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SCC Meeting of 1 September 1977

PRM/NSC-30, Terrorism (1)

Agenda

NSC Memorandum of August 29, scheduling the meeting and summarizing the topics to be raised.

Talker (Read)

Talking paper for the Secretary of Defense and the Chairman, Joint Chiefs of Staff

Tab A (Read)

PRM-30, Terrorism

Background Information (Scan)

Tab A-1

Department of State Position

Tab B-1

Department of Justice Position

Coordination:

PDASD (ISA) [Signature]

DASD (PP&NSCA) [Signature]

DIR (PP&NSCA) [Signature]

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PRM-30 - TERRORISM

I. Introduction

This review must be understood against the background of the present organization for handling terrorism at the interdepartmental level and the policy of the previous administration.

In 1972 in connection with the terrorist killings of Israeli athletes at the Olympic Games in Munich, the Cabinet Committee to Combat Terrorism (CCCT) was established by Presidential Memorandum. The Cabinet Committee met once, established a working group, and has never convened again. The working group, however, chaired by the Department of State representative, has remained active in the intervening five years, meeting frequently, and expanding to include representatives from more than twenty-five agencies. This CCCT working group has been effective in increasing the level of informal interagency coordination and exchange of information; but the inaction of the Cabinet Committee itself has meant that the working group could neither bring policy issues to Executive attention nor exercise crisis management authority in actual terrorist incidents. Not surprisingly, some issues have remained unresolved.

There has been close coordination and general agreement between federal agencies on operational tactics and broad guidelines for dealing with terrorist incidents. Each agency, of course, has exercised its own judgment in the crisis management of those incidents over which it has jurisdictional responsibility. In a few incidents where the jurisdictional responsibilities of domestic agencies and those of the Department of State have overlapped, differences have arisen between the agencies on tactical decisions regarding what "concessions" can or should be made in order to protect hostage safety.

The experience of the CCCT and its working group, therefore, points to two central issues for this review.

- a. U.S. policy and capabilities for dealing with terrorism.
- b. Organization and procedures for dealing with terrorism at the interdepartmental level.

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## II. Policy and Capabilities

### A. Should there be an explicit policy for negotiating with terrorists?

Publicly addressing the question of negotiating policy and tactics on terrorism at the NSC level should be avoided. If the U.S. Government must take a public stance on terrorism, it should emphasize that terrorist acts are crimes which are subject to our federal and local laws when committed domestically and to the practices of international law where they involve the United States abroad. Acts occurring in a foreign nation are subject to the laws of that nation. Such a stance could be expressed as follows:

The U.S. Government will take all measures permitted by law in cooperation with local law enforcement agencies to prevent acts of terrorism and to bring to justice those who commit them. Furthermore, the Secretary of State will seek cooperation with foreign governments to combat terrorism.

More explicit policy and negotiating tactics should be left to the agencies and departments within their jurisdiction because the demands for guidelines and practices differ for the Department of State and national security agencies on the one hand and for domestic agencies on the other. To the degree practical, however, interagency memoranda of understanding should be used to increase interagency coordination of policies and procedures.

It was considered desirable by the working group, however, to examine alternative interagency policies that would not be publicly announced but which would provide an interagency understanding of the general premise from which all agencies would initially approach negotiations in particular terrorist incidents. Four options were considered.

Option A. Hard Line. This would be a policy of "no negotiations, no concessions," and retaliation. This policy would be urged on other governments as well.

Option B. No Concessions. Communications would be established with terrorists for talking, but no concessions would be made. Other governments involved in an incident would also be encouraged to adhere to this policy.

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Option C. Firm but Flexible. Managers of terrorist negotiations would seek to balance the aim of deterring future acts with the aim of protecting and saving lives of hostages. Publicly the negotiating posture would be firm and unyielding while seeking through negotiations to discover minor concessions that would save the lives of involved persons. The U.S. Government, however, would not pay ransoms; or release prisoners.

Option D. Maximum Flexibility. Protection of hostages and saving lives would be paramount. Negotiators would have rather wide latitude in concessions if they achieved the goal of release of hostages.

A preponderance working group favored the "firm but flexible" option. Agency representatives felt that it would not be excessively constraining but that it would encourage a tough stance against terrorists, yielding minor concessions and thereby having a deterrence effect on other terrorists.

#### RECOMMENDATION:

That a "firm" policy with flexible strategies be adopted by all agencies and that the U.S. Government take no public stance on terrorism other than to condemn it as a crime, to promise the full use of the law to deal with it as a crime, and to seek cooperation with other governments to combat terrorism.

