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Legal Mechanisms to Combat Terrorism

Testimony

of

John Norton Moore

before the

Senate Judiciary Subcommittee on

Security and Terrorism

April 23, 1986

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Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to share a few thoughts on legal mechanisms to combat terrorism. Terrorist attacks against the democracies, particularly the United States, are a serious and growing threat. It is of critical importance that the American people and the democracies unite against this scourge which so cruelly disregards both the United Nations Charter prohibition against aggressive attack and two centuries of human thought about protecting non-combatants in settings of armed conflict.

There is no single answer to the threat posed by a growing radical terrorist network. Rather, the democracies must respond with a wide range of measures that can collectively at least dampen the terrorist attack. These measures might be grouped in two broad categories. First, measures intended to strengthen political, legal and moral prohibitions on terrorist actions, particularly the use of terrorist violence as a means of conducting foreign policy in violation of the United Nations Charter prohibition of aggressive use of force and terrorist attacks against non-combatant targets that would be grave breaches of the laws of war even if committed by regular armed forces during hostilities. And second, measures intended physically to

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Formerly he served as Counselor on International Law to the Department of State and in that capacity drafted the 1972 United States Convention on Terrorism. He has also served as a United States Ambassador to the Law of the Sea negotiations and a member of the United States delegation to the Athens meeting of the Conference on Security and Cooperation in Europe.

The views expressed are those of the author and are not necessarily those of any organization with which he is or has been affiliated.

deter, inhibit, raise the cost of or sanction terrorist violence.

The first category of measures recognizes that we are in a struggle for legitimacy and law regarding terrorist actions and that attitudes of the international community toward terrorist actions will profoundly contribute to either legitimizing such acts or condemning and deterring them. When George Habash of the PFLP gives an interview, as he did two days ago, asserting a right of attack against American military and economic interests worldwide, he is seeking to legitimate such actions, as well as proclaiming his own intentions.

The second category of measures might collectively be described as war-fighting for low-intensity conflict settings. It includes measures such as enhanced airport security, sky marshals on aircraft, enhanced intelligence assets in identifying terrorist threats, enhanced international information-sharing on the terrorist network, anti-terrorist military training and rules of engagement for settings of terrorist exposure, measures to permit careful proportional military response, and measures to facilitate successful apprehension and prosecution of terrorists.

Law can make a contribution to both the "legitimacy" and "war-fighting" strands in the fight against terrorism. Thus, the series of United Nations anti-terrorism conventions have established the international illegitimacy of some kinds of attacks, such as attacks against civil aviation, attacks against diplomats or the taking of hostages. Simultaneously these conventions have sought to enhance successful criminal prosecution for such acts by strengthening the obligation of prosecution or extradition.

With both these "legitimacy" and "war-fighting" strands in mind let me sketch several legal initiatives that I believe this Subcommittee might profitably explore.

Enhancing Education About the Fundamental Charter Distinction Between Aggression and Defense

A constant and recurring confusion in dealing with terrorism is the failure to condemn terrorism as a policy of aggressive violence in violation of the United Nations Charter and instead to condemn the defensive response of the democracies to terrorist attack as though the defensive response were itself the aggressive attack. In part, this results from terrorist warfare as covert war in which the attack is denied using all of the means available to a modern intelligence and political disinformation network. By so doing the attacking nations seek to conceal the attack as part of the general background noise of ongoing international terrorism and guerrilla warfare. The full weight of the international immune system against aggressive attack is then applied to the relatively open defensive response against the secret attack. This syndrome of "the invisible attack" and "the anemic defense right" threatens to destroy the international immune system against aggressive attack, and by destroying the distinction between attack and defense, to destroy the most important principle in 2000 years of human thought about war prevention.

The recent confusion over the United States response against the continuing and serious pattern of Libyan-sponsored terrorist attacks against United States interests worldwide is a good example. Little condemnation is heard of the secret covert war by Libya against the democracies. A careful and proportionate United States defensive response under Article 51 of the United Nations Charter, however, is condemned by some as the very illegal aggression to which it is responding.

Enhanced Reporting on
State-Sponsored Terrorism

One mechanism for dealing with terrorism is to strip away the curtain of secrecy that surrounds the "invisible" terrorist secret war. In this respect the United States might profitably begin an annual country by country report on assistance to terrorism exactly as we now have human rights reporting on an annual country by country basis. Similarly, it might be useful to encourage an annual joint NATO report on such state-sponsored terrorism within the NATO area and to encourage our allies individually to begin such reporting. All such reporting should clearly differentiate between aggressive attack and defensive response so as not inadvertently to contribute to destruction of this fundamental Charter distinction.

Enhanced "Accountability Talks"
on Covert Attack and State-sponsored Terrorism

Pursuant to the Helsinki process, "human rights" accountability talks have become a regular feature of NATO coordination and East-West talks. We should broaden this tradition to undertake "world order" accountability talks particularly focusing on support for state-sponsored terrorism and secret guerrilla attacks. Indeed, this might also be an appropriate subject for Western and East-West summit talks. We must end the pattern of relative public silence about covert war and support for state-sponsored terrorism as illustrated by repeated Cuban "crises" over force emplacement in Cuba but none over the sustained pattern of Cuban covert warfare in this hemisphere.

Strengthening Extradition by Reform of the Political Offense Exception

One pragmatic bar to enhanced criminal prosecution of international terrorists has been overly broad application of the "political offense exception." We should as a nation and with our allies carefully review how this concept should be reformed. As a first step we might consider a dual approach of eliminating the exception in cases of violent crimes on a country by country basis in extradition treaties with the principle democracies of the world, such as the United Kingdom, while also proceeding across-the-board to end the political offense exception for violation of any of the UN-sponsored anti-terrorism treaties.

It is a national scandal that the United States Senate has not yet given advice and consent to the Supplemental Extradition Treaty with the United Kingdom. If the United States and the United Kingdom cannot agree on mutual extradition of terrorists what hope is there internationally for successful prosecution? And this would seem to be the least we can do for the Government of the United Kingdom after their courageous support of the recent United States defensive response against on-going Libyan terrorism.

In addition to this country by country approach, we should also support across-the-board legislation ending the "political offense" exception for actions in violation of the United Nations anti-terrorism conventions; that is, the conventions for the protection of civil aviation, diplomats and prohibiting taking of hostages.

Vigorously Support the 1972 United States-Sponsored Draft Convention on Terrorism (Convention to Prevent the Spread of Civil Conflict)

The United States sponsored an excellent anti-terrorism convention in 1972 in the aftermath of the Munich massacre. That Convention was ahead of its time in serving as a counterpart to neutrality laws for low-intensity conflict settings. That is, it sought to establish that carrying on civil struggle on the territory of a third state was impermissible. This treaty is important in the struggle for "legitimacy" and should be vigorously pursued by the United States. It is notable that virtually all recent terrorist attacks against Americans in Europe would have come under the ambit of this draft treaty.

Explore a Confidential Reporting Requirement for Private Extortion Payments to Terrorist Groups

The United States Government rightfully adopts a policy that prohibits governmental payment of ransom for return of victims of terrorism or other terrorist extortion. Many corporate and other private groups, however, continue to pay ransom to terrorist groups. We should as a first step to considering whether such payments should be made illegal institute a system of required reporting on a confidential basis to the State Department anti-terrorism office and this Subcommittee (or perhaps the select committees on intelligence of both houses). Possibly such a reporting law might also be combined with a monetary limit on lawful payments such as $10,000 per incident. We should, however, at least as a nation know the magnitude of the problem of private sector extortion payments to terrorist groups as a prelude to more effectively dealing with this problem.

Enhanced Legal Determination of Organizations Using Terror Coupled with Full Reporting of their Activities, Prohibition on Fund-raising and Provision for Enhanced Civil Suits Against Such Organizations

It is a recognized feature of international law, endorsed by the Nuremberg Tribunal, that organizations as well as individuals can be criminal. Our current domestic legal framework with respect to criminal conspiracies and criminal organization, however, is focused on racketeering--not terrorism. As a nation we might appropriately draft new legislation on the problem of organizations using terrorism that also maintain operations within the United States. Perhaps provision could be made for trial in federal district court as to whether a particular organization were engaged in a pattern of aggressive terrorist attack with a terrorism finding triggering detailed reporting requirements, a prohibition on fund-raising and facilitation of civil suits (possibly treble or higher damages) to recover damages to Americans in particular terrorist incidents. The details of such legislation could be tailored for effectiveness against such organizations, maximum public education about the aggressive actions of such organizations, and, of course consistency with our Nation's cherished traditions of due process.

Mr. Chairman, this is only a partial list of possible legal initiatives. A steering committee of prominent national and international lawyers could, I believe, develop these and many other legal initiatives that could add further effectiveness to the war against terrorism.

Thank you.

Testimony of

Deputy Legal Adviser Mary V. Mochary

Before the

Subcommittee on Security and Terrorism

of the

Senate Committee on the Judiciary

April 23, 1986

Mr. Chairman and Members of the subcommittee:

It is an honor to testify before you on the critical topic of legal mechanisms to combat terrorism. Your invitation indicated a particular interest in the question of law enforcement efforts against Yasir Arafat in relation to his alleged involvement in the 1973 murders of U.S. diplomats Cleo Noel and George Moore in Khartoum. I will open with a few words on that issue before moving to a more general discussion of today's subject.

We have consistently exerted a maximum effort to see that the perpetrators of this crime are punished. On the question of whether the necessary jurisdiction and evidence exist to seek an indictment against Arafat in this matter, we defer to the Department of Justice. We have been cooperating with our colleagues at Justice to develop as complete a record as possible in this matter. The State Department is particularly concerned that those who planned the action in Khartoum which caused the death of one our own be brought to justice.

In an appearance before this subcommittee last July, the State Department Legal Adviser, Judge Sofaer, testified on an important addition to the counter-terrorism arsenal, S.1429, the "Terrorist Prosecution Act of 1985." That bill would make it a federal offense for terrorists to murder U.S. citizens abroad. Judge Sofaer expressed the Department's strong support for that measure, which would fill a substantial gap in our legal coverage against terrorism. Recent terrorist acts, such as the killing of Americans in the Rome and Vienna airport bombings, and the killing of an American soldier in the Labelle Disco bombing in Berlin, have reminded us of the need for this legislation. S. 1429 has passed the Senate without opposition, and we hope it will soon become law.

