

CRS Report for Congress

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National Commission on Terrorism Report: Background and Issues for Congress

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Summary

On June 5, 2000, the National Commission on Terrorism (NTC), a congressionally mandated bi-partisan body, issued a report providing a blueprint for U.S. counterterrorism policy with both policy and legislative recommendations. The report could be significant in shaping the direction of U.S. policy and the debate in Congress. It generally argues for a more aggressive U.S. strategy in combating terrorism. Critics, however, argue that NTC conclusions and recommendations ignore competing U.S. goals and interests; i.e. that a proactive strategy might lead to the curbing of individual rights and liberties, damage important commercial interests, and widen disagreements between the U.S. and its allies over using the “stick” as opposed to the “carrot” approach in dealing with states that actively support or countenance terrorism.

The NTC report is likely to stimulate strong congressional interest in counterterrorism policy in the 107th Congress. Likely areas of focus are (1) a more proactive counterterrorism policy; (2) a stronger state sanctions policy; and (3) a more cohesive/better coordinated U.S. federal counterterrorism response. January 23, 2001 press reports indicate that Rep. J.C. Watts (R-Okla) has urged House Speaker Dennis Hastert to create a House Select Committee on Domestic Terrorism. In the 106th Congress, H.R. 4210, which passed the House, would also give added attention to domestic terrorism by establishing a President’s Council on Domestic Preparedness in the White House. Moreover, in the 106th Congress, S. 3205, the (Kyl-Feinstein) Counterterrorism Act of 2000, which passed the Senate, incorporated a number of recommendations of the NTC including measures to ensure (1) enhanced policy emphasis on control of biological pathogens and terrorist funding raising; (2) better sharing of FBI intelligence; (3) easier recruitment of CIA counter-terrorism informants; and (4) maintaining Syria and Iran on the list of countries that sponsor terrorism. This report will not be updated.

Background

Combating terrorism has emerged as one of the most important U.S. foreign policy and national security priorities. The number of terrorist groups is reportedly growing and the technology to inflict mass casualties is becoming more readily available. The United States and other cooperating nations confront four major tasks, namely, (1) deterring/identifying terrorists and their sponsors/supporters, (2) weakening terrorist financial and other infrastructures, (3) hardening potential targets, and (4) containing damage in the aftermath of terrorist incidents.

The 105th Congress, in response to what is seen as a growing terrorist threat, created the ten-person, bi-partisan National Commission on Terrorism to evaluate U.S. laws, policies, and practices for preventing and punishing terrorism aimed at U.S. citizens (P.L. 105-277). The resulting NTC report, *Countering the Changing Threat of International Terrorism*, was issued on June 5, 2000. It calls on the U.S. government to prepare more actively to prevent and deal with a future mass casualty, catastrophic terrorist attack.

The report advocates: (1) using full, and what can be characterized as proactive, intelligence and law enforcement authority to collect intelligence regarding terrorist plans and methods; (2) targeting firmly — and with sanctions — all states that support terrorists; (3) disrupting non-governmental sources of terrorists' support — especially financial and logistical; (4) enhancing planning and preparation to respond to terrorist attacks involving biological, chemical, radiological or nuclear materials; and (5) creating stronger mechanisms to ensure that funding for individual agency counterterrorism programs reflects priorities integrated into a comprehensive national counterterrorism plan subject to congressional oversight.

The report suggests that the United States is drifting away from a strong policy of combating state support of international terrorism and is generally too passive and not proactive enough in combating a threat that is becoming more deadly, diffuse, and difficult to detect. Implicit in the report is the suggestion that the United States, by drifting away from a strong policy to combat state support of international terrorism, may well be encouraging more terrorism. In citing incidences of such a drift in policy, the report suggests there is a softening of U.S. positions on Iran and Syria and points to a perceived U.S. weakness in not aggressively confronting Pakistan's support for terrorist groups. It also notes U.S. failure to use sanctions, or the threat thereof, in response to Greece's inactivity/reluctance to investigate and prosecute terrorist activity — inaction by Greece which is portrayed as tantamount to complicity. While recognizing the growing danger posed by lone-wolf terrorists and loosely affiliated private transnational groups, the report intimates that U.S. policy may be too heavily focused on Usama Bin Laden.

Highlights of the Report

Areas addressed in the report's recommendations include the following:

! *Expanding sanctions on state sponsors/uncooperative nations*

Greece and Pakistan. The report notes that “Greece has been disturbingly passive in response to terrorist activities.” It comments that since 1975 there have been

146 terrorist attacks against Americans or American interests in Greece with only one case being solved and no meaningful investigation into the others. The report cites examples of past Pakistani anti-terrorism cooperation but stresses that “Pakistan provides safehaven, transit, and moral, political, and diplomatic support to several groups engaged in terrorism” (in Kashmir).

