

CRS Report for Congress

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Terrorism: U. S. Response to Bombings in Kenya and Tanzania: A New Policy Direction?

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Summary

On August 20, 1998 the United States launched retaliatory and preemptive missile strikes against training bases and infrastructure in Afghanistan used by groups affiliated with radical extremist and terrorist financier Usama bin Laden. A “pharmaceutical” plant in Sudan, making a critical nerve gas component, was destroyed as well. This is the first time the U.S. has unreservedly acknowledged a preemptive military strike against a terrorist organization or network. This has led to speculation that faced with a growing number of major attacks on U.S. persons and property and mounting casualties, U.S. policymakers may be setting a new direction in counter-terrorism— a more proactive and global policy, less constrained when targeting terrorists, their bases, or infrastructure. Questions raised include: What is the nature and extent of any actual policy shift; what are its pros and cons; and what other policy options exist? Issues of special concern to Congress include: (1) U.S. domestic and overseas preparedness for terrorist attacks and retaliatory strikes; (2) the need for consultation with Congress over policy shifts which might result in an undeclared type of war; and (3) sustaining public and Congressional support for a long term policy which may prove costly in: (a) dollars; (b) initial up-front loss of human lives, and (c) potential restrictions on civil liberties. Whether to change the presidential ban on assassinations and whether to place Afghanistan on the “terrorism” list warrants attention as well. This short report is intended for Members and staffers who cover terrorism, as well as U.S. foreign and defense policy. It will be updated as events warrant. For more information, see CRS Issue Brief 95112, *Terrorism, the Future and U.S. Foreign Policy* and CRS Report 98-722F, *Terrorism: Middle East Groups and State Sponsors*.

Background

On August 7, 1998, the U.S. Embassies in Kenya and Tanzania were bombed. At least 252 people died (including 12 U.S. citizens) and more than 5,000 were injured. Secretary of State Albright pledged to “use all means at our disposal to track down and punish” those responsible. On August 20, 1998, the United States launched missile strikes

against training bases in Afghanistan used by groups affiliated with radical extremist and terrorist financier Usama bin Laden. U.S. officials have said there is convincing evidence he was a major player in the bombings. A pharmaceutical plant in Sudan, identified by U.S. intelligence as a precursor chemical weapons facility with connections to bin Laden, was hit as well.

The United States has bombed terrorist targets in the past in retaliation for anti-U.S. operations (Libya, in 1986 following the Berlin Disco bombing and Iraq in 1993 as a response to a plot to assassinate former President Bush) and an increasingly proactive law enforcement policy has resulted in bringing roughly 10 suspected terrorists to the U.S. for trial since 1993. However, this is the first time the U.S. has given such primary and public prominence to the *preemptive*, not just retaliatory, nature and motive of a military strike against a terrorist organization or network. This may be signaling a more proactive and global counter-terrorism policy, less constrained when targeting terrorists, their bases, or infrastructure.¹

Is There a Policy Shift and What Are Its Key Elements?

The proactive nature of the U.S. response, if official Administration statements are to be taken at face value, can readily be interpreted to signal a new direction in anti-terrorism policy. A series of press conferences, TV interviews and written explanations given by Administration officials reveal what appears to be a carefully orchestrated theme that goes well beyond what could be characterized as one-time, isolated-show-of-strength-statements. Defense Secretary William S. Cohen, in words similar to those of National Security Adviser, Sandy Berger, characterized the response as “the long term, fundamental way in which the United States intends to combat the forces of terror” and noted that “we will not simply play passive defense.” Secretary of State Albright stressed in TV interviews that: “We are involved in a long-term struggle.... This is unfortunately the war of the future..” and National Security Adviser Sandy Berger stressed in public media appearances that “You can’t fight this enemy simply in defense. You also have to be prepared to go on the offense”. In what some see as a warning to other terrorist groups who may seek weapons of mass destruction, President Clinton in his August 20th statement