S.1429 provides an excellent model of productive cooperation between the legislative and executive branches in creating new legal weapons to fight terrorism. Congress has supported the Administration's policy of treating terrorists as criminals and going after them with the full resources of our law enforcement apparatus.

We must recognize, however, that the law has not yet proven to be a fully satisfactory tool in dealing with international terrorism. Unfortunately, the record has been poor. Some terrorists are killed or captured during the course of their crimes; but few terrorists are ever found and arrested after the fact. The prospects for a successful extradition of a terrorist fugitive are even fewer. Thus, while in several respects it can be correctly said that to deal effectively with terrorism we need <u>more</u> laws, we must not deceive ourselves into believing that new laws, closing "gaps," will, of themselves, overcome the problems that yield poor law enforcement results against terrorists.

One reason for this poor record is that terrorism is, in essence, criminal activity, and we cannot eliminate crime. In applying law domestically we have the benefits of excellent federal/state/municipal cooperation at the police and judicial level. In dealing with international terrorism we have no comparable co-operative or international police force or judiciary system.

The Comprehensive Crime Control Act of 1984, which provided us with some major new legal tools to combat international terrorism, has now been in force for a year-and-a-half. The new laws on aircraft sabotage and hostage-taking, which were enacted pursuant to our responsibilities under the relevant international conventions, have given us the authority we needed to initiate investigations in several recent terrorist incidents, including the bombing of TWA 840 and the hostage-taking aboard the <u>Achille Lauro</u>. I can say that our law enforcement agencies, spearheaded by the FBI, have used these new powers effectively, in close cooperation with the Department of State, in investigating terrorist attacks against Americans abroad.

But, in combatting international terrorism, we are dependent upon the cooperation of other governments. The primary method of securing such cooperation in the law enforcement area is international extradition. The importance of extradition has grown as international transportation and communications links have increased in scope and efficiency, and as crime -- particularly terrorist crime -- has become more international in nature. The United States has extradition treaties with more than one hundred countries. We now process hundreds of extradition cases annually, a vast increase over just ten years ago. But few, if any, of these cases involve terrorist offenders. This fact can be attributed, not to gaps in the applicable legal regimes, but primarily to gaps in the political will and commitment of States to combat terrorism.

Extradition is not an end in itself, but a means to an end -- the meting out of justice to an accused or convicted offender. This fact is reflected in the extradite-or-prosecute formulas of the major multilateral conventions on aircraft hijacking and sabotage, attacks on internationally protected persons, and hostage-taking. The goal of these conventions is not to ensure that an alleged offender be extradited, but rather that the offender be subjected to law enforcement measures. If, under the relevant factual and legal circumstances, extradition would serve that end, then the convention provides a legal basis for extradition. If, on the other hand, submission of the case for prosecution by the authorities of the state where the offender is found would serve that end, then the convention provides for the creation by parties of the legal basis to exercise their own criminal jurisdiction over the offense -- as we have done, for instance, in the new laws I mentioned earlier enacted as part of the Comprehensive Crime Control Act of 1984.

It is easy to question the effectiveness of these conventions, and indeed of any law enforcement treaties as a deterrent to terrorism. But it would be unfair to ask too much of the international conventions in this regard. The real achievement of the extradite-or-prosecute conventions is not to deter terrorism, but to ensure that terrorists cannot escape punishment for their deeds through gaps in the international legal structure, a situation that responsible governments simply could not allow.

The loophole that currently causes the greatest concern is the political offense exception to extradition. This exception was simply not developed with modern international terrorism in mind. Yet today we see it used -- or misused -- to prevent terrorists from being brought to justice. The major multilateral law enforcement treaties address this subject only indirectly. Proposals during negotiations of these treaties that the offenses covered by the treaties be excluded from the application of the political offense exception were ultimately rejected. However, the United States and many other parties to these conventions have adopted a policy in subsequently negotiated bilateral extradition treaties of excluding offenses covered by the multilateral conventions from the application of the political offense exception. And of course, this has been done on a multilateral basis by the Council of Europe in its 1977 Convention on the Suppression of Terrorism.

The international community as a whole has begun to take note of this problem but has hardly dealt with it adequately. The resolution on criminal acts of a terrorist character adopted by consensus at the Seventh U.N. Congress on Crime in Milan last fall, co-sponsored by a diverse group of countries including strong Third World and non-aligned representation, urged all States, to the fullest extent possible, to facilitate the effective application of law enforcement meaures with respect to those who commit acts of terrorist violence, to rationalize their extradition procedures and practices, and to avoid inappropriate exceptions to extradition. Subsequently the UN General Assembly adopted the strongest anti-terrorism resolution in its history. The resolution condemned acts of terrorism as criminal and urged all states not to allow any circumstances to obstruct the application of appropriate law enforcement measures to persons who commit acts of international terrorism, and to cooperate with one another more closely, especially through the apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists. Howeveri it is worth comparing this resolution to past resolutions, which have regularly included provisions that demonstrate the absence of international agreement on the need to regulate political violence. Thus, while the United States looks to the strong anti-terrorist language of this resolution, defenders of certain terrorist acts may find comfort in language in the same resolutions that reaffirms the legitimacy of struggles against colonial and racist regimes and other forms of alien domination.

By far the most prominent among recent efforts of the United States to match its words with action is the U.S.-U.K. Supplementary Extradition Treaty. This treaty would remove from the scope of the political offense exception to extradition certain specified crimes of violence typically committed by terrorists. The policy underlying this treaty is clear: with respect to violent crimes, the political offense exception has no place in extradition treaties between stable democracies in which the political system is available to redress legitimate grievances and the judicial process provides fair treatment. We intend the U.K. treaty as the first of a series of similar treaties we will negotiate with democratic governments. A network of such agreements will contribute substantially to our ability to deal effectively with terrorism within the framework of international law. I cannot stress enough the critical importance of Senate support for the U.S.-U.K. Treaty. Failure to ratify the treaty will send a signal that the United States is not really serious about conmbatting terrorism; we talk a good game, but when it comes to action we are negligent. After all, our laws are replete with authorities for punitive measures to be taken aginst states that give "sanctuary" to international terrorists. We cannot allow the United States to be perceived by others as such a sanctuary from foreign justice.

I would like to highlight one additional measure currently pending in the Congress that would significantly enhance our legal mechanisms to combat terrorism. Section 508 of H.R. 4418, the "Omnibus Diplomatic Security and Anti-terrorism Act of 1986" recently passed by the House, incorporates the essence of a measure proposed by the Administration in the last Congress, introduced at that time as S. 2626. This measure would give us the clear authority to control certain types of services provided by anyone within U.S. jurisdiction to governments that support terrorism. We cannot tolerate a situation in which individuals are free to place their technical expertise in various fields at the disposal of foreign governments to aid such governments in sponsoring or carrying out terrorist activities. Current law effectively covers such assistance only when it is directly related to items on the Munitions List. But technical assistance in other areas, for example, in illegal document preparation, certain types of communications security, or evading security measures at airports, is not controlled under current law. This is a situation that section 508 would correct, and I commend it to your attention.

Terrorism is a broad subject, and I have covered only a few of the more salient issues in my remarks today. In the interest of time, however, I will stop here, and would welcome any questions you might have. Thank you.

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by AMS

STATEMENT

OF

MARK RICHARD
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE

BEFORE

THE

COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON SECURITY AND TERRORISM
UNITED STATES SENATE

CONCERNING

LEGAL MECHANISMS TO COMBAT TERRORISM

APRIL 23, 1985

Mr. Chairman and members of the Subcommittee, my name is Mark Richard. I am Deputy Assistant Attorney General of the Criminal Division of the Department of Justice. Deputy Assistant Attorney General Victoria Toensing, who has oversight responsibility for terrorism matters within the Criminal Division, is out of the country on business. Therefore, I will be presenting this testimony on behalf of the Criminal Division. With me is Lawrence Lippe, the Chief of the General Litigation and Legal Advice Section of the Criminal Division, which has line responsibility for terrorism matters. I am pleased to be here today to discuss with you the existing legal mechanisms available to combat international terrorism, the use that the Department is making of the existing legal mechanisms to prosecute those responsible for several of the most recent tragic terrorist attacks against Americans and some of the areas in which additional legislation is needed to close gaps in our jurisdiction to prosecute terrorist atrocities abroad. In addition, I will discuss the Department's extensive consideration of reports that PLO leader Yassir Arafat was criminally responsible for the March 1973 seizure by members of the terrorist Black September Organization of the Saudi Arabian Embassy in Khartoum, Sudan and that he personally authorized the savage murders of our ambassador, Cleo Noel, our Charge d'Affaires G. Curtis Moore and Belgian diplomat Guy Eid.

The Department of Justice has received a number of letters calling for the indictment of Arafat for the 1973 slayings and much has been stated about the existence of evidence that may implicate Arafat in the murders. On the basis of such assertions, the Department conducted an extensive search, both within our government and from other sources, to determine if admissible evidence is available to support criminal prosecution in this country. Simultaneous with that search, the Department engaged in an exhaustive legal analysis to determine whether the United States has jurisdiction to prosecute Arafat or anyone else for these reprehensible acts. Regretfully, we have concluded as a result of this analysis that there is no statutory authority upon which to predicate a prosecution in this country against any person for the 1973 murders of Ambassador Noel and Charge d'Affaires Moore.

A federal prosecution of Arafat for the murder of our diplomats could not be predicated upon any concept included in the law of nations in the absence of statutory authority for such a prosecution enacted by Congress. While Article I, section 8 of our Constitution grants Congress the power to define and punish offenses against the law of nations, Congress must exercise that power before there is jurisdiction to prosecute an offense recognized under the law of nations. Thus, even assuming that the murder of diplomats was an offense cognizable under the law of nations in 1973, the federal courts of the United States could not exercise jurisdiction over such a prosecution in the absence of a statute prohibiting the crime.

