

# CRS Issue Brief for Congress

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## Intelligence Issues for Congress

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## Intelligence Issues for Congress

### SUMMARY

The U.S. Intelligence Community continues to adjust to the 21<sup>st</sup> Century environment. Congressional and executive branch initiatives have emphasized improved cooperation among the different agencies that comprise the Community by giving greater coordination and managerial authority to the Director of Central Intelligence (DCI). The 9/11 Commission recommended that a new position of National Intelligence Director with even more extensive authorities be established. The Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) was signed on December 17, 2004.

Growing concerns about transnational threats, especially terrorism, are leading to increasingly close cooperation between intelligence and law enforcement agencies. The September 11, 2001 terrorist attacks, for which no specific warning was provided, have led to increased emphasis on human intelligence, statutory changes permitting closer cooperation between law enforcement and intelligence agencies, and to consideration of organizational changes to the Intelligence Community.

Intelligence Community leadership and congressional committees have expressed determination to enhance analytical capabilities. A major concern is an imbalance between resources devoted to collection and those allocated to analysis, with collected data much exceeding analytical capabilities.

In several regional crisis areas, the role of the U.S. Intelligence Community is especially important. Provisions for U.S. intelligence to monitor security arrangements between Israelis and Palestinians have been a factor in efforts to resolve Middle East tensions. Intelligence efforts have also been important in monitoring peace agreements in Bosnia.

Intelligence support to military operations continues to be a major responsibility of intelligence agencies. Intelligence agencies contributed to the highly effective use of precision-guided munitions during Operation Iraqi Freedom, but intelligence on Iraqi weapons of mass destruction was to some extent inaccurate.



## **MOST RECENT DEVELOPMENTS**

On December 17, the President signed the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458). The act, which had its origins in the recommendations of the 9/11 Commission, makes major changes in the organization of the U.S. Intelligence Community. There will be a Director of National Intelligence (DNI) with management and budgetary responsibilities for the entire national intelligence effort and a separate Director of the CIA who will manage the Agency on a day-to-day basis. The act also provides for a National Counterterrorism Center that reports directly to the DNI and incorporates the Terrorist Threat Integration Center (TTIC). The President has not yet submitted a nominee for the position of DNI.

On December 7, the House passed the Intelligence Authorization Act for FY2005 (H.R. 4548). The Senate companion bill, S. 2386, passed the Senate, amended, on October 11. The conference report (H.Rept. 108-798) passed the House on December 7 and passed the Senate on December 8, 2004. The legislation was signed by President on December 23, becoming P.L. 108-487.

## **BACKGROUND AND ANALYSIS**

The end of the Cold War, now over a decade past, continues to reverberate throughout the United States Intelligence Community. After the beginning of the George H.W. Bush Administration, intelligence agencies have been reduced in size (reportedly by some 30%) and priorities shifted away from the Soviet Union and its erstwhile allies. Yet the post-Cold War world has its own complexities — political, economic, and technological — that continue to require the attention of intelligence agencies. The attacks on the World Trade Center and the Pentagon on September 11, 2001, dramatically demonstrated the changed nature of threats facing the United States. Although its budgets have been substantially increased in recent years, the Intelligence Community continues to be challenged by the variety of topics on which information is needed, changing technologies that may limit success in acquiring information, and, not least, by temporary and not-so-temporary needs for expertise in many different foreign languages.

Changes in the nature of the world beyond U.S. borders, the focus of U.S. intelligence agencies, have required a shift in the purposes and goals of the Intelligence Community. Gone is the relentless focus on Soviet submarines, missile silos, and conventional military capabilities; new threats include terrorism, transfers of weapons of mass destruction (WMD), and political, ethnic, and social upheavals in a variety of regions. Gone also is the massive military infrastructure of the Soviet Union that could be observed by overhead imagery platforms. Intelligence agents must now be able to move beyond contacts with foreign government officials and tap into political sects and terrorist cells often having no perceptible infrastructure.

As a result, some observers believe that intelligence agencies may be in for a period of transition and adaptation exceeding the one that immediately followed the dissolution of the Soviet Union and the Warsaw Pact. In particular, it is argued that the three major “INTs,” the major intelligence disciplines — signals intelligence (sigint), imagery intelligence

(imint), and human intelligence (humint) — will have to be fundamentally reinvented and this process will have major technical and organizational ramifications. There will have to evolve, it is further argued, a coherent community-wide managerial structure that will respect the varied and changing needs of military and civilian intelligence consumers while keeping costs within bounds and avoiding unnecessary duplication of effort. Making some of these changes may not save money, and may even require budgetary growth.

The events of September 11, 2001, persuaded many observers that there may be a need for a wide-ranging review of the organizational structure of the Intelligence Community. Media reports in early November 2001 indicated that a review of the Intelligence Community by an Administration panel, headed by former National Security Adviser Brent Scowcroft, would recommend transferring three major intelligence agencies to the direct control of the DCI and separating the DCI from day-to-day management of the CIA. The conferees on the FY2002 intelligence authorization bill indicated their conclusion that “today’s intelligence structure is not suitable to address current and future challenges.” The two intelligence committees at the conclusion of the Joint Inquiry into the 9/11 attacks recommended the creation of Cabinet-level intelligence position without managerial responsibilities for the CIA. (*Recommendations of the Final Report of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry into the Terrorist Attacks of September 11, 2001*, December 10, 2002, pp. 1-2.)

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) issued its Final Report detailing the efforts of intelligence agencies prior to the attacks of September 11, 2001. In addition, the Report included a number of recommendations regarding the organization of the U.S. Intelligence Community that are discussed below.

