

IMPLEMENTATION OF CONVENTION ON TERRORIST BOMBINGS AND SUPPRESSION OF THE FINANCING OF TERRORISM

NOVEMBER 29, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3275]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3275) to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	6
Background and Need for the Legislation	7
Hearings	8
Committee Consideration	8
Vote of the Committee	8
Committee Oversight Findings	8
Performance Goals and Objectives	8
New Budget Authority and Tax Expenditures	8
Congressional Budget Office Cost Estimate	8
Constitutional Authority Statement	9

Section-by-Section Analysis and Discussion	10
Changes in Existing Law Made by the Bill, as Reported	14
Markup Transcript	22
Minority Views	67

The amendment is as follows:
Strike all after the enacting clause and insert the following:

TITLE I—SUPPRESSION OF TERRORIST BOMBINGS

SEC. 101. SHORT TITLE.

This title may be cited as the “Terrorist Bombings Convention Implementation Act of 2001”.

SEC. 102. BOMBING STATUTE.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332e the following new section:

“§ 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

“(a) OFFENSES.—

“(1) IN GENERAL.—Whoever unlawfully 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, shall be punished as prescribed in subsection (c).

“(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

“(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

“(1) the offense takes place in the United States and—

“(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

“(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

“(C) at the time the offense is committed, it is committed—

“(i) on board a vessel flying the flag of another state;

“(ii) on board an aircraft which is registered under the laws of another state; or

“(iii) on board an aircraft which is operated by the government of another state;

“(D) a perpetrator is found outside the United States;

“(E) a perpetrator is a national of another state or a stateless person;

or

“(F) a victim is a national of another state or a stateless person;

“(2) the offense takes place outside the United States and—

“(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

“(B) a victim is a national of the United States;

“(C) a perpetrator is found in the United States;

“(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

“(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

“(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

“(G) the offense is committed on board an aircraft which is operated by the United States.

“(c) PENALTIES.—Whoever violates this section shall be imprisoned for any term of years or for life, and if death results from the violation, shall be punished by death or imprisoned for any term of years or for life.

“(d) EXEMPTIONS TO JURISDICTION.—This section does not apply to—

“(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

“(2) activities undertaken by military forces of a state in the exercise of their official duties; or

“(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

“(e) DEFINITIONS.—As used in this section, the term—

“(1) ‘serious bodily injury’ has the meaning given that term in section 1365(g)(3) of this title;

“(2) ‘national of the United States’ has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(3) ‘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;

“(4) ‘intergovernmental organization’ includes international organization (as defined in section 1116(b)(5) of this title);

“(5) ‘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;

“(6) ‘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;

“(7) ‘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;

“(8) ‘explosive’ has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage;

“(9) ‘other legal device’ means any weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents, or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

“(10) ‘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 defense or security, and persons acting in support of those armed forces who are under their formal command, control, and responsibility;

“(11) ‘armed conflict’ does not include internal disturbances and tensions, such as riots, isolated, and sporadic acts of violence, and other acts of a similar nature; and

“(12) ‘state’ has the same meaning as that term has under international law, and includes all political subdivisions thereof.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding after the item relating to section 2332e the following:

“2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.”

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the applicability of any other Federal or State law which might pertain to the underlying conduct.

SEC. 103. EFFECTIVE DATE.

Section 102 of this title shall become effective on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States.

TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM

SEC. 201. SHORT TITLE.

This title may be cited as the “Suppression of the Financing of Terrorism Convention Implementation Act of 2001”.

SEC. 202. TERRORISM FINANCING STATUTE.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by adding at the end thereof the following new section:

“§ 2339C. Prohibitions against the financing of terrorism

“(a) OFFENSES.—

“(1) IN GENERAL.—Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

“(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, 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,

shall be punished as prescribed in subsection (d)(1).

“(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

“(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

“(b) CONCEALMENT.—

“(1) IN GENERAL.—Whoever, in the United States, or outside the United States and a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions), knowingly conceals or disguises the nature, the location, the source, or the ownership or control of any material support or resources provided in violation of section 2339B of this chapter, or of any funds provided or collected in violation of subsection (a) or any proceeds of such funds, shall be punished as prescribed in subsection (d)(2).

“(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(2).

“(c) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

“(1) the offense takes place in the United States and—

“(A) a perpetrator was a national of another state or a stateless person;

“(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

“(C) on board an aircraft which is operated by the government of another state;

“(D) a perpetrator is found outside the United States;

“(E) was directed toward or resulted in the carrying out of a predicate act against—

“(i) a national of another state; or

“(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

“(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

“(G) was directed toward or resulted in the carrying out of a predicate act—

“(i) outside the United States; or

“(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

“(2) the offense takes place outside the United States and—

“(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

“(B) a perpetrator is found in the United States; or

“(C) was directed toward or resulted in the carrying out of a predicate act against—

“(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

“(ii) any person or property within the United States;

“(iii) any national of the United States or the property of such national; or

“(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

“(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

“(4) the offense is committed on board an aircraft which is operated by the United States; or

“(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

“(d) PENALTIES.—

“(1) Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

“(2) Whoever violates subsection (b) shall be fined under this title, imprisoned for not more than 10 years, or both.

“(e) DEFINITIONS.—As used in this section—

“(1) the term ‘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 coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

“(2) the term ‘government facility’ means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a 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) the term ‘proceeds’ means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

“(4) the term ‘provides’ includes giving, donating, and transmitting;

“(5) the term ‘collects’ includes raising and receiving;

“(6) the term ‘predicate act’ means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

“(7) the term ‘treaty’ means—

“(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

“(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

“(C) the 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 December 14, 1973;

“(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

“(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

“(F) the 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 February 24, 1988;

“(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

“(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

“(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

“(8) the term ‘intergovernmental organization’ includes international organizations;

“(9) the term ‘international organization’ has the same meaning as in section 1116(b)(5) of this title;

“(10) the term ‘armed conflict’ does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

“(11) the term ‘serious bodily injury’ has the same meaning as in section 1365(g)(3) of this title;

“(12) the term ‘national of the United States’ has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

“(13) the term ‘state’ has the same meaning as that term has under international law, and includes all political subdivisions thereof.

“(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least \$10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

“2339C. Prohibitions against the financing of terrorism.”.

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the scope or applicability of any other Federal or State law.

SEC. 203. EFFECTIVE DATE.

Except for sections 2339C(c)(1)(D) and (2)(B) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States, and for the provisions of section 2339C(e)(7)(I) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of Terrorist Bombing enters into force for the United States, section 202 of this title shall be effective upon enactment.

TITLE III—ANCILLARY MEASURES

SEC. 301. ANCILLARY MEASURES.

(a) WIRETAP PREDICATES.—Section 2516(1)(q) of title 18, United States Code, is amended by—

(1) inserting “2332f,” after “2332d.”; and

(2) striking “or 2339B” and inserting “2339B, or 2339C”.

(b) FEDERAL CRIME OF TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

(1) inserting “2332f (relating to bombing of public places and facilities),” after “2332b (relating to acts of terrorism transcending national boundaries),”; and

(2) inserting “2339C (relating to financing of terrorism),” before “or 2340A (relating to torture)”.

(c) PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.—Section 2339A of title 18, United States Code, is amended by inserting “2332f,” before “or 2340A”.

(d) FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end thereof the following new subparagraph:

“(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.”.

PURPOSE AND SUMMARY

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 amends title 18, United States Code, to allow the United States to be in compliance with the conditions of the Conventions. 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. 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 terrorists.

BACKGROUND AND NEED FOR THE LEGISLATION

The International Convention for the Suppression of Terrorist Bombings was conceived by the United States in the wake of the bombing attack of the U.S. military personnel in Saudi Arabia in 1996. This treaty 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. In essence, the Convention imposes binding legal obligations upon nations either to submit for prosecution or to extradite any person within their jurisdiction who 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 nation is subject to these obligations without regard to the place where the alleged act covered by the Convention took place. Twenty-eight nations are currently party to the Convention, which entered into force internationally on May 23, 2001.

Title II of the bill is entitled the "Suppression of the Financing of Terrorism Convention Implementation Act of 2001." It would implement the International Convention for the Suppression of the Financing of Terrorism, which was signed by the United States on January 10, 2000, and which was transmitted to the Senate for its advice and consent to ratification on October 12, 2000. The Convention imposes binding legal obligations upon nations either to submit for prosecution or to extradite any person within their jurisdiction who unlawfully and wilfully provides or collects funds with the intention that they should be used to carry out various terrorist activities. A nation is subject to these obligations without regard to the place where the alleged act covered by the Convention took place. The Convention is not yet in force internationally, but will 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.

Both the "terrorist bombings" and the "financing terrorism" conventions were the subject of hearings in the Senate Committee on Foreign Relations on October 23, 2001. President Bush sent Congress a legislative proposal to implement these two treaties on October 26, 2001 (House Document 107-139). These treaties, once they are ratified, 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.

HEARINGS

On November 14, 2001, the Subcommittee on Crime held a legislative hearing and mark-up on H.R. 3275. Testimony was received from Mr. Sam Witten, Deputy Legal Adviser, U.S. Department of State and Mr. Michael Chertoff, Assistant Attorney General, Criminal Division, U.S. Department of Justice.

COMMITTEE CONSIDERATION

On November 14, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 3275, by a voice vote, a quorum being present. On November 15, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 3275 with amendment by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

No recorded votes were held on H.R. 3275.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 3275 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3275, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 27, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3275, a bill to implement the International Convention for the Suppression of Terrorist

Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the nation against terrorist acts, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3275—A bill to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the nation against terrorist acts, and for other purposes

CBO estimates that enacting H.R. 3275 would have no significant impact on the Federal budget. The bill could affect direct spending and receipts, so pay-as-you-go procedures would apply; however, CBO estimates that any such effects would not be significant.

H.R. 3275 would implement two international treaties: the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. The bill would establish a sentence of life in prison or death for those who are convicted of participating in bombings in public places, government facilities, public transportation systems or infrastructure facilities. In addition, the bill would establish minimum prison sentences and criminal fines for those who provide or collect funds with the intent that such funds be used to carry out terrorism.