The existence of drafts of two international conventions in the early 1970's does not demonstrate that the protection of diplomats was a cognizable obligation under international law at the time that Ambassador Noel and Charge d'Affaires Moore were killed. The United States did not even sign the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons until December 28, 1973, more than nine months after the murders in Khartoum. The United States did not become a party to either this Convention or the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance until the instruments of ratification were deposited after 18 U.S.C. § 1116 was amended in 1976. Section 1116 was specifically amended to criminalize attacks on internationally protected persons so that the United States would be able to discharge the obligations of these international conventions <u>before</u> becoming bound by them. Thus, it was more than three years after the Khartoum murders that international conventions reflecting any multi-national commitment to protect diplomats were consummated and adopted by the United States.

In 1973, there was no federal criminal liability for the murder of United States diplomats abroad. It was not until 1976, when Congress amended 18 U.S.C. § 1116, that such attacks on our diplomats abroad became a federal crime. The 1976 amendments to § 1116 created a major substantive change in federal law: they enlarged the class of persons protected against deadly assaults, a class that had previously been limited to foreign officials or foreign guests attacked while in the United States. Moreover, these amendments created a major procedural change in our law: they established extraterritorial jurisdiction in the courts of the United States to prosecute the murderers of American diplomats wherever the crime occurs. Thus, while the murder of American diplomats abroad undeniably was a condemnable act in 1973, it was not a prosecutable crime in the United States at the time and did not become one until 1976. Prosecuting anyone in the United States for the 1973 Khartoum murders as a violation of 18 U.S.C. § 1116 as amended would amount to punishing persons for acts not punishable under our law at the time they were committed. Such a prosecution clearly would violate the _ex post facto_ clause found in Article I, Section 9 of the United States Constitution.

There is no statutory authority besides 18 U.S.C. § 1116 upon which to predicate a federal prosecution for the murder of American diplomats abroad. Criminal statutes are presumed to apply only domestically unless the language and nature of the statute and its legislative history clearly demonstrate that Congress intended it to have extraterritorial effect. While several extraterritorial statutes exist, many are of rather recent vintage and all reflect Congressional intent to prohibit acts occurring outside the territory of the United States. Upon review of these statutes, however, it is apparent that extraterritorial jurisdiction will vest in United States courts only in the case of particular attacks against specially protected persons. No extraterritorial statute besides 18 U.S.C. § 1116 as amended would cover the savage attacks against Ambassador Noel and Charge d'Affaires Moore.

Although the Department of Justice has determined that there is no federal jurisdiction to prosecute anyone for the 1973 Khartoum murders, we conducted an extensive search of agencies and departments within our government as well as outside our government to see if admissible evidence exists that could support an indictment against Arafat. We enlisted the assistance of the State Department and various components of the intelligence community to obtain and verify information alleging Arafat's complicity in the planning of the embassy takeover and the murder of our diplomats.

We have analyzed all of the materials available and have determined that the evidence currently available is plainly insufficient for prosecutive purposes even if there were a legal basis for instituting charges against Arafat. If the Committee wishes to convene an Executive Session, we can advise the Committee in more detail concerning our findings. Information concerning Arafat's direct involvement in this operation is, at best, hearsay and conjecture. Thus, such information would never be admissible in any trial of Arafat in this country.

Although neither the law nor the evidence supports a prosecution for Arafat for the 1973 murders, the Department of Justice does have jurisdiction to prosecute the international terrorists responsible for many of the most recent brutal attacks on Americans abroad. Our extraterritorial jurisdiction has expanded greatly since 1973 and we are using our enhanced authority to investigate such barbaric attacks aggressively. We will not hesitate to prosecute all those criminally implicated in these heinous crimes. We intend to ensure the identification, apprehension and effective prosecution of terrorists whose wanton violence targets Americans abroad. We have commenced investigations of those responsible for the hijacking of TWA 847, the piracy of the Achille Lauro, the hijacking of Egyptair 648 and the bombing of TWA 840 and we intend to prosecute them. The development of these cases has required substantial investigation abroad and unique cooperative initiatives with other countries that we hope share our commitment to bring the perpetrators to justice. With your permission, I would like to summarize our progress on each of these cases.

In the case of the June 1985 hijacking of TWA 847 and the cold-blooded murder of Robert Stethem, the Justice Department has charged the three hijackers with aircraft piracy and murder in the special aircraft jurisdiction of the United States. Complaints against and arrest warrants for the hijackers were filed under seal in the United States District Court for the District of Columbia within days of the release of all passengers and these complaints and warrants were unsealed on October 17, 1985. A reward of up to $250,000 has been offered for information leading to the apprehension, effective prosecution and punishment of those responsible for the hijacking. Witnesses to the hijacking continue to be interviewed by the FBI and a federal grand jury investigation remains open to receive evidence.

In the case of the October 1985 piracy of the cruise ship Achille Lauro and the cowardly murder of Leon Klinghoffer, the Department of Justice obtained a complaint and arrest warrant in the United States District Court for the District of Columbia for Abu el-Abbas, the mastermind of the attack, even before the ship's American passengers returned to the United States after their release from captivity. Abbas has been charged with hostage-taking, piracy and conspiracy. The United States issued provisional arrest requests for Abbas to Italy and Yugoslavia in efforts to capture him before he departed those countries after the apprehension on Sicily of the four terrorists who carried out the piracy. The Department of Justice also obtained complaints against and arrest warrants for these four terrorists, charging them with hostage-taking, piracy and conspiracy. As you know, the Egyptian aircraft carrying these terrorists to safety out of Egypt was diverted by United States aircraft to Sigonella, Sicily on October 11, 1985 to ensure the apprehension of the terrorists. A reward of up to $250,000 has been offered by the United States for information leading to the apprehension, effective prosecution and punishment of Abbas, who remains at large. A federal grand jury investigation is continuing into the matter. Meanwhile, the four terrorists apprehended on Sicily are in Italian custody. Last fall, they were tried and convicted by the Italian authorities for weapons offenses related to the piracy. They have been sentenced to between four and nine years for those crimes alone. They are in prison awaiting trial in Italy on charges of piracy and murder. At this time, the trial against the four terrorists in custody and ten other persons not in custody is anticipated to begin in June.

In the case of the November 1985 hijacking of Egyptair 648 and the brutal murder of Scarlett Rogenkamp and the attempted murders of Scott Patrick Baker and Jackie Pflug, the Department of Justice has obtained a complaint against and an arrest warrant for the hijacker who survived the Egyptian rescue mission conducted in Malta to end the crisis. Based upon this complaint for the offense of hostage taking, the United States submitted a request to Malta for the provisional arrest of that hijacker currently in custody and awaiting trial there. We instructed the Maltese to take no action on this request unless and until he ever becomes eligible for release from Maltese custody. If the hijacker ever becomes eligible for release, the request for provisional arrest will serve to ensure that he can be placed in our custody. A federal grand jury investigation into this case is continuing. The Maltese authorities began a "compilation of evidence" procedure in their courts in January. This procedure is similar to an American preliminary hearing and has thus far included the live testimony of members of the Egyptair flight crew as well as the live testimony of Mr. Baker, who travelled to Malta specifically for that purpose. The Department of Justice is monitoring the Maltese proceedings and has been informed that the trial of the hijacker will commence at the conclusion of the "compilation of evidence" procedure, perhaps as early as next month.

Finally, the Department of Justice has been aggressively involved in the investigation of the savage bombing of TWA 840 earlier this month, which killed four Americans: Alberto Ospina, Maria Klug, her baby, Demetra Klug and her mother, Demetra Stylian. A federal grand jury investigation has commenced to receive evidence concerning this attack. In its efforts to preserve and obtain evidence located abroad and to track down the perpetrators, the United States has prepared requests for judicial assistance to transmit to Greece and Egypt seeking all relevant evidence and information. FBI agents have conducted preliminary interviews of key witnesses in Athens and Cairo and are continuing to gather critical investigative data.

Thus, as you can see from the foregoing, the United States is aggressively pursuing available legal mechanisms by which to prosecute these recent terrorist acts. We are, however, very grateful for the efforts of this Subcommittee, its Chairman, and the full Senate for the attention they have given and continue to give to several legislative efforts that are needed to confront terrorism. While there are numerous matters presently pending in the Congress relating to terrorism, I will comment only upon those in the Senate which we believe will be the most beneficial.

1. The reinstitution of capital punishment in the federal system for crimes relating to murder, espionage, and treason is a priority of this Administration. The full Senate now has S. 239, which was reported favorably by the Judiciary Committee, pending before it. While the full Senate will likely consider floor amendments to S. 239, -- one of which we anticipate will be an amendment to add the death penalty to 18 U.S.C. 1203 if the death of any person results from a hostage-taking situation -- we are confident that the Senate will produce a bill that contains the necessary procedures that will permit the constitutional imposition of a death sentence. Unfortunately, prior bills which have passed the Senate to constitutionally impose the death sentence have languished in the House. Accordingly, we vigorously support prompt enactment of this legislation.

2. The murder of and serious assaults upon United States nationals overseas by terrorists remains the area where the biggest gap in current federal criminal jurisdiction exists. Under current law, we cannot prosecute someone, without an alternative jurisdictional base, for the murder of Americans who

are not specifically protected. Senator Specter and this Subcommittee recognized this serious gap and led the effort in the Senate's passage of S. 1429 by a vote of 92 to 0 on February 19, 1986. Unfortunately, the House Judiciary Committee is not disposed to act upon S. 1429. We believe that the approach taken by S. 1429 is the most productive and workable arrangement in this difficult area. As with the death penalty, we urge enactment of S. 1429.

3. On March 18, 1986, the House passed H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. Presently, the Senate is carefully reviewing this measure. H.R. 4151 has many sections that the Administration believes will be beneficial to fight terrorism. One of these is Section 508 which creates a mechanism to control the provision of certain services to the military, police, and intelligence agencies of certain designated countries that support international terrorism. This measure is the essence of the "services" bills submitted to the 98th Congress (i.e., S. 2626 and H.R. 5613) by the President to close the gaps in federal law that came to light in the Wilson-Terpil investigations. While Section 508 has somewhat limited the scope of the prior bills of the 98th Congress, we believe it represents the broadest coverage likely to be granted by the Congress. We would suggest, however, that Section 508 include appropriate language to clearly indicate that authorized undercover activities by United States Government

personnel and their agents are not encompassed within the scope of the provision and that investigative authority for any offense be vested in both the Attorney General and the Secretary of the Treasury. Because the prohibited services would involve regulatory, export-type violations, which are more within the investigative expertise of the U. S. Customs Service, and could at times involve activities relating to known terrorists, which is the primary responsibility of the FBI, it is essential that both agencies have the necessary authority to investigate these cases either jointly or separately, depending upon the circumstances. We anticipate that investigative understandings between both agencies will be readily reached to ensure a coordinated law enforcement response.

