

less provocative path of regime-led economic development."

That "can have the effect of subsidizing an Arab government's attempts to build a kinder, gentler autocracy," it added.

"The whole thing rings hollow," said Steven A. Cook, a fellow at the Council on Foreign Relations, a nonpartisan research group based in New York. "What is missing is not technical and financial know-how, it is the political will to reform," said Mr. Cook, whose field of study is political change in the Arab world. "I don't think these programs mesh with the president's rhetoric."

At the briefing, Mr. Larson emphasized repeatedly that the Morocco conference was not "an effort to impose anything from the outside as much as to facilitate efforts that are already being undertaken in the region" and "share experiences, share ideas" among Arab foreign ministers.

Robert Satloff, executive director of the Washington Institute for Near East Policy, a public research organization said, "If only the Arab leaders are involved, that will be a brief discussion."

Anger about a perceived bias toward Israel in Washington and about the war in Iraq have made the United States quite unpopular among many in the Arab world. Then, in February, when an Arabic newspaper published a draft of a Bush administration plan urging the world's wealthiest nations to press for political change in the Middle East, several Arab leaders erupted in anger. President Hosni Mubarak of Egypt, a close ally of Washington, called the plan "delusional."

The administration quickly abandoned the plan.

The unspoken fact behind all of the discussions, said Leslie Campbell, director of the Middle East Program at the National Democratic Institute for International Affairs, a government-financed group that promotes democracy worldwide, "is that we are trying to work with a bunch of people who are going to be kicked out of office" if democratic change moves forward. For now, he added, "it's easier to support free-trade agreements than political change."

Now, not only do many Arab leaders oppose the plan for broad democratic change, so do some opposition leaders.

"The Bush plan is opposed by the ruling elites who fear losing their privileges and powers," wrote Amir Taheri, a political commentator, in Gulf News, "and by a variety of oppositionists who use anti-Americanism as the key element of their political message."

There is little question that Arab leaders prefer the new approach. A senior Arab diplomat said in an interview that when American officials spoke to his nation's prime minister about political change recently, "the prime minister told them: 'I have two trains—the political train and the economic train. And the political train cannot run ahead of the other.'"

"So we started talking to them about economic development," the diplomat said.

A senior State Department official said discussions with several Arab states brought similar results.

In a speech to open a session of Parliament on Wednesday, King Abdullah II of Jordan emphasized that his country must continue "reform, modernization and development," which would enable "the Jordanian individual to actively take part in formulating the present and the future." He went on to emphasize that change should be focused on fighting "poverty and unemployment."

Mr. Craner, the former State Department official, said: "I would watch for the prominence of political versus economic and social reforms I discussed at the meeting. If it is mostly economic and social, it is not a good sign."

The senior Arab diplomat offered a broader warning.

"Something must happen as a result of this meeting," he said. "If nothing happens, it will be very difficult to keep this alive because there are lots of people who want to kill it."

## CONFERENCE REPORT ON S. 2845, INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

SPEECH OF

**HON. DUNCAN HUNTER**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 7, 2004*

Mr. HUNTER. Mr. Speaker, I submit the following for the RECORD:

### BACKGROUND

As the lead House conferee on those matters before the conference involving support and execution of defense intelligence activities, I find it necessary to offer amplifying remarks on the intent of House conferees on these critical areas of interest. It is unfortunate that the conference leadership saw fit to reduce the customary statement of managers to the most cursory and minimalist of documents. With all the new organizational structures and revamped relationships required by this legislation, it is particularly critical that clear legislative intent be established to guide the executive branch in implementing and executing this legislation for decades to come.

Thus, the following remarks represent my attempt to provide such clarifying intent for selected provisions of the conference report on S. 2845 that was approved by the House of Representatives on December 7, 2004.

### HOUSE ARMED SERVICES COMMITTEE CONSIDERATION OF INTELLIGENCE REFORM

During the late summer and early fall of this year, the House Armed Services Committee held a series of hearings on the recommendations contained in the 9/11 Commission Report prior to marking up H.R. 10, the House version of this intelligence reform legislation. The Committee on Armed Services' markup of H.R. 10 was limited to Title I, the National Security Intelligence Improvement Act of 2004, which addresses the core issue of the commission report, namely the organization of the intelligence community. Thus, during the conference between the Senate and the House, I, as Chairman of the Committee on Armed Services, focused primarily on Title I provisions and the potential effect of these statutory changes on the ability of the Secretary of Defense to ensure that troops in combat have the intelligence support they need.

