

CRS Issue Brief

Terrorism: Background and Issues for Congress

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SUMMARY

In recent years, terrorism has been primarily viewed as an international and foreign policy issue. However, the notion of terrorism as a national issue is emerging in the wake of the bombing of the federal building in Oklahoma City. The FBI defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

President Clinton's initial proposal, was introduced on February 10, 1995 (H.R. 896/S. 390), and on May 5, 1995, Senator Daschle introduced S. 761, a revised Administration proposal. On April 27, 1995, Senator Dole introduced S. 735 (the Senate Republican initiative). An amended compromise version of S. 735 passed the Senate on June 7, 1995. H.R. 1710, the House Republican proposal, was introduced by Representative Hyde on May 25, and reported out of House Judiciary Committee on December 5. Also on December 5, Representative Hyde introduced an amendment in the nature of a substitute to H.R. 1710 and H.R. 2703, an apparently identical bill, introduced by Representative Hyde for himself, Representative McCollum, Representative Smith of Texas, and Representative Barr. On December 13, Representative Hyde introduced a second amendment in the nature of a substitute and H.R. 2768, an apparently identical bill, introduced by Representative Hyde for himself and Representatives McCollum, Smith of Texas, and Barr.

On March 14, the House passed S. 735, striking all after the enacting clause and inserting in lieu thereof H.R. 2703 as amended. On April 15, the conference report on S. 735 was submitted, H.Rept. 104-518. The Senate passed the conference version of the measure on April 17 (91-8). The House passed the identical measure on April 18 (293-133). The President signed the bill into law on April 24, 1996, which became the Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132.

Among its provisions as enacted, P.L. 104-132 includes: habeas corpus provisions; victims' rights provisions; exception to foreign sovereign immunity for civil damage suits against foreign states for death or personal injury resulting from certain terrorist acts; alien terrorist and criminal alien removal procedures; explosives tagging; funding and hiring of personnel; new criminal offenses; controls over terrorist fundraising and prohibitions against financial transactions with terrorist states, assistance to countries that aid terrorist states or that provide military assistance to them; proscriptions concerning misuse of nuclear materials; and restrictions on biological and chemical weapons.

Issues for Congress include (1) How to shape an appropriate federal response; (2) How to protect against terrorism while protecting constitutional rights; (3) How to effectively coordinate federal, state, and international responses to terrorism; (4) Funding the U.S. response; and (5) Enforcing immigration laws and establishing immigration goals in conjunction with security concerns.



infiltrate suspected domestic groups in a manner that one congressional committee found to be both improper and illegal.

The bombing of the World Trade Center in New York on February 26, 1993, brought the domestic threat of international terrorism to the forefront of U.S. public attention. A federal court found four men guilty of the bombing and sentenced them to life in prison. Several months later, police uncovered another plot by a related group of conspirators to bomb tunnels, bridges, and other critical sites in and around New York City. On October 1, 1995, a federal court convicted nine men, including Sheik Omar Abdel-Rahman, an extremist Muslim cleric from Egypt and spiritual leader of radical Muslim groups in this country, of conspiring to commit assassinations and bomb New York landmarks. All of those convicted came to the United States from countries in the Middle East.

The Oklahoma City Bombing

On April 19, 1995, a bomb exploded, destroying the Alfred P. Murrah Federal building in Oklahoma City and killing 168 people. An additional 500 people were injured in the blast, making it the worst terrorist incident ever to take place in the United States. Within minutes of the 9:00 A.M. attack, President Clinton ordered into action a crisis management team under the leadership of the FBI, working with the Department of Justice, the Bureau of Alcohol, Tobacco, and Firearms (BATF), and military and local authorities to investigate and arrest the murderers. In the days following the bombing, the President called for stronger legal tools to combat terrorism in the United States, and congressional leaders declared a willingness to work with the Clinton Administration to pass comprehensive anti-terrorism legislation.

Within hours of the bombing, a suspect, Timothy James McVeigh, was arrested by police, initially in connection with a driving violation, and on May 10, 1995, Terry Lynn Nichols, a friend of McVeigh's who had been held as a material witness, was charged in connection with the crime. McVeigh and Nichols allegedly have ties to citizen paramilitary militias in Michigan and Arizona and, since the bombing, official and media attention has focused on these groups. On August 16, 1995, the two suspects were arraigned in federal court. They pled not guilty.