*Sigint* collection is the responsibility of the National Security Agency (NSA) at Fort Meade, Maryland. Sigint operations are classified, but there is little doubt that the need for intelligence on a growing variety of nations and groups that are increasingly using sophisticated and rapidly changing encryption systems requires a far different sigint effort than the one prevailing for several decades. In 1998 the House Intelligence Committee concluded that “very large changes in the National Security Agency’s culture and method of operations need to take place ... .” Some observers believe that an inevitable restructuring of NSA will be required at the cost of billions of dollars. The Senate Intelligence Committee acknowledged that “NSA’s core mission is an essential national capability, and must be dramatically rejuvenated” but added that some new initiatives already underway will require “a significant infusion of funds.” Observers credit the current Director of NSA, Lt. Gen. Michael Hayden, with launching a long-overdue reorganization of the Agency, but adapting it to changed technological and geopolitical conditions will remain a significant challenge. Nevertheless, congressional intelligence committees remain concerned about managerial effectiveness at NSA, as well as disparities between the massive amounts of sigint collected and the lesser quantities that are analyzed.

A second major intelligence discipline, imagery or *imint* is also facing profound changes. Imagery is collected in essentially three ways, satellites, manned aircraft, and unmanned aerial vehicles (UAVs). (See CRS Report RL31369, *Imagery Intelligence: Issues for Congress*.) The satellite program that covered the Soviet Union and acquired highly accurate intelligence concerning submarines, missiles, bombers, and other military targets

is perhaps the greatest achievement of the U.S. Intelligence Community. The demise of the Soviet Union and experience in the Persian Gulf War have indicated that there is likely to be a greater number of collection targets than in the Cold War and that more maneuverable satellites may be required. At the same time, the advent of high-quality commercial satellite imagery has raised many questions about whether at least some coverage can be obtained less expensively from the private sector. (See the discussion of India's nuclear tests below.) Concern has been widely expressed that imagery architecture is unbalanced and that acquiring collection platforms has been emphasized at the expense of analytical and dissemination efforts.

Imagery as a collection discipline has been affected by the establishment in 1996 of the National Imagery and Mapping Agency (NIMA) to manage imagery processing and dissemination to national decision makers and combat commanders. NIMA was renamed the National Geospatial-Intelligence Agency (NGA) pursuant to the FY2004 Defense Authorization Act (P.L. 108-136). NGA is composed of agencies and organizations with disparate backgrounds, including the Defense Mapping Agency, which was never a member of the Intelligence Community.

Manned aircraft — the U-2 and other aircraft used by the services for tactical intelligence collection — remain important sources of imagery. The SR-71, which flew at very high altitudes, has been retired, and no replacement is apparently envisioned. The U-2s, the earliest of which were procured in the 1950s, are being upgraded with new interception capabilities and new navigational equipment, but some observers express concern that a follow-on will not be available because of a questionable assumption that manned aircraft can be completely replaced with unmanned aerial vehicles.

UAV procurement has been a continuing source of difficulties. Although some UAVs were used during the Vietnam War, the advantages of these pilotless craft have been more generally appreciated in the last decade or so when they have been equipped with electro-optical devices and real-time communications. Since the Persian Gulf War, they have been widely recognized as relatively inexpensive sources of tactical imagery that do not place the lives of U.S. personnel at risk; they have been widely used to monitor peacekeeping operations in Bosnia. UAV procurement efforts, however, have been beset by problems. Several systems have been canceled after millions of dollars were spent without producing operational platforms. Despite having been of significant use in the 2003 Iraq campaign, the UAV effort has been perceived by many in Congress as lacking in focus and being unable to meet operational requirements. The Global Hawk UAV currently appears to be the most promising platform for high-altitude, long-endurance unmanned surveillance and reconnaissance; see CRS Report RL31872, *Unmanned Aerial Vehicles: Background and Issues for Congress*, by Elizabeth Bone and Christopher Bolkom.

A long-standing criticism of the Intelligence Community's imint effort has been an imbalance between collection and analysis: that far more imagery is collected than can ever be evaluated with large quantities remaining "on the cutting room floor." Intelligence budgets moreover reflect an emphasis on the procurement of collection systems with fewer resources allocated to processing and analysis. Some also argue that priority is given to the concerns of operational military forces rather than to matters of interest to senior political leaders; for example, it has been alleged that in 1995 imagery analysts were concentrating on Serb air defenses to an extent that delayed finding evidence of mass grave sites of acute

interest to the State Department. The House intelligence committee has concluded that, “the emphasis on collection at the expense of downstream activities [i.e., processing and analysis] permeates the [Intelligence Community] at all levels and in most collection disciplines.”

Intelligence from human contacts — *humint* — is the oldest intelligence discipline and the one that is most often written about in the media. (Humint collection is to be distinguished from covert actions although they may on occasion involve the same agents; see CRS Report 96-844, *Covert Action: An Effective Instrument of U.S. Foreign Policy?*) The Central Intelligence Agency (CIA), which is responsible for most humint collection, had important successes during the Cold War; disaffected Soviets and others provided invaluable help in providing information about weapons programs and political intentions that were not obtainable from any other source. In large measure, targets of U.S. humint collection during the Cold War were government officials and military leaders. Intelligence agency officials working under cover as diplomats could approach such potential contacts at receptions or in the context of routine embassy business. Today, however, the challenge is making contacts with influential figures in heretofore obscure third world states, clandestine terrorist groups, or narcotics traffickers who speak a variety of foreign languages. Humint regarding such sources can be especially important as there may be little evidence of activities or intentions that can be gathered from imagery and their communications may be carefully limited.