Since a large proportion of the funding and personnel involved in the national intelligence mission reside in the Department of Defense and exist in large measure to support troops in combat, the committee was concerned that the reorganization of the intelligence community does not in any way deprive combatant commanders of needed full spectrum intelligence. It was clear as we conducted our deliberations on this matter that the 9/11 Commission found no fault with the operation of the DOD elements of the intelligence community and did not intend to affect the ability of these agencies to support the combatant commanders. It was also clear in my deliberations with fellow conferees in both the Senate and House of Representatives that the conferees had no intent to negatively affect these delicate relation-

ships. In other words, all conferees believe that the Secretary of Defense should continue to be able to manage the elements of the intelligence community resident in DOD to provide all necessary support to commanders in the field. So that there is no misunderstanding of that intent, I have prepared a description of how DOD intelligence support operates today, accompanied by a description of how the conferees intend for the new Director of National Intelligence (DNI) to implement his new authorities with respect to DOD.

### DEPARTMENT OF DEFENSE SUPPORT OF NATIONAL INTELLIGENCE MISSION

The Department of Defense operates the majority of the nation's national intelligence apparatus through the National Security Agency, the National Reconnaissance Office, the National Geospatial-intelligence Agency, and the Defense Intelligence Agency. These agencies support the intelligence requirements of both the Director of Central Intelligence (DCI) and the Secretary of Defense under a well established partnership arrangement. That partnership works effectively today and was effective before September 11, 2001, according to testimony before the committee by the leadership of the 9-11 Commission.

The reason for this complicated arrangement is that our nation's intelligence assets are a unique and valuable instrument of national security policy that must serve multiple purposes. We do not have two separate intelligence systems. Today, the same national capability and the same satellites that inform the President and senior policymakers are also used by front line military forces to carry out their mission. The use of expensive, complex systems for multiple purposes is both efficient and synergistic to effective intelligence analysis. Our tactical successes in both Afghanistan and Iraq, while simultaneously providing strategic intelligence to national policy makers, demonstrate the flexibility and effectiveness of the current intelligence sharing structure.

This integration of national and tactical intelligence and the sharing of information to users up and down the command chain is a proven strategy that the House Armed Services Committee has been developing for well over a decade. Therefore, the suggestion that national and tactical intelligence operations and assets can be surgically split into separate organizations (and budgets) fails to understand the negative impact such a step would have on how we operate and perform on today's modern battlefield. Consequently, the budget authorities assigned to the newly created Director of National Intelligence (DNI) under H.R. 10 were carefully crafted to preserve the ability of the Secretary of Defense to rely on these agencies to supply critical military intelligence to combatant commanders, yet enable the DNI to effectively perform his national intelligence mission.

The system works today because of the delicately balanced partnership that exists between the DCI and the Secretary of Defense. Thus, as we codify this new organizational concept that creates a Director of National Intelligence to manage the community, the conferees sought to protect this critical partnership to ensure that we do not weaken those parts of the intelligence system that work well and are critical to the life and death of our men and women in uniform.

### CONFEREES' INTENT

H.R. 10 was crafted in such a way that the prerogatives of senior cabinet officials were preserved and the delicate balance described above was maintained, while the Senate bill

provided the DNI with more unilateral authority to manage the intelligence community. As would be expected, the conference agreement resulted in compromises that shifted the balance somewhat. In particular, in an effort to bridge the differences between the two bills, House conferees agreed to alternative language formulations on a broad range of issues, including those related to budget authority, budget reprogramming authority, and personnel transfer authority.

#### BUDGET EXECUTION

First, the new section 1011 provides the DNI with authority to determine the budgets for national intelligence programs operated by the elements of the intelligence community, including the four major national intelligence agencies that are part of the Department of Defense. The conferees clearly intend that the DNI will rely heavily on the recommendations of the Secretary of Defense in the development and management of the appropriations of any Department of Defense element of the intelligence community, and will not involve himself unnecessarily in the budget details of DOD agencies. Clearly, section 1018 of the conference agreement preserves the authority of the Secretary of Defense to operate his department, including and especially in regard to budgetary matters affecting his agencies. In section 1011, the conferees intended to provide the DNI with broad oversight of national intelligence budgetary matters to be able to assure that national intelligence strategic objectives and programs are adequately supported. Again, the conferees did not intend for the DNI to become routinely involved in internal execution of DOD intelligence programs.

