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Organizing for Homeland Security

INTRODUCTION

In response to the September 11 terrorist attacks on the World Trade Center and the Pentagon, President George W. Bush put in place a new organizational structure for ensuring the security of the American homeland. By executive order, he created within the White House an Office of Homeland Security, to be headed by the Assistant to the President for Homeland Security. The President also established a new interagency coordinating body, the Homeland Security Council. The importance the President accords this new organization is evident in his placing it in the Executive Office of the President and in his giving cabinet rank to its director. He also chose a personal friend, Pennsylvania's Governor Tom Ridge, to head the office. Governor Ridge will have a deputy and some 120 staff members, drawn primarily from the agencies currently involved in homeland security.

Coordinating the executive branch's many largely autonomous departments and agencies has historically been an enormous challenge, and the integration of domestic and national security policies has been particularly problematic. Thus, designing an organizational structure to coordinate homeland security activities is not only a difficult intellectual task, it also calls for many hard choices, since more than 40 national security and domestic departments and agencies are involved. The experiences of the Director of Central Intelligence (DCI) and the Director of the Office of National Drug Control Policy (ONDCP) attest to these difficulties, as do the divergent recommendations of the various commissions that have called for reforms in the governmental processes for countering terrorism and providing homeland security.[1]

President Bush chose to model the new organization after the National Security Council (NSC), although he opted to constitute the staff as a new office and to give it enhanced budget responsibilities. The mandate of the new organization is carefully circumscribed to involve only coordination, leaving unaltered the existing authorities of the operating departments and agencies.

This issue paper discusses the critical issues involved in designing the homeland security organization and in achieving its goals. It first compares existing coordinating organizations responsible for national security, economics, intelligence, and drug control. Next, it presents the restructuring recommendations of three commissions and a nongovernmental group. Each of these recognized the need to integrate foreign and domestic counterterrorism activities, but they disagreed on whether to rely on the current NSC organization or create a new coordinating process. They assigned different priorities to changing current budgetary practices, and they also disagreed

[1]Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction [known as the Gilmore Commission], Second Annual Report, *Toward a National Strategy for Combating Terrorism,* December 15, 2000; The United States Commission on National Security/21st Century [known as the Hart-Rudman Commission], *Road Map for National Security: Imperative for Change,* Phase III Report, March 15, 2001; Report from the National Commission on Terrorism, *Countering the Changing Threat of International Terrorism,* June 7, 2000; Center for Strategic and International Studies (CSIS), *Defending America in the 21st Century,* Executive Summary of Four Working Group Reports on Homeland Defense, 2000.

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In response to the September 11 terrorist attacks on the World Trade Center and the Pentagon, President George W. Bush put in place a new organizational structure for ensuring the security of the American homeland. By executive order, he created within the White House an Office of Homeland Security, to be headed by the Assistant to the President for Homeland Security. The President also established a new interagency coordinating body, the Homeland Security Council. The importance the President accords this new organization is evident in his placing it in the Executive Office of the President and in his giving cabinet rank to its director. He also chose a personal friend, Pennsylvania's Governor Tom Ridge, to head the office. Governor Ridge will have a deputy and some 120 staff members, drawn primarily from the agencies currently involved in homeland security.

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on the need for consolidating some of the operating homeland security agencies and offices.

This issue paper then describes in some detail the responsibilities of the new homeland security organization. Particularly striking is the minimalist character of the responsibilities defined in the executive order, in view of the extraordinary challenge ahead. Congressional views on the appropriate structure of a homeland security organization are also emerging, and these too are described. Not surprisingly, the focus of Congress has largely been on assuring its own statutory and budget prerogatives. The paper concludes by offering suggestions about how the new homeland security organization should proceed on some of the most critical issues that it will confront.

HISTORICAL COORDINATING MODELS

A variety of coordinating models have developed within the White House staff. They tend to differ in the characteristics of their processes, the nature of their budgetary authorities, and their statutory foundation. President Bush clearly drew on the following three models in designing his new homeland security organization.