¹ The same day as the missile strike, the President signed an executive order E.O. 13099, [63 Fed. Reg. 45167] which would freeze any assets owned by bin Laden, specific associates, their self-proclaimed Islamic Army Organization, and prohibiting U.S. individuals and firms from doing business with them. Bin Laden’s network of affiliated organizations pledged retaliation; the State Department issued an overseas travel advisory warning for U.S. citizens, and security has been heightened, particularly at embassies, airports and domestic federal installations and facilities. On August 25, 1998 it was reported a federal grand jury in New York had indicted bin Laden in June 1998 in connection with terrorist acts committed in the U.S. prior to the embassy bombings. A “retaliatory” bombing at a South African Planet Hollywood restaurant in Capetown on August 25, 1998 killed one and wounded 24 persons. For information on the role of Sudan and Afghanistan in support of International terrorism: See CRS Issue Brief 95112, *Terrorism, the Future, and U.S. Foreign Policy* by Raphael Perl, See also: *Terrorism: Middle Eastern Groups and State Sponsors*, by Kenneth Katzman, CRS Report No. 98-722 F

from Martha's Vineyard, gave as one of four reasons for ordering the attacks :” because they are seeking to develop chemical weapons and other dangerous weapons”.²

Statements aside, the fact remains that this is the first time the U.S. has: (1) launched and acknowledged a preemptive strike against a terrorist organization or network, (2) launched such a strike within the territory of a *state* which presumably is not conclusively, actively and directly to blame for the action triggering retaliation, (3) launched military strikes at multiple terrorist targets within the territory of more than one foreign nation, and (4) attacked a target where the avowed goal was not to attack a single individual terrorist, but an organizational infrastructure instead. Moreover, in the case of the facility in Sudan, the target was characterized as one that poses a longer term danger rather than an immediate threat.

Inherent in Administration statements and actions are allusions to a terrorism policy which, in response to immediate casualties and a global vision of higher levels of casualties is: (1) more global, less defensive, and more proactive; (2) more national security oriented and less traditional law enforcement oriented, (3) more likely to use military force and other proactive measures, (4) less likely to be constrained by national boundaries when sanctuary is offered terrorists or their infrastructure in instances where vital national security interests are at stake, and (5) generally more unilateral when other measures fail, particularly if other nations do not make an effort to subscribe to like-minded policies up front. A policy with such elements can be characterized as one shifting from a long term diplomatic, economic and law enforcement approach to one which more frequently relies on employment of military force and covert operations. Implied in such a policy shift is the belief that though terrorism increasingly poses a threat to *all* nations, all nations may not sign up with *equal* commitment in the battle against it and bear the full financial and retaliatory costs of engagement. In such an environment, the aggrieved nations with the most at stake must lead the battle and may need to take the strongest measures alone.

What Are the Pros and Cons of Such a Shift?

Arguments in favor of a proactive deterrent policy. Such a policy: (1) shows strength and world leadership--*i.e.*, other nations are less inclined to support leaders that look weak and act ineffectively; (2) provides disincentives for other would be terrorists; (3) is more cost-effective by thwarting enemy actions rather than trying to harden all potential targets, waiting for the enemy to strike, and suffering damage; (4) may truly damage or disrupt the enemy--dry up his safehavens--sources of funds and weapons and limit his ability to operate, and (5) provides governments unhappy with the U.S. response an incentive to pursue bilateral and multilateral diplomatic and law enforcement remedies

² See for example: The Policy: We are Ready to Act Again, editorial by Defense Secretary William S. Cohen , *Washington Post*, August 23, 1998, p. C-1 and U.S. Hints at More Strikes at bin-Laden by Eugene Robinson and Dana Priest, *Washington Post*, p. A-1 August 22, 1998. An excellent series of excerpts from press conferences and TV interviews by Administration officials which could be used to support the premise of a policy shift are found in the PBS television series Jim Lehrer Newshour report of August 25, 1998. See also: New Rules in a New Kind of War, by Peter Grier and Jonathan S. Landay, *Christian Science Monitor*, August 24, 1998, p.1.

to remain active players. *Arguments against a proactive military/covert operations oriented deterrent terrorism policy:* Such a policy: (1) undermines the rule of law, violating the sovereignty of nations with whom we are not at war ; (2) could increase, rather than decrease, incidents of terrorism at least in the short run; (3) leaves allies and other nations feeling left out, or endangered--damaging future prospects for international cooperation; (4) may be characterized as anti-Islamic, and (5) may radicalize some elements of populations and aid terrorist recruitment; and (6) may result in regrettable and embarrassing consequences of mistaken targeting or loss of innocent life.

What Other Policy Options Exist?