4. As you well know, recent decisions of U. S. courts have blocked the extradition of persons accused or convicted of terrorist acts abroad on the ground that their violent crimes, including murder, were political offenses. Moreover, similar provisions in foreign extradition laws have frustrated efforts to bring accused terrorists to this country for trial. To correct this situation, the United States has begun negotiations with selected countries to revise our extradition treaties to preclude the use of the political offense exception in cases involving violent crime. The first country with which we have concluded such a revision is the United Kingdom. The Supplemental United States-United Kingdom extradition treaty has been submitted to

the Senate for ratification and is pending before the Senate Committee on Foreign Relations. We are hopeful of favorable consideration of this important anti-terrorism measure by the Senate within the near future.

There are, of course, other important anti-terrorism matters of a preventive nature such as S. 274, the Nuclear Power Plant Security and Anti-Terrorism Act of 1985, which was drafted and sponsored by the Chairman of this Subcommittee and which was overwhelmingly passed by the Senate last October. The Administration has also submitted a bill to further improve airport security. These important measures, if enacted, will help to further protect Americans from possible terrorist attacks, especially attacks here in the United States.

STATEMENT BY SENATOR CHARLES E. GRASSLEY
REGARDING LEGAL MECHANISMS TO COMBAT TERRORISM
Before the Senate Judiciary Subcommittee on Security and Terrorism
APRIL 23, 1986

Mr. Chairman,

Thank you for the opportunity to appear today to testify before your subcommittee regarding the importance of using legal mechanisms to combat terrorism. Unfortunately Mr. Chairman, the Justice Department just yesterday indicated its unwillingness to pursue one of the first good cases we have had before us -- that being the indictment of Yassir Arafat for the murders of Ambassador Cleo Noel and Charge d' Affairs G. Curtis Moore.

Mr. Chairman, back in February Senator Lautenberg and I, along with 42 of our colleagues including yourself, indicated to the Justice Department the necessity for pursuing, with vigor, an investigation of Arafat's alleged participation in these murders. Following that letter, Senator Lautenberg and I provided the Justice Department with a detailed packet of information supporting the issuance of an indictment. Mr. Chairman, I ask that this exchange of information between the Senate and the Justice Department be made part of the record.

The response we received from the Department yesterday indicates that refusal to go forward was based on the following assertions:

1) lack of jurisdiction

2) insufficient evidence

Mr. Chairman, I believe that this decision is flawed for a number of reasons and I think you will hear similar views from later panelists, whose legal expertise is certainly greater than mine.

The Justice Department devotes more than half of its response to establishing that the federal courts cannot hear cases without a statute conferring jurisdiction. The Justice Department states that the federal courts are courts of limited jurisdiction which do not have the ability to hear common law criminal cases or cases based on international law without Congressional approval of a statute conferring jurisdiction. While this is accurate it is also irrelevant. The Constitution does indeed establish limited jurisdiction in the federal courts and any attempt to bring a case without a Congressional grant of jurisdiction would be illegitimate.

We are not suggesting that the United States could charge Yassir Arafat with the 1973 murders without a statutory basis for jurisdiction. Quite the contrary. In the Arafat case, we <u>have</u> a statute which confers jurisdiction on the federal courts to hear cases involving extraterritorial murders of internationally protected persons -- 18 U.S.C. 1116 -- which is exactly what the Justice Department says is required.

Once a jurisdictional statute exists, the real question is whether that statute may be applied retroactively -- the _ex post facto_ question. The _ex post facto_ issue revolves around an accused person's rights to fair warning and fair treatment. Evidence from international law and other sources is quite relevant to establish this fair warning, even if these sources are not codified in a federal statute. The Justice Department is implicitly arguing that there can be no warning for _ex post facto_ purposes without a federal statute -- a position for which it offers no evidence. If one examines the purpose behind the _ex post facto_ clause, it is apparent that the concept would be inapplicable in this situation. This position will be expanded on in the testimony of later witnesses.

Mr. Chairman, I submit to this subcommittee that we have at hand the necessary elements to overcome the opposition on an _ex post facto_ argument. We have statuatory jurisdiction via Section 1116, a contention which is supported by ample legal authority. In addition, the murder of diplomatic personnel has been a violation of international law for years. These two elements combined should enable the Department to jump the <u>ex post facto</u> hurdle.

The Justice Department fails to expand on its second contention that there is insuffficent evidence to pursue an indictment. It is difficult for this Senator to believe, what with all the reports we have received that a tape recording exists containing Arafat's voice ordering the operation, that this evidence could go either unlocated or once located, be inadmissable in court.

The Justice Department fails to address itself to the facts raised in our letter citing the existence of such evidence. The Department does indicate that limited resources prevent it from further investigation. If that is a problem, perhaps we could persuade our colleagues to increase the Department's resources. Again, it is difficult for me to believe that resources are a problem in light of DOJ's current budget request of a 1/2 billion dollar increase.

Mr. Chairman, the reality of the situation is this, the PLO General Command has claimed responsibility for approximatey 150 terrorist attacks since February 11, 1985.

President Reagan stated July 8, 1985 before the American Bar Association, "We must act against the criminal menace of terrorism with the full weight of the law, both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks."

Attorney General Meese, reinforcing this policy ,stated just two weeks ago that, "We know that various elements of the PLO and its allies and affiliates are in the thick of international terror. And the leader of the PLO, Yassir Arafat, must ultimately be held responsible for their actions." Referring to the fight against terror, Meese went on to say, "you don't make progress until you close in on the kingpins."

Yassir Arafat is indeed one of these kingpins. He makes his intentions known through statements such as the following, "The Arab strategy should take into consideration that the enemy is the same, be he Israeli or the United States" (KUNA 1/31/86) and "We are on the threshold of a fierce battle -- not an Israeli-Palestinian battle but a Palestinian-United States battle." It is Arafat who is ultimately responsible for terrorism committed by the main wing of the PLO.

Mr. Chairman, I commend the response that this administration has taken against Libya's Kaddafy. However, in addition, we must focus our energies on other available courses of action -- actions which, according to the administration, will be vigorously pursued. In light of the solid legal foundations for an indictment, the refusal to issue oneagainst this kingpin of terrorism, undercuts our entire approach to ensure the safety of our citizens.

Mr. Chairman, I urge the Justice Department to review the testimony at today's hearing and reconsider its decision. If it persists in its position, then I would advocate a number of other avenues which would further the administration's goals of combating terrorism.

On January 15, 1986, Charles Redman reiterated U.S. policy regarding visa denial to terrorists. "With the very narrow exception of those who espouse terrorism, the United States does not exclude aliens for purely ideolgical reasons . . . This having been said, however, overriding national security concerns sometimes demand that we exclude a particular alien or class of aliens from the United States . . . For example, it has been United States policy, sanctioned by the Congress as recently as 1979, to deny visas to members of the PLO. Similarly, we will as a matter of principle exclude individuals who personally advocate terrorism or who we believe have participated in or supported terrorist activities."

Despite the encouraging policy statements made by successive administrations, enforcement of visa restrictions on PLO members has been inconsistent and deficient. The freedom of travel in the United States given to PLO members to engage in activities unrelated to the United Nations enhances the opportunity for terrorist activities in this country. It has been documented that at least 11 PLO officials have entered the United States during this administration.

Mr. Chairman, for the record, I submit a list of these entries.

I strongly suggest that the State Department review its procedures to ensure that PLO members are not permitted in the United States. I'm sure my colleagues will suggest other courses of action in their testimony and I urge that we look carefully at all the options and move swiftly to enact legislation which will effectively combat PLO terrorism.

Cases of United States Visas Granted to Officials of the PLO During the Reagan Administration

November 1985
Shafiq al-Hout, a PLO leader, attended a conference of the Association of Arab American University Graduates in Chicago. His visa stipulated that he could not address the conference.

February 1984
Fatah Central Committee members Khaled el-Hassan and Hani el-Hassan accompanied King Hussein and President Mubarak to Washington. Hani el-Hassan is known for his comments after the Achille Lauro highjacking when he said that allegations of Leon Klinghoffer's murder were "lies." His brother Khaled has said that "there will be no existence for either the Palestinian people or for Israel unless one of them disappears... there will be no peaceful co-existence with Israel. The PLO has no right to discuss recognition with the enemy Zionist state."

April 1983
PLO Executive Committee member Ahmed Abu Sitta was sent by Arafat to Washington to plead for U.S. recognition of the Palestinians' right to self-determination.

March 1983
Issam Abdul-Hadi, president of the General Union of Palestinian Women, was granted a visa to travel in the United States on a speaking tour. As a PLO affiliate organization, U.S. immigration laws consider the women's group as a proscribed organization.

January-February 1983
Noha Tadros, a senior member of the office of the Chairman of the PLO, apparently travelled with John Mroz to Washington on several occasions. She also apparently spent the summer in Washington.

December 1982
Khaled el-Hassan, a member of the Fatah Central Committee, accompanied King Hussein to Washington.

October 1982
Khaled el-Hassan travelled to Washington as an unofficial member of the Arab League delegation led by King Hassan of Morocco.

August 1982
Nabil Shaath, a senior member of the Palestine National Council, visited Washington.

July 1982
Khaled el-Hassan concluded his meetings in Washington.

August 1981
John Mroz told Arafat that "as a confidence building measure" Haig had personally decided to grant visas to Mahmoud Labadi, Arafat's spokesman, and Khaled Fahoum, chairman of the Palestine National Council.

August 1981
Khaled el-Hassan reportedly visited Washington and met with "three senior State Department officials."

June 1981
Khaled el-Hassan visited Washington and met with U.S. officials.

