

CRS Issue Brief

Intelligence Issues For the 102d Congress

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**Intelligence Issues
For the 102d Congress**

SUMMARY

Intelligence issues will be of significant concern during the 102d Congress. The unification of Germany, the withering of the Warsaw Pact and the protracted internal difficulties of the Soviet Union suggest to many the need for reducing the extensive intelligence resources heretofore concentrated on the threat of a Soviet attack on Western Europe. Some see these reductions as offering the potential for major cost savings in the intelligence community's budget or, alternatively, for significant realignments of priorities to focus intelligence resources in such areas as counternarcotics and counterterrorism.

The 1980s saw greatly increased spending on intelligence activities. With the end of the cold war and planned reductions in Defense Department budgets (in which most intelligence spending is included), there is strong pressure for major cuts in intelligence spending. Indeed, the FY1991 Defense Authorization Act requires a reduction of about a quarter of the number of Defense Department intelligence personnel over a 5-year period. Some Members, however, strongly opposed this provision and argue that major intelligence reductions should not be made until there has been a more thorough study of future intelligence requirements.

Although Congress increased its oversight of the intelligence community in recent years, the Iran-Contra hearings of 1987 led some Members to see a need for additional controls. Intelligence reform proposals dating from the mid-1970s, encompassing the intelligence community's leadership structure, the control of covert activities, and executive-legislative relations, remain at issue. In addition, President Bush's pocket veto of the FY1991 Intelligence Authorization bill, which contained significant reform provisions, may serve to refocus interest on these issues.

The Persian Gulf crisis that began in August 1990 has required the concentration on short notice of enormous intelligence resources. Some observers see this type of response as more typical of the challenges that will face the intelligence community in the coming decade even though the capabilities to meet such crises are expensive. Other international issues, including the narcotics trade, the monitoring of a series of major arms control agreements, counterterrorism, the uncertain future of the Soviet Union, and economic intelligence might also require the involvement of extensive intelligence assets.

Another set of intelligence questions arises out of concern for the complex organizational structure of intelligence activities in the Department of Defense. There have been legislative initiatives for reorganizing and simplifying the Defense intelligence efforts.

ISSUE DEFINITION

At issue are the tasks and functions of the intelligence community in the post cold war era, changes necessitated by new budgetary realities, the nature and extent of legislative oversight, and the organization of Defense intelligence. All of these areas involve significant legislative responsibilities. Congress has mandated the general responsibilities of the intelligence community, it has legislated reporting and oversight requirements, and it authorizes and appropriates monies for intelligence activities on an annual basis. In the next few years, the intelligence community will face crucial decisions in which Congress will play an active and influential role.

BACKGROUND AND ANALYSIS

New Tasks for the Post Cold War World

The end of the cold war inevitably entails a searching review of requirements for those U.S. intelligence efforts previously focused on the Soviet Union's military capabilities and the potential threat of a Warsaw Pact invasion of Western Europe. The possibility of a sudden unprovoked attack or of a crisis that degenerates into a military confrontation between East and West has been the basis of much of the tasking of the intelligence community throughout the cold war period. A central intelligence concern has been the amount of warning time that would be available in the event of a Warsaw Pact attack; enormous resources have also been dedicated to monitoring Warsaw Pact military installations, troop strength and exercise activity. If, as many believe, a much less cohesive Warsaw Pact no longer has the capability to launch an attack on NATO without many months of preparation, intelligence resources targeted on the Pact can be significantly reduced and/or redirected. Further support for this view may be gained should the number of U.S. forces stationed in Europe be reduced. On the other hand, the Soviet Union still possesses extensive military forces and some argue that it is premature to begin a major drawdown of intelligence assets in the critical regions of central Europe.

Hostilities in the Persian Gulf have required a large concentration of intelligence resources -- both "national" systems controlled by agencies in the Washington area and those controlled by military commanders -- over a period of months. There will be an opportunity to study the effectiveness of the deployment of these assets in the Persian Gulf region and to determine whether the satellite and other reconnaissance systems currently available will be adequate for future third world crises.

Some observers are looking to the intelligence community to play an enhanced role in support of U.S. policymakers dealing with various global and multinational issues. A major responsibility will be the monitoring of arms control agreements, including the complex Treaty on Conventional Armed Forces in Europe (CFE), the Intermediate-Range Nuclear Forces (INF) Treaty, a possible Strategic Arms Reduction Treaty (START), and a potential treaty on chemical weapons. These agreements may require large collection and analytical efforts. Treaties such as INF, CFE and START which include provisions for on-site inspections will pose special problems, such as the need to find properly trained and language-qualified personnel to serve as observers at isolated posts throughout the Soviet Union for long periods.