#### CLASSIFICATION OF BUDGET INTELLIGENCE TOPLINE

The Senate bill contained a budget execution mechanism that would have resulted in the declassification of the total funding level provided to the intelligence community, known as the topline. The conferees agreed that topline number should remain classified, and deliberately designed the budget execution authorities in section 1011 to achieve that objective. This was an important negotiating point in conference discussions, and there should be no confusion over the intent of the conferees to preserve the secrecy of the total funding allocated to the intelligence activities of the United States.

#### BUDGET REPROGRAMMING

Similarly, the conference agreement, also in section 1011, provides the DNI with greater reprogramming authority than is found in H.R. 10. H.R. 10, as passed by the House, provides the DNI with unilateral reprogramming authority within the National Intelligence Program for up to \$100 million annually per department for "unforeseen requirements." Even though the conferees agreed in the final conference report to allow the DNI to reprogram within the national intelligence program up to \$150 million for any purpose that "increases efficiency," it is the firm expectation of the conferees that any large reprogramming should only be made to meet unforeseen requirements and that every effort should be made to execute such reprogrammings with collaboration and concurrence of the affected agency and department heads. As a matter of policy, the appropriate process for efficiency adjustments to an agency's programs is the regular budget process and not reprogramming actions. While the conference agreement provides the DNI with this reprogramming tool, the conferees expect that use of this authority would be exceedingly rare and in times of real emergency.

#### PERSONNEL TRANSFERS

Section 1011 also provides the DNI with unilateral authority to transfer personnel out of elements of the intelligence community under limited circumstances. Under the conference agreement, the DNI has the authority to create a new national intelligence center for any reasonable purpose and may transfer up to 100 personnel from anywhere within the intelligence community to the new center, without the concurrence of the head of the agency to which the personnel are assigned. The conferees expect that the DNI will use this authority sparingly and as a last resort. The conferees believe that any emergent need that mandates the creation of a new national intelligence center will be managed in a collegial fashion in any administration, with the DNI and agency heads involved able to jointly determine the appropriate staffing support for the new center. Further, the conferees expect the DNI to develop working agreements with all appropriate Congressional committees of oversight over agencies and departments within the National Intelligence Program to establish necessary notification procedures similar to those utilized for prior approval reprogramming of appropriations.

#### PERSONNEL MANAGEMENT

A significant proportion of the personnel working in the intelligence community are assigned to the Department of Defense, and military personnel are a large part of that workforce. The conferees agree that the DNI should have a role in the management and professional development of civilian personnel assigned to the disparate parts of the intelligence community, but do not intend that the DNI have the same authority over military personnel. Military personnel are subject to the personnel management provisions found in title 10, United States Code, and are promoted to senior grades based on meeting statutory requirements for joint service. The conferees agree that it would be inappropriate for military personnel to be managed by both the DNI and the Secretary of Defense, and intend that the personnel management authorities found in section 1011 of the conference report apply principally to civilian personnel.

#### ACQUISITION AUTHORITY

The conferees intend that the provision that provides the DNI with joint milestone decision acquisition authority over defense programs contained in the national intelligence program will be used in a spirit of co-operation with the Secretary of Defense, with each official giving due weight to the needs of the other as new national intelligence programs are procured. In no way do the conferees intend for the DNI to have veto power over DOD programs. The Secretary of Defense retains the authority and responsibility to develop and field intelligence assets that will support the troops in combat. The conferees expect that the Secretary will work with the DNI to develop and field systems that can reasonably accommodate both the DNI's national intelligence needs as well as combatant commander requirements, and expect the DNI to fully support the needs of the Secretary and the combatant commanders.

#### DNI CONTROL OVER MILITARY PROGRAMS

To ensure that combatant commander requirements were satisfied, H.R. 10 excluded from DNI controls all military intelligence programs within the Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA) program. The Senate bill provided the DNI with partial control over JMIP programs, including non-national, or military programs. The Senate receded from its provision that

would provide the DNI control over non-national JMIP programs, and the conference report provides that the Secretary of Defense will exclusively manage and execute JMIP programs.

The conference agreement also goes beyond H.R. 10 in regard to the intelligence tasking authority of the DNI. National intelligence assets provide real time, life and death information to our troops in combat, and must be available to the Secretary of Defense and the combatant commanders when needed. There is broad agreement among conferees that the needs of troops engaged with the enemy shall always take priority in tasking national intelligence assets. I only very reluctantly agreed to this language based on assurances of all the conferees and senior administration officials that the combatant commanders and engaged troops would never be denied the intelligence support they need, notwithstanding the statutory authority of the DNI to direct the assets elsewhere. Furthermore, combatant commanders need intelligence on a continuous basis, not only when engaged in combat operations. The conferees expect that combatant commander requirements will continue to enjoy a high priority for collection and analysis, in times of peace as well as time of war.