THE PLO OBSERVER MISSION AT UNITED NATIONS HEADQUARTERS IN NEW YORK DOES NOT HAVE DIPLOMATIC IMMUNITY FROM CRIMINAL PROSECUTION

Permanent observer missions at the United Nations Headquarters in New York are not granted diplomatic immunity by any of the major agreements the United States has signed. This was conceded by an authoritative and explicit legal opinion on the status of permanent observer missions issued by the United Nation's Office of Legal Affairs in 1962: "Permanent observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host state...If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities."[1] In an October 1982 statement, the United Nations Legal Counsel, Erik Suy, noted that "there are no specific provisions relating to permanent observer missions in the Charter, the Headquarters Agreement or the Convention on the Privileges and Immunities of the United Nations..."[2] Thus, the PLO observer mission does not have diplomatic immunity from criminal prosecution in U.S. courts.

...NOR WOULD YASSER ARAFAT IF HE CAME TO NEW YORK

Invitees to the United Nations are also not among those granted diplomatic immunity by the host nation. In a 1963 opinion paper of the Secretariat, the United Nations Office of Legal Affairs described the intent of the Headquarter's Agreement: "The Headquarters Agreement does not confer diplomatic status upon an individual invitee because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside the Headquarter's District."[3]

CASES

There are several cases which provide precedent on the issue of United Nations non-member missions and diplomatic immunity. In Pappas v. Francisci (1953), the Supreme Court of New York ruled that permanent observer missions did not have diplomatic immunity. The decision quoted from a 1952 opinion of the Acting Chief of Protocol of the United Nations: "The Headquarters Agreement does not mention the observers category and up until now the agreement has not been interpreted to confer diplomatic immunity on such persons and/or members of their staff."[4]

The question of immunity of an invitee to the United Nations arose in the 1963 case of Enrique Galvao, a Portuguese national living in Brazil who sought to come to New York to testify before a United Nations committee. Portugal was seeking extradition of Galvao on charges of piracy and hijacking under a U.S.-Portugal extradition agreement. The United States Representative to the United Nations, Sidney Yates, clarified the U.S. position on immunity of invitees: "Section 11 [of the Headquarters Agreement]... does not grant them [invited persons] immunity from legal process" and noted that "the General Convention [on Privileges and Immunities of the United Nations] does not confer any immunities on invitees."[5] The United Nations Office of Legal Affairs supported Yates' conclusion in an opinion paper on the case: "It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvao concerning immunity from legal process."[6]

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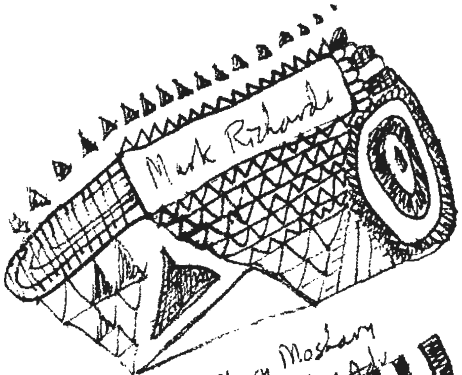

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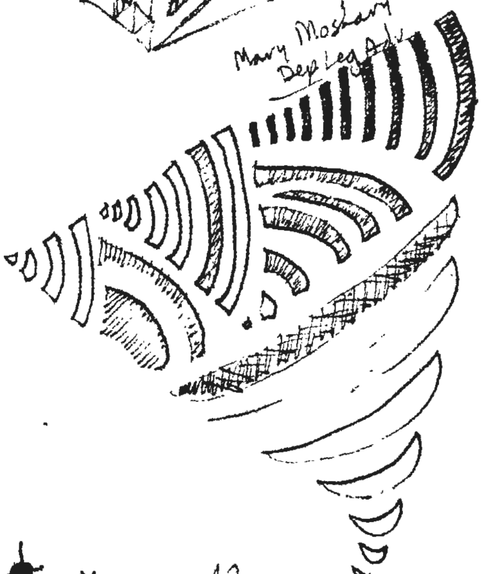

In 1985 14 members of

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No I would not give ... assurance

This is a law that is unique
Little enforcement since 1940
concerns about evidence - constitutionality
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they are required to register

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We did not receive the legal memorandum released by the Department of Justice on April 21, 1986 until this statement was substantially completed. That memorandum has a number of deficiencies that may be summarized thusly:

1. Most of the paper is devoted to arguing an irrelevant question -- whether the United States courts may exercise jurisdiction over a case in the absence of a statutory grant of jurisdiction. Of course the federal courts may act only pursuant to a statutory grant of subject matter jurisdiction. The pertinent issue is whether a statutory grant of jurisdiction, once enacted, may be applied retroactively in a criminal case.

2. The only authority cited in support of the proposition that the <u>ex post facto</u> clause bars retroactive assertions of jurisdiction in criminal cases is a district court decision, <u>United States</u> v. <u>Juvenile</u>. A reading of that case shows that the applicable Supreme Court decisions were not discussed, and the case accordingly has no persuasive force.

3. The pertinent decisions of the Supreme Court, which we have addressed above, show first that jurisdictional statutes can be applied retroactively in criminal cases and second that the key issue is whether the statute retroactively makes illegal what previously was lawful.

4. Although the Justice Department author eventually acknowledges that the latter question has some bearing on the matter, the analysis misses the main point. The author's apparent contention is that there was no legal prohibition of murdering diplomatic personnel until The United Nations and OAS conventions regarding internationally protected persons were ratified. This simply is not the case, as is shown by such authorities as Respublica v. De Longchamps, which are discussed above. The murder of diplomatic personnel has been recognized to constitute a violation of international law for centuries, and the recently released memorandum is wrong in failing to appreciate the legal significance of this point. And, as the Justice Department correctly said in its successful brief in the Demjanjuk case, "Certainly, no one can claim with the slightest pretense at reasoning that there is any taint of ex post factism in the law of murder."

5. In summary, the author of the memorandum released on April 21 fails to recognize that the ex post facto clause deals with substance rather than jurisdiction. The intent of the Founders was to incorporate the principles of fair warning enunciated in Calder v. Bull, which is the earliest authority on the subject and which continues to be cited as a basic authority on the meaning of the ex post facto clause.

We shall be pleased to provide the Committee with a more detailed analysis of the Justice Department paper at a later date.

PLO

HISTORY OF ANTI-ISRAEL TERRORISM

Today's guerrilla attacks around the Israeli El Al airline desks at Rome and Vienna airports are the latest in a long line of strikes against targets associated with Israel.

Nearly all have been carried out by, or blamed on, Palestinian guerrillas or sympathizers who say they are fighting for the establishment of an autonomous Palestinian state. Israel said it believed Palestinians, probably from the Palestine Liberation Organization, were responsible for today's attacks at Fiumicino and Schwechat airports. No group immediately claimed responsibility for either incident.

Some attacks have taken place on Israeli soil, others abroad against citizens, representatives or symbols of the state of Israel. There have also been attacks on targets unconnected to Israel aimed at securing the release of pro-Palestinian prisoners held in jails in Israel or around the world.

Following is a chronology of major attacks over the past 13 years:

- **May 1972:** Three Japanese guerrillas, recruited by the Popular Front for the Liberation of Palestine, opened fire on passengers at Tel Aviv's Lod Airport, killing 27 people and wounding more than 70. Kozo Okamoto, the sole surviving gunman, was freed by Israel in May 1985 in a prisoner swap.

- **September 1972:** At the Munich Olympic Games, eight guerrillas of the Palestinian Black September group forced their way into Israeli team quarters, killing two Israelis and taking nine hostage. Israel refused their demand for the release of 200 Arab prisoners. Following a day of fruitless talks, all nine hostages, five gunmen and a West German policeman were killed in a shoot-out at a military airport.

- **December 1973:** Five Palestinian terrorists threw grenades at a Pan American Boeing 707 at Rome's Fiumicino Airport, and then hijacked a Lufthansa 737 to Athens and Kuwait. A total of 32 persons died.

- **May 1974:** In the worst of several attacks mounted from Lebanon on Israeli settlements, Palestinian guerrillas took over a school in Maalot. In the ensuing gunbattle, 21 schoolchildren were among the dead.

- **March 1975:** Eight Palestinian guerrillas landed by boat on Tel Aviv beach and took a waterfront hotel. They set off a massive explosion as troops stormed the hotel and, after a gunbattle, seven guerrillas, three soldiers and eight hostages died.

- **June 1976:** Pro-Palestinian guerrillas hijacked an Air France plane and forced the pilot to fly to Entebbe, Uganda, demanding the release of 53 prisoners in Israel, Kenya and Western Europe. Israel appeared ready to bargain and 100 hostages were freed. But in a predawn raid on July 4, Israeli commandos landed at Entebbe, freed the remaining hostages and flew back to Israel. Seven guerrillas, 20 Ugandan soldiers, three hostages and an Israeli officer were among those killed in the airport battle.

- **March 1978:** An 11-strong group of guerrillas belonging to Al-Fatah, a PLO faction, landed in Israel and ambushed two buses. One group clashed with police in a bloody shoot-out near Tel Aviv in which their hijacked bus burst into flames, trapping more than 20 passengers and three guerrillas. In all, nine guerrillas, 34 Israelis and one U.S. citizen died in the bus battle and related clashes.

- **August 1981:** A bomb exploded in the offices of El Al at the Rome airport, wounding two persons. The Front for the Liberation of Palestine claimed responsibility.

- **September 1985:** Three pro-Palestinian gunmen killed three Israelis aboard a yacht near Larnaca, Cyprus, claiming they were intelligence agents. Israel, saying the three victims were tourists, retaliated by bombing PLO headquarters in Tunis, killing more than 60.

- **October 1985:** Four Palestinian guerrillas seized control of the Italian cruise ship Achille Lauro in Egyptian waters, demanding the release of Palestinian prisoners in Israel, Italy and elsewhere. A crippled Jewish-American passenger, Leon Klinghoffer of New York City, was killed and his body thrown in the sea. The hijackers surrendered after two days and were flown out of Egypt. The United States intercepted the plane that was carrying them, and they were subsequently jailed pending trial in Italy.