The NTC recommends that the President consider imposing sanctions against Greece and Pakistan under provisions of U.S. law (P.L.104-132) that limit arms sales to countries not “fully cooperating” with the U.S. on anti-terrorism efforts. Enactment of legislation making countries which have been designated as not “fully cooperating” with U.S. counterterrorism efforts ineligible for the U.S. visa waiver program is also called for. In general, the Commission recommends expanding the broad use of sanctions to include, not just state sponsors, but nations not fully cooperating. Currently, U.S. law also requires the withholding of foreign assistance to nations providing lethal military assistance to nations on the U.S. list of state sponsors of terrorism — a little-known provision of P.L.104-132, but one that the Administration has used to help persuade some countries not to provide arms to terrorist list states.

Iran. The report expresses concern that U.S. efforts to signal support for political reform in Iran could be misinterpreted in Iran or by U.S. allies as a weakening of resolve on counterterrorism. The report calls for the President to make no further concessions to Iran and to keep Iran on the terrorism sponsors list until it ceases to support terrorism and cooperates fully in the investigation of the June 1996 Khobar Towers bombing which resulted in the death of U.S. servicemen in Saudi Arabia. It also calls upon the President to actively seek support from U.S. allies to compel Iranian cooperation in the Khobar towers investigation.

Syria. The report recommends that the President make it clear that Syria will remain on the state sponsors list until it shuts down terrorist training camps in Syria and the Bekaa valley and prohibits resupply of terrorist groups through Syrian controlled territory.

Afghanistan. The report notes that the United States has not designated Afghanistan as a state sponsor of terrorism because it does not recognize the Taliban regime. Nevertheless, it recommends designating Afghanistan as state sponsor and imposing sanctions against the Kabul regime.

! Role of the Armed Forces

Under extraordinary circumstances when a catastrophic event is beyond the capabilities of local, state, and other federal agencies, or is directly related to an armed conflict overseas, the report suggests that the President may want to consider designating the Department of Defense (DoD) as the lead federal agency for the government’s response in the event of a catastrophic terrorist attack on U.S. soil. The report calls for detailed contingency plans for the Defense Department’s role, which could include transfer of command authority to the Pentagon, in the event of a catastrophic event where the command and control, logistical, communications and specialized ability of the military to respond to chemical/biological/radiological incidents would be required. The Commission believes that advance planning is the best way to prevent curtailment of individual liberties in a weapons of mass destruction scenario.

! *Enhancing foreign student visa data retrieval capability*

Critics of current Immigration and Naturalization Service (INS) student visa status tracking mechanisms often refer to them as being in the “stone age.” In a move which has been characterized as an effort to “substitute computers for shoeboxes,” the report recommends expanding an existing computerized pilot program designed to facilitate data retrieval capability to more efficiently monitor the immigration/visa status of students from abroad. This would facilitate access to whereabouts of students from terrorist-list countries and could “flag” a student from such a country who suddenly changes majors from a field such as art to biochemistry or nuclear physics. The report notes that one of the convicted terrorists involved in the World Trade Center bombing entered the U.S. on a student visa, dropped out and remained illegally thereafter.

! *Full use of law enforcement and intelligence authority*

The report recommends that existing CIA guidelines restricting recruitment of unsavory (criminal) sources not apply to recruiting counterterrorism sources. Also recommended is that the FBI guidelines governing criteria for investigating suspected terrorists or groups be clarified to permit full use of legal authorities including the authority to conduct electronic surveillance.

! *Expulsion of suspected terrorists*

Expulsion of suspected terrorists can be a touchy civil liberties issue. In a move designed to minimize what some see as past governmental abuse in expulsion cases handled by INS procedures, the report recommends use of the Alien Terrorist Removal Court (ATRC) (created by Congress in 1996 by section 401 of P.L. 104-132, but heretofore unused) to expel terrorists from the United States in instances where criminal prosecution is not possible. This process contains safeguards designed to protect national security and classified evidence (sources and methods), but also accords the accused the right to challenge such evidence.

! *National terrorism response exercises*

The report recommends that senior federal government officials involved in responding to a catastrophic terrorist threat or incident be required to participate in national response exercises every year to test capabilities and coordination.

! *Cyberterrorism/cybercrime*

The report calls on the Secretary of State to take the lead in developing an international convention aimed at harmonizing national laws, sharing information, providing early warning, and establishing accepted procedures for conducting international investigations of cybercrime.

! *Counterterrorism budget process*

The report recommends that the senior National Security Council (NSC) official in charge of coordinating overall U.S. counterterrorism efforts be given a stronger hand in

the budget process and that Congress develop a mechanism for comprehensive review of this process and consolidate the process in fewer committees.