The NSC and NEC

The NSC was originally created as part of the 1947 National Security Act to advise the President on the integration of domestic, foreign, and military policies relating to national security and to facilitate interagency cooperation. The act created an Executive Secretary and a small permanent staff. During the Eisenhower administration, the Executive Secretary position evolved into that of National Security Advisor, more formally titled the Assistant to the President for National Security Affairs.[2] Over time, the coordinating and advising functions have shifted from the National Security Advisor to the NSC staff, which has grown to more than 100 members. While forswearing any operational roles, the National Security Advisor has in practice regularly undertaken such tasks, including highly sensitive diplomatic negotiations. As a matter of tradition and principle, the National Security Advisor is the President's personal adviser and does not receive Senate confirmation. The incumbents have regularly met privately with members of Congress, but they do not testify publicly.

Each new administration defines its own NSC structure of interagency groups. For example, a National Coordinator for Security, Infrastructure, and Counterterrorism was established in the late 1990s to give priority to these transnational issues. Among other responsibilities, the Coordinator was to develop counterterrorism initiatives through an interagency process and, with the Director of the Office of Management and Budget (OMB), to ensure that the counterterrorism programs and budgets in the federal departments and agencies meet the President's overall counterterrorism objectives.

Presidents have found particularly challenging the task of coordinating and integrating policies involving national security, international economics, and domestic economics. While closely related, these areas have traditionally been the purview of separate White House staffs with different coordinating mandates and overlapping responsibilities. Recognizing the need for a more structured interagency process, President Clinton in 1993 established by executive order the National Economic Council (NEC), along with a new Assistant to the President for Economic Affairs. He modeled the processes on those of the NSC and charged the NEC with coordinating domestic and international economic policies. Integration with national security policies was to be achieved by overlapping membership in the NEC and NSC, as well as by the sharing of the international economics staffs. The Bush administration took the further integrating steps of making the Secretary of the Treasury a full member of the NSC and appointing a single person to be the Deputy to both the National Security Advisor and the NEC Director.

The Director of Central Intelligence

The 1947 National Security Act gave the DCI responsibility for "coordinating the intelligence activities of the several Government departments and agencies in the interest of national security." The DCI was also made Director of the Central Intelligence Agency (CIA). Concurrently, the President designated the DCI as his principal foreign-intelligence adviser. The responsibilities of the DCI have expanded over time, most importantly in 1992, when Congress for the first time defined the "intelligence community" in law and codified many of the DCI's specific authorities. These responsibilities included creating a centralized process for establishing requirements and priorities for intelligence collection and analysis; developing and presenting to the President and Congress an annual budget for national foreign-intelligence activities; concurring in any reprogramming of

[2] *History of the National Security Council, 1947–1997*, Office of the Historian, U.S. Department of State, August 1997 (available at http://www.whitehouse.gov/nsc/history.html).

agency budgets; and consulting on appointments of the defense intelligence agencies.[3] The DCI's Community Management Staff assists him in managing intelligence-community resources and collection requirements. The history of the DCI demonstrates the difficulties of trying to coordinate intelligence activities without direct control over the operations and budgets of the other intelligence agencies, especially those of DoD, which consumes some 85 percent of the intelligence budget. There is a constant tension between the DCI, who is responsible for producing independent and objective national intelligence, setting intelligence requirements, and producing an overall national intelligence budget, and the departments and agencies that are required to cooperate in this effort.[4]

The Office of National Drug Control Policy

Congress created the ONDCP as part of the Executive Office of the President in 1988. That legislation and subsequent amendments gave the ONDCP Director broad responsibility for directing and coordinating the nation's drug policy. The ONDCP Director, who is confirmed by the Senate, is required to set priorities and objectives annually for accomplishing the President's antidrug goals. The central vehicle for carrying out this responsibility is the National Drug Control Strategy. Each year, the ONDCP must prepare this strategy for submission by the President to Congress. The ONDCP must also define in a federal drug-control budget the necessary resources to implement the strategy. Toward that end, all federal departments and agencies must submit their drug budget requests to the ONDCP at the same time they submit them to their superiors and before transmitting them to OMB. The Director must certify in writing as to the adequacy of the requests and can direct an agency or department to add resources or programs to its OMB budget submission. The ONDCP must approve any reprogramming request of more than $5 million and can request reprogramming itself.