#### AUTHORITY OF DIRECTOR OF NATIONAL COUNTER TERRORISM CENTER

Section 1021 of the conference agreement, like H.R. 10, provides the Director of the National Counter Terrorism Center with the authority to conduct "strategic operational planning" of the nation's counter terrorism operations. Unlike H.R. 10, the conference agreement defines strategic operational planning with a specificity that could be misinterpreted in a manner that suggests the conferees intended for the NCTC director to become involved in tasking internal elements of agencies to perform such missions. To the contrary, the conferees have included specific language stating that the director may not direct the execution of counterterrorism missions and have included section 1018, which clearly preserves the prerogatives of the chain of command in operational matters. Some managers in the other body have made contradictory statements concerning the role of the NCTC in strategic operational planning. On the one hand, it is suggested that the NCTC would operate much like the Joint Staff, planning broad missions but not becoming immersed in the details. This first interpretation is in fact what the conferees intended. On the other, it has been suggested that strategic operational planning would involve the NCTC in selecting specific mission objectives, and possibly directly tasking subordinate elements of the Department of Defense and other agencies. This sort of activity was decidedly not contemplated by the conferees, and was one reason why House conferees insisted on the inclusion of section 1018 preserving the chain of command. In no case may the NCTC directly task an internal element of the Department of Defense outside the statutory chain of command. The use of military force to achieve national objectives is the statutory responsibility of the Secretary of Defense, and the conferees intend that Secretary will be fully and authoritatively involved in any instance where the NCTC or any other outside agency proposes to employ the assets of the Department of Defense.

#### CHAIN OF COMMAND PROTECTION

As noted above, the conferees included, with the President's full support, section 1018 that reaffirms the sanctity of the chain of command. The chain of command, by operation of title 10, United States Code, runs

from the President to the Secretary of Defense to the combatant commander involved. There must be no confusion about who is in charge in the execution of military operations. The conference report provides the DNI with a broad coordinating and integrating role to ensure that the nation does not endure another intelligence failure, but the conferees have not bestowed upon the DNI the authority to independently direct and manage elements of the intelligence community that are part of other government departments, such as Justice, Treasury, Homeland Security, and most critically, Defense.

It has been suggested by managers in the other body that section 1018 does not authorize the President or department heads to override the DNI's authority contained in this legislation. That assertion is plainly wrong. The original language that the other body suggested for inclusion in the conference report would have made the DNI's authority in this legislation exempt from existing statutory language concerning the chain of command, such as sections 113(b) and 162(b) of title 10, United States Code. However, that language was not accepted by the conferees. The language of section 1018 that was finally agreed to specifically protects the military chain of command. Assertions that the President and the Secretary of Defense have no authority to override the DNI with regard to commanding and controlling all elements of the Department of Defense are not correct. Further, it is important to note that the President has consistently upheld this principle by endorsing the necessity of a clear "preservation of authorities" provision in this legislation. As stated in his letter to the conferees of December 6, 2004,

"Accordingly, in developing implementing guidelines and regulations for this bill, it is my intention to ensure that the principles of unity of command and authority are fully protected. It remains essential to preserve in the heads of the executive departments the unity of authority over and accountability for the performance of those departments. In particular, as we continue to prosecute the global war on terrorism, the integrity of the military chain of command must continue to be respected and in no way abrogated."

It is critical that there be no ambiguity about the intent of Congress as this legislation is implemented, and I will be particularly diligent in my oversight role to ensure that the intelligence needs of the Department of Defense are fully met as the various complex new relationships provided by this legislation are implemented in the years to come.

#### CONFERENCE REPORT ON S. 2845, INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

SPEECH OF

**HON. PETER HOEKSTRA**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 7, 2004*

Mr. HOEKSTRA. Mr. Speaker, as chairman of the conference on the bill I would also like to briefly discuss the interpretation of this legislation.

The conference report embodies the substantial agreement between the House bill, H.R. 10, and the Senate bill, S. 2845, on the core reforms to be carried out by this legislation. It is also important to note, however, that

the conference faced many challenges in reconciling often fundamentally different philosophies and visions underlying those reforms and the specific provisions in each bill. Accordingly, the conferees agreed to submit only a very limited Joint Explanatory Statement on the conference report, relying on the text of the legislation to represent our agreements.

