, Saudi Arabia, in which seventeen U.S. Air Force personnel were killed. That attack followed other terrorist attacks in 1995-96 including poison gas attacks in Tokyo's subways; bombing attacks by HAMAS in Tel Aviv and Jerusalem; and a bombing attack by the IRA in Manchester, England. The Convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in such bombings and similar attacks.

More specifically, the Convention will create a regime for the exercise of criminal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place. An explosive or other lethal device is defined broadly in Article 1 as "(a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material." Thus, in addition to criminalizing the unlawful use of bombs and

similar explosive devices, the Convention addresses, for example, the intentional and unlawful release of chemical and biological devices.

Like earlier similar conventions, the new Convention requires Parties to criminalize under their domestic laws the offenses set forth in the Convention, if they have an international nexus; to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses, if they have an international nexus; and to provide one another assistance in connection with investigations or criminal or extradition proceedings in relation to such offenses.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

The UN General Assembly adopted a new counterterrorism convention entitled the International Convention for the Suppression of the Financing of Terrorism, commonly known as the "Terrorism Financing Convention," on December 9, 1999. The United States signed the Convention on January 10, 2000, the first day it was open for signature. The Convention will enter into force once twenty-two states deposit their instruments of ratification.

France initiated the negotiation of this convention in the Fall of 1998, with strong support and input from the United States, as part of the Group of Eight Industrialized Nations initiative to combat terrorist financing. The Convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in financing terrorism.

The Convention provides for States Parties to exercise criminal jurisdiction over the unlawful and willful provision or collection of funds with the intention that they be used or in the knowledge that they are to be used in order to carry out certain terrorist acts set forth in the Convention. This new Convention requires Parties to criminalize under their domestic laws the offenses set forth in the Convention, if they have an international nexus; to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses, if they have an international nexus; and to provide one another assistance in connection with investigations or criminal or extradition proceedings in relation to such offenses.

The Terrorism Financing Convention is aimed specifically at cutting off the resources that fuel international terrorism. Once in force, the Convention will obligate States to criminalize conduct related to the raising of money and other assets to support terrorist activities.

As stated in Article 2, a person commits an offense "if that person, by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used" to carry out terrorist acts. The first category of terrorist acts consists of any act that constitutes an offense within the scope of one of the nine counter-terrorism conventions previously adopted and listed in the Annex. The second category includes any other act intended to cause death or serious bodily injury to a civilian, or to any other person (*e.g.*, off-duty military personnel) not taking an active part in hostilities in a situation of armed conflict, when the act has a terrorist purpose. An act has a terrorist purpose when, by its nature or context, it is intended to intimidate a population or to compel a government or international organization to do or abstain from doing any act. The offense includes "attempts," "accomplices," and anyone who "organizes or directs," or "contributes" to the commission of an offense.

The State Department joins the Justice Department in asking that the Committee act favorably on the Administration's proposed implementing legislation so that the United States will be able to become a party to these two law enforcement Conventions in the very near future.

I will be happy to answer any questions the Committee may have.

Mr. SMITH. Thank you, Mr. Witten.

Mr. Chertoff, let me address my first question to you, and it is this—and you touched on this subject in your testimony, but would you explain a little further what the difference is between crimes that are covered under current law and the new crimes that are covered under these two conventions?

Mr. CHERTOFF. I would be happy to, Mr. Chairman. There may be some overlap in some instances, and that is partly because, as the current law has evolved over time, I don't know that there has been a comprehensive, single statute or effort to create a single statute that covers the waterfront, so to speak, with respect to ter-

rorism. But I can say, for example, with respect to the Bombing Convention, although we are relying to a large extent on existing State and Federal laws in terms of the implementing legislation, this legislation does cover some gaps in the law.

For example, under current law, as I understand it, if there were a bombing of a foreign government facility within the U.S., let's say a foreign embassy, and if we were not able to prove that the intent of the bombing was to cause the loss of life of a protected person, that would not now be currently covered under the existing law. But this new statute would cover that, and that would be necessary to be consistent with the treaty.

Likewise, and maybe more significant, with respect to conduct occurring outside the United States, we have a broader jurisdiction under this statute with respect to perpetrators who we find in this country who may be responsible for bombings overseas that don't affect American citizens or don't affect American property. So in the bombing area, those are gaps that we are covering and expansions we are covering.

Likewise, in the area of financing, the current anti-terrorist financing law is keyed to a list of specific statutes that are predicate offenses under 2339A, and, of course, 2339B requires the designation of a foreign terrorist organization.