CBO expects that any increase in Federal costs for law enforcement, court proceedings, or prison operations under the bill would not be significant because such cases would likely be pursued under current law. In addition, CBO expects that any changes in direct spending or receipts would be insignificant because of the small number of cases that are likely to be involved.

Section 4 of the Unfunded Mandates Reform Act excludes from application of that act legislative provisions that would be necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of H.R. 3275 would implement the two treaties mentioned above, and thus, would fall within that exclusion.

The CBO staff contact for this estimate is Lanette J. Walker, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

TITLE I—SUPPRESSION OF TERRORIST BOMBINGS.

Section 101. Short Title

This title may be cited as “The Terrorist Bombings Convention Implementation Act of 2001”

Section 102. Bombing Statute

This section of the bill adds a new section, 18 U.S.C. § 2332f, to the Federal terrorism statutes (i.e., Chapter 113B of title 18 of the United States Code) entitled “Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities,” which makes terrorist acts covered by the Convention a crime. New section 2332f contains 5 subsections (§ 2332f(a)-(e)) which are described below.

Subsection 2332f(a) makes it a crime to unlawfully deliver, place, discharge or detonate 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 with intent to cause death or serious bodily injury, or 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. Conspiracy and attempts to commit these crimes are also criminalized. This provision implements article 2, paragraphs 1, 2 and 3 of the Convention. It should be noted that Section 2339A of title 18, United States Code, which is amended by section 3(d) of the bill, also addresses the provision of material support for such offenses.

The inclusion of the term “unlawfully” in Subsection 2332f(a), and mirrored in article 2 of the Convention defining the offenses, is intended to embody what would be considered under U.S. law as common law defenses. For purposes of Subsection 2332f(a), whether a person acts “unlawfully” will depend on whether he is acting within the scope of authority recognized under and consistent with existing U.S. law, which reflects international law principles, such as self defense or lawful use of force by police authorities. This language is not to be construed as permitting the assertion, as a defense to prosecution under Section 2332f, that a person purportedly acted under authority conveyed by any particular foreign government or official. Clearly such a construction, which would exempt State-sponsored terrorism, would be at odds with the purpose of the Convention and this implementing legislation.

With respect to the provision regarding the delivery, placing, discharging or detonating of an explosive or lethal device with the intent to cause extensive destruction of the described place, facility or system, it is sufficient if the intent is to significantly damage such a place, facility or system. Further, for the purpose of Subsection 2332f(a), when determining whether the act resulted in, or was likely to result in major economic loss, the physical damage to the targeted facility may be considered, as well as other types of economic loss including, but not limited to, the monetary loss or other adverse effects resulting from the interruption of its activities. The adverse effects on non-targeted entities and individuals,

the economy and the government may also be considered in this determination.

Subsection 2332f(b) delineates the jurisdictional bases for the covered offenses and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention (article 8(1)) who are found within the jurisdiction of a State Party. While current Federal or state criminal laws encompass all the activity prohibited by the Convention which occurs within the United States, Subsection (b)(1) ensures Federal jurisdiction where there is a unique Federal interest, e.g., a foreign government is the victim of the crime or the offense is committed in an attempt to compel the United States to do or abstain from doing any act.

Subsection 2332f(c) delineates the penalties for committing the covered crimes, to wit, a term of years or life, and, if death results from the violation, punishment by death or imprisonment for any term of years or life.

Subsection 2332f(d) delineates certain exemptions to jurisdiction as set forth in the Convention. The subsection exempts from jurisdiction activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law, and activities undertaken by military forces of a State in the exercise of their official duties. It is anticipated that courts, when interpreting and applying Subsection (d), will solicit the views of the Executive Branch on whether the activities at issue were conducted by armed forces during armed conflict, as those terms are understood under the law of war, or whether the activities at issue were undertaken by military forces of a State in the exercise of their official duties. See *United States v. Shakur*, 690 F. Supp. 1291 (S.D.N.Y. 1988).

Subsection 2332f(e) contains definitions of twelve terms that are used in the new law. Six of those definitions (“State or government facility,” “infrastructure facility,” “place of public use,” “public transportation system,” “other lethal device,” and “military forces of a State”) are the same definitions used in the Convention. Four additional definitions (“serious bodily injury,” “explosive,” “national of the United States,” and “intergovernmental organization”) are definitions which already exist in other U.S. statutes. One of those definitions (“armed conflict”) is defined consistent with an international instrument relating to the law of war, and a U.S. Understanding to the Convention which is recommended to be made at the time of U.S. ratification. The final term, “State,” has the same meaning as that term has under international law.

Section 102(b) amends the analysis for chapter 113B of title 18, United States Code, by inserting therein the caption for the new Section 2332f. Section 102(c) reflects that new Section 2332f supplements existing Federal and state laws and does not affect or supplant any of them.

Section 104. Effective Date

Section 102 of this title shall become effective on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States.

TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM

Section 201. Short Title

This title may be cited as “The Suppression of the Financing of Terrorism Convention Implementation Act of 2001.”

Section 202. Terrorism Financing Statute

This section of the bill adds a new section, 18 U.S.C. § 2339C, to the Federal terrorism statutes (i.e., Chapter 113B of title 18 of the United States Code) entitled “Prohibitions against the financing of terrorism,” which makes financial acts covered by the Convention a crime. New Section 2339C contains 6 subsections (§ 2339C(a)-(f)) which are described below.

Subsection 2339C(a) makes it a crime to directly or indirectly, unlawfully and willfully provide or collect funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out an act which constitutes an offense within the scope of certain terrorism treaties, as implemented by the United States, or 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. The term “unlawfully” is intended to embody common law defenses. The term “willfully” means voluntary or intentional. Conspiracy and attempts to commit these crimes are also criminalized. Subsection 2339C(a)(3) states, as contained in article 2, paragraph 3, of the Convention, that a violation of Section 2339C(a) does not require that the funds which are provided or collected actually be used to carry out an act referred to in subparagraph (A) or (B) of subsection 2339C(a)(1). Section 2339C(a) implements article 2, paragraphs 1, 3, 4 and 5 of the Convention.

Subsection 2339C(b) creates an offense for concealing or disguising the nature, the location, the source, or the ownership or control of any funds or proceeds provided or collected under Section 2339C, as well as any material support or resources provided under Section 2339B, by any person or legal entity within the United States and by any United States national or legal entity created under U.S. law anywhere in the world. This provision goes beyond what was required by the Convention, but would enhance the ability of U.S. law enforcement authorities to combat the supply of financing to terrorists and their organizations.

Subsection 2339C(c) delineates the jurisdictional bases for the covered offenses under Section 2339C(a) and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention (article 10) who are found within the territory of a State Party. The structure of this provision is designed to accommodate the structure of the Convention. Article 7 of the Convention sets forth both mandatory and permissive bases of jurisdiction, from which article 3 excludes certain offenses that lack an international nexus. Some sections, however, such as, for example, Subsection

2339(C)(c), go beyond the jurisdictional bases required or expressly permitted under article 7, paragraphs 1 and 2, of the Convention, as limited by article 3, where expanded jurisdiction is desirable from a policy perspective and is consistent with the Constitution.

Subsection 2332f(d)(1) delineates the penalties for committing the covered crimes under Subsection 2339C(a), to wit, a fine under title 18, United States Code, imprisonment for not more than 20 years, or both. This penalty is consistent with those under current law relating to money laundering offenses. See 18 U.S.C. §1956. Subsection 2332f(d)(2) delineates the penalties for committing the covered crimes under Subsection 2339C(b), to wit, a fine under title 18, United States Code, imprisonment for not more than 10 years, or both.

Subsection 2339C(e) contains thirteen definitions of terms that are used in the new law. Two of those definitions (“government facility,” and “proceeds”) are the same definitions used in the Convention. The definition for “funds” is identical to that contained in the Convention with the exception that coins and currency are expressly mentioned as money is certainly a type of funds obviously contemplated by the Convention. The definitions for “provides” and “collects” reflect the broad scope of the Convention. The definition for “predicate acts” specifies the activity for which the funds were being provided or collected. These are the acts referred to in subparagraphs (A) or (B) of Section 2339C(a)(1). The definition of “treaty” sets forth the nine international conventions dealing with counterterrorism found in the Annex to the Convention. In construing the scope of these treaties, the court is to look to the description or definition of the treaty’s provisions as reflected in United States law without regard to the particular jurisdictional provision in the implementing law. The term “intergovernmental organization,” which is used in the Convention, is specifically defined to make clear that it contains within its ambit existing international organizations. The definitions for “international organization,” “serious bodily injury,” and “national of the United States” incorporate definitions for those terms which already exist in other U.S. statutes. One of the definitions (“armed conflict”) is defined consistent with international instruments relating to the law of war. The final term, “State,” has the same meaning as that term has under international law.

Subsection 2339C(f) creates a civil penalty of at least \$10,000 payable to the United States, against any legal entity in the United States, or organized under the laws of the United States, including any of its states, district, commonwealths, territories, or possessions, if any person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in Subsection 2339C(a). There does not have to be a conviction of such person under Subsection 2339C(a) to impose the civil penalty against the legal entity. In determining the size of the penalty, the court should consider the legal entity’s net worth, the volume of business it transacts, its ability to pay, the amount of the transaction involved in the Subsection 2339C(a) offense, and the nature of the predicate act. This civil penalty is in addition to any other criminal, civil, or administrative liability or penalty allowable under United States law. Subsection 2339C(f) fulfills article 5 of the Convention.

Section 202(b) amends the analysis for chapter 113B of title 18, United States Code, by inserting therein the caption for the new Section 2339C. Section 202(c) reflects that new Section 2339C supplements existing Federal and state laws and does not affect or supplant any of them.

Section 204. Effective Date

Section 202 of this title shall be effective upon enactment. Except, the provisions of 18 U.S.C. § 2339C(c)(1)(D) and (2)(B) shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States.

