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Homeland Security: Intelligence Support

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Summary

Legislation establishing a Department of Homeland Security (DHS) (P.L. 107-296) included provisions for an information analysis element within the new department. It did not transfer to DHS existing government intelligence and law enforcement agencies but envisioned an analytical office utilizing the products of other agencies — both unevaluated information and finished reports — to provide warning of terrorist attacks, assessments of vulnerability, and recommendations for remedial actions at federal, state, and local levels, and by the private sector. In January 2003, the Administration announced its intention to establish a new Terrorist Threat Integration Center (TTIC) to undertake many of the tasks envisioned for the DHS informational analysis element. TTIC was activated on May 1, 2003. This report examines different approaches to improving the information analysis function and the sharing of information among federal agencies. It will be updated as circumstances warrant.

Introduction

Better intelligence is held by many observers to be a crucial factor in preventing terrorist attacks. Concerns have been expressed that no single agency or office in the federal government prior to September 11, 2001 was in a position to "connect the dots" between diffuse bits of information that might have provided clues to the planned attacks. Testimony before the two intelligence committees' Joint Inquiry on the September 11 attacks indicated that significant information in the possession of intelligence and law enforcement agencies was not fully shared with other agencies and that intelligence on potential terrorist threats against the United States was not fully exploited.

For many years, the sharing of intelligence and law enforcement information was circumscribed by administrative policies and statutory prohibitions. Beginning in the early 1990s, however, much effort has gone into improving interagency coordination.[1]

[1] For background on this issue, see CRS Report RL30252, *Intelligence and Law Enforcement: Countering Transnational Threats to the U.S.*, by Richard A. Best, Jr.

After the September 11 attacks, a number of statutory obstacles were addressed by the USA-Patriot Act of 2001 and other legislation.[2] Nevertheless, there has been no one place where the analytical effort is centered; the Department of Homeland Security (DHS) was designed to remedy that perceived deficiency as is the new Terrorist Threat Integration Center announced by the President in his January 2003 State of the Union address.

Background

The Bush Administration's legislative proposal for a Department of Homeland Security, released July 16, 2002, was incorporated in H.R. 5005, introduced on June 24, 2002 by Representative Armey. Title II of the bill, Information Analysis and Infrastructure Protection, as subsequently amended and passed by the House on July 26, included provisions to establish an Intelligence Analysis Center to give intelligence support to the homeland security effort and to identify priorities for measures to protect key sources and critical infrastructures. In the Senate, Senator Lieberman had introduced legislation (S. 2452) to establish a Department of National Homeland Security on May 2, 2002. The original version of S. 2452 did not address the intelligence function, but subsequent amendments in the nature of a substitute included provisions establishing a Directorate of Intelligence as an integral part of the new department. After the November 2002 elections a modified version of homeland security legislation was introduced by Representative Armey and passed by the House on November 13, 2002. Subsequently, both House and Senate passed an amended version of H.R. 5005, and the bill was signed by the President on November 25, 2002, becoming P.L. 107-296.

The final version of the Homeland Security Act established a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection (appointed by the President by and with the advice and consent of the Senate) with an Assistant Secretary of Information Analysis (appointed by the President). The legislation, especially the Information Analysis section, seeks to promote close ties between intelligence analysts and those responsible for assessing vulnerabilities of key U.S. infrastructure. The bill envisions an intelligence entity focused on receiving and analyzing information[3] from other government agencies and using it to provide warning of terrorist attacks and for addressing vulnerabilities that terrorists could exploit.

DHS is not intended to duplicate the collection effort of intelligence agencies; it will not have its own agents, satellites, or signals intercept sites. Major intelligence agencies are not transferred to the DHS, although some DHS elements, including Customs and the Coast Guard, will continue to collect information that is crucial to analyzing terrorist threats.

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[2] See CRS Report RL31377, *The USA Patriot Act: A Legal Analysis*, by Charles Doyle; and CRS Report RL30465, *The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework*, by Elizabeth Bazan.

[3] Some writers distinguish between information and intelligence; the former being unanalyzed information the latter being the result of analysis. In practice, however, the terms are often used interchangeably and the distinction will not be observed in this report.

