

Implement a Broader Approach to Stop Non-State Support for Terrorists

The United States should use all the tools at its disposal to stop or disrupt non-state sources of support for international terrorism.



Today's terrorists rely less on direct state sponsorship and more on private financial and logistical support. Many terrorist groups secretly exploit the resources of international nongovernmental organizations (NGOs), companies, and wealthy individuals. For example, bin Ladin and other extremists have used the Afghanistan-based NGO Maktab al-Khidamat for financial and logistical support. By penetrating an NGO, terrorists

gain not only access to funding and international logistics networks, but also the legitimacy of cover employment with a humanitarian organization.

To date, the focus of the U.S. Government's efforts to disrupt private support to terrorists has been on prosecutions under provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This law requires the Secretary of State to designate groups that threaten U.S. interests and security as Foreign Terrorist Organizations. There are 28 organizations on the most recent list, issued in October of 1999 by the Secretary of State. Current practice is to update the FTO list every two years, although the threat from terrorist groups can change at a faster pace.

The FTO designation makes it a crime for a person in the United States to provide funds or other material support (including equipment, weapons, lodging, training, etc.) to such a group. There is no requirement that the



contributor know that the specific resources provided will be used for terrorism. In addition, American financial institutions are required under the law to block funds of FTOs and their agents and report them to the government.

The FTO designation process correctly recognizes that the current threat is increasingly from groups of terrorists rather than state sponsors. In addition to deterring contributions to terrorist organizations, FTO designation serves as a diplomatic tool. It provides the State Department with the ability to use a "carrot and stick" approach to these groups, providing public condemnation and a potential for redemption if the groups renounce terrorism.

There is little doubt that all groups currently on the list belong there. But the exclusion, for example, of the Real Irish Republican Army, which carried out the Omagh car bombing in Northern Ireland in 1998 killing 29 people and injuring more than 200, raises questions about completeness of the list. This diminishes the credibility of the FTO list by giving the impression that political or ethnic considerations can keep a group off the list.

Rather than relying heavily on the FTO process, the U.S. Government should take a broader approach to cutting off the flow of financial support for terrorism from within the United States. Anyone providing funds to

terrorist organizations or activities should be investigated with the full vigor of the law and, where possible, prosecuted under relevant statutes, including those covering money laundering, conspiracy, tax or fraud violations. In such cases, assets may also be made subject to civil and criminal forfeiture.

"The president should direct the creation of a joint task force...."

—Commission Recommendation



In addition, the Department of the Treasury could use its Office of Foreign Assets Control (OFAC) more effectively. OFAC administers and enforces economic sanctions. For example, any U.S. financial institution holding funds belonging to a terrorist organization or one of its agents must report those assets to OFAC. Under OFAC's regulations, the transfer of such assets can be blocked. OFAC's capabilities and expertise are underutilized in part because of resource constraints.

Other government agencies, such as the Internal Revenue Service

and Customs, also possess information and authority that could be used to thwart terrorist fundraising. For instance, the IRS has information on nongovernmental organizations that may be collecting donations to support terrorism, and Customs has data on large currency transactions. But there is no single entity that tracks and analyzes all the data available to the various agencies on terrorist fundraising in the United States.

In addition to domestic efforts, disrupting fundraising for terrorist groups requires international cooperation. A new United Nations convention, the International Convention for the Suppression of the Financing of Terrorism, provides a framework for improved cooperation. Each signing party is to enact domestic legislation to criminalize fundraising for terrorism and provide for the seizure and forfeiture of funds intended to support

terrorism. The parties are to cooperate in the criminal investigation and prosecution of terrorism fundraising, and in extraditing suspects.

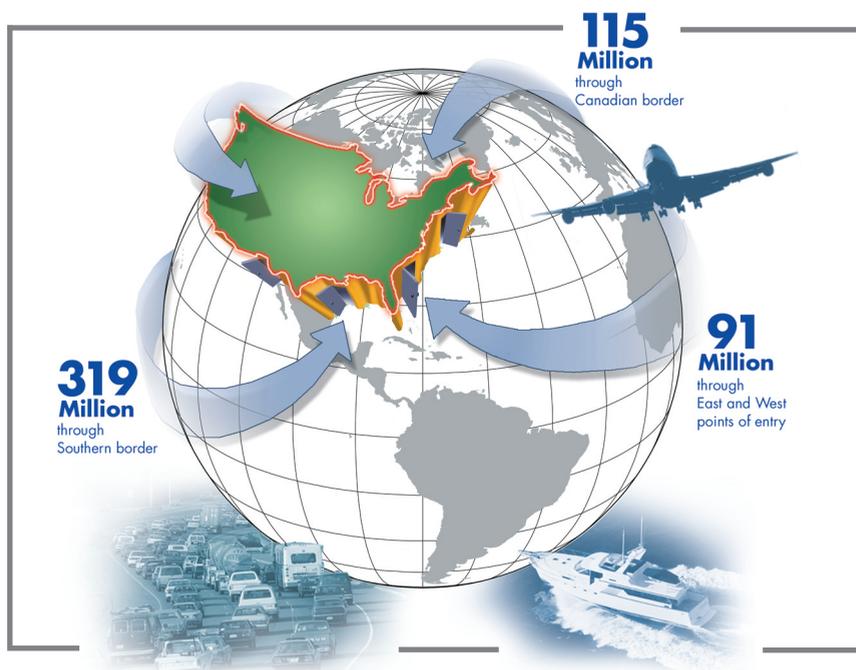
Recommendations:

- The President should direct the creation of a joint task force consisting of all the agencies in the U.S. Government that possess information or authority relevant to terrorist fundraising. The task force should develop and implement a broad approach toward disrupting the financial activities of terrorists. This approach should use all available criminal, civil, and administrative sanctions, including those for money laundering, tax and fraud violations, or conspiracy charges.
- The Secretary of the Treasury should create a unit within the Office of Foreign Assets Control dedicated to the issue of terrorist fundraising.
- The Congress should promptly ratify the International Convention for the Suppression of the Financing of Terrorism and pass any legislation necessary for full implementation.
- The Secretary of State should ensure the list of FTO designations is credible and frequently updated.
- Congress should review the status of the FTO statute within five years to determine whether changes are appropriate.