Section 301. Ancillary Measures

This section of the bill, which is not required by the treaty but will assist in Federal enforcement, adds the new 18 U.S.C. §§ 2332f and 2339C to four existing provisions of law. Sections 2332f and 2339C are made predicates under the wiretap statute (18 U.S.C. § 2516(1)(c)) and sections 2332f and 2339C are also added to those offenses defined as a “Federal crime of terrorism” under 18 U.S.C. § 2332b(g)(5). Section 2339f is made a predicate under the statute relating to the provision of material support to terrorists (18 U.S.C. § 2339A) and the statute related to the forfeiture of funds, proceeds and instrumentalities (18 U.S.C. § 981(a)(1)).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

CHAPTER 46—FORFEITURE

* * * * *

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) * * *

* * * * *

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

* * * * *

CHAPTER 113B—TERRORISM

- Sec.
 2331. Definitions.
 * * * * *
 2332f. *Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.*
 * * * * *
 2339C. *Prohibitions against the financing of terrorism.*
 * * * * *

§ 2332b. Acts of terrorism transcending national boundaries

- (a) * * *
 * * * * *
 (g) DEFINITIONS.—As used in this section—
 (1) * * *
 * * * * *
 (5) the term “Federal crime of terrorism” means an offense that—

- (A) * * *
 (B) is a violation of—
 (i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),

2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332f (*relating to bombing of public places and facilities*), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), 2339C (*relating to financing of terrorism*), or 2340A (relating to torture) of this title;

* * * * *

§ 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

(a) OFFENSES.—

(1) IN GENERAL.—Whoever unlawfully 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, shall be punished as prescribed in subsection (c).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

(1) the offense takes place in the United States and—

(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

(C) at the time the offense is committed, it is committed—

(i) on board a vessel flying the flag of another state;

(ii) on board an aircraft which is registered under the laws of another state; or

(iii) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) a perpetrator is a national of another state or a stateless person; or

(F) a victim is a national of another state or a stateless person;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a victim is a national of the United States;

(C) a perpetrator is found in the United States;

(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

(G) the offense is committed on board an aircraft which is operated by the United States.

(c) *PENALTIES.*—Whoever violates this section shall be imprisoned for any term of years or for life, and if death results from the violation, shall be punished by death or imprisoned for any term of years or for life.

(d) *EXEMPTIONS TO JURISDICTION.*—This section does not apply to—

(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

(2) activities undertaken by military forces of a state in the exercise of their official duties; or

(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

(e) *DEFINITIONS.*—As used in this section, the term—

(1) “serious bodily injury” has the meaning given that term in section 1365(g)(3) of this title;

(2) “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(3) “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;

(4) “intergovernmental organization” includes international organization (as defined in section 1116(b)(5) of this title);

(5) “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;

(6) “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;

(7) “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;

(8) “explosive” has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage;

(9) “other legal device” means any weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents, or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

(10) “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 defense or security, and persons acting in support of those armed forces who are under their formal command, control, and responsibility;

(11) “armed conflict” does not include internal disturbances and tensions, such as riots, isolated, and sporadic acts of violence, and other acts of a similar nature; and

(12) “state” has the same meaning as that term has under international law, and includes all political subdivisions thereof.

* * * * *

§ 2339A. Providing material support to terrorists

(a) OFFENSE.—Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842 (m) or (n), 844 (f) or (i), 903(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502 or 60123(b) of title 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

* * * * *

§ 2339C. Prohibitions against the financing of terrorism

(a) OFFENSES.—

(1) IN GENERAL.—Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, 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,

shall be punished as prescribed in subsection (d)(1).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

(b) CONCEALMENT.—

(1) IN GENERAL.—Whoever, in the United States, or outside the United States and a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions), knowingly conceals or disguises the nature, the location, the source, or the ownership or control of any material support or resources provided in violation of section 2339B of this chapter, or of any funds provided or collected in violation of subsection (a) or any proceeds of such funds, shall be punished as prescribed in subsection (d)(2).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(2).

(c) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

(1) the offense takes place in the United States and—

(A) a perpetrator was a national of another state or a stateless person;

(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

(C) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) was directed toward or resulted in the carrying out of a predicate act against—

(i) a national of another state; or

(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

(G) was directed toward or resulted in the carrying out of a predicate act—

(i) outside the United States; or

(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a perpetrator is found in the United States; or

(C) was directed toward or resulted in the carrying out of a predicate act against—

(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

(ii) any person or property within the United States;

(iii) any national of the United States or the property of such national; or

(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by the United States; or

(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

(d) PENALTIES.—

(1) Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

(2) Whoever violates subsection (b) shall be fined under this title, imprisoned for not more than 10 years, or both.

(e) DEFINITIONS.—As used in this section—

(1) the term “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 coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term “government facility” means any permanent or temporary facility or conveyance that is used or occupied by rep-

representatives of a state, members of a 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) the term “proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

(4) the term “provides” includes giving, donating, and transmitting;

(5) the term “collects” includes raising and receiving;

(6) the term “predicate act” means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

(7) the term “treaty” means—

(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(C) the 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 December 14, 1973;

(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(F) the 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 February 24, 1988;

(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(8) the term “intergovernmental organization” includes international organizations;

(9) the term “international organization” has the same meaning as in section 1116(b)(5) of this title;

(10) the term “armed conflict” does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

(11) the term “serious bodily injury” has the same meaning as in section 1365(g)(3) of this title;

(12) the term “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(13) the term "state" has the same meaning as that term has under international law, and includes all political subdivisions thereof.

(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least \$10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).

* * * * *

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * *

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * *

(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2332f, 2339A, [or 2339B] 2339B, or 2339C of this title (relating to terrorism); or

* * * * *

MARKUP TRANSCRIPT
BUSINESS MEETING
THURSDAY, NOVEMBER 15, 2001

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

The Committee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order.

The last item on the agenda is the adoption of H.R. 3275, the implementation legislation for the International Convention for the Suppression of Financing of Terrorism.

The Chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Crime.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, the Subcommittee on Crime reports favorably the bill H.R. 3275 and moves its favorable recommendation in the full House.

Chairman SENSENBRENNER. Without objection, H.R. 3275 will be considered as read and open for amendment at any point.

[The bill, H.R. 3275, follows:]

107TH CONGRESS
1ST SESSION

H. R. 3275

To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2001

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—SUPPRESSION OF**
2 **TERRORIST BOMBINGS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Terrorist Bombings
5 Convention Implementation Act of 2001”.

6 **SEC. 102. BOMBING STATUTE.**

7 (a) OFFENSE.—Chapter 113B of title 18, United
8 States Code, relating to terrorism, is amended by adding
9 at the end thereof the following new section:

10 **“§ 2332f. Bombings of places of public use, govern-**
11 **ment facilities, public transportation sys-**
12 **tems and infrastructure facilities**

13 “(a) OFFENSES.—

14 “(1) IN GENERAL.—Whoever unlawfully deliv-
15 ers, places, discharges, or detonates an explosive or
16 other lethal device in, into, or against a place of
17 public use, a state or government facility, a public
18 transportation system, or an infrastructure facility—

19 “(A) with the intent to cause death or seri-
20 ous bodily injury, or

21 “(B) with the intent to cause extensive de-
22 struction of such a place, facility, or system,
23 where such destruction results in or is likely to
24 result in major economic loss, shall be punished
25 as prescribed in subsection (c).

1 “(2) ATTEMPTS AND CONSPIRACIES.—Whoever
2 attempts or conspires to commit an offense under
3 paragraph (1) shall be punished as prescribed in
4 subsection (c).

5 “(b) JURISDICTION.—There is jurisdiction over the
6 offenses in subsection (a) if—

7 “(1) the offense takes place in the United
8 States and—

9 “(A) the offense is committed against an-
10 other state or a government facility of such
11 state, including its embassy or other diplomatic
12 or consular premises of that state;

13 “(B) the offense is committed in an at-
14 tempt to compel another state or the United
15 States to do or abstain from doing any act;

16 “(C) at the time the offense is committed,
17 it is committed—

18 “(i) on board a vessel flying the flag
19 of another state;

20 “(ii) on board an aircraft which is
21 registered under the laws of another state;

22 or

23 “(iii) on board an aircraft which is op-
24 erated by the government of another state;

1 “(D) a perpetrator is found outside the
2 United States;

3 “(E) a perpetrator is a national of another
4 state or a stateless person; or

5 “(F) a victim is a national of another state
6 or a stateless person;

7 “(2) the offense takes place outside the United
8 States and—

9 “(A) a perpetrator is a national of the
10 United States or is a stateless person whose ha-
11 bitual residence is in the United States;

12 “(B) a victim is a national of the United
13 States;

14 “(C) a perpetrator is found in the United
15 States;

16 “(D) the offense is committed in an at-
17 tempt to compel the United States to do or ab-
18 stain from doing any act;

19 “(E) the offense is committed against a
20 state or government facility of the United
21 States, including an embassy or other diplo-
22 matic or consular premises of the United
23 States;

24 “(F) the offense is committed on board a
25 vessel flying the flag of the United States or an

1 aircraft which is registered under the laws of
2 the United States at the time the offense is
3 committed; or

4 “(G) the offense is committed on board an
5 aircraft which is operated by the United States.

6 “(c) PENALTIES.—Whoever violates this section shall
7 be imprisoned for any term of years or for life, and if
8 death results from the violation, shall be punished by
9 death or imprisoned for any term of years or for life.

10 “(d) EXEMPTIONS TO JURISDICTION.—This section
11 does not apply to—

12 “(1) the activities of armed forces during an
13 armed conflict, as those terms are understood under
14 the law of war, which are governed by that law,

15 “(2) activities undertaken by military forces of
16 a state in the exercise of their official duties; or

17 “(3) offenses committed within the United
18 States, where the alleged offender and the victims
19 are United States citizens and the alleged offender
20 is found in the United States, or where jurisdiction
21 is predicated solely on the nationality of the victims
22 or the alleged offender and the offense has no sub-
23 stantial effect on interstate or foreign commerce.