Contacts with such persons usually cannot be made in the course of embassy business or in diplomatic receptions; in many cases contacts between a U.S. embassy and terrorist figures or narcotics smugglers would be unacceptable to either side. Placing U.S. intelligence officials in foreign countries under “non-official cover” in businesses or other private capacities is possible, but it presents significant challenges to the agencies. Administrative mechanisms are vastly more complicated; special arrangements have to be made for pay, allowances, retirement, and healthcare. The responsibilities of operatives under non-official cover to the parent intelligence agency have to be reconciled with those to private employers, and there is an unavoidable potential for many conflicts of interest or even corruption. Any involvement with terrorist groups or smugglers has an inevitable potential for major embarrassment to the U.S. government and, of course, physical danger to those immediately involved.

Responding to allegations in the early-1990s that CIA agents may have been involved too closely with narcotics smugglers and human rights violators in Central America, the then-DCI, John Deutch, established guidelines in 1995 (which remain classified) to govern the recruitment of informants with unsavory backgrounds. Although CIA officials maintain that no proposal for contacts with persons having potentially valuable information was disapproved, there is a widespread belief that the guidelines served to encourage a “risk averse” atmosphere at a time when information on terrorist plans, from whatever source, is urgently sought. Section 903 of the USA Patriot Act (P.L. 107-56), enacted October 26, 2001, expressed the sense of Congress that intelligence officials “should be encouraged, and should make every effort, to establish and maintain intelligence relationships with any person, entity, or group” to acquire information on terrorist groups. The FY2002 Intelligence Authorization Act (P.L. 107-108) directed the DCI to rescind and replace the guidelines, and July 2002 press reports indicated that they had been replaced.

Another problem is the availability of personnel trained in appropriate languages. Cold War efforts required a supply of linguists in a relatively finite number of foreign languages,

but in recent years the Intelligence Community has needed experts in a wider range of more obscure languages and dialects. Various approaches have been considered: use of civilian contract personnel, military reservists with language qualifications, and substantial bonuses for agency personnel who maintain their proficiency. The House Intelligence Committee has called for consideration of the establishment of a new Intelligence Community language training facility and for language proficiency requirements for intelligence analysts.

A fourth INT, measurement and signatures analysis — *masint* — has received greater emphasis in recent years. A highly technical discipline, *masint* involves the application of more complicated analytical refinements to information collected by *sigint* and *imint* sensors. It also includes spectral imaging by which the identities and characteristics of objects can be identified on the basis of their reflection and absorption of light. A key problem has been retaining personnel with expertise in *masint* systems who are offered more remunerative positions in private industry.

In the current geopolitical environment, another category of information, open source information — *osint* (newspapers, periodicals, pamphlets, books, radio, television, and Internet websites) — is increasingly important. Whereas the Soviet Union was a tightly closed society with access difficult to come by, most (but not all) countries of interest today are far more open in their media. A much greater proportion of information can thus be obtained without the use of human agents or sophisticated collection platforms. At the same time, requirements for translation, dissemination, and systematic analysis may even have increased, given the multitude of different areas and the volume of materials. Most observers believe that intelligence agencies should be more aggressive in using *osint*; some believe that the availability of *osint* may even reduce the need for certain collection efforts. The availability of *osint* also raises questions regarding the need for intelligence agencies to undertake collection, analysis, and dissemination of information that could be directly obtained by user agencies.

The widespread use of computers and new communications systems means that although there is a greater need for coordinating the INTs at the Washington level, intelligence products are used at many different levels of government and that quite low-level users can access information from Washington-area agencies. In addition, there has been increased availability of tactical intelligence collectors — *sigint* systems, aircraft and UAVs — that are operated by military commanders who are also the immediate recipients of the information acquired. Some observers express concern about excessive emphasis on tactical intelligence, arguing that national priorities may be downgraded. Others note, however, that organizational structures, traditionally focused on providing information from each “INT” to the Washington agency in charge of that “INT” (a practice known as “stovepiping”) do not adequately serve current needs of military commanders. Observers suggest that there will be increasing needs to share national and tactical intelligence and for organizational and individual flexibility.

Another issue is funding. Some alternatives to current platforms and procedures may produce cost savings, but observers suspect that they may be outweighed by increases found necessary in other areas. (On acquisition programs, see CRS Report RL32508, *Intelligence, Surveillance, and Reconnaissance (ISR) Programs: Congressional Oversight Issues*.) Satellites will remain high-cost programs, greater numbers of UAV systems and human collectors will have to be supported and trained. Observers generally expect that intelligence

activities will probably continue to absorb some 10% of the defense budget in any given year. It is uncertain whether such percentages will be adequate to accommodate major changes in NSA's operations, the acquisition of additional imagery platforms, and a reorganized humint effort.

Although much of the restructuring that arguably is required could be accomplished by executive branch initiative, Congress remains responsible for appropriations and for oversight. In recent years Congress has emphasized the need for expanded humint capabilities and has insisted upon a major role in the acquisition of new imagery collection platforms. Other concerns and directives are undoubtedly expressed in the classified annexes to intelligence authorization bills. Even if Congress and the leadership of the Intelligence Community concur on the need for major changes in these and other areas, ensuring the reorienting of long-established organizations is a difficult task. In addition to recommendations for reorganizing executive branch intelligence agencies, the 9/11 Commission, describing current congressional oversight of intelligence agencies as "dysfunctional," urged that Congress establish new arrangements (a joint committee or a combined authorization and appropriations committee) to deal with intelligence issues.