The National Drug Control Strategy provides the ONDCP Director with a platform for highlighting priorities and the interrelationships among various antidrug programs, but it is not a vehicle for actually coordinating the various antidrug activities. The ONDCP Director has relatively limited authority to carry out his budgetary responsibilities: The ONDCP issues budget guidance, repeating the priorities outlined in the strategy, but does not specify what funds will be available. That is the responsibility of OMB. Although the legislation requires review of the drug-control budget at three stages—program, agency, and department—the ONDCP has historically not required the program-level submission, waiting instead until later in the process to review the agency budgets. Following agency review, the ONDCP Director certifies the adequacy of the budget submissions for carrying out the strategy objectives. However, in more than ten years, the Director has decertified a submission only once, the DoD's submission in 1997. DoD and the ONDCP subsequently negotiated changes to the request. The ONDCP participates in the final OMB budget review, but at this stage, it is too late for the Director to do more than raise a few issues with the President.[5]

Summary of Historical Coordinating Models

The three models differ in their organizational characteristics. See Table 1 for a summary of the coordinating models. The NSC and NEC involve a formal interagency process under the leadership of a personal adviser to the President. The DCI is also a presidential adviser, but his coordinating role is less formal. The ONDCP Director directs a White House office but not a formal interagency process. Both the DCI and the ONDCP Director have statutorily based budget authorities, although their actual influence is seriously constrained by the budget powers that reside in OMB and various other departments and agencies.

History demonstrates how difficult it is to coordinate the activities of the many executive branch departments and agencies. There is constant tension between the coordinator's enumerated responsibilities and limited means. Neither presidents nor department heads have been willing to cede any real authority. It is also clear that the organizational characteristics are only one factor determining whether the coordinator is successful. Policy and bureaucratic imperatives play a critical role, as do personalities and leadership skills. Perhaps most important is the degree of personal presidential engagement.

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[3] *Preparing for the 21st Century*, Report of the Commission on the Roles and Capabilities of the United States Intelligence Community, March 1, 1996, pp. 48–49. Within the purview of the DCI today are the intelligence activities of the Federal Bureau of Investigation (FBI); the Departments of State, Energy, and Treasury; and the multiple elements of the Department of Defense (DoD).

[4] For a discussion of the organizational dynamics, see *Preparing for the 21st Century*, pp. 49–51.

[5] For a discussion of the ONDCP's statutory and budget authorities, see Patrick Murphy, Lynn E. Davis, Timothy Liston, David Thaler, and Kathi Webb, *Improving Anti-Drug Budgeting*, RAND, 2000, pp. 5–15. See also, United States General Accounting Office, *Drug Control ONDCP Efforts to Manage the National Drug Control Budget*, May 1999.

Table 1
Summary of Coordinating Models

	White House Coordinating Organization	Budget Responsibility[1]	Basis of Authorities	Senate Confirmation
NSC	Assistant to President; Council	0	Statute	No
NEC	Assistant to President; Council	0	Executive Order	No
DCI	"Principal Foreign Intelligence Adviser"; Community Management Staff	+	Statute	Yes
ONDCP	Director	++	Statute	Yes

[1]0 = baseline budget authority; + = slightly enhanced budget authority; ++ = greater budget authority.

COMMISSION RECOMMENDATIONS

A variety of nongovernmental groups have addressed the issue of reorganizing the executive branch to provide for homeland security. They all see the need for better coordination among the multiple departments and agencies and for integrating foreign and domestic activities. But they have presented very different recommendations for organizational reform.

A table summarizing the commission recommendations, homeland security organization, and congressional views is given in the Appendix.