24 “(e) DEFINITIONS.—As used in this section, the
25 term—

1 “(1) ‘serious bodily injury’ has the meaning
2 given that term in section 1365(g)(3) of this title;

3 “(2) ‘national of the United States’ has the
4 meaning given that term in section 101(a)(22) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1101(a)(22));

7 “(3) ‘state or government facility’ includes any
8 permanent or temporary facility or conveyance that
9 is used or occupied by representatives of a state,
10 members of Government, the legislature or the judi-
11 ciary or by officials or employees of a state or any
12 other public authority or entity or by employees or
13 officials of an intergovernmental organization in con-
14 nection with their official duties;

15 “(4) ‘intergovernmental organization’ includes
16 international organization (as defined in section
17 1116(b)(5) of this title);

18 “(5) ‘infrastructure facility’ means any publicly
19 or privately owned facility providing or distributing
20 services for the benefit of the public, such as water,
21 sewage, energy, fuel, or communications;

22 “(6) ‘place of public use’ means those parts of
23 any building, land, street, waterway, or other loca-
24 tion that are accessible or open to members of the
25 public, whether continuously, periodically, or occa-

1 sionally, and encompasses any commercial, business,
2 cultural, historical, educational, religious, govern-
3 mental, entertainment, recreational, or similar place
4 that is so accessible or open to the public;

5 “(7) ‘public transportation system’ means all
6 facilities, conveyances, and instrumentalities, wheth-
7 er publicly or privately owned, that are used in or
8 for publicly available services for the transportation
9 of persons or cargo;

10 “(8) ‘explosive’ has the meaning given in sec-
11 tion 844(j) of this title insofar that it is designed,
12 or has the capability, to cause death, serious bodily
13 injury, or substantial material damage;

14 “(9) ‘other legal device’ means any weapon or
15 device that is designed or has the capability to cause
16 death, serious bodily injury, or substantial damage
17 to property through the release, dissemination, or
18 impact of toxic chemicals, biological agents, or toxins
19 (as those terms are defined in section 178 of this
20 title) or radiation or radioactive material;

21 “(10) ‘military forces of a state’ means the
22 armed forces of a state which are organized, trained,
23 and equipped under its internal law for the primary
24 purpose of national defense or security, and persons
25 acting in support of those armed forces who are

1 under their formal command, control, and responsi-
2 bility;

3 “(11) ‘armed conflict’ does not include internal
4 disturbances and tensions, such as riots, isolated,
5 and sporadic acts of violence, and other acts of a
6 similar nature; and

7 “(12) ‘state’ has the same meaning as that
8 term has under international law, and includes all
9 political subdivisions thereof.”

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 113B of title 18, United
12 States Code, is amended by adding at the end thereof the
13 following:

“2332f. Bombings of places of public use, government facilities, public transpor-
tation systems and infrastructure facilities.”

14 (c) DISCLAIMER.—Nothing contained in this section
15 is intended to affect the applicability of any other Federal
16 or State law which might pertain to the underlying con-
17 duct.

18 **SEC. 103. ANCILLARY MEASURES.**

19 (a) WIRETAP PREDICATE.—Section 2516(1)(c) of
20 title 18, United States Code, is amended by inserting “sec-
21 tion 2332f (relating to bombing of public places and facili-
22 ties),” before “section 1992 (relating to wrecking trains)”.

23 (b) STATUTE OF LIMITATIONS EXTENSION.—Section
24 3286 of title 18, United States Code, is amended by in-

1 sserting “section 2332f (bombing of public places and fa-
2 cilities),” before “or section 2340A (torture)”.

3 (c) MONEY LAUNDERING PREDICATE.—Section
4 1956(c)(7)(D) of title 18, United States Code, is amended
5 by inserting “section 2332f (relating to bombing of public
6 places and facilities),” after “section 2332b (relating to
7 international terrorist acts transcending national bound-
8 aries),”.

9 (d) PROVIDING MATERIAL SUPPORT TO TERRORISTS
10 PREDICATE.—Section 2339A of title 18, United States
11 Code, is amended by inserting “2332f,” before “or
12 2340A”.

13 (e) RICO PREDICATE.—Section 1961(1)(B) of title
14 18, United States Code, is amended by inserting “section
15 2332f (relating to bombing of public places and facili-
16 ties),” before “sections 2341–2346 (relating to trafficking
17 in contraband cigarettes)”.

18 (f) FEDERAL CRIME OF TERRORISM.—Section
19 2332b(g)(5)(B) of title 18, United States Code, is amend-
20 ed by—

21 (1) inserting “229 (relating to prohibited activi-
22 ties involving chemical weapons)” after “175 (relat-
23 ing to biological weapons),”;

24 (2) striking “2332e,”; and

1 (3) inserting “2332f (relating to bombing of
2 public places and facilities),” after “2332b (relating
3 to acts or terrorism transcending national bound-
4 aries),”.

5 **SEC. 104. EFFECTIVE DATE.**

6 Sections 102 and 103 of this title shall become effec-
7 tive on the date that the International Convention for the
8 Suppression of Terrorist Bombings enters into force for
9 the United States.

10 **TITLE II—SUPPRESSION OF THE**
11 **FINANCING OF TERRORISM**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Suppression of the
14 Financing of Terrorism Convention Implementation Act
15 of 2001”.

16 **SEC. 202. TERRORISM FINANCING STATUTE.**

17 (a) IN GENERAL.—Chapter 113B of title 18, United
18 States Code, relating to terrorism, is amended by adding
19 at the end thereof the following new section:

20 **“§ 2339c. Prohibitions against the financing of ter-**
21 **rorism**

22 “(a) OFFENSES.—

23 “(1) IN GENERAL.—Whoever, in a circumstance
24 described in subsection (c), by any means, directly or
25 indirectly, unlawfully and willfully provides or col-

1 lects funds with the intention that such funds be
2 used, or with the knowledge that such funds are to
3 be used, in full or in part, in order to carry out—

4 “(A) an act which constitutes an offense
5 within the scope of a treaty specified in sub-
6 section (e)(7), as implemented by the United
7 States, or

8 “(B) any other act intended to cause death
9 or serious bodily injury to a civilian, or to any
10 other person not taking an active part in the
11 hostilities in a situation of armed conflict, when
12 the purpose of such act, by its nature or con-
13 text, is to intimidate a population, or to compel
14 a government or an international organization
15 to do or to abstain from doing any act,

16 shall be punished as prescribed in subsection (d)(1).

17 “(2) ATTEMPTS AND CONSPIRACIES.—Whoever
18 attempts or conspires to commit an offense under
19 paragraph (1) shall be punished as prescribed in
20 subsection (d)(1).

21 “(3) RELATIONSHIP TO PREDICATE ACT.—For
22 an act to constitute an offense set forth in this sub-
23 section, it shall not be necessary that the funds were
24 actually used to carry out a predicate act.

25 “(b) CONCEALMENT.—

1 “(1) IN GENERAL.—Whoever, in the United
2 States, or outside the United States and a national
3 of the United States or a legal entity organized
4 under the laws of the United States (including any
5 of its States, districts, commonwealths, territories,
6 or possessions), knowingly conceals or disguises the
7 nature, the location, the source, or the ownership or
8 control of any material support or resources pro-
9 vided in violation of section 2339B of this chapter,
10 or of any funds provided or collected in violation of
11 subsection (a) or any proceeds of such funds, shall
12 be punished as prescribed in subsection (d)(2).

13 “(2) ATTEMPTS AND CONSPIRACIES.—Whoever
14 attempts or conspires to commit an offense under
15 paragraph (1) shall be punished as prescribed in
16 subsection (d)(2).

17 “(c) JURISDICTION.—There is jurisdiction over the
18 offenses in subsection (a) in the following circumstances—

19 “(1) the offense takes place in the United
20 States and—

21 “(A) a perpetrator was a national of an-
22 other state or a stateless person;

23 “(B) on board a vessel flying the flag of
24 another state or an aircraft which is registered

1 under the laws of another state at the time the
2 offense is committed;

3 “(C) on board an aircraft which is oper-
4 ated by the government of another state;

5 “(D) a perpetrator is found outside the
6 United States;

7 “(E) was directed toward or resulted in
8 the carrying out of a predicate act against—

9 “(i) a national of another state; or

10 “(ii) another state or a government
11 facility of such state, including its embassy
12 or other diplomatic or consular premises of
13 that state;

14 “(F) was directed toward or resulted in the
15 carrying out of a predicate act committed in an
16 attempt to compel another state or inter-
17 national organization to do or abstain from
18 doing any act; or

19 “(G) was directed toward or resulted in
20 the carrying out of a predicate act—

21 “(i) outside the United States; or

22 “(ii) within the United States, and ei-
23 ther the offense or the predicate act was
24 conducted in, or the results thereof af-
25 fected, interstate or foreign commerce;

1 “(2) the offense takes place outside the United
2 States and—

3 “(A) a perpetrator is a national of the
4 United States or is a stateless person whose ha-
5 bitual residence is in the United States;

6 “(B) a perpetrator is found in the United
7 States; or

8 “(C) was directed toward or resulted in the
9 carrying out of a predicate act against—

10 “(i) any property that is owned,
11 leased, or used by the United States or by
12 any department or agency of the United
13 States, including an embassy or other dip-
14 lomatic or consular premises of the United
15 States;

16 “(ii) any person or property within
17 the United States;

18 “(iii) any national of the United
19 States or the property of such national; or

20 “(iv) any property of any legal entity
21 organized under the laws of the United
22 States, including any of its States, dis-
23 tricts, commonwealths, territories, or pos-
24 sessions;

1 “(3) the offense is committed on board a vessel
2 flying the flag of the United States or an aircraft
3 which is registered under the laws of the United
4 States at the time the offense is committed;

5 “(4) the offense is committed on board an air-
6 craft which is operated by the United States; or

7 “(5) the offense was directed toward or resulted
8 in the carrying out of a predicate act committed in
9 an attempt to compel the United States to do or ab-
10 stain from doing any act.

11 “(d) PENALTIES.—

12 “(1) Whoever violates subsection (a) shall be
13 fined under this title, imprisoned for not more than
14 20 years, or both.

15 “(2) Whoever violates subsection (b) shall be
16 fined under this title, imprisoned for not more than
17 10 years, or both.