Implementation of changes enacted in 1996 has been a difficult process. In May 1998, Joan Dempsey, a career intelligence official, was confirmed by the Senate to fill the newly established position of Deputy DCI for Community Management. She resigned, however, in mid-2003; her replacement, Larry C. Kindsvater, was not confirmed by the Senate until July 2004. Two other positions designated as requiring Senate confirmation were filled without formal Senate action as a result of an understanding reached between the Administration and the Senate Intelligence Committee. These positions were abolished by the Intelligence Reform and Terrorism Prevention Act signed in December 2004 with the functions to be absorbed by the office of the newly created Director of National Intelligence.

For budgetary purposes, intelligence spending is divided between the National Foreign Intelligence Program (NFIP) (recently renamed the National Intelligence Program), which covers Washington-based agencies and Tactical Intelligence and Related Activities (TIARA) (also known as intelligence-related activities), which covers programs supporting the operating units of the armed services, and the Joint Military Intelligence Program (JMIP), which covers programs, not-necessarily tactical, that are of primary concern to the Defense Department. Jurisdiction over these programs is somewhat different in the House and the Senate, but in both chambers members of both intelligence and armed services committees are involved in oversight efforts.

For a number of years some Members have sought to make public total amounts of intelligence and intelligence-related spending; floor amendments for that purpose were defeated in both chambers during the 105th Congress. In response, however, to a lawsuit filed under the Freedom of Information Act, DCI Tenet stated on October 15, 1997 that the aggregate amount appropriated for intelligence and intelligence-related activities for FY1997 was \$26.6 billion. He added that the Administration would continue "to protect from disclosure any and all subsidiary information concerning the intelligence budget." In March 1998, DCI Tenet announced that the FY1998 figure was \$26.7 billion. Figures for FY1999 and subsequent years have not been released and the executive branch has thus far prevailed against legal efforts to force release of intelligence spending figures. On May 23, 2000, the House voted 175-225 to defeat an amendment calling for annual release of an unclassified

statement on aggregate intelligence spending. Some have suggested that if intelligence spending totals were made public it would no longer be necessary to “hide” intelligence programs within the Defense Department budget; national programs at least could be broken out and consolidated under the DCI and the two intelligence committees. Others contend that the current system ensures that national intelligence programs are closely related to military operations and are considered in conjunction with defense programs.

A significant concern continues to be the need to provide intelligence support to operating military forces. In 1997, the House intelligence committee noted that “intelligence is now incorporated into the very fiber of tactical military operational activities, whether forces are being utilized to conduct humanitarian missions or are engaged in full-scale combat.” The Persian Gulf War demonstrated the importance of intelligence from both tactical and national systems, including satellites that had been previously directed almost entirely at Soviet facilities. There were, nonetheless, numerous technical difficulties, especially in transmitting data in usable formats and in a timely manner. Many of these issues have since been addressed with congressional support, but even in the Iraq war of 2003 significant technical and organizational challenges remained.

The House intelligence committee has given special attention to weaknesses in analysis, expressing concern about “a largely inexperienced workforce; lack of language skills and limited in-country familiarity ... and a predominant focus on current intelligence that is eroding the [Intelligence Community’s] ability to conduct comprehensive strategic analysis.” The bureaucratic tendency to emphasize current intelligence over long-term analysis has been noted for many years. It has been enhanced by the shift from enduring targets such as the Soviet Union to the disparate and fluctuating concerns of the post-Cold War period. The House committee has advocated the establishment of core groups of analysts to undertake research-oriented projects aimed at assessing strategic issues. It further expressed support for a civilian intelligence reserve program that would utilize the expertise of former intelligence officials, as well as civilian experts and linguists.

The Intelligence Community’s failure to provide advance notice of India’s nuclear tests in May 1998 produced searching reviews of analytical efforts and capabilities both in the executive branch and Congress. The initial review, undertaken by Admiral David Jeremiah, former vice chairman of the Joint Chiefs of Staff, has not been made public, but in a press conference Admiral Jeremiah described his conclusions. Although the Indian government that took office in late March 1998 had indicated its intention to “exercise the option to induct [*sic*] nuclear weapons,” most observers believed that India would conduct a lengthy assessment prior to undertaking tests. Admiral Jeremiah concluded that “both the intelligence and policy communities had an underlying mindset going into these tests that the BJP [the party heading the new Indian government] would behave as we behave.” The Indians also undertook various efforts to mask their intentions and to hide their test preparations. The Intelligence Community provided more detailed information on the follow-on Pakistani tests.

Admiral Jeremiah called for more rigor in analysts’ thinking and urged that outside experts be brought into the analytical process. There is, he maintained, a need for “greater collaboration and coordination of intelligence agencies and disciplines.” There is also, he pointed out, an imbalance between the vast quantities of imagery collected and limits on numbers of analysts. “In everyday language, that means there is an awful lot of stuff on the

cutting room floor at the end of the day that we have not seen.” In essence, Jeremiah concluded that the DCI needs to ensure greater coordination among intelligence agencies in regard both to collection and analysis. DCI Tenet accepted Jeremiah’s recommendations. Appreciating that no system can prevent any future intelligence surprise or “failure,” many observers believe that inadequate coordination may have contributed significantly to the inability to monitor Indian nuclear efforts more closely. (See CRS Report 98-672, *U.S. Intelligence and India’s Nuclear Tests: Lessons Learned*, by Richard A. Best, Jr.)

Congress remains concerned with the potential for abuses by intelligence agency personnel and has addressed the question of whistleblower protection for officials working in intelligence agencies who may not be covered by other whistleblower legislation. The FY1999 Intelligence Authorization Act established procedures by which an intelligence agency official (or contractor) who seeks to provide information to Congress with respect to an urgent concern would first report such concern to the inspector general of his or her agency. The IG in turn would forward the information to the agency head within 14 days. The agency head would then forward it to the congressional intelligence committees within seven days. If the IG does not transmit the information (or does so inaccurately) the complainant could forward it to the intelligence committees directly if the agency head is notified. The conference report noted that “an intelligence committee Member or staff employee receiving such complaints or information must abide by the rules of the intelligence committees.”