Here the structure of the new implementing legislation, which is designed to match the convention, is to frame the offense in terms of financing acts of terrorism in general that cause death or serious bodily injury with the intent to affect government policy or the policy of an international organization. So it will cover violations that would not fit within existing predicates. I can give you an example.

If there is an individual in the U.S. who provides funding for the hijacking of a plane in France where there is no American citizen on the plane and no other U.S. connection, that would not be a violation of the underlying U.S. hijacking statute, and, therefore, we couldn't bring 2339A into play. But under the new legislation, we could cover that because it would fit the new definition of the offense.

So both of these implementing statutes, although there may be some overlap, cover important areas that are not covered under current U.S. law.

Mr. SMITH. Thank you, Mr. Chertoff. Those were good points.

Mr. WITTEN, if we were to change or amend the legislation at hand, how would that affect either the ratification process or our ability to comply with the treaties?

Mr. WITTEN. Mr. Chairman, I think that would depend on how the legislation is changed. The legislation is intended to implement obligations that the United States would undertake under the treaty, and I think at the end of the legislative process, we and the Justice Department would review the legislation to ensure that it is adequate to enable the United States to discharge the obligations that it is undertaking under the treaty. U.S. practice is that prior to depositing our instrument of ratification for a treaty of this character, we will do a survey of available U.S. laws to be sure that the available laws are adequate to discharge the obligations.

Mr. SMITH. Thank you, Mr. Witten. I don't have any other questions, and I will recognize the Ranking Member, Mr. Scott, for his.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chertoff, did I understand you to say that if someone is in the United States and conspires to blow up a plane in France, that we don't have jurisdiction over that conspiracy today?

Mr. CHERTOFF. We might under the conspiracy provision, but in terms of the substantive offense, as I understand the law, if you had a hijacking in France involving no American citizens on the plane, no American perpetrators, substantively that would not violate the U.S. hijacking statute. And as a consequence, we couldn't use that predicate for somebody who finances that organization.

We might be able, as is the case in many criminal laws, to find some other provision we could nail them on. But in terms of the specific offense that we need to trigger 2339A, as I understand it, we would not be able to—

Mr. SCOTT. Well, let me ask the question again. Financing a bombing of a plane in France, in the United States making the plans and advancing that act, is not a crime in the United States?

Mr. CHERTOFF. As I understand it, the substantive—and I want to be careful because there may be a conspiracy provision that applies to it—in other words, you may be able to nail someone for a conspiracy under, let's say, section 956 of title 18. But in terms of the financing statute, if we want to charge them with the financing statute—and there may be reasons we can't charge a conspiracy. As I understand it, we would not have the predicate of a U.S. hijacking in a situation where we had a totally foreign hijacking involving no U.S. person on the plane, no U.S. perpetrator, but an American in this country financing an organization that executes that hijacking.

Mr. SCOTT. Do other countries have the same State and Federal jurisdictional complications that we do? If we are going to pass Federal law, we have to have Federal jurisdiction, and that kind of complicates what we can do with some of these things. Do other countries have that same complication, and do we need States to take any action to make sure we fill all the gaps?

Mr. CHERTOFF. I think my understanding is that this legislation, coupled with existing State laws, does what we need to do in terms of implementing.

Mr. SCOTT. Okay.

Mr. CHERTOFF. As far as other countries, they have their own systems, and I don't know that I can actually speak to that.

Mr. SCOTT. How is terrorism defined in the bill?

Mr. CHERTOFF. Well, in this instance, if you look at, for example, the language in the Terrorist Financing, it is defined as an attack—let me get the right provision here—an act which is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict.

Mr. SCOTT. Okay, so this involves intended to kill—

Mr. CHERTOFF. Or seriously injury.

Mr. SCOTT. Or seriously injury.

Mr. CHERTOFF. And where the purpose of the act is to—

Mr. SCOTT. So we are not talking about the same problems we had with the last bill where breaking into the dean's office would subject you to the terrorist legislation?

Mr. CHERTOFF. Well, without referring to the last bill as having problems, I will agree it does not cover breaking into the dean's office.

Mr. SCOTT. Okay. The death penalty is in this bill. Most countries don't have the death penalty. How do they comply with the treaty without the death penalty and we apparently need the death penalty in this bill?

Mr. CHERTOFF. The death penalty I don't think is in here because we need it to comply with the treaty. The death penalty is in here because—and it applies obviously where death is caused. It is symmetrical with the position that has been taken in other laws treating similar criminal acts.