U.S. Response to Combat Terrorism

Domestic Legislation

Much U.S. policy against terrorism was shaped in reaction to the murders of Israeli athletes in the 1972 Munich Olympics. Much of the policy remains unchanged, but the thrust became increasingly aggressive as terrorist attacks against U.S. people abroad became more frequent and deadlier in the 1980s. Congress passed a series of laws to clearly identify terrorism as a crime, to set up procedures for apprehending and punishing perpetrators worldwide, and to require or permit sanctions on countries supporting terrorism.

No all-encompassing federal law explicitly pertains to domestic terrorism. For example, a terrorist act may be an actual or attempted bombing, armed robbery, arson,

international terrorism (a measure at least partially aimed at Russia), and (3) establish a State Department coordinator for counter-terrorism.

Most experts agree that the most effective way to fight terrorism is to gather as much intelligence as possible and to disrupt terrorist plans and organizations before they act and to organize multinational cooperation against terrorists and countries that support them. The United Nations (U.N.) action against Libya is an example of the latter. Libya's refusal to meet a U.N. deadline to turn over individuals suspected of two aircraft bombings in 1988 and 1989 resulted in U.N.-mandated sanctions starting April 15, 1992.

The U.N. action against Libya was significant as the first worldwide coalition against a country accused of international terrorism. Several factors made the action possible: first, terrorism has touched many more countries in recent years, forcing governments to put aside parochial interests. (Citizens from over 30 countries died in Libyan-sponsored bombings.) Second, the end of the Cold War contributed to increased international cooperation against terrorism. And third, U.S. determination to punish terrorist countries -- by military force in some instances -- once their complicity was established was a major factor spurring other countries to join U.N.-sponsored action.

It took a long time for the international community to come together against a terrorist state. Most governments have preferred to handle terrorism as a domestic problem without outside interference. Some governments were also wary of getting involved and possibly attracting additional terrorism in the form of reprisals. Others were reluctant to join in sanctions if their own trade interests might be damaged or they sympathized with the perpetrators cause. These impediments have not disappeared. And finally, there is the persistent problem of defining terrorism without abandoning long-held protection for persons fleeing persecution for political crimes.

One valuable law enforcement tool in combatting international terrorism is extradition of terrorists. International extradition traditionally has been subject to limitations. These include the refusal to extradite for political or extraterritorial offenses and the refusal of some countries to extradite nationals. The U.S. has been encouraging the negotiation of agreements with fewer limitations, in part as a means of facilitating the transfer of wanted terrorists. Because terrorism involves politically motivated violence, the Department of State has recently sought to curtail the availability of the political offense exception to avoid extradition for certain types of violent acts. However, some argue that curtailing the political offense exception and other restrictions on extradition may be inappropriate when dealing with non-democratic governments.

Constitutional/Statutory Limitations

In responding to the risk of terrorist activity here and abroad, sensitivity to constitutional protections is necessary. For example, during investigations of allegations of possible terrorist activity, the prohibition against unreasonable searches and seizures in the Fourth Amendment, the protection of the freedoms of speech and association in the First Amendment, the protection of the right to bear arms in the Second Amendment, and due process rights under the Fifth and Fourteenth Amendments may be implicated. The constitutional framework sets the outside limits within which any official investigations must operate.

The U.S. government has established specialized mechanisms for coordinating and implementing counter-terrorism policy. Congress' role in policy development and consultation, to date, has been limited.

New Legislative Initiatives

In the current Congress, six bills and two amendments in the nature of substitutes with multifaceted counter-terrorism components have been introduced. The Omnibus Counter-terrorism Act of 1995, President Clinton's proposal, was introduced on February 10, 1995, as H.R. 896 by Representative Schumer and as S. 390 by Senator Biden.

On April 27, Senator Dole introduced S. 735, a Republican (and post-Oklahoma City bombing) concept of comprehensive terrorism legislation. A revised version of the bill, amendment no. 1199, was subsequently substituted by request on May 25, 1995. The amendment tracked the substance of S. 735, but it contained some changes.

On May 5, Senator Daschle introduced S. 761, a new, updated Administration bill, which incorporated major elements of both previous bills with some refinements, in effect narrowing the gap between the original Administration bill and many new elements added by Senator Dole's proposal.