Congress also remains concerned about intelligence support provided to the government’s counter-narcotics effort. The Explanatory Statement accompanying the FY1998 intelligence authorization conference report expressed concern about funding the National Drug Intelligence Center (NDIC) through the National Foreign Intelligence Program inasmuch as NDIC functions within the Department of Justice. Nonetheless, NDIC funding has continued to be incorporated in defense authorization and appropriation acts. FY2004 intelligence authorization legislation provided NDIC with \$47.1 million.

Other provisions of the FY2001 intelligence authorization bill would have established criminal penalties for the unauthorized disclosure of properly classified information. Previous legislation established penalties only for disclosure of specific types of classified material, such as codes and cryptographic devices and information related to nuclear programs. Proponents of the provision maintained that recent leaks of highly sensitive intelligence information have not only risked the loss of valuable collection capabilities but also jeopardized important security interests. Critics argued that the provisions in H.R. 4392 were overly broad and would preclude the type of leaks that in the past have ultimately benefitted the public. The bill was vetoed by President Clinton on November 4, 2000, and another version (H.R. 5630) with the unauthorized disclosure provisions deleted was enacted on December 27, 2000, as P.L. 106-567.

Consideration was given to including similar provisions in FY2002 legislation, but Attorney General Ashcroft requested that the Administration be given time for a thorough interagency study of the need for legislation to provide additional protections against unauthorized disclosures of classified information. Accordingly, FY2002 intelligence authorization legislation provided that such a review be conducted by the executive branch and a report submitted to Congress by May 1, 2002. The Bush Administration ultimately concluded that further legislation is unnecessary.

**International Terrorism.** Terrorism has emerged as a top intelligence priority especially since September 2001. Major increases in personnel and funding have been directed towards international terrorism. The Joint Inquiry by the two intelligence committees and other investigations, including the 9/11 Commission may lead to significant changes in the organization of the Intelligence Community. There has also been greater emphasis on the role of humint in counterterrorism. See CRS Report RL31292, *Intelligence to Counter Terrorism: Issues for Congress*.

Since such terrorist threats are often dealt with in law enforcement channels, greater cooperation between intelligence and law enforcement agencies has been encouraged in recent years. This cooperation has raised a number of difficult issues: potential duplication of effort, the use of information obtained by intelligence agencies in court trials, the danger that the methods of covert intelligence collectors might be used routinely in law enforcement cases, and the undermining of legitimate foreign policy and defense initiatives. (For additional background, see CRS Report RL30252, *Intelligence and Law Enforcement: Countering Transnational Threats to the U.S.*)

Concern that information from both law enforcement and intelligence agencies may not be reaching those responsible for dealing with international terrorist threats has grown since the incidents of September 11, 2001. Much information about Osama bin Laden and the Al Qaeda network was accumulated for trials of individuals connected with the 1993 World Trade Center attack and an aborted January 2000 attack on the Los Angeles airport. Critics argue that much of this information was not made available to intelligence agencies, and some of that which was available may not have been thoroughly exploited. Further, some argue that information available to intelligence agencies was not shared with the law enforcement agencies that could have apprehended (because of immigration violations) some of those involved in the September 11 attacks. The USA Patriot Act (P.L. 107-56) was designed to facilitate the greater sharing of information available to law enforcement agencies (including grand jury testimony) with the Intelligence Community in accordance with guidelines to be established by the executive branch. The Justice Department announced the completion of the guidelines on September 23, 2002.

**Department of Homeland Security (DHS).** DHS includes an Information Analysis and Infrastructure Protection component that is responsible for analyzing information provided by intelligence and law enforcement agencies. The new Department will not itself engage in collecting intelligence but will receive analyses and, to some as yet unknown extent, unanalyzed information from other intelligence and law enforcement agencies. On the basis of its threat analysis, the Homeland Security Department would effect or recommend necessary measures to protect the U.S. public and infrastructures. In January 2003, the Administration announced plans to create a Terrorist Threat Integration Center (TTIC) under the DCI. TTIC commenced operations on May 1, 2003 and performs a number of analytical functions earlier assigned to DHS; its reports and analyses are made available to DHS. (See CRS Report RS21283, *Homeland Security: Intelligence Support*.) In accordance with Intelligence Reform enacted in December 2004, TTIC will be transferred to the National Counterterrorism Center, which will be under the control of the new Director of National Intelligence.

**CIA and the Israeli-Palestinian Situation.** The accord between Palestinian and Israeli leaders (the "Wye River Memorandum") signed in Washington on October 23, 1998,

provided for a Trilateral Security Committee of high-ranking Israeli, Palestinian, and U.S. officials to oversee the implementation of the agreement and coordinate efforts to combat terror and terrorist organizations. The accord assumed that CIA officials would continue liaison efforts, which were ongoing for several years, to improve communications between the two sides on security matters and to enhance the professionalism of Palestinian security forces. With the deterioration of Israeli-Palestinian relations in the spring of 2001, the CIA role was reduced. DCI Tenet visited the region, but CIA-sponsored meetings between Israeli and Palestinian security officials were unproductive.

In the final stages of negotiations of the Wye Accord, Israeli Prime Minister Netanyahu pressed President Clinton to pardon Jonathan Pollard, a former Navy Intelligence analyst, who was convicted of spying on behalf of Israel in 1986. Subsequent Israeli leaders have also pressed Pollard's case. Media reports indicate that many Intelligence Community officials strongly oppose any presidential pardon and opposition has been expressed by some Members of both intelligence committees. (See CRS Report RS20001, *Jonathan Pollard: Background and Considerations for Presidential Clemency*.)