Mr. SCOTT. Is there any part of the terrorism provision that is not already covered by present law? I understand collecting money as well as providing money is—the collecting part may not be part of present law. Is that most of what is in there for the financing part that we actually needed?

Mr. CHERTOFF. As I said, I think some of this is covered by current law, although it may be covered in different parts of the law. But there are gaps in the law that we need this to cover in order to come into compliance with the treaty, such as, for example, certain jurisdictional reach which we might not have under current law or a terrorist act that might not fit within one of the enumerated predicates but would satisfy the conventions definition.

Mr. SCOTT. Could we get a list of what we actually needed to comply with the treaty? Because a lot of this, as you have suggested, is in there not because the treaty requires it, because, you know, somebody wanted it in there. What is actually needed to comply with the treaty?

Mr. CHERTOFF. I am sure we can provide you with that list, but I don't want to be misunderstood. I am not suggesting that a lot of things were put in here because we just wanted them in there.

It is true that some of the things that are covered by the legislation can be found in other parts of title 18. But I think it would have been impractical to craft, let's say, with the financing legislation, a piece of legislation that only listed those predicates that are not otherwise listed, because it would essentially look like a piece of Swiss cheese, which would not only be a drafting problem but, frankly, as someone who has tried criminal cases, would be a charging problem because you would need to often charge acts which may fall within similar but different concepts, you would have to charge them under separate statutes.

So that although we have some overlap, there are things that could be prosecuted under 2339A that would now also be prosecutable under 2339C. To fill the gaps and do it in a manageable way, I think we needed to have a comprehensive statute.

Mr. SCOTT. Well, Mr. Chairman, I think that puts us in a position where we don't—we are again passing the bill because we are trying to comply with a treaty, and we have got stuff in here that has nothing to do with the treaty. And some of us would like to comply with the treaty, but not add on extraneous stuff that is not needed. And without such a list of what we actually need to comply, we are in a situation where, you know, you have the death penalty in here, which isn't needed, and probably some other

things that are just kind of added on. I guess if he is not going to provide it, we will just have to go through it ourselves. But I think we need to make it clear that there are many provisions in here that have nothing to do with the treaty, although that is what the title of the bill seems to be.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Scott.

The gentleman from Wisconsin, Mr. Green, is recognized for his questions.

Mr. GREEN. I guess the only question I have would be for Mr. Witten. What are the remedies or consequences in the case of a nation that is a signatory to this treaty not prosecuting or providing extradition for an accused? What would be the consequences of that?

Mr. WITTEN. If a country, for example, had a fugitive in its territory and it didn't take the actions that are contemplated by the convention, then immediate consequence is that the country could be characterized as acting inconsistently with international obligations that it had undertaken.

Now, the next question would be what remedies do other countries have if, for example, the United States were aggrieved because a country wasn't taking certain actions. I would say that the most likely scenario would involve two steps. One is that we would be in touch with that country diplomatically through our embassy, or otherwise, to consult about what the possibilities are for discharging the obligations. It might be that the country might be more comfortable surrendering the person to a third state that hadn't yet sought extradition. It might be that there are some crimes within its system that it could prosecute. Or it could be that we could persuade the country to grant extradition.

If at the end of the day we found that another country was not complying with its obligations and we felt aggrieved, then I would say it is a case-by-case analysis about what we would be able to do. Certainly diplomatic pressure and diplomatic approaches would be relevant, bringing the inaction to the attention of the international community. Sanctions might be appropriate in specific cases. It is hard to say in the abstract.

Mr. GREEN. But it seems to me we could do all those things now absent this treaty and that it doesn't sound like this treaty really provides any kind of a hammer for enforcement. What you just described is presumably what this Nation, this Government would do right now, even with a nation that isn't a signatory to this treaty. I just can't see that this really—unless it gives us a little extra moral authority, but it doesn't seem to actually provide anything for us.

Mr. WITTEN. Well, becoming a party to a treaty of this character does provide more for us. It gives us, for example, a legal basis to seek extradition where, in some treaty relationships, we don't have a legal basis. It gives us a legal basis to seek assistance and to invoke the provisions of the treaty and the obligations.

To think of the flip side, if we are not a party to the treaty, we don't have a legal foundation to seek and demand the cooperation. So while I understand your point, all in all it is best to be a party to this kind of treaty, particularly these initiatives which the

United States has supported from the outset. And we would do our best to achieve international cooperation.