- **November 1985:** Palestinian hijackers seized an Egyptair flight leaving Athens for Cairo and diverted the plane to Malta. After demanding only fuel, the hijackers began killing passengers at 10-minute intervals. A team of about 25 Egyptian commandos stormed the plane, gaining access to the passenger area using an explosive. The hijackers threw grenades, and the commandos answered with a smoke bomb. The plane caught fire, and a gun battle ensued. A total of [illegible] died in the tragedy.

—Reuter

POLICY FOCUS

NEWSLETTER OF THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY
ISSUE NUMBER TWO APRIL 1986

Whither the Peace Process? The Local Leadership Option

by Martin Indyk

"No Palestinian moderates allowed."

That is the meaning of Yassir Arafat's recent rejection of King Hussein's terms for entering peace negotiations and the message behind the subsequent murder of Zafir al-Masri on the West Bank. Where does this leave U.S. efforts to advance the Middle East peace process by involving Palestinians in negotiations with Jordan and Israel?

Option 1: Punish Hussein, Resurrect Arafat

The four alternatives seem bleak. We could continue to pursue the illusion of a transformed Arafat. But given that this is the sixth American overture he has rejected since Jimmy Carter first tried in 1977, it is hard to see what purpose would be served in trying again.

Some will argue that if only we now endorsed "self-determination" for the Palestinians, Arafat would be prepared to meet our terms. But if that in fact happened, we would have presided over the resurrection of Arafat at King Hussein's expense; and, by bringing the PLO into the process, we would have succeeded in forcing Israel out. We would in effect be placing ourselves at loggerheads with Israel and Jordan, our partners in the peace process. We would immediately have achieved direct negotiations between the U.S. and the PLO but, in the process, we would have destroyed the chance for direct negotiations between the Arabs and Israel.

More importantly, our endorsement of "self-determination" would be interpreted by all parties to the conflict as support for an independent Palestinian state. But such a state would threaten first Jordan and then Israel, while providing its Soviet ally with ample opportunity for troublemaking in the Middle East heartland.

Option 2: The International Conference

Second, we could pursue that other illusion that always presents itself when the peace process appears to have reached a roadblock—the international conference. Some will argue that an international conference which brought the Syrians into the process would obviate Hussein's need for the PLO. But the only conference Syria will attend is one in which it has the whip-hand. And given Syria's maximalist position (Assad is now vowing to place the Golan Heights "in the center of Syria") such a conference would only "increase our disappointment," as Sadat was fond of warning.

Continued on page 2

Hussein's Plan: Sidestepping Arafat

by Robert Satloff

What remains is who will represent the Palestinian people. When a side that can represent the Palestinian people appears, we will be at its side.

King Hussein, interviewed in *al-Siyasah,* March 1

By openly challenging the leadership of Yassir Arafat, King Hussein has broached once again an issue that has been simmering beneath the surface of Jordanian-PLO relations for more than a decade—who speaks for the Palestinians in Israeli-held territory. In recent weeks, the King has publicly called for Palestinians in the occupied territories to come forth with their own, alternative leadership and has even floated again his 1972 proposal of a United Arab Kingdom with provinces on both banks of the Jordan.

There is little doubt that the March 2 assassination of Nablus mayor Zafir al-Masri, who symbolized Hussein's vision of an independent leadership, curtailed progress toward the creation of such an alternative. But Masri's death may prove to be just a stumbling block, not a stone wall. As ex-Gaza mayor Rashad ash-Shawwa said after Masri's murder, "the idea itself which Masri supported, and in which many others including myself believe, has not died."

Hussein's efforts to foster a more amenable West Bank alternative to the Arafat leadership are not new. In April 1985, he appointed a cabinet with 11 Palestinian ministers headed by Prime

Continued on page 6

The Local Leadership Option

Continued from page 1

The only international conference that is attractive to the U.S. is a phony conference in which the Soviet Union, Syria and the PLO give the speeches while Israel, a Jordanian-Palestinian delegation and the U.S. do the negotiating elsewhere. This kind of conference is unattractive to the Soviet Union and Syria and, given their current success in blocking our moves to promote it, they have little reason to turn around now and accept it. The conference they will insist upon is one in which they retain a veto over the bilateral negotiations.

Option 3: Benign Neglect

If we cannot either solve the problem of Palestinian representation or reach agreement on the forum in which the negotiations will take place, the third alternative of a policy of "benign neglect" begins to look more attractive. After all, if the parties to the conflict are not ready to take the risks necessary to make peace, then it is entirely possible that the Palestinian problem cannot be solved. In these circumstances, creative American diplomacy may well be foredoomed. Better then, the argument goes, to focus on the growing power of radical forces in the Middle East and promote stability through deterrence rather than "solutionism."

The problem with this approach is that while the U.S. can live without a peace process, its local allies cannot. Israel needs a peace process if it is to reduce the immense human and economic costs of war that are taking their toll on the very fabric of its society. And it needs to find some method for dealing with the growing demographic threat posed by a burgeoning Palestinian population in its midst.

Egypt needs a peace process because it cannot otherwise break out of its isolation in the Arab world, short of tearing up its peace treaty with Israel. If there is no process, the pressure will mount on the Mubarak regime to take such drastic steps. Put simply, if there is no peace process, then the peace treaty with Israel will remain a separate peace. And if this is the only peace in the Middle East, it is unlikely to survive.

Jordan also needs a peace process because, like Israel, it faces a Palestinian demographic problem that threatens Hashemite dominance. Moreover, as long as the peace process focusses on Jordan, the leverage of this small, weak and otherwise insignificant power is enhanced with every other interested party. And in the absence of such a process, Jordan is more vulnerable than the others to extreme solutions that threaten to fill the vacuum.

"[The U.S. must] make clear—especially to the PLO's Arab interlocutors—that we no longer have an interest in courting the PLO leadership and no desire to have it accept our conditions for recognition."

Option 4: Pressuring the King

This leaves the fourth alternative, the "pure" Jordan option, in which King Hussein brings Palestinian representatives from the West Bank and Gaza to the negotiating table with Israel. This has always been the ostensible objective of the 1982 Reagan Plan and it is congruent with Israel's conception of negotiations. The problem, however, is that it imposes considerable risks on Hussein since it would provoke the certain opposition of the PLO, Syria and the Soviet Union. Given his problems of demography (a majority of his subjects are Palestinians) and geography (a much stronger Syria on his northern border), the King has been unwilling to take this risk.

A Better Policy: Preparing for the Next Stage.

We therefore find ourselves in a quandary. Activism appears to be needed, yet none of the ways of proceeding holds any prospect of a breakthrough. What then should the Reagan Administration do?

The first requirement is to reaffirm the basic objective of solving the Palestinian problem in a Jordanian context, via direct negotiations between Israel and a Jordanian-Palestinian delegation. Even if the circumstances are not now conducive to such a solution, it is the only objective that serves American interests as well as the interests of our partners in the peace process, Israel, Jordan and Egypt.

The second requirement is to prepare the ground for the pursuit of this objective in the future by helping to promote alternative Palestinian representatives from the territories capable of replacing the paralyzed militancy and hidebound ideology of Arafat and his henchmen.

Such an idea is rarely greeted with much enthusiasm at the best of times. For better or worse, many observers argue, Arafat represents the Palestinians and there is no credible alternative. The murder of Zafir al-Masri has reinforced their argument for he was the first credible, indigenous West Banker to emerge in recent years. His death, and the subsequent withdrawal of other mayoral candidates, appears to demonstrate that when the PLO leadership fails to maintain its legitimacy among the West Bank Palestinians through armed struggle or diplomatic maneuvering, it can still retain legitimacy by violence and intimidation. For even though Masri was apparently murdered by Abu Nidal or the PFLP, Arafat's leadership benefited most from the elimination of this pro-Jordanian, indigenous leader.

The skeptics, however, overlook a number of factors which make the emergence of an alternative leadership now more possible. First, for more than a year, the government of Israel, which controls the territories, has been laying the groundwork for this alternative leadership.

Israel has been attempting to improve the standard of living in Palestinian towns and to provide the residents with the opportunity to run their own affairs. To do this, West Bank and Gaza leaders are not required to defy the PLO by entering into negotiations with Israel on behalf of the Palestinians. However, by assuming responsibility for the basic functions of government and for economic development in the territories, these local leaders are gaining control of the means to build their own legitimacy at the expense of the PLO leadership which is forced to operate from outside the territories.

A second factor bolsters this effort to build an alternative local leadership. King Hussein has begun to take advantage of the shift in Israeli policy to build his own influence in the territories at the expense of the PLO leadership. This is a significant departure. Although he has always competed with the PLO for the allegiance of his former subjects, his efforts have been desultory. Now, however, sensing the weakness of the PLO, he is encouraging the pro-Jordanians in the West Bank to take advantage of Israel's offer and he is providing them with some financial backing to do the job.

Hussein's break with the PLO leadership and his call to the residents of the territories to seek alternative leaders are serious steps. Hussein is trying to prove simultaneously that the PLO leadership has failed the Palestinians on the international level and that local leaders can at least deliver a better day-to-day existence for them.

Of course, the PLO leadership will resist these efforts to loosen its stranglehold on the Palestinians in the territories. But its claim to represent them is now under challenge on four fronts. Internally, the leadership is severely split, not only between those who reside in Damascus and those who remain loyal to Arafat, but also between Arafat and his own lieutenants who would prefer to make a complete break with Jordan and reconcile with Syria.

In the territories, the PLO leadership is finding it increasingly difficult to compete with Jordan. Its financial resources are diminishing and avenues for channelling funds to its loyalists in the territories are being severely restricted by Jordan and Israel.

On the inter-Arab level, the PLO leadership lacks an independent base of operations and is therefore more dependent than ever on the support of the Arab states. Yet it is under serious challenge by both Jordan and Syria. While it can still command the support of Saudi Arabia, Egypt and Iraq, these regimes are all preoccupied with far more pressing problems of their own.

On the international level, the PLO leadership's support is waning. The decline in Arab oil power, the revulsion with PLO terrorism, and the image of intransigence that has come to replace Arafat's earlier image as a moderate have all contributed to this process. Arafat has been prevented from attending the UN General Assembly; apparently, he is no longer even welcome in Moscow.