**The Intelligence Community and Iraq.** The Baath regime in Iraq presented major challenges to intelligence agencies. U.S. intelligence agencies supported the efforts of U.N. inspectors charged with determining Iraqi compliance with U.N. resolutions requiring Iraq to end any programs for the acquisition or deployment of weapons of mass destruction, but such efforts were resisted by the Iraqi government. The Iraq Liberation Act of 1998 led to funding for covert assistance to opposition elements in legislation, but intelligence agency officials were skeptical of providing aid to the groups working against Saddam Hussein. (See CRS Report RL31339, *Iraq: U.S. Efforts to Change the Regime*, by Kenneth Katzman; also, CRS Report RL32379, *Iraq: Former Regime Weapons Programs, Human Rights Violations, and U.S. Policy*, by Kenneth Katzman.)

The attack on the Iraqi regime launched in March 2003 by the United States, the United Kingdom, and other countries was based on thorough intelligence preparation. Intelligence supported the extensive use of precision-guided munitions that targeted key Iraqi military and command facilities but limited civilian casualties.

Subsequent to the fall of Saddam Hussein's regime, questions have been raised about the extent and accuracy of U.S. intelligence reports concerning Iraqi weapons of mass destruction (WMD). The inability thus far to locate anticipated stocks of chemical and biological weapons has led some observers to argue that prewar intelligence estimates were inaccurate and unreliable. Others point out that the Intelligence Community's October 2002 report, *Iraq's Weapons of Mass Destruction Programs*, carefully noted Iraq's previous use of WMD, its ongoing WMD programs, and its unwillingness to document the destruction of WMD stocks in accordance with U.N. resolutions. Few observers contest these factors, but intelligence judgments regarding the existence of specific inventories of WMD products — and the interpretation and use of these judgements by policymakers — are under dispute. On July 7, 2004, the Senate Intelligence Committee released its highly critical review of the Intelligence Community's analytical efforts regarding Iraq. The review faulted analysts for failing to convey the ambiguities of the evidence that they relied on in judging that Iraq had an active and growing WMD program.

On February 11, 2004, President Bush by Executive Order 13328 created a Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. The Commission, co-chaired by former Senator Charles S. Robb and retired Federal Judge Laurence H. Silverman, is to assess the capabilities of the Intelligence Community to collect, analyze, and disseminate intelligence regarding WMD. In addition, the Commission is to look specifically at intelligence regarding Iraqi WMD prior to Operation Iraqi Freedom and to compare prewar assessments with the findings of the Iraq Survey Group. The Commission is to report by March 31, 2005.

**The Intelligence Community and Missile Defense.** A key Cold War-era intelligence mission that endures in the post-Cold War era is collection targeted at foreign missile capabilities, especially those capable of delivering WMD. As noted above, the unanticipated North Korean testing of the Taepo Dong 1 missile raised questions about intelligence collection capabilities. In addition, the July 1998 report of the Commission to Assess the Ballistic Missile Threat to the United States (known as the Rumsfeld Commission) concluded: “A new strategic environment now gives emerging ballistic missile powers the capacity, through a combination of domestic development and foreign assistance, to acquire the means to strike the U.S. within about five years of a decision to acquire such a capability (10 years in the case of Iraq). During several of those years, the U.S. might not be aware that such a decision had been made. Available alternative means of delivery can shorten the warning time of deployment nearly to zero.” Although more pessimistic than much-criticized Intelligence Community estimates, this assessment underscored the vital importance of intelligence efforts in this area, especially given its key role in the debate over missile defense systems.

**Kosovo/Operation Allied Force.** The highly successful air strikes against Serbian military targets, the centerpiece of Operation Allied Force, taxed U.S. intelligence capabilities. Intelligence enabled NATO to use precision munitions to destroy Serbian targets with no NATO combat casualties and with relatively limited losses of civilian lives. Nonetheless, some observers suggest that difficulties in relaying targeting data, the need for communications “work arounds,” and escalating requirements for additional aircraft reflected a serious failure in the years after the Persian Gulf War to address increased requirements for imagery collection platforms for use in conjunction with precision-guided munitions.

In addition to uncertainties about the future government satellite programs, critics note that DOD has been unable to acquire significant numbers of unmanned aerial vehicles (UAVs) as a result of the managerial problems that have long been subjects of congressional censure. Further, they cite the absence of plans for follow-ons to U-2 aircraft, first developed in the Eisenhower Administration, as well as a limited inventory of JSTARS aircraft with ground-radar capabilities. UAV procurement remains a high priority despite losses of several platforms in Afghan operations.

According to official accounts, the mistaken attack on the Chinese Embassy in Belgrade on May 7, 1999, resulted from the use of outdated maps and databases. The Yugoslav Federal Directorate of Supply and Procurement, a military supply facility, was the intended target, but it was confused with a nearby and similarly-sized building that was actually China’s embassy. Although embassies were on “no-strike” lists for Operation Allied Force, along with hospitals, churches, and mosques, U.S. databases did not reflect the location of the current Chinese Embassy in Belgrade. Secretary of Defense William Cohen subsequently

announced several steps to prevent future targeting errors; the State Department will be responsible for reporting to the Intelligence Community whenever embassies move or new embassies are built, new procedures for developing target information, including procedures for updating maps will be established, and the Defense Intelligence Agency (DIA) and the National Geospatial-Intelligence Agency will establish new rapid response procedures for updating critical databases for no-strike targets.