Mr. GREEN. I am not suggesting that we shouldn't support it. I am just surmising that this doesn't give us much more than, again, perhaps a little bit of extra moral authority. But it sounds as though that the steps that we would take in the case of a nation, a signatory, not following through would be largely the steps we would take now for a nation that isn't a signatory.

Thank you, Mr. Chairman.

Mr. SMITH. I think that is a fair statement. Thank you, Mr. Green.

The gentleman from Massachusetts, Mr. Delahunt, is recognized for his questions.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. Chertoff, you said there would be a charging problem. Could you amplify on that?

Mr. CHERTOFF. Yes. I think generally if you have a situation where you have one statute that covers—or two statutes that cover closely related types of conduct, where you might normally charge someone in a single charging instrument with doing A or B—although we typically charge it as A and B, but it is read disjunctively. If you have to use two separate statutes, you may wind up with slightly different elements of the offense, depending on whether the act—

Mr. DELAHUNT. But isn't that a problem that prosecutors face every day?

Mr. CHERTOFF. It is a problem, and, therefore, where it is avoidable, we try to avoid it.

Mr. DELAHUNT. I understand that. But the reality is it is an issue that has to be addressed every day by a prosecutor, and there is nothing to preclude a prosecutor from charging under both statutes, is there, Mr. Chertoff?

Mr. CHERTOFF. There is not, although as I say, when you—if when we put together legislation we can draft it in a way so that you have a single set of elements for the alternatives, it is not only easier for the prosecutor but, frankly, easier for the jury. And I can't—

Mr. DELAHUNT. Right. But, I mean, with all due respect, Mr. Chertoff, I find that argument really without a lot of merit.

Mr. CHERTOFF. Well—

Mr. DELAHUNT. Being someone who has tried a few cases myself as a prosecutor.

Mr. CHERTOFF. Well, as I say, sometimes prosecutors are unavoidably put in the position of having to deal with statutes that are worded differently, and we deal with it. Where it is possible to avoid it and make sure we have a seamless—

Mr. DELAHUNT. I mean, it is nice, I guess. But it is certainly not a reason, I would suggest, that should serve as even something to be considered in terms of drafting particular legislation. I mean, with all due respect, I am confident in the competency of our prosecutors being able to draft the appropriate indictments. I am sure there wouldn't be too many motions to dismiss that would lie—

Mr. CHERTOFF. Well, I am confident, too—

Mr. DELAHUNT. I am sure you are confident. Having discussed that particular issue—and I am operating from a disadvantage because I have to acknowledge I haven't had a chance to read either the statutes that we are considering here or the treaties. But you talked about overlap also. Has there been any effort on the part of the Department to make recommendations regarding repealing those or clarifying those areas where there is overlap?

Mr. CHERTOFF. There hasn't, and that might be something that would be well worth undertaking at a point in time—

Mr. DELAHUNT. I mean, if we want to do it really clean, if we don't want Swiss cheese and if we want to make it easier for those prosecutors who have to make those charging decisions.

Mr. CHERTOFF. I think at a point in time when there is an opportunity to review everything, it might well serve us to consider whether there are parts to the law that at this point have been superseded or less useful. And I would certainly be happy to recommend we start that—

Mr. DELAHUNT. Does the implementing legislation invoke the death penalty?

Mr. CHERTOFF. It does, with respect to—

Mr. DELAHUNT. Is that required by—

Mr. CHERTOFF [continuing]. The bombing.

Mr. DELAHUNT. It is not required by the convention.

Mr. CHERTOFF. Correct. It is not. What it does is it treats violations resulting in death under this implementing legislation in the like way we treat similar violations under other provisions.

Mr. DELAHUNT. But it does exist under other provisions?

Mr. CHERTOFF. We do obviously have the death penalty for other kinds of terrorist acts resulting in death.

Mr. DELAHUNT. Right, right. I think that goes to—how did you describe it, “symmetry”?

Mr. CHERTOFF. I think that is the word I used, yes.

Mr. DELAHUNT. Does the implementing language cover wiretaps?

Mr. CHERTOFF. The language in both of these provisions does have a series of ancillary measures which name the new statutes with respect to bombing and financing as wiretap predicates, money laundering—

Mr. DELAHUNT. But that is not required by the—

Mr. CHERTOFF. That is correct. That is not required by the—

Mr. DELAHUNT. I mean, is it a fair statement to say there are a number of issues that are implicated in this implementing legislation that are not required by the convention?