Only that text, which is controlling, and the Joint Explanatory Statement were agreed to by both houses and reflect the intent of the conferees. I should also note that Chairman HYDE intends to submit a statement for the record reflecting bipartisan and bicameral understandings with respect to certain foreign affairs provisions of the bill. Other statements by Members of Congress outside the scope of the Joint Explanatory Statement, media reports, or the reports or work product of any of the outside panels or commissions whose work contributed to this legislation reflect their own views and should not be construed as determinative guidance with respect to legislative intent.

While that framework ultimately controls interpretation of the bill, I would like to note my understanding as chairman of the conference of several matters within this legislation.

#### AUTHORITIES OF THE DIRECTOR OF NATIONAL INTELLIGENCE

The nature of the authorities to be granted to the Director of National Intelligence, DNI, and the relationship of the Director to other Federal officials were delicate and precisely negotiated issues, with resulting agreements reflected in the legislative language of the conference report. Only that legislative language controls the authorities of the DNI.

This principle bears special emphasis in a number of areas. With respect to budget formulation, the text of the agreement carefully and explicitly specifies the authorities of the DNI and the relationships between the DNI, the heads of individual agencies and organizations within the National Intelligence Program, and the heads of executive departments containing those agencies and organizations. Those roles and authorities should be construed solely by reference to the provisions of the conference report and existing law—no more, and no less.

For example, the text explicitly provides that both the heads of executive departments containing agencies or organizations within the intelligence community and the heads of those discrete agencies may each provide annual budget proposals to the DNI, based on the DNI's guidance, for the DNI to use in determining and presenting an intelligence budget to the President. Beyond this direction, the legislation does not specify how the budget proposals are to be developed or provided, and it is properly for the executive branch to determine how to execute the statute consistent with its text.

Similarly, the legislation provides, in amended section 102A(e)(2)(A) of the National Security Act, that personnel transfers are to be made in accordance with procedures developed by the DNI and the heads of affected departments and agencies. It does not specify what role is to be played in the transfers by department and agency heads pursuant to such procedures. Presumably, that matter will be determined by the executive branch within the agreement on procedures developed under the legislative text.

Consistent with basic constitutional principles, the legislation provides that the DNI's

authority is "[s]ubject to the authority, direction, and control of the President." Accordingly, the text does not specify who is to perform the President's daily intelligence briefing or under what specific operational circumstances the President will interact with the Director of the CIA, which should be matters for the President to decide himself.

The legislation also contains a detailed provision dealing with the apportionment of funds. That provision textually speaks only to the apportionment of funds, not to apportionment plans or any other related matter. Similarly, the conference report does not specifically authorize the creation of an entity within the Office of the DNI to perform common services or of a Chief Financial Officer for the DNI. Nor does it provide that an open source intelligence center, if created, should be a new element of the intelligence community. Nor is the conforming amendment to section 105(a) of the National Security Act contained in section 1072(a)(2) of the legislation intended to substantively amend the authority of the Secretary of Defense. That provision merely clarifies that section 105(a) of the National Security Act should be construed in conjunction with the specified statutory authorities of the DNI. Had the conference intended to address any of these matters in this legislation, appropriately specific provisions would have been included to do so.

#### NATIONAL COUNTERTERRORISM CENTER AND NATIONAL INTELLIGENCE CENTERS

The authorities of the National Counterterrorism Center were issues of great and delicate debate during the conference. This is particularly true with respect to the balance between the authority of the NCTC to conduct "strategic operational planning" and the authority of individual departments and agencies to plan and direct the conduct of the resulting operations. There was full agreement that the NCTC properly should assign "roles and responsibilities" to agencies participating in Counterterrorism operations. However, the text of the legislation specifies that the assignment of "roles and responsibilities" does not extend to directing the execution of any resulting operations. The legislation does not, for example, authorize the NCTC to determine which personnel or specific capabilities should be utilized by agencies in mission execution.

Similarly, careful discussions took place in the conference with respect to the detail of personnel to the NCTC, with the outcome memorialized in the legislative text. There is no specific direction to concentrate personnel holding scarce and desirable skills in the NCTC, nor is such concentration prohibited. In exercising authorities to transfer or detail personnel, it will be important for the DNI to weigh the needs of an effective NCTC with the needs of other agencies and the intelligence community as a whole.

The conference also reached compromise on the scope and authorities of any future National Intelligence Centers that might be created by the Director of National Intelligence. The conference report authorizes the DNI to establish, if appropriate and necessary to complete the mission, national intelligence centers that are administratively distinct from the other agencies of the intelligence community. However, it does not require that all National Intelligence Centers be created as separate and administratively distinct entities. As with the NCTC, it will be important for the DNI