The Gilmore Commission

The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, also known as the Gilmore Commission, found that the "United States has no coherent, functional national strategy for combating terrorism . . . [and] that the organization of the Federal government's programs is fragmented, uncoordinated, and politically unaccountable."[6] The commission called for "establishment of a senior level coordination entity in the Executive Office of the President, [to be] entitled the 'National Office for Combating Terrorism,' with responsibility for developing domestic and international policy and for coordinating the program and budget of the Federal government's activities for combating terrorism." The "foremost" responsibility of the office would be the development of a comprehensive national strategy. The office would also coordinate both foreign and domestic terrorism–related intelligence activities, assuming "many" of the NSC interagency coordinating functions. The commission recommended that to achieve political accountability and responsibility, the Senate should confirm the director of the new office, who would serve in a cabinet-level position.[7]

To ensure that the new office would have sufficient resources to carry out the national strategy, the commission recommended that it be given "specific limited program and budget control over activities for combating terrorism within the relevant Federal departments and agencies." The responsibilities and authorities would include the conduct of a "full review of Federal agency programs and budgets to ensure compliance with the programmatic and funding priorities established in the approved national strategy and to eliminate conflicts and unnecessary duplication among agencies." The commission also recommended that the new office be given responsibility to provide Congress with comprehensive information, along with a complete description and justification of each program, coupled with current and proposed out-year expenditures. Finally, according to the commission, the resource allocation process should "include a structured certification/decertification process to formally 'decertify' all or part of an agency's budget as noncompliant with the national strategy." The decertified agency would then have the choice of revising its budget or appealing the decision to the President.[8]

[6]Gilmore Commission (2000), pp. iii, v.

[7]See Gilmore Commission (2000), pp. 7–14, for the strategic and organizational recommendations. The Gilmore Commission did not include critical infrastructure protection within "the purview of direct responsibilities in the National Office for Combating Terrorism. The nature of the threats to our critical infrastructure and the processes required to defend against and mitigate attacks are much broader than terrorism" (p. 42).

[8]The budget proposals are found in Gilmore Commission (2000), pp. 8–9, 12.

These budgetary proposals clearly grow out of an appreciation of the difficulties experienced in past efforts to coordinate executive branch activities in the absence of budgetary authority. The commission, however, also limited the power of the new office: It would "not have a 'veto' over all or part of any agency's budget, or the authority to redirect funds within an agency or among agencies."[9] In addition, the commission stated that the office's authorities "are not intended to supplant or usurp the authorities of OMB."[10]

The Hart-Rudman Commission

The Commission on National Security/21st Century, known as the Hart-Rudman Commission, shared the view that the government's structures and strategies for preventing and protecting against attacks on the American homeland are "fragmented and inadequate," and it called upon the President to develop a "comprehensive strategy." Such a strategy would include counterterrorism and nonproliferation activities, intelligence and law-enforcement activities, and critical-infrastructure protection, as well as domestic preparedness and consequence management.[11] The commission concluded that the NSC "would still play a strategic role in planning and coordinating all homeland security activities."[12] The Clinton administration's initiative to include the Attorney General and the Secretary of Health and Human Services in NSC discussions, along with the designation of an NSC National Coordinator for Security, Infrastructure, and Counterterrorism, provided a point of departure.

The commission, concerned that homeland security activities are spread across many agencies, called for the establishment of an independent National Homeland Security Agency "with responsibility for planning, coordinating, and integrating various U.S. government activities involved in homeland security. The Federal Emergency Management Agency (FEMA) should be a key building block in this effort." According to the commission, "someone needs to be responsible and accountable to the President not only to coordinate the making of policy, but also to oversee its detailed implementation. . . . To give this agency sufficient stature within the government, its director would be a member of the Cabinet and a statutory advisor to the National Security Council. The position would require Senate confirmation."[13]

The agency would include the Customs Service, the Border Patrol, and the Coast Guard, while "preserving them as distinct entities."[14] At present, the Coast Guard is part of the Department of Transportation, the Customs Service is located in the Department of the Treasury, and the Immigration and Naturalization Service oversees the Border Patrol in the Department of Justice. In the commission's view, the agendas of these services currently tend to receive only limited attention within the departments, and little effort is made to integrate their activities.[15] The commission also proposed creating a Directorate for Critical Infrastructure Protection as an integral part of its recommended new National Homeland Security Agency, which would consolidate certain FBI and Department of Commerce offices.[16] Finally, the new agency, working with state officials, the emergency-management community, and the law-enforcement community, would be responsible for rationalizing and refining the nation's incident-response system, to include both crisis and consequence management.[17]