Mr. CHERTOFF. That is correct.

Mr. DELAHUNT. Could you before—I understand we are going to mark this up today. Is it my understanding, Mr. Chairman, that we are going to full committee markup tomorrow?

Mr. SMITH. That is correct, and to the best of my knowledge, we are going to full committee markup tomorrow.

Mr. DELAHUNT. You know, if you could provide a list, per the request of Mr. Scott, to give us an area where—just give us a list of those provisions that are new or that are not required by the conventions so that we can deal with the implementing language in a more thoughtful way?

Mr. CHERTOFF. We can do that. I can tell you, for example, as I understand it, the ancillary measures, which are labeled "ancillary measures" because they are ancillary, are not, strictly speaking, required by the convention. There may be one or two other elements that are not listed as ancillary measures that are not required, for example, the death penalty, and there may be one or two others.

Mr. DELAHUNT. Right. I mean, I would like to have that list. And, by the way, I agree with Mr. Green. I think we should ratify, and I think that it would be preferable if we could get a statute that was minimalist in terms of compliance. It is my understanding and I believe that we have, you know, most of the convention provisions—we have got that covered, so to speak. But I think we should ratify because I think we encourage other states that don't share our viewpoint on some of these issues, I think the signing or the ratification or the implementation of this statute by the United States is important to encourage other nations. But I really would appreciate that request to be complied with in a timely fashion.

Mr. CHERTOFF. We could furnish that.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Delahunt.

The gentleman from North Carolina, Mr. Coble, is recognized for questions.

Mr. COBLE. Thank you, Mr. Chairman. Gentlemen, good to have you all with us.

Mr. WITTEN, I was called out of the room, and I believe I am going to be repetitious, but I need to know this. I think the gentleman from Wisconsin asked you about the consequences for countries that ratify the treaty but do not comply with the requirements to either prosecute or extradite terrorists, and I was out of the room. Would you mind giving me that answer you gave him?

Mr. WITTEN. I will do my—

Mr. COBLE. And I apologize to the Members for my absence.

Mr. WITTEN. I will do my best to replicate the answer, but, sir, in the first instance, if a country had custody of a fugitive and had reason to believe that the person had committed one of the acts that are subject to the convention, they do have responsibility to undertake an investigation, detain the person if they are believed to have committed the offense, and to either submit the case for prosecution or extradite a person.

In a case where, for example, the United States believed that another country was not undertaking these responsibilities in a meaningful and good-faith way, I would anticipate that we would cite the treaty to that country, cite their obligations to them, and consult with them to see if there is some way that they can discharge their obligations under the treaty, either by finding a way to prosecute domestically, to extradite to a country with jurisdiction, which might be more appropriate in any event, if all the events took place outside the country where the fugitive was located, or take whatever steps they could to meaningfully discharge their obligations.

If at the end of the day we were to believe that the country was not fulfilling its obligations as a party to the treaty, we would have to address it on a case-by-case basis. Mr. Green and I had a discus-

sion of this a little bit, where, for example, the United States would raise the matter through diplomatic channels; in an appropriate case we would bring the noncompliance to the attention of other countries and/or in an extreme case we might argue for sanctions.

So it is an important question, but it is also a question where there is not a single answer that fits all circumstances.

Mr. COBLE. I thank you for that.

Mr. Chertoff, this may have been visited as well, but I don't think so. If you will, distinguish between the new crime of financing of terrorism under 2339C and the crimes of material support for terrorism, which are currently covered under 2339A and B of title 18. I don't think that question has been put to you, has it? If you would do that.

Mr. CHERTOFF. I would be happy to. 2339B, of course, is material aid to a designated foreign terrorist organization, so it requires the designation first. 2339A does, particularly as amended, cover material support to terrorist activities, but it lists them in terms of certain enumerated provisions of the law in other parts of the Federal criminal code.

The new statute defines material support to terrorism more broadly as support for acts that are intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in hostilities where the purpose of the act is to intimidate a population or compel a government or an international organization to do something or not to do something.

So it covers a somewhat broader range of terrorist acts in terms of material support because it is not keyed into particular violations of the Federal Criminal Code but more generally deals with serious acts of violence that are designed to effect government policy.

Secondly, the new statute has a somewhat broader jurisdictional provision. For example, it gives us jurisdiction where someone is found in the country—it is what they call universal jurisdiction—even if the act in question occurred overseas and did not involve Americans. So it fills some gaps in the existing law in order to bring it into conformity with the requirements of the convention.