#### B. The Adequacy of Capabilities for Dealing with Terrorism.

Both the legal authority and the law enforcement capabilities are considered adequate for responding to acts of terrorism committed within the U.S. as long as they involve conventional means of violence. Terrorism involving mass destruction or a number of smaller scale acts staged simultaneously could exceed the responsible agencies' ability to respond effectively. It is the upper range of the spectrum of violence, therefore, that is the cause for future concern. Preventive capabilities are less certain.

Special areas for both agency and interagency concern about capabilities were identified by the Committee:

- Although U.S. Customs Service capabilities are believed adequate for the present, more dangerous materials and weapons components being brought into the U.S. would require expanded capabilities.

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- The Energy Research and Development Administration has considerably improved upon its nuclear device detection capability with advanced technology and through the deployment of duplicate NEST Team equipment and personnel to the East Coast. However, further expansion of these capabilities may be required. Coordination and training with the Department of Defense for disarming and disposal of such devices is presently underway to provide greater capability for such events.
- U.S. military capabilities for countering terrorism, both at home and abroad, are believed generally adequate, but need a continuing assessment as the nature of terrorism evolves. Legal constraints upon the use of military forces in the United States must be recognized.

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#### RECOMMENDATION:

That these concerns, as well as others that may become appropriate through changing circumstances, be addressed by an interagency working group on a continuing basis.

#### III. Collection and Dissemination of Intelligence on Terrorist Activities.

Terrorism has been defined as violent acts or acts dangerous to human life, or threats of such acts, which appear to be intended to further political, social, religious, or economic goals by assassination, kidnapping, or intimidating or coercing the public or a government or to obtain widespread publicity for a group or its cause, and includes activities directly supportive of such acts. It is generally categorized as either domestic or international. International terrorism transcends national boundaries and domestic terrorism does not.

International terrorism includes violent attacks or threats of attacks likely to cause serious injury to U.S. citizens abroad or damage to U.S. interests abroad by any terrorist group, whatever its political persuasion, opposed to U.S. policies or U.S. presence abroad. It does not cover purely domestic terrorism in the United States or within countries abroad, or the activities of revolutionary and liberation movements as such.

Responsibility for the collection and dissemination of intelligence on the foreign aspects of international terrorism rests with the foreign intelligence agencies as defined in Section 5 of Executive Order 11905. Within

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the United States and its territories, the Federal Bureau of Investigation is authorized, subject to guidelines issued by the Attorney General, to collect and disseminate intelligence on both foreign directed and domestic groups which may engage in acts of international terrorism. The FBI is also responsible for the collection and dissemination of intelligence on U.S. domestic terrorism. The working group did not address the adequacy of U.S. domestic intelligence efforts and the recommendations that follow are directed toward the collection and dissemination of intelligence on international terrorism.

The present intelligence effort with respect to international terrorism is a fragmented one, neither tightly organized nor closely coordinated in either its collection or analytical aspects. This effort includes the discrete responses of Intelligence Community members to (a) the national-level Key Intelligence Question guidance, (b) special requests for intelligence support from the CCCT working group, and (c) internal departmental requirements.

A more coordinated community approach would provide: (a) focus to departmental programs, (b) better organization of resources, (c) a more rational work effort, (d) a more useful product at both the departmental and national levels, and (e) better and more comprehensive support for agencies charged with handling terrorist threats and incidents.

A subcommittee on international terrorism should be formed under the Critical Collections Problem Committee to address technical problems that require coordinated resolution and response.

A. In the short term, it would:

1. Examine existing legal problems and seek uniform interpretations of existing orders and guidelines.
2. Develop procedures for ensuring coordinated evaluations of international terrorist threat reporting.

B. In the midterm, it would:

1. Press for the assignment of new collection priorities in DCID No. 1/2 for coverage of international terrorism.

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2. Define data base needs for meeting Intelligence Community responsibilities, and recommend appropriate steps to ensure compatibility and possible data-sharing among those existing and planned data base systems developed by member agencies.
3. Consider, assess, and recommend new analytical tools for handling threat assessment and projection tasks more effectively.

C. In addition, the subcommittee would be responsive to such other broad foreign intelligence problems and interests as may be referred to it by the chairman of the interagency group concerned with the U.S. Government's program for combatting terrorism.

D. The subcommittee would report at intervals of six and twelve months after organizing to address these intelligence problems, recommending such steps as may be required by the DCI and at the NFIB level for resolution of those problems.

E. The subcommittee would act in consonance with the provisions of Executive Order 11905 dealing with foreign intelligence activities. The subcommittee would not be empowered to alter the assignment of intelligence jurisdiction for terrorism or to waive, alter, interpret, supercede, or rescind intelligence regulations or guidelines of any agency or of the Intelligence Community.