On May 25, Representative Hyde introduced H.R. 1710, a House Republican omnibus counter-terrorism bill that incorporated major elements of the Administration bills; reworked Administration provisions relating to terrorist fund-raising; reworked Administration provisions relating to deportation of alien terrorists; and established a national counter-terrorism center. The House Republican bill, as introduced, did not include provisions regarding federal habeas corpus reform.

On June 7, the Senate passed a compromise version of S. 735. The measure included provision for a study of explosive taggants and of placement of taggants into precursor chemicals, for promulgation of implementing regulations six months after completion of the study, and for criminal penalties for possession of, or trafficking in, explosives lacking taggants effective ninety days later. S. 735 rejected Administration proposals authorizing the President to designate domestic fundraising agents of foreign terrorist groups. The bill as passed did not expand emergency wiretap authority to cover conspiratorial activities involving domestic or international terrorism. It contained a prohibition against fundraising for terrorist organizations, but it did not adopt the Administration proposal authorizing the President to designate domestic fundraising agents of foreign terrorist groups. It did include federal habeas corpus reforms directed toward state and federal petitioners and state capital cases. In addition, the Senate-passed bill: (1) made it a crime to teach, demonstrate, or distribute bomb-making information if the person intends or knows it would be used for criminal purposes; (2) banned foreign aid to countries that aid or provide military supplies to terrorist nations; and (3) like H.R. 1710 as introduced, did not exempt humanitarian aid from fundraising bans on terrorist organizations.

On December 5, the House Judiciary Committee reported out H.R. 1710 with an amendment, H.Rept. 104-383. On the same day, an amendment in the nature of a substitute was introduced by Representative Hyde. Also on December 5, H.R. 2703 was introduced by Representative Hyde for himself, Representative McCollum,

Court found that its jurisdiction under 28 U.S.C. § 2241 was not repealed by implication by the Act. Because of the continued availability of habeas corpus under the Court's original jurisdiction, the Court concluded that no plausible argument could be made that the Act deprived the Court of appellate jurisdiction under Art. III, Sec. 2. The Court found further that the Act's new restrictions on successive habeas corpus petitions do not amount to a suspension of the writ of habeas corpus in violation of Article I, Sec. 9 of the Constitution.

Victim Restitution. The measure provides for mandatory victim restitution for certain crimes, while permitting restitution in others; and sets out a procedure for issuing and enforcing restitution orders. It also addresses compensation and assistance for victims of terrorism or mass violence. The act provides a mechanism for closed circuit televised court proceedings for victims of crime. Further, it provides an exception to foreign sovereign immunity in cases seeking money damages for specified terrorist acts.

Expanded Availability of Investigative Tools and Other Assistance to Law Enforcement. As enacted, the law directed the Attorney General and the Director of the FBI to study electronic surveillance law and guidelines and those relating to pen registers and trap and trace devices. The law amends the definitions of "electronic communication" and of "readily accessible to the general public" in the federal wiretap law. In addition, the act extends the potential time that a suspect may be held pending a detention hearing. In connection with stored electronic communications, it requires wire or electronic services providers or remote computing services to preserve records and other evidence in its possession, upon request of a government entity, for a maximum of 180 days, pending issuance of a court order or other process. In addition, this measure authorizes the Attorney General to limit certain access to federal government buildings or their immediate environs in the District of Columbia. Further, as enacted it requires the Attorney General to report to Congress on the results of a study of thefts from military arsenals. The Attorney General is also directed to collect data from 1990 forward on crimes, threats of violence, and acts of violence against Federal, State, and local government employees and their families in the performance of their lawful duties. The U.S. Sentencing Commission is directed to study and report to Congress on the deterrent effect of existing guidelines on terrorist activity damaging a Federal interest computer.