Mr. COBLE. I got you. Thank you.

Mr. Witten, I guess we visited my other question. I guess another alternative would be in the event of the noncomplying country, just have them withdraw their ratification. That would be, I guess—if they are not going to comply, at least truth in advertising. Would that not be an alternative course?

Mr. WITTEN. It could be in an appropriate case. However, I think that our judgment could be that it is better to have a country committed to taking on international obligations because there may be cases where it will discharge those commitments properly.

Mr. COBLE. I guess even a noncompliant country, at least with their name on the line, would be better than no name on the line.

Mr. WITTEN. Yes, sir.

Mr. COBLE. Thank you, sir.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Coble.

The gentleman from California, Mr. Schiff, is recognized for his questions.

Mr. SCHIFF. No questions, Mr. Chairman.

Mr. SMITH. Thank you.

The gentleman from Georgia, Mr. Barr, is recognized for questions.

Mr. BARR. I am fine, Mr. Chairman.

Mr. SMITH. Okay. The gentleman from Florida is recognized—has no questions.

Does the gentleman from Virginia, Mr. Goodlatte, have any questions?

Mr. GOODLATTE. I do not, Mr. Chairman.

Mr. SMITH. Okay. If not—

Ms. JACKSON LEE. Excuse me, Mr. Chairman.

Mr. SMITH. Oh, pardon me.

Ms. JACKSON LEE. I have to sit in a more appropriate place.

Mr. SMITH. You sneaked in. The gentlewoman from Texas sneaked in on me. Ms. Jackson Lee is recognized for her questions.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me just for my own hearing, and obviously there have been opening statements. I would ask the Chairman to allow me to submit my statement into the record and ask that it be accepted.

Mr. SMITH. Without objection.

Ms. JACKSON LEE. My concern goes to the questions of criminalization and what we need to do, and if I can have it, as heard in some places from my own hearing, I would appreciate it. And that is, again, the questions related to the Suppression of Terrorist Bombing Treaty. What does it require us to criminalize that is not now a crime under U.S. law? And I guess I say that in this context, and you may have answered it, but let me highlight the context in which I say it.

We have been very united over these last couple of weeks and now months on the issues of giving tools to the Administration and to the Department of Justice to both fight terrorism but, I would like to emphasize, bring terrorists to justice, which I hope is the concept in the American legal system.

We have seen the rush to judgment on the anti-terrorist bill. There were many good points of it. I was very gratified to support the bipartisan terrorism bill that had been promoted out of the House Judiciary Committee. Unfortunately, that was imploded and exploded and not utilized.

I now hear—and I have to make sure that I am accurate in this comment—that there is some Executive order or some announcement of the privilege or the right to listen in on attorney-client privilege of detainees. We are still researching that. I am told that that is a regulation of the Federal Bureau of Prisons, and I am aghast.

So the question goes to the need for criminalizing laws that may already exist, the redundancy and whether or not there is an excessiveness here that is not required at this time.

I certainly will be looking to oppose any suggestion of the violation of attorney-client privilege. That may be another issue, but I raise that so that the Chairman can hear my concern.

In any event, would you please answer what is required to criminalize—what we are required to criminalize that is not already a requirement? And then let me just follow up. Where in the treaty

does it call for death penalties, wiretap, RICO, money laundering predicates, or civil asset forfeitures? And if I can get those questions answered by both of you, whether you have repeated it before, I beg your indulgence. Thank you very much.

Mr. CHERTOFF. I am happy to go first. Let me try to give as clear an answer as possible.

With respect to the bombing implementing legislation, there are really two parts. There is criminalization of conduct occurring within the U.S. and criminalization of conduct occurring outside the U.S.

With respect to criminalization of conduct occurring within the U.S., we are trying to plug some gaps in the existing law. For example, the current statute—I am sorry, the implementing statute would criminalize a bombing that occurs in the U.S. against a state or government facility of a foreign country, including its embassy or other diplomatic or consular premises. Now, that would not be covered under existing law unless you could demonstrate that the purpose of the bombing was to injure someone who is a diplomatically protected person. So to give you an example—

Mr. SCOTT. Would the gentlelady yield?

Ms. JACKSON LEE. I would be happy to yield to the gentleman.

Mr. SCOTT. You mean to tell me if someone bombs an embassy downtown that there is a gap in the present law that you can't get a good conviction for attempted murder or murder for planting a bomb and blowing up a building? We need a new law to cover that?