18 “(e) DEFINITIONS.—As used in this section—

19 “(1) the term ‘funds’ means assets of every
20 kind, whether tangible or intangible, movable or im-
21 movable, however acquired, and legal documents or
22 instruments in any form, including electronic or dig-
23 ital, evidencing title to, or interest in, such assets,
24 including coin, currency, bank credits, travelers

1 checks, bank checks, money orders, shares, securi-
2 ties, bonds, drafts, and letters of credit;

3 “(2) the term ‘government facility’ means any
4 permanent or temporary facility or conveyance that
5 is used or occupied by representatives of a state,
6 members of a government, the legislature, or the ju-
7 diciary, or by officials or employees of a state or any
8 other public authority or entity or by employees or
9 officials of an intergovernmental organization in con-
10 nection with their official duties;

11 “(3) the term ‘proceeds’ means any funds de-
12 rived from or obtained, directly or indirectly,
13 through the commission of an offense set forth in
14 subsection (a);

15 “(4) the term ‘provides’ includes giving, donat-
16 ing, and transmitting;

17 “(5) the term ‘collects’ includes raising and re-
18 ceiving;

19 “(6) the term ‘predicate act’ means any act re-
20 ferred to in subparagraph (A) or (B) of subsection
21 (a)(1);

22 “(7) the term ‘treaty’ means—

23 “(A) the Convention for the Suppression of
24 Unlawful Seizure of Aircraft, done at The
25 Hague on December 16, 1970;

1 “(B) the Convention for the Suppression of
2 Unlawful Acts against the Safety of Civil Avia-
3 tion, done at Montreal on September 23, 1971;

4 “(C) the Convention on the Prevention and
5 Punishment of Crimes against Internationally
6 Protected Persons, including Diplomatic
7 Agents, adopted by the General Assembly of the
8 United Nations on December 14, 1973;

9 “(D) the International Convention against
10 the Taking of Hostages, adopted by the General
11 Assembly of the United Nations on December
12 17, 1979;

13 “(E) the Convention on the Physical Pro-
14 tection of Nuclear Material, adopted at Vienna
15 on March 3, 1980;

16 “(F) the Protocol for the Suppression of
17 Unlawful Acts of Violence at Airports Serving
18 International Civil Aviation, supplementary to
19 the Convention for the Suppression of Unlawful
20 Acts against the Safety of Civil Aviation, done
21 at Montreal on February 24, 1988;

22 “(G) the Convention for the Suppression of
23 Unlawful Acts against the Safety of Maritime
24 Navigation, done at Rome on March 10, 1988;

1 “(H) the Protocol for the Suppression of
2 Unlawful Acts against the Safety of Fixed Plat-
3 forms located on the Continental Shelf, done at
4 Rome on March 10, 1988; or

5 “(I) the International Convention for the
6 Suppression of Terrorist Bombings, adopted by
7 the General Assembly of the United Nations on
8 December 15, 1997;

9 “(8) the term ‘intergovernmental organization’
10 includes international organizations;

11 “(9) the term ‘international organization’ has
12 the same meaning as in section 1116(b)(5) of this
13 title;

14 “(10) the term ‘armed conflict’ does not include
15 internal disturbances and tensions, such as riots,
16 isolated and sporadic acts of violence, and other acts
17 of a similar nature;

18 “(11) the term ‘serious bodily injury’ has the
19 same meaning as in section 1365(g)(3) of this title;

20 “(12) the term ‘national of the United States’
21 has the meaning given that term in section
22 101(a)(22) of the Immigration and Nationality Act
23 (8 U.S.C. 1101(a)(22)); and

1 “(13) the term ‘state’ has the same meaning as
2 that term has under international law, and includes
3 all political subdivisions thereof.

4 “(f) CIVIL PENALTY.—In addition to any other crimi-
5 nal, civil, or administrative liability or penalty, any legal
6 entity located within the United States or organized under
7 the laws of the United States, including any of the laws
8 of its States, districts, commonwealths, territories, or pos-
9 sessions, shall be liable to the United States for the sum
10 of at least \$10,000, if a person responsible for the man-
11 agement or control of that legal entity has, in that capac-
12 ity, committed an offense set forth in subsection (a).”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 113B of title 18, United
15 States Code, is amended by adding at the end thereof the
16 following:

 “2339C. Prohibitions against the financing of terrorism.”.

17 (c) DISCLAIMER.—Nothing contained in this section
18 is intended to affect the scope or applicability of any other
19 Federal or State law.

20 **SEC. 203. ANCILLARY MEASURES.**

21 (a) WIRETAP PREDICATE.—Section 2516(1)(c) of
22 title 18, United States Code, is amended by inserting “sec-
23 tion 2339A (relating to providing material support to ter-
24 rorists), section 2339B (relating to providing material
25 support or resources to designated foreign terrorist orga-

1 nizations), section 2339C (relating to financing of ter-
2 rorism),” before “section 1992 (relating to wrecking
3 trains)”.

4 (b) STATUTE OF LIMITATIONS EXTENSION.—Section
5 3286 of title 18, United States Code, is amended by in-
6 serting “section 2339A (relating to providing material
7 support to terrorists), section 2339B (relating to pro-
8 viding material support or resources to designated foreign
9 terrorist organizations), section 2339C (relating to financ-
10 ing of terrorism),” before “or section 2340A (torture)”.

11 (c) MONEY LAUNDERING PREDICATE.—Section
12 1956(e)(7)(D) of title 18, United States Code, is amended
13 by striking “or section 2339A (relating to providing mate-
14 rial support to terrorists)” and inserting “section 2339A
15 (relating to providing material support to terrorists), sec-
16 tion 2339B (relating to providing material support or re-
17 sources to designated foreign terrorist organizations), sec-
18 tion 2339C (relating to financing of terrorism)”.

19 (d) RICO PREDICATE.—Section 1961(1)(B) of title
20 18, United States Code, is amended by inserting “section
21 2339A (relating to providing material support to terror-
22 ists), section 2339B (relating to providing material sup-
23 port or resources to designated foreign terrorist organiza-
24 tions), section 2339C (relating to financing of terrorism),”

1 before “sections 2341–2346 (relating to trafficking in con-
2 traband cigarettes)”.

3 (e) FEDERAL CRIME OF TERRORISM.—Section
4 2332b(g)(5)(B) of title 18, United States Code, is amend-
5 ed by inserting “2339C (relating to financing of ter-
6 rorism),” before “or 2340A (relating to torture)”.

7 (f) FORFEITURE OF FUNDS, PROCEEDS, AND IN-
8 STRUMENTALITIES.—Section 981(a)(1) of title 18, United
9 States Code, is amended by adding at the end thereof the
10 following new subparagraph:

11 “(G) Any property, real or personal, in-
12 volved in a violation or attempted violation, or
13 which constitutes or is derived from proceeds
14 traceable to a violation, of section 2339C of this
15 title.”.

16 **SEC. 204. EFFECTIVE DATE.**

17 Except for sections 2339C(c)(1)(D) and (2)(B) of
18 title 18, United States Code, which shall become effective
19 on the date that the International Convention for the Sup-
20 pression of the Financing of Terrorism enters into force
21 for the United States, and for the provisions of section
22 2339C(e)(7)(I) of title 18, United States Code, which shall
23 become effective on the date that the International Con-
24 vention for the Suppression of Terrorist Bombing enters

45

22

1 into force for the United States, sections 202 and 203 of
2 this title shall be effective upon enactment.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, to strike the last word.

Mr. SMITH. Mr. Chairman, international terrorism once threatened Americans only when they were outside our country. Today every American must live their life 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.

Mr. Chairman, H.R. 3275 is bipartisan legislation. Both treaties were drafted and initiated by the Clinton Administration and are now strongly supported by the Bush 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 U.S. military personnel in Saudi Arabia in 1996. This treaty creates international jurisdiction over the unlawful and intentional use of explosives and other lethal devices at public places with the intent to kill or cause serious bodily injury or with intent to cause the extensive destruction of the public place itself.

The treaty requires nations to extradite or submit for prosecution persons accused of committing or aiding such offenses. Thirty-seven nations are currently party to the convention, which became effective internationally on May 23rd, 2001.

The second treaty is the International Convention for the Suppression of Financing of Terrorism drafted in 1999. 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 detection, 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 ratified by the Senate.

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 would 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 the death penalty for terrorists that murder innocent civilians, so the provisions of this bill are consistent with current law. Furthermore, this bill amends current laws against terrorists simply to include crimes of terrorist bombings and financing terrorism.

Some concern was expressed at the hearing on this bill that there may be other laws already enacted that could cover the terrorist activities this bill focuses on. While there may be some overlap of current law with the crimes set forth in this bill, Assistant Attorney General Michael Chertoff testified that the bill does plug important and serious gaps in our criminal code.

As Mr. Chertoff stated: These are serious crimes that we should be able to attack from multiple ways. We should not shy away from plugging gaps for crimes that involve terrorist bombings simply be-

cause there may be some other related criminal statute in place when we can enact a criminal law that is exactly on point.

Changing or delaying these conventions could handcuff our law enforcement officers in their efforts to bring terrorists to justice. These treaties, once they are ratified and implemented, will expand the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in bombings and financially support terrorist organizations.

Mr. Chairman, 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 yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I am in favor of the United States ratifying the International Convention for the Suppression of Terrorist Bombing and the International Convention for the Suppression of the Financing of Terrorism, but I am opposed to H.R. 3275, the implementing legislation, in its current form.

There are numerous controversial provisions in the bill, such as death penalties, which are not necessary to implement the treaties. If we could focus our attention on just doing what is needed to implement the treaties, I am sure that we could do so quickly and unanimously.

These treaties have been pending for some time, so I applaud the President's decision to seek their ratification. However, 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 being 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 cover the full gamut of terroristic threats to this country. Upon that representation, unprecedented extensions of wiretap, RICO, asset seizures, and punishments were enacted into law. Many of them had nothing to do with terrorism.

Because we are not sure how these intrusive measures would play out, the bill this Committee passed unanimously placed a 2-year sunset on these provisions, and the bill finally was adopted with a 4-year sunset.

The bill before us provides for further extensions of these drastic measures, and even goes further by adding additional death penalty provisions with no sunset or other type of review.

The Justice Department has made it clear that these measures are not required for ratification of treaties that have been pending before the Senate for over a year. The part of the bill that addresses what is required is not controversial. But it seems that much of it is duplicative of existing law.

The Department of Justice, for example, insists that it needs the bill because there is a gap in the law when someone bombs a foreign embassy in the United States.