The act also establishes a Commission on the Advancement of Federal Law Enforcement, charged with studying and reporting to Congress regarding a number of issues including, among others, Federal law enforcement capability to investigate and deter adequately the threat of terrorism facing the United States; standards and procedures used by Federal law enforcement to carry out significant criminal law enforcement operations; and the investigation and handling of specific criminal law enforcement cases by the U.S. government and Federal law enforcement agencies. The act includes provisions implementing the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on March 1, 1995. The Attorney General and the Secretary of the Treasury, with the concurrence of the Secretary of State, are authorized to support overseas law enforcement training activities. The Treasury Secretary is also directed to study and report to Congress on issues relating to the marking, rendering inert, and licensing of explosive materials and precursor chemicals. The Secretary is mandated, in consultation with the advanced counterfeit deterrence steering committee, to study and report to Congress on the use

removal of alien terrorists by denying them the opportunity to apply for various types of relief from expulsion. Among these types of relief are asylum, adjustment of status, and suspension of deportation.

Terrorism-related provisions aside, P.L. 104-132 contains several more general and farther reaching revisions of immigration law. For example, aliens who enter the U.S. without inspection will now be subject to removal through exclusion proceedings rather than deportation proceedings, regardless of how long they have resided here. One effect of this change will be to deny long-term undocumented residents the opportunity to apply for suspension of deportation. Suspension of deportation is the primary avenue through which long-term residents who have had families here and become part of the community, such as the Nicaraguans who entered during the 1980s, may obtain authority to reside here permanently.

Another significant change in P.L. 104-132 is the establishment of procedures for the expedited removal of aliens who arrive without documents or with fraudulent documents. These arrivals now can be removed without extended hearing or review unless they can show they have a credible claim for asylum. Even though the House had earlier approved similar expedited removal procedures as part of H.R. 2202, they remain controversial in the Senate. In a floor amendment to S. 1664, a major immigration enforcement bill, the Senate narrowly voted to replace the expedited removal provisions of P.L. 104-132 with a more limited expedited removal measure. S. 1664 passed the Senate May 2 as its version of H.R. 2202.

P.L. 104-132 also revises procedures for removing aliens who have committed crimes. Various categories of deportable crimes are expanded, the timetable for deportation is shortened, and rules for the detention and removal of aliens convicted of aggravated felonies are applied to most other criminal grounds for removal. As with other immigration-related provisions of P.L. 104-132, proposals to amend the process for removing criminal aliens also are addressed in the Senate- and House-passed versions of H.R. 2202.

Funding and Hiring of Personnel. As enacted, P.L. 104-132 authorizes \$114 million for FY1997, \$166 million for FY1998, \$96 million for FY1999, and \$92 million for FY2000 for the FBI to combat terrorism. Appropriations for the U.S. Customs Service are authorized of \$8 million per year from FY1997-FY1999, and \$7 million for FY2000. Funding for the DEA for antiviolence crime initiatives; antidrug initiatives, and DEA infrastructure, is authorized at \$35 million for FY1995, \$40 million for FY1998, \$45 million for FY1999, and \$52 million for FY2000. The Department of Justice is authorized to receive \$10 million per year from FY1997-FY1999, and \$11 million for FY2000 to hire additional Assistant U.S. Attorneys and attorneys within the Criminal Division, and to provide for increased security at federal facilities. Funding for the Department of Treasury law enforcement agencies for counterterrorism is authorized at \$10 million per year from FY1997-FY2000. Appropriations for the U.S. Secret Service for White House security and Presidential protection are authorized at \$11 million each for FY1997 and FY1998, \$13 million for FY1999, and \$15 million for FY2000. U.S. Park Police funding is authorized at \$500,000 per year from FY1997-FY2000. Appropriations for the federal judiciary to respond to the increased demands resulting from this act including supervised release, and pretrial and probation services, are authorized at a level of \$10 million per year from FY1997-FY1999, and \$11 million for FY2000. In addition, up to \$10 million is authorized to the National Institute of

policy focus from what some see as the real long-term terrorist threat: international foreign-supported and state-sponsored terrorism?

The Administration and leaders of both parties in Congress have proposed new legislation that would expand the FBI's authority to investigate groups and individuals who might engage in politically motivated violence. While the public seems to generally support proposals to enhance the federal government's ability to prevent domestic terrorism, some have expressed concern that such measures may open the doors to the official abuse of the rights of Americans comparable to that in the 1960s under the program known as "COINTELPRO."

Central to the activities of terrorist organizations is funding. P.L. 104-132 prohibits fundraising for designated terrorist organizations, most financial transactions with terrorist states, and assistance to countries aiding or providing military support to terrorist states. It also prohibits providing material support or resources, not including medical or religious materials, knowing that they will be used to commit certain terrorist crimes.