The Executive Committee of the Working Group constituted under the SCC which is proposed in Section IV would have responsibility for discussing and proposing policy recommendations regarding the adequacy of domestic and international intelligence efforts. The Executive Committee, which has the responsibility in developing policy recommendations would coordinate its efforts with the CCPC Subcommittee chartered to deal with technical intelligence problems.

RECOMMENDATION:

That the Director of Central Intelligence establish a subcommittee under the CCPC to address the technical problems as outlined above.

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#### IV. Organization

##### A. Lines of authority and jurisdiction for handling terrorist incidents.

The Department of State has primary responsibility in terrorist incidents involving U.S. citizens and interests that occur outside of the United States. The Department of Justice has a preponderance of statutory responsibility for investigation and prosecution of crimes characterized as terrorism that take place in the U.S. and that are violations of Federal law. Other Federal agencies do exercise jurisdiction in specific circumstances. For example, the Federal Aviation Administration (FAA) has exclusive responsibility for the direction of law enforcement activity affecting the safety of persons aboard aircraft "in flight". The U.S. Secret Service has important responsibilities in the protection of the President, other U.S. officials, visiting foreign dignitaries and foreign missions. The Department of State (Security) has important responsibilities for the protection of diplomats and official guests of the U.S. A variety of Federal agencies share statutory law enforcement jurisdiction for criminal activity of a terrorist nature. Thus, coordination is required in incidents that impact on these established jurisdictional interests and responsibilities. Such coordination is accomplished formally by Memoranda of Understanding or other procedural arrangements negotiated between interested agencies or informally through a task force organization (or other crisis management organization), which is facilitated by long standing working relationships among individual agency representatives. Presently the SCC of the National Security Council is the next level where interagency issues can be resolved if agencies are unable to reach formal or informal agreements. Because Presidential Directive 2 gives the Special Coordination Committee of the NSC responsibility for crisis management, a new working group on terrorism could be properly subordinated to the SCC.

##### B. Should an Interagency Group Continue to Exist?

There is broad consensus that the CCCT Working Group has performed several useful functions which should continue. Some interagency group, therefore, should be reconstituted under the SCC with redefined functions, membership, and structure.

1. Tasks. The primary purpose of the group should be pre- and post-incident exchange of information. It would not be charged with incident management because that remains the

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responsibility of the agencies in whose jurisdiction an incident occurs. The group would:

- (a) Provide a continuing exchange of information and ideas among agencies having jurisdictional and support responsibility for combatting terrorism.
- (b) Identify key individuals having operational responsibility within each agency and facilitate the development of effective working relationships among these individuals.
- (c) Provide a forum for the frank discussion of terrorism issues.
- (d) Provide a framework for the encouragement of research and development relevant to the problems of combatting terrorism.

2. Structure and Membership of an Interagency Group.

- (a) The membership of the interagency group should consist of agencies having jurisdictional and/or support functions relating to combatting terrorism.
  - (1) Appropriate senior level representatives (and alternates) of each agency should be designated to serve on the interagency group.
  - (2) The minimal security clearance for attendance at Working Group meetings should be SECRET.
- (b) The interagency group should be chaired by Justice and/or State because these agencies have lead responsibility for domestic and international terrorist incidents. (State has expressed a strong desire to hold the chairmanship. Justice has urged a co-chairmanship with State. If a co-chairmanship cannot be arranged, Justice insists on holding the chairmanship.)
- (c) There should be an Executive Committee of the interagency group which would develop policy recommendations.

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- (1) The Executive Committee would be composed of representatives from State, Justice, CIA, Treasury, DOD, ERDA, DOT, and the NSC Staff.
- (2) The Chairman of the interagency group would also serve as chairman of the Executive Committee.

The dispute over the chairmanship of the Interagency Group and the Executive Committee could be resolved one of three ways.

Option A. State as Chairman. (State, Treasury, DOD/JCS, CIA and DOT support this option.) The State Department arguments are attached at Tab A.

Option B. Justice and State as Co-Chairmen. Since both State and Justice want to be involved in the leadership of the interagency group, one way to resolve the problem is to establish a co-chairmanship. (Justice and ERDA support this option. DOD/JCS, Treasury, DOT, State, and CIA object to a co-chair arrangement.) The Department of Justice arguments are attached at Tab B.

Option C. Justice as Chairman. This option is supported by Justice and ERDA if a co-chairmanship is not possible.

#### RECOMMENDATIONS:

That an Interagency Group and Executive Committee should continue, reconstituted under the SCC with the functions, membership, and structure described above.

On the chairmanship issue, the Working Group could make no single recommendation. Rather, three options are presented for decision.

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