The drug problem will continue to require the attention of the intelligence community in support of domestic law enforcement agencies and the interdiction effort. There are a large number of agencies involved in the anti-drug effort and ensuring effective intelligence support requires careful procedures for such coordination. Some steps have been taken to create appropriate means and procedures for coordination. The Director of Central Intelligence (DCI) has created a Counternarcotics Center to assist with the coordination of intelligence community reporting dealing with this problem. In addition, funds for a National Drug Intelligence Center within the Defense Department were appropriated for FY1991 (P.L. 101-511). The relationship between the two centers and among the agencies involved in the anti-drug effort is as yet undefined and the Congress may seek to oversee the situation more closely and establish a specific charter for the National Drug Intelligence Center.

The threat of international terrorism will continue to require monitoring by the intelligence community. There is also some interest in more extensive economic intelligence and, perhaps, in making more of it available to U.S. business and the public.

Budgetary Issues

A key determinant of the future of the intelligence community is, of course, the level of funding provided by Congress. There has been a tremendous expansion in intelligence budgets since the beginning of the 1980s driven by new technology and requirements for supporting military operations to meet varied threats throughout the world. A high level of funding has continued, at least in relative terms, even as overall defense spending has begun to decline.

In accordance with Executive Order 12333 of Dec. 4, 1981, the Intelligence Community is considered to include the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency (DIA), the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs, the Bureau of Intelligence and Research (INR) of the Department of State and the intelligence elements of the Army, Navy, Air Force and Marine Corps, the Federal Bureau of Investigation (FBI), the Treasury and Energy Departments, and the Intelligence Community (IC) staff. In practice, budgets for the intelligence activities have been closely tied to that of the Department of Defense. (Only two categories of intelligence expenditures are not contained in defense authorization bills -- the activities of the relatively small intelligence organizations of the Departments of State, Justice, Energy, and the Treasury and the two items publicly authorized in the annual intelligence bills (the IC staff and the CIA retirement and disability system).) The size of the intelligence budget is classified and largely hidden within the Defense Department's appropriations. It is made available to Members in separate classified annexes to annual authorization and appropriation bills.

With the end of the cold war and as a result of other priorities, significant reductions in overall defense spending are being planned. When various defense programs are cut, it may become difficult for defense budget planners to avoid asking that intelligence programs included in the defense budget absorb their "fair share." If defense is cut by a percentage, failure to reduce intelligence programs included in the defense budget by the same figure would, depending on mechanisms utilized, mean that

other DOD programs would be cut even more heavily to reach the overall percentage reduction. There will thus be a certain bureaucratic momentum towards intelligence reductions. Some argue, on the other hand, that as defense spending goes down, spending on intelligence should rise, or at least remain stable, to provide better and more timely warning of potential developments affecting the national security. Better intelligence, it is argued, would allow the U.S. to maximize effectiveness of its reduced military resources and could become a cost-effective way to offset direct defense reductions.

In light of the changes in the international situation, the FY1991 DOD Authorization Act (P.L. 101-510) requires reductions in DOD intelligence personnel levels of 5% annually in the fiscal years 1992-1996. This provision was, however, strongly opposed by leading members of the House Permanent Select Committee on Intelligence, who maintained that a comprehensive assessment of intelligence requirements (within and beyond the Defense Department) should be made prior to major intelligence reductions.

In November 1990, President Bush declined to sign S.2834, the Intelligence Authorization bill for FY1991 (based on objections treated below). The pocket veto of an intelligence authorization bill -- the first such veto on intelligence legislation -- raised the question of whether funds can be spent on intelligence activities in the absence of legislative authority. Although other appropriations measures are not infrequently passed without accompanying authorization acts, the National Security Act of 1947, as amended in 1985 by P.L. 99-169, specifies that intelligence agencies may obligate funds only if "those funds were specifically authorized by the Congress." Intelligence funds were appropriated in the DOD Appropriations Act (P.L. 101-511) and the intelligence agencies have continued to function after the President's pocket veto, but serious concern was expressed by some Members that the clear intent of the law was being ignored. The issue is likely to resurface early in the 102d Congress.

Intelligence Reform Issues

A number of intelligence reform proposals that date from the mid-1970s, including stronger reporting requirements, annual authorizations, and Senate confirmation of CIA's inspector general, have been enacted. Others are still under consideration. The bulk of these proposals may be placed in three categories: covert actions, the role of the Director of Central Intelligence, and Senate confirmation of senior intelligence officials.

Covert Actions

The Intelligence Authorization bill for FY1991 (S. 2834), pocket vetoed by President Bush on Nov. 30, 1990, included new requirements regarding reports to Congress of Presidential findings authorizing covert actions. These provisions resulted from congressional opposition to the methods followed in the Iran-Contra affair in which no notice was given to Congress of an arms sale to Iran and the subsequent legal opinion by a Justice Department official that the "timely" notification required by the Intelligence Oversight Act of 1980 could be delayed by the President for an indeterminate period.