Another issue of substance is that of an appropriate role for the military in combatting terrorism. Clearly, military resources could be most valuable in assisting law enforcement authorities in detection and monitoring suspected terrorist activity. A proposal advanced by the Clinton Administration would amend the Posse Comitatus Act to permit the use of the military to assist in civilian law enforcement in cases involving chemical and biological weapons. Former Secretary of Defense Casper Weinberger has criticized this proposal as being "written too vaguely" and as possibly "needlessly undercut[ting] civil liberties guaranteed by the Constitution."

Protecting against Terrorism while Protecting Constitutional Rights

In legislation to respond to the threat of terrorism, issues arise regarding the tension between the need to ensure constitutional rights and the need to protect against terrorist activities. This is particularly true when the focus is on domestic terrorism or on actions in furtherance of international terrorism occurring within the United States, or where the pertinent investigations or prosecutions occur within the United States. Constitutional questions may arise regarding freedom of speech or association, prohibitions against unreasonable searches and seizures, protection of the right to bear arms, and due process protections.

For example, terrorism is often characterized in part by efforts to attain political or social goals through the use or threatened use of force or violence. The ideological underpinnings of terrorism may give rise to questions as to whether legislative responses to terrorism intrude into First Amendment protected freedom of speech.

The Fourth Amendment protects against unreasonable searches and seizures and requires searches, seizures, or arrests to be made pursuant to a warrant unless circumstances fall within exceptions to the warrant requirement. Legislation expanding available investigative tools must address law enforcement investigative needs within the bounds set by the Fourth Amendment. All of the bills discussed in this report have provisions dealing with interception of communications that must comply with Fourth Amendment protections or be invalidated. Of particular concern are provisions in the Administration's bills that provide for emergency wiretaps without court authorization.

toward the hiring of 59 additional inspectors, and another \$6.3 million to set up four permanent "National Response Teams" to investigate bombings and bomb threats.

The Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132, authorizes almost \$1 billion over a 4-year period for antiterrorism spending. For more information on funding provisions, see "funding" section under New Legislative Initiatives and discussion below in regard to Effectively Enforcing Immigration Laws.)

Effectively Enforcing Immigration Laws

Enacting tougher standards for excluding security risks will have little effect unless all prospective entrants are screened thoroughly. Thorough screening, in turn, requires minimizing opportunities for surreptitious entry and providing reliable, up-to-date information to consular officers who issue visas abroad and to immigration officers who inspect arrivals at ports of entry. At the same time, expanding international travel has put pressure on Congress to streamline and expedite the screening process.

National security is among the concerns that have made border security a budget priority. P.L. 104-91, which funded the enforcement activities of the Immigration and Naturalization Service (INS), made more money available for adding Border Patrol agents, adding land border inspectors, expanding automated border lookout systems, and generally modernizing border control systems. Authority to expand border controls even further is contained in the House- and Senate-passed versions of H.R. 2202, a broad immigration enforcement bill scheduled to be referred to a conference committee shortly. H.R. 2202 also addresses alien smuggling and document fraud.

Meanwhile, Congress enacted legislation in 1994 to authorize the State Department to charge fees for processing machine readable visas (MRVs) and similar documents and to use the proceeds for consular services. Proceeds from the MRV fee have been used for the Department's Border Security Program. This program seeks to upgrade automated name-check technology and make it more widely available to consular posts, provide consular officers with more information on potential security threats, and improve the integrity of nonimmigrant visas and U.S. passports.

Funding aside, an additional issue has arisen with respect to making law enforcement intelligence and similar information available to consular posts. Apparently, some agencies have been reluctant to share certain information, because the State Department is not itself a law enforcement agency and because of possible security concerns about foreign personnel working at our foreign posts.

LEGISLATION

Note: Approximately 32 bills have been introduced in the 104th Congress that may be regarded as addressing various aspects of terrorism. Major bills are listed below.

H.R. 896 (Schumer)/S. 390 (Biden)

Omnibus Counterterrorism Act of 1995. Both introduced, by request, February 10, 1995. H.R. 896 referred to House Judiciary Committee. S. 390 referred to Senate