U.S. Policy: Promoting the Moderates

The United States can play a helpful role in this process by encouraging Israel and Jordan to continue along their present paths. This is not a new direction for the Reagan Administration. Secretary of State George Shultz was the first to raise the idea of "quality of life" for the Palestinians in 1984. It was not, however, pursued with any vigor because the Hussein-Arafat initiative diverted American attention to the pursuit yet again of a transformed PLO. Now that we have entered a "period of reflection," there is a new opportunity to pursue this alternative, low-profile process.

"I think the question of a Jordanian option is about whether you strive for peace or give up and say nothing can be done."

—Shimon Peres, *Jerusalem Television,* March 5

Above all, our strategic objective must be clear. We would be supporting an effort already begun by our partners in the peace process to promote a legitimate, local Palestinian leadership that will over time serve as an alternative to the current PLO leadership. Our diplomatic activities must therefore be consistent with this objective. On the international level we would need to avoid any actions that might give new credibility to Yassir Arafat. We would have to make clear—especially to the PLO's Arab interlocutors—that we no longer have an interest in courting the PLO leadership and no desire to make concessions or have it accept our conditions for recognition. We would have to embark on a serious effort to deprive Arafat of the recognition he has already achieved among our European and Japanese allies. And we would have to ensure that the U.S. Consulate in east Jerusalem sent this same signal to the Palestinians it deals with. We might also need to provide funds for the economic development projects undertaken by the local leadership. But if it does so, the U.S. must be careful to avoid channeling these resources through organizations that are sympathetic to, or dependent upon, the PLO leadership.

Those who remain skeptical that this "local leadership" option can work should bear in mind that the U.S. has spent nine years pursuing the option of transforming Arafat without the slightest measure of success. If we had spent that time trying to circumvent the PLO leadership we would probably not be facing an impasse today. It is not too late to try another way.

'Devolution': A Consensus

by Michael Lewis

On February 8, Prime Minister Shimon Peres announced his plan for "devolution" for the West Bank and Gaza. The proposal entails a gradual transfer to the Arab inhabitants of responsibility for running their own municipal affairs, with increased authority over health, education, welfare and other services as well as over the "development of water resources and the means of sustenance in the territories." Israeli administrators of Arab towns and Israeli civil administration officials would be replaced with (Israeli-appointed) Arab mayors and officials, and Israeli control over the day-to-day lives of Palestinians in the territories would be reduced to a minimum.

Peres has suggested that devolution could be applied first to Gaza, where administrative directors have already been appointed and where there is little dispute over government lands or water resources.

promote investments in the territories has been dropped. Under Shmuel Goren, the coordinator of activities in the territories, Israel is now actively seeking to attract major industrial investment to the territories. Finally, Israel will appoint local mayors and municipal councils to replace the Israeli governors who have controlled the major cities. Zafir al-Masri was the first of several intended appointments for the cities of Nablus, Ramallah, Hebron and al-Bireh.

Neither this liberalization, nor the

the assassination of Zafir al-Masri. Although Peres affirmed his determination to press forward with devolution in the aftermath of Masri's murder, success will depend on the ability and willingness of the Palestinians to resist a campaign of violent intimidation by various factions of the PLO. The immediate response was for several Arab candidates for mayor to withdraw their names from consideration. However, the deputy mayor of Nablus, Hafiz Tuqan, has now assumed Masri's responsibilities.

"The murder of Zafir al-Masri . . . should not deter us from pursuing the trend of appointing local Arabs to run the affairs of the localities. If they want to do so, they will indeed do so, and we shall encourage them."

—West Bank Administrator Shmuel Goren, *Jerusalem Television*, March 8

Improvements in the Quality of Life

Peres's plan is the latest in a series of steps taken by Israel to improve the "quality of life" in the West Bank and Gaza since the National Unity Government took office in the fall of 1984. Restrictions on foreign travel by West Bank residents, as well as visits to the West Bank across the Jordan river bridges, have been relaxed. Censorship of books has been virtually eliminated and censorship of the press eased. Controls on the transfer of money into the territories as well as tariffs on the exports of vegetables from the West Bank to Jordan have been removed. New factories and hospitals have been approved. Permission was granted for the establishment of the first Arab bank in the West Bank, but the plan has been blocked by Jordan, which feared that the bank would attract deposits that otherwise would go to Jordanian banks. And opposition to American-sponsored attempts to

new measures announced by Peres, add up to the goal of "self-determination" espoused by Palestinian nationalists. The Israeli army will not be withdrawn from the area for fear that this would give free rein to the PLO. Nor will Israeli settlements or settlers be subject to the local authorities. Nor, at least for the moment, will elections be held, although Peres has said that they might be held at an appropriate, calmer moment.

Peres is not proposing "devolution" as an ultimate solution to the status of the territories, but as a path around the current impasse in the peace process. His hope is that local self-governance will hasten the emergence of an indigenous leadership in the territories which might eventually serve in partnership with Jordan's King Hussein in a renewed effort to forge a long-term settlement.

It is precisely the fear on the part of Palestinian radicals that this strategy might succeed that no doubt motivated

Devolution v. Unilateral Autonomy

Peres's plan differs from "unilateral autonomy," a concept first advanced in 1980 by Moshe Dayan. Dayan advocated abolition of the Israeli military administration of the territories and withdrawal of the army from Arab towns to border areas and strategically important points. Israel however would retain its option to reinstate the military government. Dayan proposed that these steps be taken without setting conditions or seeking Arab agreement, because he believed that local leaders would refuse to negotiate anything but full sovereignty, a demand Israel could not accept.

A revival of the "unilateral autonomy" idea would prove controversial not only between the partners in the National Unity Government, but within each of the parties as well. The idea is supported by some on the left of the Labor Party, such as Gad Ya'aqobi,

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Minister of Economy and Planning, but it is opposed by other Laborites, notably Defense Minister Rabin whose views are crucial.

Rabin is scheduled to remain in his post under the rotation agreement and thus will continue to be responsible for Israeli policy in the territories. The Defense Minister opposes unilateral autonomy because he believes that the PLO will fill the vacuum, forcing Israel to reassume control. Rabin however does support the extension of self-rule to residents of the territories, the appointment of Arab mayors and the negotiation of a final settlement with leaders from the West Bank and Gaza in conjunction with Jordan.

The Likud leadership also opposes "unilateral autonomy," asserting it would lead to PLO control over the West Bank. Likud has demanded that the government adhere to a policy of autonomy for the population, but not for the land—its interpretation of the Camp David Accords. A noteworthy exception to the Likud consensus is MK Ehud Olmert who has supported the concept of unilateral autonomy since Dayan first proposed it. He questions the feasibility of a territorial compromise with Jordan, and favors a different kind of "Jordan option" based on the assumption that formal negotiations are out of the question. He believes that Israel should seek behind-the-scenes cooperation from Jordan as it grants unilateral autonomy to the West Bank and Gaza, in order to create a new reality. A tradition of such cooperation since 1967 has brought about a quiet understanding and shows, he argues, that this approach holds much greater potential than any formal Jordan option.

While "unilateral autonomy" is highly controversial, Peres's devolution plan enjoys widespread support in Israel. This is the case at least in part because devolution leaves unresolved the bitterly divisive issue of what comes next. Apart from extreme positions advocated at the radical fringes of Israeli politics (to permit the creation of a PLO-dominated Palestinian state, at one end; or to drive the Arabs out of the territories, at the other end), the mainstream is divided among three broad notions of what should ultimately happen in the West Bank and Gaza. These three are:

—to retain Israeli sovereignty over the territory, but to grant autonomy to the Arab population (Likud's position);

—to reach a territorial compromise for dividing the territories with Jordan (Rabin's goal);

—to achieve an agreement with Jordan over "functional compromise" or shared rule of the territories (Peres's preference).

Devolution precludes none of these three options. Although Peres came in for some criticism from his political opponents, he should encounter no serious domestic political problems by proceeding on this course. And because Rabin and the Likud leadership are agreeable, the policy can be expected to continue after the rotation of the National Unity Government.

"[The Palestinians in the territories] are saying 'no' to Hussein, the PLO, mayors and devolution, but what are they saying 'yes' to? They are the ones who should give the answers; you and I cannot answer for them."

—Shimon Peres, *Jerusalem Television*, March 5

"Israel is willing to hold peace talks with a joint Palestinian-Jordanian delegation in which 'any resident of the West Bank or Gaza Strip can participate . . . without reservation.'"

—Yitzhak Rabin, quoted in *al-Quds*, February 26

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Hussein and the West Bank

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Minister Zaid al-Rifai, himself the son of a Palestinian. Hussein specifically named ministers with close family ties to the major West Bank cities—like Nablus's Tahir al-Masri (Foreign Affairs); Jerusalem's Hazim Nuseibah (Prime Ministerial Affairs); and Ramallah's Hanna Odeh (Finance). Since then, Jordan has embarked on a carefully calibrated plan to promote an independent political elite inside the occupied territories.

Undercutting Arafat, Not 'the PLO'

According to that plan, Hussein did not contest the PLO's position as the paramount symbol of Palestinian national aspirations. He has come to understand that the PLO has evolved over the past fifteen years from an organization committed to "Palestinian nationalism" into the sole repository of those nationalist sentiments. Hussein realized that to be a Palestinian nationalist one had to be seen as a supporter of "the PLO" and that no Palestinian can dare to be labelled "anti-PLO." His 1985 initiative, therefore, incorporated the PLO as junior partner in diplomatic efforts. Zafir al-Masri, for example, assumed the municipal reins in Nablus under the banner of the PLO.

But the King still sought to undermine the current PLO leadership, which he saw as being more interested in the long-term competition for power in some future Palestinian entity than in the short-term goal of securing the liberation of the occupied lands. Therefore, Hussein tried to drive a wedge between the PLO leadership and the West Bank rank-and-file by promoting pragmatic leaders whose immediate concern was the improvement of the day-to-day lives of the local Palestinians. His tactics were to employ Jordan's still potent political and financial capital to encourage these men to step forward and to bolster their support among the thousands of Palestinians in West Bank cities.