Issues for Congress

Protecting civil liberties, while effectively combating terrorism, remains a strong area of concern in Congress. A number of the Commission's recommendations have drawn sharp criticism from civil libertarian and Arab-American groups. This is especially true of those recommendations which relate to (1) enhancing intelligence gathering; (2) modernizing retrieval capability of databases which monitor the visa status of foreign students; (3) expulsion of suspected terrorists; and (4) contingency planning for an active military role (including a possible lead role) in the event of a catastrophic terrorist attack on U.S. soil. In addition, it is interesting to note that although the Commission's report addresses an impressive array of counterterrorism issues, the list of issues examined is less than exhaustive, leaving a few complex, unresolved, and potentially "prickly" issues unaddressed. These issues would seem to warrant additional congressional attention.

! *Civil Liberties Concerns*

In democracies such as the United States, the constitutional limits within which policy must operate are sometimes seen to conflict with a desire to more effectively secure the lives of citizens against terrorist activity. Combating terrorism requires government activity designed to gather information on, and restrict the activities of, individual terrorists and groups seeking to engage in direct or indirect terrorist activity. The greater the magnitude of any such acts, the greater the pressure on societal institutions to provide security for their citizens. A challenge facing the policy community is how — in a growing age of globalization, deregulation, democracy and individual freedom — to institute regulatory and monitoring mechanisms which help deter, identify, and track terrorists and generally hinder their operations. Implicit in the reasoning of the Commission's report is that combating terrorism — particularly in the wake of a mass casualty catastrophic incident — may require restrictions on individual liberties. The assumption is that carefully planned and measured restrictions in advance of a catastrophic incident coupled with well thought out contingency planning for a constructive military role in the aftermath of an incident constitute an effective way of *preserving*, and *not* diminishing, individual liberties and democratic freedoms and institutions.

! *Unresolved Issues*

The report is noteworthy for what it does not address as well as for what it addresses. Areas not covered in the Commission's report but dealt with by other panels or expert advisory groups include (1) U.S. embassy security (1999 Overseas Advisory Panel Report); (2) security of U.S. military installations overseas (1996 Downing Commission Khobar Towers Report); and (3) weapons of mass destruction (WMD) disaster consequence management (1999 Gilmore Commission Report).

Issues within the purview of the Commission's mandate, but not addressed in its report or in the reports cited above include:

- (1) Who should be in charge of U.S. counterterrorism policy, and what are the best organizational mechanisms for policy formulation and implementation;

- (2) How does one effectively utilize the gamut of tools available to policymakers to combat terrorism: i.e., public diplomacy, economic and political sanctions, covert action, military force, and international cooperation and agreements;
- (3) How does one prioritize for budget purposes whatever is viewed as an appropriate mix of counterterrorism resources to facilitate assuring that important components are neither short-changed or overfunded depending on political “clout”;
- (4) How effective are sanctions and military force as policy tools; how might their use be improved; and how are commercial interests balanced in the equation. For example, how might sanctions be fine tuned or graduated to enhance their effectiveness and make their imposition more likely;
- (5) What is an appropriate role for covert operations in a proactive counterterrorism policy (should the U.S. ban on assassinations be reviewed);
- (6) How can one insure that the best international talent joins forces to enhance technological research and development efforts to support counterterrorism goals; and
- (7) What role, if any, should the media assume in a proactive counterterrorism policy.

Also absent from the report, which largely focuses on the “stick” approach to combating terrorism, are suggestions for use of expanded “carrot” options which may moderate the behavior of rogue states or terrorist groups. Supporters of these types of incentives argue that they facilitate achievement of antiterrorist goals without compromising core values or principles, and without giving in to the demands of terrorists. These approaches include options such as constructive engagement, creative foreign aid or trade packages, or expanded use of rewards for information programs.

For example, if U.S. trade with China is deemed to produce a moderating effect on China’s rogue human rights policy, supporters of the “carrot” approach might argue that trade with Libya could have a moderating effect on that nation’s rogue terrorism policy. Answers are far from clear, but pursuit of innovative “carrot”-oriented options, coupled with a strong “stick” approach, may, or may not, produce varying degrees of success in dealing with such groups as the IRA and PLO. And many still suggest that use of such options may well produce positive results with countries that seem to be moving in a positive direction such as Iran.

Conclusion

The National Commission on Terrorism’s report and recommendations on countering the changing threat of international terrorism are likely to spur strong congressional interest in counterterrorism policy during the 107th Congress. The most likely areas of scrutiny include: (1) more productive counterterrorism policies and mindsets; (2) enhanced use of legislative authority to impose sanctions on states that support or actively countenance terrorism, and (3) methods of achieving a more cohesive, better coordinated federal counterterrorism effort through enhanced budget coordination mechanisms.