Mr. CHERTOFF. I will give you—let's take that example. If you had a bombing and you couldn't demonstrate—let's assume it is a bombing at night and you can't demonstrate there are people in the building, and, therefore, you can't necessarily demonstrate there was an intent to kill or seriously injure someone who is a diplomatically protected person, as I understand the existing law, you would not be able to directly prosecute for the bombing of that foreign embassy.

Now, you know, could someone in the course—could we sit down and find some statute somewhere where there was an illegal transportation of something across State lines or wire fraud? You know, there is a lot of ingenuity. But for purposes of the convention, I think we are obligated to commit to prosecuting the offenses that are laid out in the convention. And to the extent, for example, the convention criminalizes bombings of state facilities, meaning foreign state facilities, for the purpose of affecting policy, we need to be able to represent to the world that that offense is something that is clearly prosecutable in the United States.

So, again, might there be some way we could get to the result of putting someone in jail for something? We might be able to. But as I understand the existing law, there is not an existing statute that would allow us to prosecute for blowing up an embassy of a foreign country without an indication of an intent to harm a diplomatically protected person.

So, again, we cover some gaps in the law with respect to the bombing in the country. Outside the country this increases our jurisdiction because, for example, it allows us to prosecute somebody we apprehend in this country who is a foreigner responsible for a

foreign terrorist act who we would not currently have jurisdiction over. And, again, that is a gap in the law.

I now have to confess I have forgotten what the second—oh, the second question was the ancillary measures. And as I think I said previously, the ancillary measures are not, strictly speaking, required by the treaty. But, again, to the extent that we are criminalizing bombings and things of that sort, we are attempting to treat them in similar fashion as it relates to money laundering and RICO.

Let me step back and try to just put it in perspective for a minute. The acts we are talking about here cannot possibly be viewed as, you know, arguably legitimate acts or entrenching on some right of somebody to do something that we would attach some value to. I mean, there is no—I can't conceive of a reason why bombing of buildings or attempting to kill or seriously injure people is anything that we in any way, shape, or form want to have a mixed message about. So to the extent that we are covering things that we might be able to get at in different ways, I venture to say that we are covering serious types of crimes that we ought to be able to attack from multiple standpoints. And I don't think that there is anybody's civil rights or civil liberties that are going to be compromised if we are inhibiting them from setting off bombs or radiological devices.

Ms. JACKSON LEE. Thank you very much, Mr Chertoff.

Mr. Witten?

Mr. WITTEN. I would add a couple of comments. First, the nature of these two treaties is that they leave to parties the decision about how to implement them. There are certain offenses that are outlined in Article 2 of each convention, and some of the immediately following articles talk about some of the jurisdictional elements.

One could imagine that there will be countries who become party to this that do even more than the United States, than the Administration is proposing by way of, in addition to criminalizing the offenses, getting investigative tools related to the offenses. So in that context, while some of the ancillary measures, as Mr. Chertoff just noted, aren't discussed in the convention, these offenses that would be put into U.S. law are similar in character and severity to other offenses where the proposed ancillary measures are already in U.S. law. And because of that, from our perspective, while the treaty doesn't discuss them, it makes sense that if we are going to criminalize this major conduct and we have these ancillary tools that are available for other major acts of terrorism in the United States, as Mr. Chertoff put it, there would be a symmetry to providing U.S. law enforcement authorities with the additional related authority that they have in existing major crimes.

Ms. JACKSON LEE. Mr. Chairman, may I just be indulged? Let me thank Mr. Witten and Mr. Chertoff for their explanation.

My empathy is this: I am well familiar with the tools—I will not call them “tactics”—of the Department of Justice U.S. Attorneys in times when there are domestic criminals that you cannot get on, i.e., attempted murder, et cetera, and you use the IRS, i.e., the Mafia was a well-known sort of opposition or entity of criminal activity that you seem to have utilized that tool.

What I am hearing you say is that this gives you further refined tools to be able to prosecute on terrorist activities. I abhor terrorist activities and terrorists and certainly want you to be able to utilize these tools. I am going to withhold judgment because I am concerned, even though I know these treaties are, I think, moving forward on the Senate side. I think it is important for us to be meticulous in our review to be assured that you need this widespread, this wide depth, and whether or not there will be a fishing expedition or whether this will help you be focused. I don't know. I know that the Federal authorities usually come into the Federal court and they have got 99 charges, and I am told you need to do that to see that you can get one that you can prevail on.