Now, Members of the Committee, let's be serious. If somebody blows up an embassy in downtown D.C. and law enforcement offi-

cials can't figure out how to charge a crime under existing law, we've got more problems than this bill will cure.

Of particular concern is the death penalty, which can't be necessary because other countries who are signatories to the treaties don't have any death penalties at all.

So, Mr. Chairman, we should separate what is required and not controversial from what is controversial and not required, so we can pass a bill with broad support, as we did with the anti-terrorism bill. If more is desired, let's discuss in that in a separate bill.

Now, I understand that the gentleman from Texas will have an amendment which addresses some of these concerns, and I look forward to consideration of that amendment.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members opening statements will be inserted in the record at this point.

[The statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN

I rise in support of this amendment, which strikes the death penalty as a punishment under this legislation. This legislation is not the appropriate time or vehicle for expanding use of the death penalty in this country. Simply put, the death penalty should not be expanded; it has raised numerous concerns because of its questionable constitutionality and the manner in which it is implemented.

As practiced in this country, the death penalty violates not only the Eighth Amendment prohibition against cruel and unusual punishment but also the Sixth Amendment guarantee of right to counsel. A Columbia University study showed that two out of three death penalty convictions between 1973 and 1995 were overturned on appeal, largely because of incompetent counsel. Many lawyers appointed to death penalty cases simply have no experience whatsoever with capital offenses. We simply are not complying with the Sixth Amendment in a situation where defendants' lives are dependent upon inexperienced lawyers. It is because of these concerns that Mr. Delahunt's Innocence Protection Act garnered so many cosponsors from both sides of the aisle.

And unfortunately, sometimes the errors in death penalty cases are not discovered until after the defendant is already incarcerated. In Oklahoma City, the FBI has found that police chemists have performed flawed analyses in numerous cases; at least one man has been released from death row when DNA evidence cleared him. Overall, approximately ninety-eight death row inmates have been exonerated since the death penalty was reinstated in the 1970's.

Moreover, numerous studies have shown that it is applied in a discriminate manner. For instance, statistics show that African-American defendants convicted of killing white victims are ten times more likely to receive the death penalty than white defendants who kill African-Americans. Evidence like this indicates that capital punishment is being applied unfairly and should be curtailed, not expanded.

This is why numerous politicians on both sides of the aisle, legal experts, and Americans are not only raising concerns about capital punishment but also opposing it. After learning that thirteen death row inmates had been exonerated in Illinois, Republican Governor George Ryan imposed a blanket moratorium on executions in his state. Supreme Court Justice Sandra Day O'Connor said just this past July that "serious questions are being raised" about the death penalty and "the system may well be allowing some innocent defendants to be executed." The American Bar Association also has called for a moratorium. Even Texas, the state traditionally having a high execution rate, has reduced its rate from forty last year to thirteen this year. And when asked whether they support capital punishment or life without parole, only forty-seven percent of Americans favor the death penalty; an all-time low.

Finally, I fail to understand why we need a death penalty in order to comply with a treaty when most other signatory nations have outlawed it. As a matter of fact, many parties to the convention may not extradite persons to us because we impose the death penalty.

I urge my colleagues to vote "Yes" on this amendment.

[The statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

COMMITTEES:
JUDICIARY
SUBCOMMITTEES:
CRIME

Ranking Member
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEES:
SPACE AND AERONAUTICS
ENERGY

Chair
CONGRESSIONAL CHILDREN'S CAUCUS

Regional Staff
DEMOCRATIC CAUCUS

2nd Vice Chair
CONGRESSIONAL BLACK CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE
405 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3918

DISTRICT OFFICE
1919 SMITH STREET, SUITE 1180
THE GEORGE "MICK" LELAND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-0090

ACRES HOME OFFICE
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 891-4882

HEIGHTS OFFICE
420 WEST 18TH STREET
HOUSTON, TX 77008
(713) 861-4070

STATEMENT

CONGRESSWOMAN SHEILA JACKSON LEE

MARKUP OF H.R. 3275, THE "IMPLEMENTATION

LEGISLATION FOR THE INTERNATIONAL

CONVENTION FOR THE SUPPRESSION OF TERRORIST

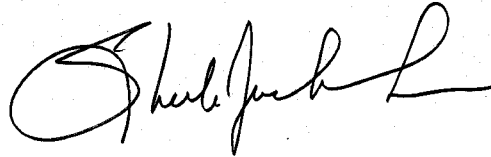
BOMBINGS AND THE INTERNATIONAL CONVENTION

FOR THE SUPPRESSION OF THE FINANCING OF

TERRORISM"

HOUSE COMMITTEE ON THE JUDICIARY

NOVEMBER 15, 2001



I would like to thank Chairman Sensenbrenner and Ranking Member Conyers for convening this 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 important 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. Currently, twenty-eight states are 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. As of yesterday, the treaties were on the agenda for the Senate Foreign Relations Committee and it was anticipated to report out favorably. Furthermore, legislation to implement the treaties must be passed by both Houses of Congress and signed by the President.

We are here today to fulfill our obligation as a signatory to the treaty by moving forward favorably with legislation on this issue.

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. Make no mistake about it: this is our solemn duty.

But in our efforts, we must take care to protect of due process and the rule of law in order to protect those presumed to be innocent from illegal and unfair targeting based on race, color, sexual orientation, creed, gender, or religion. To this end, we must assure that the bill is narrowly tailored so as to avoid authorizing law enforcement to embark on fishing expeditions in order to bring the perpetrators to justice.

I am particularly concerned about the redundancy of ancillary provisions relating to the death penalty, wiretapping, money laundering, and RICO predicates. These stipulations, which were

included in the Anti-Terrorist Bill, have already been passed into law on October 26, 2001. Therefore, to include the same provisions in H.R. 3275 would be redundant and would serve no purpose. As a matter of fact, Mr. Chertoff of the Department of Justice stated yesterday that these provisions are not required in order to implement the treaties.

Moreover, most party states to the Conventions do not tolerate the death penalty, but are still in compliance with the treaty. This could have a profound effect on extradition and result in an inordinate burden on our criminal justice system.

My amendment to this bill recognizes this redundancy. My amendment simply strikes Sections 103(e) and 203(d) of the bill which unnecessarily provide RICO predicates in the bill. While I fully support the efforts of our law enforcement professionals in light of the recent attacks against this Nation, I am concerned that prosecutors should be limited in the extent to which they can cast

the widest possible net, often to the great detriment of those who were not initially target by Congress when the legislation was enacted. The RICO provision is unnecessary, and I urge my colleague to support my amendment.

Mr. Chairman, it is in our best interest, as well as the international community, that we comply with the treaty. Our message that we will not tolerate terrorism in any way, shape, or form, must reverberate for all to heed. But we should do it as simply as possible, without unnecessary, irrelevant, and offensive provisions. Let us bring forth a bill that we can find a balance on.

Thank you.

6

Are there amendments—

Mr. DELAHUNT. Mr. Chairman?

Mr. SMITH. Mr. Chairman?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Texas.

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 3275—

Mr. SMITH. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

**AMENDMENT
TO H.R. 3275
OFFERED BY MR. SMITH**

Delete sections 103 and 203 of the bill and insert a new section 301 at the end as follows:

"SEC. 301. ANCILLARY MEASURES

(a) **WIRETAP PREDICATES.**—Section 2516(1)(q) of title 18, United States Code, is amended by—

(1) inserting "2332f," after "2332d,"; and

(2) striking "or 2339B" and inserting "2339B, or 2339C".

(b) **FEDERAL CRIME OF TERRORISM.**—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

(1) inserting "2332f (relating to bombing of public places and facilities)," after "2332b (relating to acts of terrorism transcending national boundaries),"; and

(2) inserting "2339C (relating to financing of terrorism)," before "or 2340A (relating to torture)".

(c) **PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.**—Section 2339A of title 18, United States Code, is amended by inserting "2332f," before "or 2340A".

(d) **FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.**—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title."."

Chairman SENSENBRENNER. And the gentleman from Texas is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

And as the gentleman from Virginia indicated, I do hope that this amendment will satisfy some of the concerns that he has expressed, as well as the concerns expressed by the gentlewoman from Texas, Ms. Jackson Lee.

Mr. Chairman, I offer this amendment to make changes to the bill consistent with recommendations provided by the Department of Justice.

These recommendations were made in response to requests by Members of the Subcommittee that the Department of Justice review the bill and inform them of any provision that was not necessary to comply with the terrorist bombing treaty or the financing of terrorism treaty.

Upon further review, the Justice Department has determined that it is not necessary to specifically reference the RICO statutes or the extension of the statute of limitations. Since the crimes that we are dealing with are Federal crimes of terrorism, under section 2332b(g)(5)(B) of title 18 of the U.S. Code, they would automatically be included in these statutes.

This amendment will serve to simplify the bill language, and I urge my colleagues to support it.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the amendment has what's called ancillary measures, which suggests that they are not absolutely needed.

I would point out that the wiretap predicate, unlike the wiretap legislation that we passed in the anti-terrorism bill, is limited to terrorism situations under title 3, which requires probable cause that crimes are being committed. That is in stark contrast to what we passed last time around, where with the FISA wiretaps, you don't even have to suggest that a crime is being committed and you don't need probable cause.

This amendment limits the application of the bill and more closely reflects what is needed to conform with the treaties. And, therefore, I would support the amendment.

Chairman SENSENBRENNER. The question is on the——

Ms. JACKSON LEE. Will the gentleman yield? Will the gentleman yield?

Chairman SENSENBRENNER. The gentleman from Virginia——

Mr. SCOTT. Reclaiming my time, and I would yield to the gentlelady from Texas.

Ms. JACKSON LEE. Let me as well indicate my concerns with the broad net again for implementing the treaties, in as much as many of the provisions were already in U.S. criminal law.

And I would say to the gentleman from Texas, this alleviates some of my concern in the redundancy issue that we raised in Subcommittee. And I thank the gentleman for the amendment, and I support the amendment.

Mr. FRANK. Would the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, since this is now becoming a love fest—[Laughter.]—I just wanted to add a word of bipartisan praise.

I think we should take note, this appears to be the first treaty that the Bush Administration has discovered on entering office that it is prepared to support. [Laughter.]