The National Commission on Terrorism

The National Commission on Terrorism focused primarily on defining the elements of a successful national counterterrorism strategy and the need to coordinate the activities of the intelligence and law-enforcement agencies. It also made some suggestions for governmental reform. It was particularly concerned that no specific counterterrorism budget existed and that the person on the NSC staff responsible for coordinating counterterrorism programs had no role in the "critical step when the Office of Management and Budget . . . decides what agencies' programs will be funded at what levels." The commission recommended that the President require the OMB Director and the NSC Coordinator to "agree on all budget guidance to the agencies, including the response to initial budget submissions, and both officials should be involved in presenting agencies' counterterrorism budget appeals to the President."[18]

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[9]Ibid., p. 12.

[10]Ibid., p. 15.

[11]Hart-Rudman Commission, pp. 10–13.

[12]Ibid., p. 14.

[13]Ibid.

[14]Ibid.

[15]Ibid. In contrast, and following the September 11 attacks, the Gilmore Commission called for the "Office of Homeland Security to create an intergovernmental border advisory group with representatives from the responsible Federal agencies and with State, local, and private sector representatives from jurisdictions with significant ports of entry." Third Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction [the Gilmore Commission], *III. For Ray Downey*, December 15, 2001, p. 36.

[16]Hart-Rudman Commission, pp. 18–19.

[17]Ibid., p. 19.

[18]National Commission on Terrorism, p. 34.

CSIS Working Groups

The Center for Strategic and International Studies (CSIS) convened a series of working groups to assess the nature of the terrorist threats to the American homeland. These working groups described the need for a national plan "to cover all details of the nation's defense against terrorists, as well as plans for critical infrastructure protection."[19] In a brief discussion of the government's organization, they recommended that "the President make the Vice President responsible for most aspects of homeland defense." The Vice President would chair a new National Emergency Planning Council that would include representatives from all federal departments and agencies as well as the states and private corporations. He would be assisted by an "Emergency Planning Staff" headed by the NSC National Coordinator for Security, Infrastructure, and Counterterrorism, who would also remain a member of the NSC staff. The FEMA Director would report through the NSC Coordinator to the Vice President. Both the FEMA Director and the NSC Coordinator would be confirmable by the U.S. Senate.[20]

The CSIS working groups recommended that the NSC Coordinator, "in conjunction with OMB, should assess the budgetary programs of federal agencies for homeland defense," in order to create annual budgets that would support the major objectives of the national homeland defense plans. No changes would be made in the principal department responsibilities, in counterterrorism or counterintelligence operations, or in the FBI and Department of Commerce infrastructure offices. FEMA would, however, be augmented with additional personnel as well as administrative support and would be given responsibility for some Department of Justice training and preparedness activities.[21]

Summary of Commission Recommendations

The Hart-Rudman Commission and the National Commission on Terrorism left overall White House coordinating responsibility with the NSC and the NSC staff. The Gilmore Commission supported the need for a new office in the White House. It did not include in its recommendations a formal counterterrorism interagency coordinating process involving all the federal agencies with counterterrorism responsibilities. The CSIS working groups recommended a hybrid approach in which the Vice President, assisted by a new council and new staff, would be given coordinating responsibility. State governors and private corporations would be members of the council.

All the commissions recommended that the White House coordinating entity be given responsibility for integrating both international and domestic activities.

The Hart-Rudman Commission and the CSIS working groups were generally comfortable with the current NSC and OMB budgetary processes, while the National Terrorism Commission focused on enhancing the NSC role somewhat. The Gilmore Commission recommended an expanded budget role for the new office, with authorities similar to those of the ONDCP Director. Both the Hart-Rudman Commission and the CSIS working groups recommended steps to consolidate some homeland security operations within an expanded FEMA.