The legislation establishing DHS envisioned an information analysis element with the responsibility for acquiring and reviewing information from the agencies of the Intelligence Community, from law enforcement agencies, state and local government agencies, and unclassified publicly available information (known as open source information or "osint") from books, periodicals, pamphlets, the Internet, media, etc. The legislation is explicit that, "Except as otherwise directed by the President, the Secretary [of DHS] shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructures or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government."[4]

DHS analysts would be charged with using this information to identify and assess the nature and scope of terrorist threats; producing comprehensive vulnerability assessments of key resources and infrastructure; identifying priorities for protective and support measures by DHS, by other agencies of the federal government, state and local government agencies and authorities, the private sector, and other entities. They will disseminate information to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the U.S. The intelligence element is also charged with recommending measures necessary for protecting key resources and critical infrastructure in coordination with other federal agencies.

DHS would be responsible for ensuring that any material received is protected from unauthorized disclosure and handled and used only for the performance of official duties. (This provision addresses a concern that sensitive personal information made available to DHS analysts could be misused.) As is the case for other federal agencies that handle classified materials, intelligence information would be transmitted, retained, and disseminated consistent with policies established under the authority of the Director of Central Intelligence (DCI) to protect intelligence sources and methods and similar authorities of the Attorney General concerning sensitive law enforcement information.[5]

Concerns about DHS Intelligence

Despite enactment of the Homeland Security Act, it is clear that significant concerns persisted within the Administration about the new department's ability to analyze intelligence and law enforcement information. Media accounts suggest that these concerns center on DHS' status as a new and untested agency and the potential risks

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[4] Section 202(a)(1). The language provides for a presidential exception that might arise because of particularly sensitive information; some observers also argue that under any circumstances the President has a constitutional authority to control the dissemination of intelligence information.

[5] The DCI's authority for protecting intelligence sources and methods is set forth in 50 USC 403-3(c)(6).The Attorney General's authorities for safeguarding law enforcement information are diffuse; see, *e.g.*, 18 USC 2511 (interception and disclosure of wire, oral, or electronic communications prohibited, exceptions); 18 USC 2517 (authorization for disclosure and use of intercepted wire, oral, or electronic communications); 21 USC 190(e) (public disclosure of significant foreign narcotics traffickers and required reports, exclusions of certain information).

involved in forwarding "raw" intelligence to the DHS intelligence component.[6] Another concern is that a new entity, rather than long-established intelligence and law enforcement agencies, would be relied on to produce all-source intelligence relating to the most serious threats facing the country.

DHS Role in the Intelligence Community. The U.S. Intelligence Community consists of the Central Intelligence Agency (CIA) and some 14 other agencies;[7] it provides information in various forms to the White House and other federal agencies (as well as to Congress). In addition, law enforcement agencies, such as the Federal Bureau of Investigation (FBI), also collect information for use in the federal government.[8] Within the Intelligence Community, priorities for collection (and to some extent for analysis) are established by the DCI,[9] based in practice on inter-agency discussions. Being "at the table" when priorities are discussed, it is widely believed, helps ensure equitable allocations of limited collection resources.

The Homeland Security Act makes the DHS information analysis element a member of the Intelligence Community, thus giving DHS a formal role when intelligence collection and analysis priorities are being addressed. It is also intended to facilitate access to intelligence databases and other analytical resources. Nonetheless, the relationship of DHS to the Intelligence Community will probably not be as close — at least initially — as that of other intelligence agencies that have long experience in dealing with national security questions and in dealing with jurisdictional issues.

The Question of "Raw" Intelligence. There has been discussion in the media whether DHS will have access to "raw" intelligence or only to finished analytical products, but these reports may reflect uncertainty regarding the definition of "raw" intelligence. A satellite photograph standing by itself might be considered "raw" data, but it would be useless unless something were known about where and when it was taken. Thus, satellite imagery supplied to DHS would under almost any circumstances have to include some analysis. The same would apply to signals intercepts. Reports from human agents present special challenges. Some assessment of the reliability of the source would have to be provided, but information that would identify a specific individual is normally retained within a very small circle of intelligence officials so as to reduce the risk of unauthorized disclosure and harm to the source.

The issue of the extent and nature of information forwarded to DHS has proved to be difficult. Reviewing copies of summary reports prepared by existing agencies is seen by some observers as inadequate for the task of putting together a meaningful picture of terrorist capabilities and intentions and providing timely warning. On the other hand, there is a need to ensure that DHS would not be inundated with vast quantities of data and

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[6] Dan Eggen and John Mintz, "Homeland Security Won't Have Diet of Raw Intelligence; Rules Being Drafted to Preclude Interagency Conflict," *Washington Post*, December 6, 2002, p. A43.

[7] Defined by 50 USC 401a(4).

[8] 28 USC 533 provides information collecting authority to the Justice Department and the FBI.