**The 9/11 Investigations.** In the aftermath of September 11, 2001, there was extensive public discussion of whether the attacks on the Pentagon and World Trade Center represented an “intelligence failure.” On July 17, 2002, the House Intelligence Committee Subcommittee on Terrorism and Homeland Security released an unclassified summary of its investigation of ways to improve counterterrorism and homeland security capabilities. The findings were discussed further in a September 5, 2002 hearing before the House Armed Services Committee, Special Oversight Panel on Terrorism.

In addition the two intelligence committees undertook a joint investigation of the September 11 attacks. Public hearings by the resulting “Joint Inquiry” began on September 18, 2002 with testimony from representatives of families of those who died in the attacks. Eleanor Hill, the Inquiry Staff Director also summarized the Inquiry’s findings: “... the Intelligence Community did have general indications of a possible terrorist attack against the United States or U.S. interests overseas in the spring and summer of 2001 and promulgated strategic warnings. However, it does not appear that the Intelligence Community had information prior to September 11 that identified precisely where, when and how the attacks were to be carried out.” Former policymakers and senior CIA and FBI officials also testified.

The two intelligence committees published the findings and conclusions of the Joint Inquiry on December 11, 2002. (The full report was subsequently released some months later as H.Rept. 107-792/S.Rept. 107-351.) The committees found that the Intelligence Community had received, beginning in 1998 and continuing into the summer of 2001, “a modest, but relatively steady, stream of intelligence reporting that indicated the possibility of terrorist attacks within the United States.” Further findings dealt with specific terrorists about whom some information had come to the attention of U.S. officials prior to September 11 and with reports about possible employment of civilian airliners to crash into major buildings. The Inquiry also made systemic findings highlighting the Intelligence Community’s lack of preparedness to deal with the challenges of global terrorism, inefficiencies in budgetary planning, the lack of adequate numbers of linguists, a lack of human sources, and an unwillingness to share information among agencies.

Separately, the two intelligence committees submitted recommendations for strengthening intelligence capabilities. Most significantly, they urged the creation of a Cabinet-level position of Director of National Intelligence (DNI) separate from the position of director of the CIA. The DNI would have greater budgetary and managerial authority over intelligence agencies in the Defense Department than currently possessed by the DCI. The committees also expressed great concern with the reorientation of the FBI to counterterrorism and suggested consideration of the creation of a new domestic surveillance agency similar to Britain’s MI5. Senator Shelby, the vice chairman of the Senate Intelligence Committee in the 107<sup>th</sup> Congress, submitted extensive additional views detailing his concerns with the functioning of intelligence agencies as currently organized.

Provisions for establishing an independent commission on the 2001 terrorist attacks were included in the FY2003 Intelligence Authorization Act (P.L. 107-306). Former New Jersey Governor Thomas H. Kean was named to serve as chairman, with former Representative Lee H. Hamilton serving as vice chairman. Widely publicized hearings were held in spring 2004 with Administration and outside witnesses providing different perspectives on the role of intelligence agencies prior to the September 11, 2001, attacks. The Commission's Report was published in July 2004.

The principal recommendations of the 9/11 Commission Report address perceived lack of authorities of the current position of DCI; the Commission recommended establishing a National Intelligence Director (NID) to manage the national intelligence program and oversee the agencies that contribute to it. The NID would annually submit a national intelligence program budget and, when necessary, forward the names of nominees to be heads of major intelligence agencies to the President. Lead responsibility for conducting and executing paramilitary operations would be assigned to DOD and not CIA. The Commission also recommended that Congress pass a separate annual appropriations act for intelligence that would be made public. The NID would execute the expenditure of appropriated funds and make transfers of funds or personnel as appropriate.

On August 27, 2004, President Bush addressed key recommendations of the 9/11 Commission in signing several executive orders to reform intelligence. In addition to establishing a National Counterterrorism Center, the orders provide new authorities for the DCI until legislation is enacted to create a National Intelligence Director, strengthen the sharing of terrorism information, and establish a Board on Safeguarding Americans' Civil Liberties.

Several legislative proposals were introduced to establish a National Intelligence Director, separate from a CIA Director (see CRS Report RL32600, *Comparison of 9/11 Commission Recommended Intelligence Reforms, Roberts Draft Bill, H.R. 4104, S. 190, S. 1520, S. 6, H.R. 4584, Current Law*, and CRS Report RL32601, *Comparison of 9/11 Commission Recommended Intelligence Reforms, S. 2845, S. 2774, H.R. 5024, Administration Proposal, H.R. 10, Current Law*). The Senate passed S. 2845 on October 16, 2004; the House had passed H.R. 10 on October 8, 2004. Efforts by the resulting conference committee to reach agreed-upon text focused on the issue of the authorities of the proposed Director of National Intelligence in regard to the budgets and operations of the major intelligence agencies in the Defense Department, especially the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency. (See CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, and CRS Report RL32515, *Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies*.) Conferees finally reached agreement in early December, and the conference report on S. 2845 (H.Rept. 108-796) was approved by the House on December 7 and by the Senate on December 8. The President signed the legislation on December 17, 2004, and it became P.L. 108-458.

**Intelligence Reform and Terrorism Prevention Act (P.L. 108-458).** The new legislation is expected to have a major influence on the Intelligence Community. The new DNI will have authority to task intelligence collection and analysis and will manage national intelligence centers such as the National Counterterrorism Center. The DNI will have extensive budgetary and acquisition authorities over the entire national intelligence effort,

although the exact contours of the relationship with other government organizations, including the Defense Department, will be worked out in presidential guidelines that are to be prepared in early 2005. There will be a separate Director of the CIA. The act has a number of provisions designed to ensure that intelligence analysis is not politicized or biased and to protect civil liberties at a time when additional counterterrorism measures are being undertaken. Intelligence agencies in the DOD will remain in their existing chain of command and continue to be responsible for providing support to combat commands.