Of the large number of foreign students who come to this country to study, there is a risk that a small minority may exploit their student status to support terrorist activity. The United States lacks the nationwide ability to monitor the immigration status of these students.

In spite of elaborate immigration laws and the efforts of the Immigration and Naturalization Service, the United States is, de facto, a country of open

borders. The Commission found that the massive flows of people across U.S. borders make exclusion of all foreign terrorists impossible. There are more than 300 million legal crossings each year at the U.S./Mexican land border alone. Millions more stream through our airports.



APPLICANTS FOR ENTRY INTO THE U.S. IN 1999

visitor's visa, but overstayed their visa and remained here to live. That said, of the millions who come here to live or visit only a minuscule portion of all foreigners in the United States attempt to harm the country in any way.

Beyond the millions who legally come and go, over four million persons reside illegally in the United States. About half of them entered the country without inspection, meaning they crossed U.S. borders between inspection stations or entered by small boat or aircraft. Roughly another two million people entered the United States with a valid

While the problems of controlling America's borders are far broader than just keeping out terrorists, the Commission found this an area of special concern. For example, thousands of people from countries officially designated as state sponsors of terrorism currently study in the United States. This is not objectionable in itself as the vast majority of these students contribute to America's diversity while here and return home with no adverse impact on U.S. national security. However, experience has shown the importance of monitoring the status of foreign students. Seven years ago, investigators discovered that one of the terrorists involved in bombing the World Trade

Center had entered the United States on a student visa, dropped out, and remained illegally. Today, there is still no mechanism for ensuring the same thing won't happen again.

One program holds promise as a means of addressing the issue. The Coordinated Interagency Partnership Regulating International Students (CIPRIS), a regional pilot program mandated by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIR/IRA) collects and makes readily available useful and current information about foreign student visa holders in the United States. For example, CIPRIS would record a foreign student's change in major from English literature to nuclear physics. The CIPRIS pilot program was implemented in 20 southern universities and is being considered for nationwide implementation after an opportunity for notice and comment. The Commission believes that CIPRIS could become a model for a nationwide program monitoring the status of foreign students.

Recommendation:

- The President and Congress should work together to create an effective system for monitoring the status of foreign students nationwide.

Congress provided for the expedited expulsion of terrorists with procedures for the use of secret evidence. The protections contained in these procedures have not been used.²

The 1993 World Trade Center bombing brought to light the problem of international terrorists entering and operating in the United States and illustrated the importance of removing suspected terrorists from the United States.

² Due to his *pro bono publico* representation in certain cases, Commissioner Woolsey did not participate in the deliberations on this recommendation.

In 1996, Congress established the Alien Terrorist Removal Court (ATRC). The legislation authorized use of classified information in cases involving the expulsion of suspected terrorists, but the law provided several protections for the accused, including the requirement that the alien be provided an unclassified summary of the classified evidence and appellate review by federal courts. For aliens legally admitted for permanent residence, the law allowed the use of special attorneys who hold security clearances (cleared counsel) who are permitted to review secret evidence on behalf of an alien and challenge its veracity.

The ATRC has never been used. Rather, pursuant to other statutes and case law, the Immigration and Naturalization Service (INS) has acted to remove aliens based on classified evidence presented to an immigration judge without disclosure to the alien or defense counsel.

The U.S. Government should not be confronted with the dilemma of unconditionally disclosing classified evidence or allowing a suspected terrorist to remain at liberty in the United States. At the same time, resort to use of secret evidence without disclosure even to cleared counsel should be discontinued, especially when criminal prosecution through an open court proceeding is an option.

Recommendations:

- The Attorney General should direct the Department of Justice to pursue vigorously the criminal prosecution of terrorists in an open court whenever possible.
- The Attorney General should further direct that where national security requires the use of secret evidence in administrative immigration cases, procedures for cleared counsel and unclassified summaries, such as those provided in the ATRC, should be used.

Without international cooperation, the United States cannot protect its national infrastructure from the cyber threat.

Cyber crime already has been recognized as a serious and growing problem. In response, the government has passed new laws, set new security requirements, established new centers, promoted partnerships with the private sector, and supported the exchange of information and research.

In addition to domestic efforts, the United States must seek international cooperation. Cyber criminals and terrorists using the Internet are unrestrained by national borders. Therefore, the U.S. Government must make every effort to establish international agreements and cooperation to prevent or respond to a cyber-terrorist attack.

Recommendation:

- The Secretary of State, in concert with other departments and agencies, should take the lead in developing an international convention aimed at harmonizing national laws, sharing information, providing early warning, and establishing accepted procedures for conducting international investigations of cyber crime.

Improve Executive and Legislative Branch Review of Counterterrorism Activities

The senior official responsible for coordinating all U.S. counterterrorism efforts does not have sufficient authority to ensure that the President's priorities on counterterrorism are reflected in agencies' budgets.