The U.S. government has employed a wide array of policy tools to combat international terrorism, from diplomacy, international cooperation and constructive engagement to economic sanctions, covert action, protective security measures and military force. Implementation of policy is often situation-driven and a military response is more likely in close time proximity to a terrorist attack when public world outrage is high and credible accountability can quickly be established. When combating non-state sponsors of terrorism like bin Laden's networks, direct *economic or political pressure* on sanctuary states and indirect pressure through neighboring states may be an effective policy tool in restricting activities and sanctuary locations as well creating a favorable climate for *legal approaches* such as criminal prosecution and extradition which is gaining prominence as an active tool in bring terrorists to trial. Working with other victim states through the U.N. and the Organization of African Unity are options which would build on the March 1996 Sharm al-Sheikh peacemaker/terrorism summit. *Enhanced intelligence targeting* of non-state "amorphous" groups and intelligence coordination and sharing among agencies, governments, and with the private security community is critical, but mechanisms to achieve such intelligence objectives must be in place. All agree that more effective human intelligence sources must be developed. In this regard, other nations such as Saudi Arabia and Kenya may be more effective in penetrating terrorist groups than the U.S. Another option is *not to overpersonalize conflicts* against terrorist organizations and networks. Publically focusing on individuals like bin Laden (instead of on their networks or organizations) too often glamorizes such persons--drawing funding and recruits to their cause and misses the purpose of countermeasures --e.g. disabling terrorist capabilities.

Enhanced unilateral use of *covert operations*³, though not without downsides, holds promise as an effective long-term policy alternative to high profile use of military force. A seeming industrial explosion at a factory believed to be producing nerve gas chemicals draws less formal criticism and political posturing by other nations than an openly announced missile attack. The dangers here are that the United States is not especially competent at secret-keeping and that counter-terror can be miseducated to terrorism. Effective use of covert policy alternatives requires institutionalization of covert action capability tapping into the best that each agency has to offer. In a world where state sponsorship for terrorism is drying up, private funding becomes critical to the terrorist enterprise. Terrorist front businesses and banking accounts could increasingly become the target of creative covert operations. To support such efforts and effective law enforcement oriented approaches to curbing money flows, assisting personnel in other countries in tracing and stopping money flows to terrorists, their organizations and front

³ See: *Covert Action: An Effective Instrument of U.S. Foreign Policy?* CRS No. 96-844F

companies may warrant consideration. So-called “grey” area or “black” area *information operations* which bring to light vulnerabilities in the personalities of key terrorist leaders (*i.e.* corruption, deviant sexual behavior, drug use), promote paranoia, and inter-organizational rivalries, warrant increased attention as well. One can assassinate a person physically only once; but “character assassination” in the media can be done daily.⁴ U.S. terrorism policy lacks a multifaceted information offensive aspect which is not merely reactive in nature.

Issues for Congress

Issues of special concern to Congress include: (1) U.S. domestic and overseas preparedness for terrorist attacks and retaliatory strikes, (2) the need for consultation with Congress over policy shifts which might result in an undeclared type of war, and (3) sustaining public support for a long-term policy which may prove costly in: (a) dollars; (b) initial clearly seen loss of human lives, as well as (c) potential restrictions on civil liberties. Whether the Presidential ban on assassinations should be changed and whether Afghanistan should be placed on the “terrorism” list warrants consideration as well.⁵

An important issue brought to the forefront in the wake of the U.S. military response to the August 7, 1998 embassy bombings is that of *U.S. preparedness for domestic and overseas terrorist and retaliatory attacks*. There is no absolute preparedness; a determined terrorist can always find a soft target somewhere. Thus, advance intelligence is perhaps the most critical element of preparedness. Good working relationships with foreign intelligence services are important here. Other key elements of preparedness include: (1) the ability through law enforcement channels and covert means to actively thwart terrorist actions before they occur, (2) high profile physical security enhancement measures; (3) and the ability to limit loss of life and mass hysteria, confusion and panic in the face or wake of terrorist attacks. Particularly in situations involving weapons of mass destruction, effective mechanisms to minimize panic and ensure coordinated dissemination of critical life saving information is important, as is planning on practical matters such as how to dispose of bodies. Essential is the ability to maintain and promptly dispatch emergency teams to multiple disaster sites.