**Counterintelligence.** Allegations that U.S. classified information regarding missile warhead design may have been provided to Chinese officials by a scientist at the Los Alamos National Laboratory (part of the Energy Department) led to charges of lax security especially in regard to visits by foreign nationals. An Intelligence Community damage assessment, released in April 1999, concluded that China obtained by espionage classified U.S. nuclear weapons information that “probably accelerated” its program to develop future nuclear weapons. According to the assessment, China obtained at least basic design information on several modern U.S. nuclear reentry vehicles, including the Trident II (W88). A report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China concluded that U.S. information accelerated Chinese nuclear weapon modernization and “helped the PRC in its efforts to fabricate and successfully test its next generation of nuclear weapons designs. These warheads give the PRC small, modern thermonuclear warheads roughly equivalent to current U.S. warhead yields.”

(For additional details, see CRS Report RL30143, *China: Suspected Acquisition of U.S. Nuclear Weapon Data*, by Shirley A. Kan and CRS Report RL30220, *China’s Technology Acquisitions: Cox Committee’s Report — Findings, Issues and Recommendations*. For more recent developments, see CRS Report RL30569, *Department of Energy: Status of Legislated Security and Counterintelligence Measures*, by Jonathan Medalia.)

## LEGISLATION

**P.L. 108-177, H.R. 2417 (Goss).** Intelligence Authorization Act for FY2004. Introduced June 11, 2003; referred to the Permanent Select Committee on Intelligence; reported June 18, 2003. Passed House, amended, June 27, 2003. Conference report (H.Rept. 108-381) filed, November 19, 2003. Passed House, November 20, 2003. Passed Senate, November 21, 2003. Signed into law December 13, 2003.

**H.R. 4104 (Harman).** To establish the Director of National Intelligence. Introduced April 1, 2004; referred to the Permanent Select Committee on Intelligence.

**H.R. 4548 (Goss) / S. 2386 (Roberts).** Intelligence Authorization Act for FY2005. H.R. 4548 introduced June 14, 2004; reported June 16, 2004; passed House, amended, June 23, 2004. S. 2386 introduced May 5, 2004, with written report (S.Rept. 108-258); reported by Armed Services Committee, July 8, 2004 (S.Rept. 108-300). S. 2386 passed Senate (amended), October 11, 2004. Conference report (H.Rept. 108-798) passed House, December 7; passed Senate December 8, 2004.

**H.R. 4584 (Goss).** To Improve the Organization and Operation of the Intelligence Community. Introduced June 16, 2004; referred to the Permanent Select Committee on Intelligence.

**S. 6 (Daschle).** To enhance Homeland Security. Introduced January 7, 2003; referred to the Committee on the Judiciary.

**S. 113 (Kyl).** Foreign Intelligence Surveillance Act Amendment. Introduced January 9, 2003. Passed Senate, amended, May 8, 2003.

**S. 190 (Feinstein).** To establish the Director of National Intelligence. Introduced January 16, 2003; referred to the Select Committee on Intelligence.

**S. 1025 (Roberts).** Intelligence Authorization Act for FY2004. Introduced May 8, 2003 from Select Committee on Intelligence with report; referred to Committee on Armed Services; reported by Armed Services Committee, June 26, 2003. Passed Senate, amended, July 31, 2003 (text substituted for H.R. 2417).

**S. 1520 (Graham of Florida).** To Reorganize and Improve the Leadership of the Intelligence Community. Introduced July 31, 2003; referred to the Select Committee on Intelligence.

**S. 2386 (Roberts).** Intelligence Authorization Act for FY2005; for details, see H.R. 4548, above.

## FOR ADDITIONAL READING

U.S. Commission on the Role and Capabilities of the United States Intelligence Community, *Preparing for the 21st Century: An Appraisal of U.S. Intelligence*, March 1, 1996.

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—*Intelligence Authorization Act for Fiscal Year 2004*. June 18, 2003. 108<sup>th</sup> Congress, 1<sup>st</sup> session (H.Rept. 108-163).

—*Intelligence Authorization Act for Fiscal Year 2004*. November 19, 2003. 108<sup>th</sup> Congress, 1<sup>st</sup> session. Conference Report (H.Rept. 108-381).

—*IC21: Intelligence Community in the 21st Century*. Staff Study. April 9, 1996. 104<sup>th</sup> Congress.

—Subcommittee on Terrorism and Homeland Security. *Counterterrorism Intelligence Capabilities and Performance Prior to 9-11*. July 2002.

U.S. Congress. Senate. Committee on Armed Services. *Intelligence Authorization Act for Fiscal Year 2004*. June 26, 2003. 108<sup>th</sup> Congress, 1<sup>st</sup> session. (S.Rept. 108-80).

U.S. Congress. Senate. Select Committee on Intelligence. *Authorizing Appropriations for Fiscal Year 2004 for Intelligence and Intelligence-Related Activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System*. May 8, 2003. 108<sup>th</sup> Congress, 1<sup>st</sup> session. (S.Rept. 108-44).

—*Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*. July 9, 2004. 108<sup>th</sup> Congress, 2d session. (S.Rept. 108-301).

U.S. Department of Justice, Commission for Review of FBI Security Programs, *A Review of FBI Security Programs*, March 2002.

U.S. National Commission on Terrorist Attacks Upon the United States. *The 9/11 Commission Report*, July 2004.