S.2834 would have tightened reporting requirements; the Joint Explanatory Statement to the Conference Report on the bill specified that when the President implements a covert action under exigent circumstances he "must notify the [two intelligence] committees within a few days." The President took issue with this statement, arguing that, "Such an interpretation would unconstitutionally infringe on the authority of the President and impair any administration's effective implementation of covert action programs." The President also objected to the bill's requirement that requests to foreign governments to conduct covert actions be reported to the Congress.

The involvement of Congress in overseeing covert actions is likely to remain controversial. Some within the executive branch and in Congress may be opposed to any efforts to change present laws dealing with covert actions in ways which would further limit the President's freedom of action and, in their view, endanger U.S. operations and operatives. On the other hand, others believe that covert actions are inherently instruments of U.S. foreign policy (as opposed to the information gathering functions of the intelligence community which are usually acknowledged to be a direct executive responsibility) and as such require close congressional involvement. A number continue to believe that there should be a requirement that all covert actions be reported to Congress in advance or, at most, within 48 hours of their approval by the President.

Role of the Director of Central Intelligence

Other intelligence reform issues may come before the 102d Congress. Senator Specter introduced legislation in both the 100th and 101st Congresses to separate the responsibilities of the Director of Central Intelligence as leader of the entire intelligence community from his specific responsibilities as head of the CIA. Arguments in favor of this proposal center on reducing the workload of the DCI and ensuring that he not be overly beholden to the CIA, which is only one agency within a large and complex intelligence community. Arguments against the concept are based on concerns about adding additional layers of bureaucracy and isolating future DCIs from their institutional base and operational support in the CIA.

Other legislation previously considered would fix the length of the DCI's tenure at 7 years, to provide him with more independent status and the intelligence community with managerial stability. Opponents of such provisions argue that intelligence policy is an integral part of a President's constitutional authority in foreign and defense policy and consider that such measures would reduce the DCI's responsiveness and accountability to the President.

Senate Confirmation of Senior Intelligence Officials

The 101st Congress, concerned about the independence, capabilities, and effectiveness of the CIA Inspector General, passed legislation (P.L. 101-193), over Administration objections, requiring Presidential nomination and Senatorial confirmation of the CIA Inspector General. In November 1990, the Senate confirmed the nomination of Frederick P. Hitz, a former CIA official, to the post. To follow up on the requirement that the CIA Inspector General be appointed by the President and confirmed by the Senate, consideration may be given to legislating a requirement that other key CIA officials, such as the general counsel and deputy directors, also be confirmed appointments.

The Organization of Defense Intelligence

One of the longstanding concerns of many intelligence observers has been the complexity and apparent duplication existing within the intelligence organizations and entities of the Defense Department. In addition to the National Security Agency, which essentially provides information to other parts of the intelligence community, and the Defense Intelligence Agency, which provides intelligence support to the Secretary of Defense and the Joint Chiefs of Staff, the four Services have sizable intelligence components. Outside the Washington area, there are the intelligence support staffs, some of considerable size, of the unified and specified commanders and their subordinate commands. This elicits widespread congressional interest because of the number of personnel and the extent of the funding involved. The Senate Armed Services Committee noted in July 1991 the criticisms that have been made regarding the existence of gaps in intelligence support and coverage while there is considerable duplication of effort in other areas. The Committee also noted the tendency of military commanders to seek their own intelligence organizations and a disinclination by the national intelligence community to place high priority on the needs of operational commanders.

The FY1991 DOD Authorization Act (P.L. 101-510) directs that the Secretary of Defense and the Director of Central Intelligence conduct a joint review of defense intelligence programs to consolidate functions to reduce redundancy and make changes to improve efficiency of the organizations and the quality of the intelligence products. The conference report accompanying the legislation indicated an intention that Congress will be conducting hearings in the coming months.

This is a complex set of issues. On one hand, the number of intelligence entities in DOD and the personnel involved in their operations consume a significant amount of overall intelligence spending. On the other hand, military commanders who must prepare for combat require intelligence support which they are extremely reluctant to leave in the hands of others unknown to them and beyond their influence and control. Balancing these issues will no doubt be difficult and may extend throughout the period of the 102d Congress.

Conclusion

The issues discussed above will face the legislative and executive branches in the months ahead. Their resolution will, it appears, be difficult and time consuming. To varying extents they also have significant implications for the relationship between Congress and the intelligence community. Many legislative proposals will probably extend, to some degree, the role of Congress in prescribing the organization and functions of the intelligence community and its components. They will thus raise fundamental issues of separation of powers between the legislative and executive branches of the Federal Government. They will probably involve pragmatic considerations regarding the difference between oversight and control. If it moves very far in the latter direction, Congress may assume an increasing responsibility for supervising the national intelligence community.

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