ROLES AND RESPONSIBILITIES OF THE HOMELAND SECURITY ORGANIZATION[22]

The Homeland Security Office

The mandate of the new Office of Homeland Security created by executive order in October 2001 covers "efforts to detect, prepare for, prevent, protect against, respond to, and recover from *terrorist attacks within the United States*"(emphasis added). The responsibilities involve coordination of "Executive branch efforts" across a wide range of federal activities. The executive order, however, is somewhat ambiguous concerning whether the office's coordinating responsibilities extend to the activities of state and local government agencies. The order first states that in carrying out its functions, the office is to "encourage and invite the participation of State and local governments and private entities." Later it requires the office to coordinate "national" efforts to mitigate the consequences of terrorist threats or attacks within the United States by "working with Federal, State, and local agencies and private entities."

The office's domestic antiterrorist activities are divided into these functions:

- Identification of priorities for collection and analysis of information on terrorist threats.
- Preparation for and mitigation of the consequences of terrorist threats or attacks.
- Protection of the critical U.S. infrastructure from the consequences of terrorist attacks.
- Prevention of terrorist attacks.
- Response to and promotion of recovery from terrorist threats or attacks.
- Review of legal authorities and development of legislative proposals to carry out antiterrorism goals.

[19]CSIS Working Groups, pp. 9, 13.

[20]Ibid., pp. 13–14.

[21]Ibid., pp. 14–15.

[22]See White House, Executive Order 13228, "Establishing Office of Homeland Security," October 8, 2001, for a description of the functions and responsibilities of the three parts of the homeland security organization.

But even as the office's functions are delineated, it is mandated to share responsibility with others. To ensure the adequacy of a comprehensive national strategy, the office is to work with the executive departments and agencies, state and local governments, and private entities; it must then periodically "review and coordinate" revisions. The office is to work with the National Security Advisor to identify priorities for intelligence collection outside the United States, improve security of U.S. borders, territorial waters, and airspace, and provide ready federal response teams. Working with the NEC, it is to coordinate efforts to stabilize financial markets after a terrorist attack.

The executive order gives the responsibility for coordinating "efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks." Its mandate is broad, including energy production, telecommunications, information systems, food and water supply, and transportation systems. Since President Bush separately issued an executive order creating a new President's Critical Infrastructure Protection Board, it is unclear how this will be achieved in practice. In cooperation with the private sector and state and local governments, the board will "coordinate programs for *protecting information systems* for critical infrastructure" (emphasis added).[23] It will consist of representatives of all the departments and White House offices involved in counterterrorism activities and will be chaired by a Special Advisor to the President for Cyberspace Security. This new adviser will report to both the Assistant to the President for National Security and the Assistant to the President for Homeland Security and will have a separate staff within the White House office.

The executive order setting up the Critical Infrastructure Protection Board defines its responsibilities to include those functions that "were assigned to the Office of Homeland Security" relating to "the protection of and recovery from attacks against information systems for critical infrastructure, including emergency preparedness communications." It then states that the Assistants to the President for Homeland Security and National Security Affairs shall together define the board's responsibilities for protecting the physical assets that support the information systems. No mention is made of where responsibilities for protecting the physical infrastructure itself will reside. By implication, this function remains with the Homeland Security Office, and the Homeland Security Council has in fact set up policy coordinating committees for key asset, border, territorial waters, and airspace security and domestic transportation security.

[23]White House, Executive Order 13231, "Critical Infrastructure Protection in the Information Age," October 16, 2001.

The Assistant to the President for Homeland Security

The Assistant to the President for Homeland Security has individual responsibilities that are generally shared with others. He is "primarily" responsible for coordinating the domestic response to terrorist attacks within the United States and is to be the "principal point of contact for and to the President" with respect to coordination of such efforts, while coordinating with the National Security Advisor "as appropriate." This language appears to reflect the important roles that others, including FEMA and the state and local governments, will play.[24] Most critically, the Assistant to the President for Homeland Security is to consult with the OMB Director and the heads of executive departments and agencies in the development of the President's budget. His actual budget responsibilities are carefully delimited to include only:

- Identifying programs that contribute to the administration's homeland security strategy.
- Advising the heads of departments and agencies on such programs.
- Providing advice to the OMB Director on the level and use of funding in the executive branch for homeland-security–related activities.
- Certifying to the OMB Director the funding levels "necessary and appropriate for homeland-security-related activities," prior to the transmission of the proposed annual budget to the President.