And we've heard a lot about the belated discovery of multilateralism. I have been trying to think of all of the treaties that Bush Administration administered, and we have finally found one that it likes, and I think that ought to be duly noted.

Chairman SENSENBRENNER. And then we should quickly pass this bill.

The question is on the——

Mr. DELAHUNT. Will the gentleman yield?

Mr. FRANK. Before they change their minds. [Laughter.]

Chairman SENSENBRENNER. Right.

The question is on the amendment offered by the gentleman from Texas, Mr. Smith.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. I don't have an amendment; I have a question for the sponsor of the bill.

Chairman SENSENBRENNER. The gentleman strikes the last word and is recognized for 5 minutes.

Mr. NADLER. Thank you. I just have a question.

I'm trying to understand this bill, the necessity. Can you cite for us, please, precisely anything that this bill adds to the law? In other words, what's now legal that would be made illegal under this bill?

Mr. DELAHUNT. Will the gentleman yield?

Mr. NADLER. To who?

Mr. DELAHUNT. To——

Mr. NADLER. Oh, yes, certainly.

Mr. DELAHUNT. Yes, at my request yesterday, there was a memorandum—and I want to compliment the department for producing it in a timely fashion—that posed that exact question. And if you don't have it in front of you, I would be happy to share my copy of it with you.

It's entitled "Response to Request by Members of Subcommittee for More Input."

It says, "Provisions that do not directly implement the conventions." And clearly, it would take longer than you or I have in terms of time to recite it.

Mr. NADLER. Well, I will read this, but—thank you.

Reclaiming my time.

I will read this.

But I will yield to the gentleman. Could you give us examples of what are now legal that would be made illegal under this bill?

Mr. SMITH. Let me give you one specific example that was given to us by the Associate Attorney General yesterday. And it is this: If, for example, a U.S. citizen were implicated in planting a bomb in an Air France aircraft that exploded and killed people, with no U.S. citizens, under current law, that U.S. citizen would not be able to be prosecuted. Whereas under the treaty——

Mr. NADLER. That's hard to—reclaiming my time.

It's hard to believe that it is not a crime now to plant a bomb in the United States on a foreign aircraft if the bomb explodes over the ocean?

Mr. SMITH. No, no, no, no. If the U.S. citizen planted a bomb in France on an Air France aircraft, blew it up——

Mr. NADLER. Presumably that would be a crime under French law which they would extradite——

Mr. SMITH. Well, that was the example given to us yesterday by the Attorney General.

Mr. NADLER. So this expands our jurisdiction to crimes that occur in a foreign—

Mr. SMITH. Correct. And it fills in some gaps that are now open and where we are not able to prosecute.

Mr. NADLER. Let me just ask one other question, then. And I haven't given this any thought, obviously, but are there problems with giving the United States jurisdiction for crimes that occur in France, that France might want to prosecute?

Mr. SMITH. If the gentleman will yield, I think the point of the treaty is that we want to be able to have that individual extradited and work with France—

Mr. FRANK. Will the gentleman yield?

Mr. NADLER. Yes.

Mr. FRANK. Well, if you pass this bill, he won't be extradited, because they won't extradite anybody to be subject to a death penalty. So if you include the death penalty, you guarantee that there will be no extradition.

Mr. DELAHUNT. Will the gentleman yield?

Mr. NADLER. Yes.

Mr. DELAHUNT. I have an amendment that would deal with the death penalty issue, because of the reluctance on the part of a number of parties to the agreement.

Mr. NADLER. I appreciate the gentleman.

Reclaiming my time, can you give me an example, other—I mean, I find it difficult to think that we are going to pass a bill to give us jurisdiction for a crime in France that France would certainly want to—if someone put a bomb on an Air France, in France, put a bomb on an Air France airline that blew up, I suspect the French would want to prosecute that individual. And why would they extradite them to the United States so we could prosecute them?

Give me a more practical example. I mean, I don't see a great problem in that situation, where France would certainly want to prosecute. Is there anything that might happen where someone else doesn't want to prosecute that this bill would help us with?

Mr. SMITH. By the way, I think that was a very practical example, because I think that's a very realistic possibility.

Let me see if we can—

Mr. NADLER. Yes, but France would take care of that, presumably.

Mr. SMITH. If the gentleman will continue to yield, let me see if we can give another example based upon the testimony we received.

Let me read to the gentleman a couple of paragraphs as to what Mr. Chertoff testified and maybe that will reassure him: Some concern was expressed at the hearing on this bill—this is what I mentioned awhile ago—that there may be other laws already enacted that could cover the terrorist activities the bill focuses on. While there may be some overlap of current law with the crimes set forth in this bill, Assistant Attorney General Michael Chertoff testified that the bill does plug important and serious gaps in our criminal code.

As he stated: These are serious crimes that we should be able to attack from multiple ways. We should not shy away from plugging gaps for crimes that involve terrorist bombings simply because there may be some other related criminal statute in place when we can enact a criminal law that is exactly on point.

If the gentleman wants to yield further, I can read him part of the memo that was given——

Mr. NADLER. I'm reclaiming my time. Thank you very much.

Mr. SMITH. Okay.

Mr. NADLER. You read that before anyway.

I yield back.

Mr. WATT. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT [continuing]. Just for the purpose of requesting that maybe we all would feel better if we had a copy of the letter that was written to Mr. Delahunt, which apparently has not been circulated.

Mr. DELAHUNT. Will the gentleman yield?

Chairman SENSENBRENNER. Is it possible that the staff can supply the letter quickly?

Mr. SMITH. We can give them a copy, Mr. Chairman. It's titled, "Response to Request by Members of Subcommittee for More Input: Provisions that do not directly implement," and then it goes into provisions which implement the convention.

Chairman SENSENBRENNER. Without objection, the letter will be put in the record at this point.

[The information referred to follows:]

RESPONSE TO REQUEST BY MEMBERS OF SUBCOMMITTEE FOR MORE INPUT

I. PROVISIONS THAT DO NOT DIRECTLY IMPLEMENT THE CONVENTIONS

The sole reason for proposing the two pieces of legislation is to implement our obligations under the Terrorist Bombings and Terrorism Financing Conventions. Because through this legislation the U.S. will be establishing two new terrorism offenses, we are proposing typical ancillary measures of the kind applicable to other terrorism offenses that will be helpful to law enforcement here as well. Apart from these ancillary measures, the proposed legislation contains a very limited number of provisions that are not required for implementation of the Conventions, but are closely related and appropriately included in this legislative vehicle. Those additional provisions are conceptually related to the substance of the Conventions, have strong law enforcement benefits and are, of course, within Congress' constitutional authority to enact.

Terrorist Bombing:

Section 102, which includes the offenses and the bases of jurisdiction, implements the Convention. However, the ancillary measures in section 103 of the proposed legislation do not directly implement the Convention, but make good sense in their own right and, we would think, should be noncontroversial on the merits. They are similar to measures enacted in connection with similar major crimes under U.S. federal law. In addition, while the death penalty is not required by the Convention, particularly when viewed against the penalties provided in existing terrorism statutes, it would be anomalous to omit it here for a terrorist bombing that involves the death of one or more victims.

Terrorist Financing

As with the Terrorist Bombing Convention, the ancillary provisions in section 203 of the bill do not directly implement the Convention. (As spelled out below, these provisions can be shortened and narrowed because, after the passage of the USA PATRIOT ACT, parts of them have already been enacted into law). In addition, we would note that while the concealment offense set forth in proposed 18 U.S.C. §2339C(b) does not directly implement the Convention, Congress found such a provision advisable in the context of 18 U.S.C. § 2339A.

In addition, one of the proposed statutory bases for jurisdiction relating to the financing offense, proposed 18 U.S.C. §2339C(c)(1)(G)(ii), extends beyond the Convention's requirements in that it reaches conduct which occurs within the United States but where no international element is found. However, this proposed provision is restricted to cases where there is a nexus with interstate or foreign commerce. Finally, the implementing legislation goes beyond the Convention in that it covers financing outside the United States for a terrorist act directed against the property of a US national or corporation, see § 2339c(c)(2)(C)(ii) & (iv).

II. PROVISIONS WHICH IMPLEMENT THE CONVENTIONS BUT OVERLAP WITH EXISTING FEDERAL OR STATE LAW

Proposed 18 U.S.C. §§2332f and 2339C will overlap to some extent with existing federal or state law. However, there is no question that they will also fill important gaps in existing law and are needed to fully implement these Conventions. To the extent there is an overlap in coverage, we do not believe it would have any negative consequences, given the interest in ensuring that U.S. law is adequate to discharge U.S. Government obligations under the Convention. (Potential overlap is far better than failing to criminalize an offense that needs to be criminalized.) The combination of the new legislation and existing state and federal law will ensure that we will have a network of laws adequate to cover all of the jurisdictional elements required in the Conventions. For example, the implementing legislation would confer jurisdiction over terrorist bombings or financing that occur outside the United States if the perpetrator is later found within the United States. It is quite clear that existing federal law does not criminalize all such bombing or financing, and would not always confer jurisdiction in the absence of this bill. But such jurisdiction would be required to implement our obligations under the Convention. This is only one example of a gap that would exist in the absence of this bill.

III. EFFECTIVE DATE

Our strong preference would be to maintain the effective dates provided in the implementing legislation for the Terrorist Financing Convention. That Convention has not yet entered into force and may not do so for a significant period of time, depending on the actions of other State governments. The substantive provisions of the Convention, however, and of the implementing legislation, represent tools which should be provided to law enforcement immediately, to the extent that they can currently be implemented through Congress' constitutional authority under the commerce, foreign relations, or other power.

IV. REVISIONS TO ANCILLARY PROVISIONS

With the enactment of the USA PATRIOT ACT on October 26, 2001, Public Law 107-56, the proposed ancillary measures in H.R. 3275 can be simplified. Under current law, Sections 2339A and 2339B of title 18, United States Code, are now wiretap predicates (Section 201 of the USA PATRIOT ACT) and are now listed in 18 U.S.C. § 2332b(g)(5)(B) (Section 808 of the USA PATRIOT ACT). Since they are now listed in Section 2332b(5)(g)(B), they become RICO predicates (Section 813 of the USA PATRIOT ACT) and their statute of limitations is extended by 18 U.S.C. § 3286 (Section 809 of the USA PATRIOT ACT). Furthermore, since they are now RICO predicates, they become "specified unlawful activity" under the money laundering statute (18 U.S.C. § 1956(c)(7)).