A central issue of concern is *Administration consultation with Congress over policy shifts which may result in an undeclared war*. To paraphrase a familiar congressional

⁴ See: *Terrorism, the Media, and the Government: Perspectives Trends, and Options for Policymakers*, by Raphael Perl, CRS report No. 97-960 F.

⁵ A key question here is whether Afghanistan should be on the terrorism list in light of the Taliban’s enhanced consolidation of control over the country and its harboring of bin-Laden and associated terrorist groups, facilities, and individuals. Given the “wild west” nature of Afghanistan today, is it fair to hold Afghanistan liable as a viable country for state action? Also, would such action legitimize the Taliban government which so far only 3 nations have recognized? Many suggest that diplomatic initiatives and the threat of sanctions and further military retaliation against the Taliban’s harboring known terrorists and supporting or countenancing terrorist training activity on their soil, will continue to prove to no avail. Should such assertions bear out, *then* a strong argument can be made that the Administration, pursuant to Section 6 (j) of the 1979 Export Administration Act (P.L. 96-72) must place Afghanistan on the Department of State’s list of countries supporting terrorism list. Imposed would be restrictions of foreign aid, and severe export controls on dual use and military items. See also CRS Report 98-722F, previously cited..

adage: We need to be there for the takeoffs if you expect us to support you on the crash landings. It can be argued that given the need for secrecy and surprise, and given the fact that the Administration's timing of the military response was dependent to large degree on the configuration of events and the activities of terrorist operatives on the ground, the Administration made reasonable efforts to inform Congress in advance of the August *action* to be taken as well as the targets and rationale of the pending missile-strike-response⁶. Notwithstanding Administration efforts to brief Congress on the attack, has the Administration been remiss in its failure to consult with and brief Congress on any new policy or major change in policy emphasis or direction? Questions for Congressional inquiry might include: What is the policy; how exactly is it different; how does it fit in with other policy options; what consequences are foreseeable; how is it to be implemented; how is effectiveness to be measured; how is it to be coordinated; what funding, organizational mechanisms or legislative authority are required to implement it effectively, and how is international support for, and cooperation in, this strategy to be pursued?

In justifying the U.S. missile response under Article 51 of the U.N. Charter (self defense), the Clinton Administration has invoked 22 USC 22377 note (*otherwise known as*) Section 324(4) of the *Antiterrorism and Effective Death Penalty Act of 1996 P.L. 104-132* which provides: "The Congress finds that.... The President should use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists, including overseas terrorist training facilities and safehavens". Does 22 USC 2377, as passed by Congress in 1996, amount to the counter-terrorism analogue to the Vietnam era Gulf of Tonkin Resolution? Some analysts suggest that such authority is too broad and open-ended and may pave the way for a quagmire of unconventional violent exchanges, and consequently amendment of the statute may be warranted. Others, however, feel that such broad authority is essential to allow a president maximum flexibility to counter mounting terrorist threats and stress that potential for abuse can be checked through active congressional oversight and reporting to Congress. Another issue involving presidential authority is how the presidential *ban on assassinations* (E.O. 12233) fits into any policy shift and if it should be modified or rescinded.

A more proactive terrorism policy may prove costly in dollars [even in relatively quiet times] as well as in potential restrictions on civil liberties. Unresolved questions include: (1) what is the potential dollar cost; and is the public prepared to accept the loss of lives and other consequences of such a "war of the future?" In this regard, should there be a more active federal role in public education? An informed, involved, and engaged public is critical to sustain an active anti-terrorism response. The American public will be more likely to accept casualties if they understand why they will be sustained and that sometimes it is cheaper to pay the cost up front.

⁶ According to press reports, National Security Adviser, Sandy Berger briefed Mr. Lott and Mr. Gingrich on August 19, 1998 and Mr. Gephardt's office was briefed that day. Mr. Daschle, unavailable at the time, was briefed the following day. See: Clinton gets Hill's near-solid bipartisan support for strike, by John Godfrey, Washington Times, August 21, 1998, p. A13. Also, ½ hour before the attacks, phone calls were placed to the Chairman and Ranking Members of the House National Security and Senate Armed Services Committees. The day after the U.S. counterstrike (August 21), Secretaries Cohen, Albright, CIA Director Tenet, and Chairman of the Joint Chief's Henry H. Shelton met with Senators and available House Members to discuss the planning and rationale of the bombings. House-focused follow up briefings are planned.