[9] 50 USC 403-3(c)(2).

that highly sensitive information is not given wider dissemination than absolutely necessary.[10]

Analytical Quality. The key test for homeland security will of course be the quality of the analytical product — whether terrorist groups can be identified and timely warning given of plans for attacks on the U.S. While most observers acknowledge that focusing in one office the responsibility for identifying terrorist threats will remedy a fundamental limitation of existing arrangements, it is also understood that establishing such an office in a new agency may have complications. The types of information that have to be analyzed come from disparate sources and require a variety of analytical skills that are not in plentiful supply. Academic institutions prepare significant numbers of linguists and area specialists, but training in the inner workings of clandestine terrorist entities is less often undertaken. Analysts with law enforcement backgrounds may not be attuned to the foreign environments from which terrorist groups emerge. DHS would begin with analysts detailed from existing intelligence and law enforcement agencies along with, presumably, some newly hired personnel. There is concern about previous bureaucratic competitors merging effectively and a culture of objectivity and adherence to high standards being established from the outset.

The Terrorist Threat Integration Center

President Bush, in his State of the Union address delivered on January 28, 2003, called for the establishment of a new Terrorist Threat Integration Center (TTIC) that would merge and analyze all threat information in a single location under the direction of the DCI. According to Administration spokesmen, TTIC will eventually encompass CIA's Counterterrorist Center (CTC) and the FBI's Counterterrorism Division, along with elements of other agencies, including DOD and DHS. TTIC's stated responsibilities are to "integrate terrorist-related information collected domestically and abroad" and to provide "terrorist threat assessments for our national leadership."[11] On May 1, 2003, TTIC began operations at CIA Headquarters under the leadership of John O. Brennan, who had previously served as the CIA's Deputy Executive Director. Initially it consists of some 50 officers from various intelligence agencies and federal departments; it is expected to move to a separate facility in May 2004.

TTIC appears to be designed to assume at least some of the functions intended for DHS' information analysis division. Making the DCI responsible for TTIC will facilitate its ability to use highly sensitive classified information and TTIC can expand upon the relationships that have evolved in the CTC that was established in CIA's Operations Directorate in the mid-1980s. According to testimony by Administration officials to the Senate Government Affairs Committee on February 26, 2003, TTIC will in effect function as an information analysis center for DHS and DHS will require a smaller number of analysts with less extensive responsibilities.

Some observers express concern that the DCI's role in the TTIC — responsibility for the analysis of domestically collected information and for maintaining "an up-to-date

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[10] See Eggen and Mintz, "Homeland Security Won't Have Diet of Raw Intelligence."

[11] White House Fact Sheet, "Strengthening Intelligence to Better Protect America," January 28, 2003.

database of known and suspected terrorists that will be accessible to federal and non-federal officials and entities,"[12] — may run counter to the statutory provision that excludes the CIA from "law enforcement or internal security functions."[13] There are also questions about transferring the FBI's Counterterrorism Division to the DCI. Some express concern about how the TTIC under the DCI will coordinate with state and local officials and with private industry.

A major concern for some observers is that TTIC may just become an expanded version of the CTC that has long had representatives from the FBI and other agencies. They argue that the CTC did not provide advance warning of the September 11 attacks and that a different approach (such as that envisioned in the Homeland Security Act) is called for. Some in Congress may consider modifications of the Homeland Security Act that could encompass the analytical efforts of DHS.[14]

Conclusion

Legislation creating a homeland security department recognized the crucial importance of intelligence to the counterterrorist effort. It proposed an analytical office within DHS that would be able to draw upon the information gathering resources of other government agencies and of the private sector. It envisioned the DHS information analysis entity working closely with other DHS offices, other federal agencies, state and local officials, and the private sector to devise strategies and programs to protect U.S. vulnerabilities and to provide warning of specific attacks.

The Administration appears to prefer a modification to the approach originally envisioned in the legislation that created DHS. TTIC, under the direction of the DCI, will provide the integrative analytical effort that the drafters of homeland security legislation and others in Congress have felt to be essential in light of breakdowns in communication that occurred prior to September 11, 2001. Whether TTIC is consistent with the intent of Congress in passing the Homeland Security Act and whether it is ultimately the best place for the integrative effort is current a matter of discussion in Congress. Regardless of where the integrative effort is ultimately located, the task will remain fundamentally the same. Pulling together vast amounts of data from a wide variety of sources concerning terrorist groups, analyzing them, and reporting threat warnings in time to prevent attacks is and will remain a daunting challenge.

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[12] Ibid.

[13] 50 USC 403-3(d)(1).

[14] William New, "Cox Plans Substantive Revision of Homeland Security Act," [http://www.gov.exec.com,] May 2, 2003.