Hence, the new offenses created by H.R. 3275, 18 U.S.C. §§ 2332f and 2339C, if listed in Section 2332b(g)(5)(B), will automatically become RICO predicates and money laundering predicates, and they will also have the longer statute of limitations.

Accordingly, the following amendments will accomplish all the ancillary measures

originally contained in H.R. 3275, as introduced, which have not as yet been enacted into law.

SEC. ____ . ANCILLARY MEASURES

(a) **WIRETAP PREDICATES.**—Section 2516(1)(g) of title 18, United States Code, is amended by—

(1) inserting "2332f," after "2332d,"; and

(2) striking "or 2339B" and inserting "2339B, or 2339C".

(b) **FEDERAL CRIME OF TERRORISM.**—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

(1) inserting "2332f (relating to bombing of public places and facilities)," after "2332b (relating to acts of terrorism transcending national boundaries),"; and

(2) inserting "2339C (relating to financing of terrorism)," before "or 2340A (relating to torture)".

(c) **PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.**—Section 2339A of title 18, United States Code, is amended by inserting "2332f," before "or 2340A".

(d) **FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.**—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title."

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina, Mr. Watt.

Mr. WATT. I yield back.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Are there amendments?

Mr. DELAHUNT. Mr. Chairman?

Mr. SCOTT. Can I ask unanimous consent that the gentleman from Massachusetts be recognized for the purpose of an amendment. He has a time constraint and would like his amendment considered.

Chairman SENSENBRENNER. The Chair was about ready to recognize him all by himself. [Laughter.]

For what purpose does the gentleman from Massachusetts seek recognition.

Mr. DELAHUNT. I thank the Chairman for recognizing me—all by myself.

I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SMITH. Mr. Chairman, I will reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved.

The CLERK. Amendment to H.R. 3275, offered by Mr. Delahunt and Mr. Scott.

Page 5, line 7, insert a period after “life” and strike all that follows through line 9.

[The amendment follows:]

AMENDMENT TO H.R. 3275

OFFERED BY MR. DELAHUNT AND MR. SCOTT

Page 5, line 7, insert a period after “life” and strike all that follows through line 9.

Chairman SENSENBRENNER. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. Yes, Mr. Chairman, the amendment, which I am joined in with Mr. Scott, would delete the language authorizing the imposition of the death penalty for the offenses set forth under section 102.

In the memorandum presented by the Department of Justice, it acknowledges that apart from these ancillary measures, the proposed legislation contains a very limited number of provisions that are not required for the implementation of the conventions.

One of those, of course, is the death penalty. In fact, Mr. Chairman, not only is it not required by the convention, but, as others have suggested, it could impair the fight against international terrorism by making it harder for the Justice Department to secure extradition in these kinds of cases.

Let's be honest, much of the rest of the civilized world rejects the death penalty. And even some of our closest allies—Canada, for example—have begun to refuse extradition requests by the United States unless the courts can be assured that the defendants will not face execution.

Given that situation, how can it serve our national interests to enact additional unnecessary provisions that further marginalize us among our allies who reject the death penalty? The only answer I have heard is that the new death penalty provision merely tracks current law with respect to comparable domestic crimes. Well, that's true. And we're not repealing current law.

But the fact that the current law presents an obstacle to our law enforcement objectives is, for me, hardly a persuasive argument for compounding the problem.

So I support the implementation of the conventions with all due speed. I think there are other problems. I would have preferred a different process here.

But, saying that, let's do it in a way that advances our national objectives.

And I urge support for the amendment and yield back the balance of my time.

Chairman SENSENBRENNER. The Chair would beg the indulgence of Members of the Committee. We are unsure whether we adopted Mr. Smith's amendment.

Does the clerk have a record? Have we adopted Mr. Smith's amendment?

Okay, since we have done that, we are now on the Delahunt amendment. Does the gentleman from Texas, Mr. Smith, insist on his point of order?

Mr. SMITH. Mr. Chairman, I withdraw my point of order but oppose the amendment.

Chairman SENSENBRENNER. Okay. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, this debate should not be about whether the death penalty is appropriate or not. It should be about whether or not we implement the terrorist bombings treaty in a manner consistent with current law.

One may not like the death penalty, but if we are going to have it, then we should be consistent with the types of crime it applies to.

Sections 2332a and 2332b of title 18 of the U.S. Code all provide for the death penalty for a terrorist act that results in someone's death. With regard to the terrorist bombing crime set forth in the treaty, article 4 of the treaty requires that each nation provide, quote, "appropriate penalties which take into account the grave natures of those offenses," unquote.

Right now we are dealing with the unlawful detonation of an explosive or other lethal device in a public facility with the intent to cause death and which does in fact cause death. It would be inconsistent with our current laws on terrorism not to allow for the possibility of the death penalty in these similar cases.

The crime of killing innocent people by blowing up public buildings should be subject to the most severe penalty possible, and that should be an option.

So I ask my colleagues to oppose this amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment by the—

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, we've already pointed out that this provision may in fact be a barrier to extradition. But I want to sup-

port the amendment because it's obviously not needed when other countries don't even have the death penalty, so it cannot possibly be required.

We know that the death penalty is not a deterrent. Certainly, it wouldn't have done anything to deter those involved in September 11th. We know we make mistakes in the application of the death penalty. And we know there is a racial bias in the application of the death penalty.

And we have no idea how this thing is going to be applied in so far as the attorney general has announced that terrorists ought to be tried in some home-baked procedure where they would not be entitled to a fair trial. We would hate to have the death penalty pending in cases like that.

So I would hope that we would support the amendment and have the debate on the death penalty at another time.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Delahunt.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

Hearing none, the Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 3275 favorably as amended.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days as provided by the rules in which to submit additional dissenting, supplemental, or minority views.

The Chair thanks the Members for their indulgence and support. This concludes the business on the notice, and the Committee is adjourned.

[Whereupon, at 11:06 a.m., the Committee was adjourned.]

MINORITY VIEWS

While we support the prompt ratification and implementation of the International Conventions for the Suppression of Terrorist Bombings and the Suppression of the Financing of Terrorism, we are concerned that H.R. 3275 includes controversial changes to U.S. domestic law that go well beyond the limited changes required to bring our laws into conformity with the requirements of those agreements.¹

Chief among these is the provision in Title I that authorizes the imposition of the death penalty for the offenses set forth in section 102.² At the Committee markup, Reps. William D. Delahunt (D-MA) and Bobby Scott (D-VA) offered an amendment to delete this language, leaving in place the provision authorizing a maximum sentence of life imprisonment, but it was rejected by voice vote.

This is surprising considering that the Administration has acknowledged that capital punishment is not required to implement the Conventions.³ In fact, not only is it not required under the Conventions, but it actually could impair the fight against international terrorism by making it harder for the Justice Department to secure extradition in these kinds of cases. This is because America's continued resort to the death penalty has brought condemnation from numerous nations across the globe. Even some of our closest allies routinely refuse to honor extradition requests by the United States unless their judicial authorities can be assured that the defendants will not face execution.⁴ Given this situation, we do not see how it serves American interests to enact additional provisions that will further complicate our ability to prosecute terrorists and further marginalize the United States within the family of nations.

Nevertheless, the Majority and the Administration have attempted to justify this new death penalty provision by claiming that it merely tracks current law with respect to comparable do-

¹ Department of Justice Memorandum to House Crime Subcommittee (Response to Request by Members of Subcommittee for More Input) 1 (Nov. 14, 2001) (hereinafter the "DOJ Memorandum").

² See H.R. 3275 § 102(a), 107th Cong., 1st Sess. (proposed 18 U.S.C. § 2332f(c)).

³ *Hearing on H.R. 3275 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 107th Cong., 1st Sess. (Nov. 14, 2001) (testimony of Michael Chertoff, Assistant Att'y General, Criminal Division, U.S. Dep't of Justice); DOJ Memorandum, *supra*.

⁴ See, e.g., the recent decision by the Supreme Court of Canada, holding that the Canadian Charter of Rights and Freedoms precludes extradition to the United States absent assurances by U.S. authorities that the death penalty would not be imposed. *United States v. Burns*, 1 S.C.R.283 (2001). See also *New Murder Trial Granted for Fugitive Extradited From France*, N.Y. Times, Nov. 15, 2001, at A25 (United States officials required to assure the French authorities that longtime fugitive Ira Einhorn would not be eligible for the death penalty in his new trial); Benjamin Weiser, *South Africa Rules On Terror Suspect*, N.Y. TIMES, at B4, May 29, 2001 (South African Constitutional Court ruling that suspect on trial in Manhattan in connection with the bombing of the American Embassy in Tanzania should not have been turned over to U.S. authorities without assurances that he would not face the death penalty); John Kifner, *France Will Not Extradite If Death Penalty Is Possible*, N.Y. TIMES, Mar. 31, 2001, at B4 (refusal of French officials to turn over anti-abortion activist accused of killing a Buffalo doctor who provided abortions unless given guarantees that he would not be executed).

mestic crimes.⁵ That may well be so, but the fact that current law presents an obstacle to our law enforcement objectives is hardly a persuasive argument for compounding the problem.

In fact, we doubt a persuasive argument can be made for expanding the death penalty in this context. While reasonable people may disagree about whether the death penalty acts as a deterrent to some categories of crimes, we are at a loss to see how anyone can seriously believe that the prospect of capital punishment will deter the kinds of atrocities our nation experienced on September 11. Indeed, the Administration implicitly concedes as much when it says that this new provision merely replicates existing death penalty provisions—provisions that did nothing to prevent those attacks.

The Conventions should be ratified and implemented with all reasonable dispatch, but we have a responsibility to achieve that goal in a way that genuinely advances our nation's interests.

JOHN CONYERS, JR.
BARNEY FRANK.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
TAMMY BALDWIN.

○

⁵ DOJ Memorandum, *supra*.