But I am concerned that we have this wide net, and I tried to, even in this climate, emphasize that this is a Nation of laws, a Nation that respects civil liberties, and even on the international arena, that we must be cautious in how many laws, criminal laws, or how many situations we criminalize.

So I still raise that question flag. I raise that concern. And, Mr. Chairman, I would hope as we mark this legislation up we would keep those words or at least that concern present that there is nothing wrong in this climate to be restrained, to be questioning, to be critical, and to raise up our most important values, and that is the protection of people's civil liberties.

I yield back. Thank you.

Mr. SMITH. Thank you, Ms. Jackson Lee.

That concludes our hearing. Mr. Witten, Mr. Chertoff, thank you very much for your testimony. It has been most helpful, and we will give you a couple minutes to leave before we move to our markup.

[Whereupon, at 11:07 a.m., the Subcommittee proceeded to other business.]

A P P E N D I X

STATEMENTS SUBMITTED FOR THE HEARING RECORD

SHEILA JACKSON LEE
18th DISTRICT, TEXAS

COMMITTEES:
JUDICIARY
SUBCOMMITTEES:
CRIME
FINANCING TERRORISM,
IMMIGRATION AND CLAIMS
SCIENCE
SUBCOMMITTEES:
SPACE AND AERONAUTICS
ENERGY
CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS
REGIONAL VICE
DEMOCRATIC CAUCUS
SINGLE-DISTRICT
CONGRESSIONAL BLACK CAUCUS

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STATEMENT

CONGRESSWOMAN SHEILA JACKSON LEE

SUBCOMMITTEE ON CRIME

LEGISLATIVE HEARING

ON

H.R. 3275

IMPLEMENTATION LEGISLATION FOR THE
INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF TERRORIST BOMBINGS
AND THE
INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF THE FINANCING OF TERRORISM

November 14, 2001

10:00 am, 2237 Rayburn



I would like to thank the Chairman and Ranking Member for convening this hearing and markup of H.R. 3275, the Terrorist Bombings Convention Implementation Act of 2001 and the Suppression of the Financing of Terrorism Convention Implementation Act of 2001.

The International Convention for the Suppression of Terrorist Bombings requires parties to the treaty to criminalize the act of terrorist bombing aimed at public or governmental facilities, or public transportation or infrastructure facilities. This Convention was signed by the United States on January 12, 1998, and was transmitted to the Senate for its advice and consent to ratification on September 8, 1999. Twenty-eight states are currently party to the Convention, which entered into force internationally on May 23, 2001.

The International Convention for the Suppression of Financing of Terrorism requires nations to criminalize the act of collecting or providing funds with the intention that they will be used to support acts of international terrorist. This Convention was signed on behalf of the United States on January 10, 2000, and transmitted to the Senate on October 12, 2000.

The full Senate must approve the Conventions before the President can ratify them. Furthermore, implementing legislation must be passed by both Houses of Congress and signed by the President.

Mr. Chairman, the terrorist attacks on our Country on September 11 have forced us to reevaluate our terrorism priorities. Thousands of innocent civilians were killed and many more family members and friends grieve their loss. We must safeguard our country against any future threats and attacks.

In our efforts, we must carefully prevent the deterioration of due process under the law so that innocent people are not targeted

unfairly because of their race, color, sexual orientation, creed, gender, or religion.

I am particularly concerned about the ancillary provisions relating to wiretapping, money laundering, and RICO. The language in the treaties allows for each signatory to adopt measures that establish criminal offenses. My question is whether the ancillary provisions are needed for ratification. It is my hope that the testimony we will hear today will address my question.

Mr. Chairman, let us bring forth a bill that all of us will find a balance on. We will review this bill, but I hope we will find an opportunity to vote on a good bill and provide the leadership that we need to lead.

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MATERIALS SUBMITTED FOR THE HEARING RECORD

**INTERNATIONAL CONVENTION
FOR THE SUPPRESSION
OF THE FINANCING
OF TERRORISM**



UNITED NATIONS
1999

International Convention for the Suppression of the Financing of Terrorism

Preamble

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation

of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
2. "A State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
- (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State;
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is

present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

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

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate,

such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.
2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.
3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
 - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties that:
 - (a) Are open to the participation of all States;
 - (b) Have entered into force;
 - (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

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

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

Annex

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

International Convention for the Suppression
of Terrorist Bombings

The States Parties to this Convention,

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

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. "Explosive or other lethal device" means:

(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage

through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which

is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

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

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the

case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

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

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

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

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

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

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