Seeking Credible Palestinians

This strategy explains why in the same month (April) as Hussein launched his plan, 35 prominent Palestinians from the territories presented a petition in support of Arafat and the PLO's role as representative of the Palestinian people to U.S. envoy Richard Murphy. Pro-Jordanians—such as Shawwa, former Jordanian defense minister Anwar Nuseibah, Deputy Speaker of the Jordanian Senate Hikmat al-Masri, Bethlehem mayor Elias Freij, Basil Kana'an and Issam Anani—were featured prominently among the list of signatories that included many well-known Arafat supporters. To "Hussein's men"—the core of the alternative Palestinian leadership—appearing alongside "Arafat's men" was an integral part of the effort to establish their own nationalist credentials.

Coming Forward

Political moves continued throughout the summer. In June, Jordan promoted the formation of a moderate political grouping in East Jerusalem, centered around Anani, businessman Othman Khallak and newspaper editor Mahmud abu Zuluf. In July, leading Palestinians with known Jordanian sympathies, including Shawwa, Anani, Hikmat al-Masri and Freij, founded the Party in Support of Jordanian-Palestinian Joint Action. These organizations were created to coordinate West Bank backing for the King's diplomatic efforts and to provide a platform for his West Bank supporters.

Power of the Purse

At the same time, Hussein was engaged in an equally important contest for economic power in the territories. By controlling the flow of goods, money and people across the Jordan River bridges, Jordan held significant leverage over the every-day lives of the West Bankers. In April, the King began to use that leverage to gain influence for sympathetic Palestinian leaders. One of the Rifai government's first acts was to liberalize trans-Jordan trade, enhance intelligence activity along the border and free up millions of dinars for Amman-approved development projects. Jordanian subsidies, flowing over the bridges at an unprecedented rate—nearly $1 million per day—were diverted away from bedrock PLO-backers and funneled to pro-Jordanian cities, towns and workers' associations.

By autumn, *sub rosa* coordination between Amman and West Bank Palestinian leaders began in earnest. Palestinian luminaries began a series of trips to Amman to confer with Jordanian political leaders. Before the end of October, a month in which Hussein suffered the twin jolts of the Achille Lauro hijacking and the London joint delegation fiasco, Zafir al-Masri reportedly received the King's approval of his request to be mayor of Nablus.

In November, Hussein started making tentative moves toward an open appeal for local Palestinians to sidestep the existing PLO leadership. In a November 2 speech opening parliament, he called for "drafting a general plan and detailed program for economic and social development of the occupied territory . . ." Shawwa, Hikmat al-Masri and ex-Jerusalem gover-

> ***". . . the idea itself which Masri supported, and in which many others including myself believe, has not died."***
>
> **—ex-Gaza Mayor Rashad ash-Shawwa, *Ha'aretz*, March 3**

nor Anwar al-Khatib met with Rifai the next day, and three days later, Zafir al-Masri formally submitted to Israel his request to assume the mayoralty of Nablus. Two weeks after the December 2 assassination of moderate Ramallah notable Aziz Shehadeh, Masri and his Chamber of Commerce supporters took over the Nablus municipality.

Parliamentary Maneuvers

On November 26, Jordan's parliament became the setting for Hussein's next move: the first election of West Bank deputies since the Six Day War. In hotly contested ballots, parliament elected four men to represent constituencies in Hebron, Tulkarm, Ramallah and Nablus. Parliament has since continued to be a focus of Jordan's anti-Arafat initiative. Praising Hussein's February 19 speech, Jordan's House of Representatives declared itself "the representatives . . . of the one Jordanian people on the two banks of the Kingdom." And under an election law just approved in Jordan, West Bank representation will soon double in the Kingdom's parliament. At least 30 new deputies will be elected by their fellow parliamentarians to bring West Bank representation to a par with the East Bank. Moreover, in a move to indicate the Kingdom's responsibilities for *all* Palestinians, Hussein's cabinet is contemplating an amendment that would for the first time enfranchise Palestinians living in UNRWA refugee camps—Palestinians that have long comprised the PLO's hard-core constituency.

Throughout this period, there were continued reports that Jordan was "flexing its muscles" toward the PLO on the West Bank. Amman, for example, was determined to funnel money to pro-Jordanian development projects and drive the fund of the PLO-Jordan Joint Committee further into debt.

February 19: An Open Challenge

When the Hussein-Arafat talks finally broke down, the King decided to remove the subtlety from his year-long contest for power on the West Bank. In his February 19 speech, Hussein effectively branded the PLO chairman a liar and a cheat, and he called on Palestinians to rally around a new leadership. On the West Bank, dozens of men came forward in all the major West Bank cities, submitting their candidacies for mayoral and municipal council positions. Most were neither quislings nor Jordanian lackeys; rather, they were representatives of the "70 percent" of West Bankers that former Nablus mayor Bassam ash-Shaka'a says are "so fed up with the situation that they are ready for nearly any compromise." are also simultaneously appointed in Nablus, Hebron and Ramallah.

Men like Hikmat al-Masri warned the King of the danger in severing ties with the PLO leadership too quickly. In the days after Hussein's speech, Masri implored the King "not to allow the ship of [Jordan-PLO] political coordination as based on the February 11 accord to sink and drown all passengers aboard it." As Arafat reportedly told a group of Palestinian leaders who traveled to Amman to forestall the break with Hussein, challenging the PLO on the West Bank would be "suicidal."

"Both King Hussein and the PLO have failed. It's time for Palestinians in the West Bank to do something for themselves now. Zafir tried, and we must try also."
—ex-Nablus Mayor Hamdi Kana'an, *Washington Post, March 3*

Hussein's program of confidence-building among West Bank elites was right on track. Having jettisoned his usual path of "quiet diplomacy" on the West Bank, the King appealed directly to a different breed of Palestinian leaders—nationalists who are realistic about the problems facing the West Bank and are pragmatic about the choice of potential solutions available to them.

Hussein's Mistake

But in calling on the Palestinians to openly reject the PLO leadership, the King erred by moving too soon. Ten months—from April 1985 to February 1986—was simply not enough time in which to nurture a full-fledged indigenous Palestinian leadership. Although prospects for success looked bright in the days following the King's speech, Masri's murder on March 2 reminded West Bankers that much was left to do before they could strike out on their own. Following the murder, all the mayoral candidates withdrew their nominations. Since then, only one—al-Bireh's Jamal al-Tarifi—has again stated his willingness to become mayor, but on the condition that mayors

A Step-by-Step Approach

To foster a West Bank elite independent of Fatah domination, Hussein now has to pursue the policy of confidence-building that was in force prior to February. These are the behind-the-scenes efforts to promote a new leadership in an array of Palestinian fora—trade associations, social welfare associations, youth clubs, schools and universities. They are the low-profile plans—underwriting development projects, scholarship programs, housing subsidies and the establishment of a local bank—that could produce a moderate, practical and efficacious leadership. Only after that leadership is fully entrenched within the administrative framework of the municipalities—running public utilities, supervising work projects and parceling out building permits and city contracts—should Hussein encourage local mayors and city councilmen to challenge directly the PLO's hold on the territories.

In the end, the choice will belong to the Palestinians. But after a long-term program of investment and development—both political and economic—they may feel strong enough not only to make that choice but to stick by it.

Masri's Murder: Who Benefits?

A curious myth has already arisen about the life and death of Zafir al-Masri.

Masri, a millionaire businessman, was assassinated outside Nablus City Hall March 2, ten weeks after he assumed the mayoralty of the West Bank's largest city. As this story goes, Masri's candidacy received the hearty blessing of Yassir Arafat's Fatah wing of the PLO, with Jordan's King Hussein only reluctantly assenting to the appointment. According to a *Washington Post* editorial, Masri's appointment had received Arafat's "encouragement" but only the "tacit approval" of King Hussein.

Closer scrutiny reveals the error of this version of the Masri story. First, Jordan actively encouraged Masri to step forward and present himself as a nationalist yet practical alternative to the Fatah leadership. Second, that leadership strongly opposed Masri's candidacy as a threat to its hegemonic hold over West Bank politics—as indeed it was. Third, Fatah did publicly endorse Masri's candidacy, but only after his appointment was a *fait accompli*. Consider the following chronology:

—Nov. 3: Hikmat al-Masri, Zafir's brother and deputy speaker of the Jordanian Senate, traveled to Amman to meet with Prime Minister Zaid al-Rifai.

—Nov. 6: Zafir al-Masri filed a request with the Israeli civilian administration to assume the mayor's post in Nablus

—Nov. 10: Farouk Kaddoumi, PLO "foreign minister," warned that "attempts to appoint heads and members of municipal councils in the occupied territories . . . will be met with all types of popular resistance and total rejection." (Algiers, Voice of Palestine Radio)

—Nov. 26: Israel announced its approval of Masri's mayoral request.

—Dec. 2: Aziz Shehadeh, a leading West Bank moderate, is stabbed to death near his home in Ramallah. Abu Nidal claims responsibility.

—Dec. 11: Arafat deputy Salah Khalaf (Abu Iyad) warned that "the Palestinian cannot capitulate because capitulation means death." (Baghdad, Iraqi News Agency)

—Dec. 17: Masri assumed mayoralty of Nablus.

—Dec. 28: PLO Executive Committee member Mahmud Abbas offered first PLO endorsement of Masri. *(Jordan Times)*

Fatah joined the Masri bandwagon only after a campaign of threats and retribution proved fruitless. Continued opposition to his appointment after December 17 would have underscored Fatah's weakening authority on the West Bank. In short, Arafat—who never publicly commented on the Masri candidacy—couldn't beat them, so he reluctantly joined them.

Masri's own politics posed a direct threat to Arafat's. A keen student of the dynamics of West Bank politics, Masri never criticized the almost mystical aura that Arafat and the PLO maintain as symbols of Palestinian nationalism.

But everyone knew that Masri stood for something else: staunch advocacy of local initiatives to improve the quality of life on the West Bank. He was, for example, the driving force behind efforts to establish a Palestinian bank on the West Bank, a plan even opposed by Amman because it would siphon off millions in remittance income now funneled through Jordanian banks. Such quality-of-life programs implicitly undermine Arafat's strategy of stoking militant nationalist fervor by keeping life under Israeli occupation as miserable as possible.

In the long run, Masri posed a dangerous threat. The PFLP or Abu Nidal may have fired the gun that killed Masri, but Arafat, Kaddoumi and Khalaf surely benefit from the pall of fear and intimidation his death has produced.

— *Robert Satloff*

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