The Homeland Security Council

The Homeland Security Council is responsible for "advising and assisting the President with respect to all aspects of homeland security" and is to serve as the "mechanism" for ensuring coordination of these activities among the executive departments and agencies, as well as for effectively developing and implementing homeland security policies. The executive order also specifies different categories of council participants.[25] Like the National Security Advisor, the Assistant to the President for Homeland Security will have responsibility for determining the agenda, ensuring the preparation of the necessary

[24]The Assistants for National Security Affairs and Homeland Security are also to coordinate efforts to ensure the continuity of the federal government in the event of terrorist attack.

[25]The council will have eleven "members," including the Secretary of Defense and the DCI. Also "invited to attend any Council meeting" are the chiefs of staff of the President and Vice President, the Assistant to the President for National Security Affairs, the Counsel to the President, and the OMB Director. Others "shall be invited to attend meetings pertaining to their responsibilities," with the Secretary of State included in this category, along with nine persons from the domestic agencies and White House staff.

papers, and recording council actions and presidential decisions. The Homeland Security Council has also put in place interagency coordinating committees at different levels in the government.[26] The executive order concludes by directing that the departments and agencies assist the Homeland Security Council and the Assistant to the President, while it clearly states that "this order does not alter the existing authorities of the United States Government departments and agencies."

Summary of Roles and Responsibilities of the Homeland Security Organization

The mandate of the Office of Homeland Security covers only terrorism in the United States, far narrower than what its title might suggest.[27] The office is *not* responsible for other potential threats to the security of Americans at home, such as drug smuggling. While called upon to improve the security of U.S. borders, territorial waters, and airspace, the office appears to have no role in missile or other kinds of active defenses. For activities with multiple purposes, such as emergency planning and response, a strict reading of the executive order would give the office responsibility for only those that involve terrorism. The office has no role in the international aspects of combating terrorism, despite their inextricable connection to terrorism within the United States. Its functions are further delimited by multiple and complex requirements for coordinating with other White House staff.

The President diluted the responsibilities of the Homeland Security Council for protecting the nation's critical infrastructure by creating a separate coordinating entity for a critical component—information systems—and dispersing responsibilities among three White House staffs. The budget authorities of the Assistant to the President for Homeland Security are somewhat greater than those of the National Security Advisor, but they are far less than those of the ONDCP Director. The President was also careful not to diminish the authority of the OMB Director.

Nevertheless, Governor Ridge brings to his task what may be his most important assets: strong presidential support and the American public's appreciation of the seriousness of the terrorist threat. This could well make up for the lack of the historical foundation enjoyed by the NSC or the statutory foundation of the DCI and the ONDCP Director.

CONGRESSIONAL VIEWS AND ISSUES

Since the September terrorist attacks, congressional attention has focused largely on the organization of the executive branch and on ensuring its own prerogatives. Congress has given very little attention to its own structure for providing oversight of homeland security activities.

Organization of the Executive Branch

Bills to reorganize the executive branch have been introduced in both the Senate and the House. Following the Gilmore Commission's recommendations, a number of senators and congressmen have called for the establishment, by statute, of an office in the Executive Office of the President, with a director to be confirmed by the Senate.[28] Still another group of legislators seeks the establishment of a new department or agency, along the lines recommended by the Hart-Rudman Commission.[29] But by adopting these recommendations rather than crafting proposals in response to President Bush's new homeland security organization, Congress has created confusion as to what is at issue. The choice is not between a White House homeland security office and a homeland security agency. Those who support a new office believe that responsibility for "coordinating" homeland security activities should not reside with the NSC. So one choice is that of where to locate coordinating responsibility within the White House. Another choice is whether some homeland security "operations" should be consolidated into a new agency. It is possible to support both a new homeland security office and a homeland security agency, one but not the other, or neither.[30]

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[26] See Homeland Security Presidential Directive-1, October 29, 2001, for the organization and operation of the Homeland Security Council. It will include a Homeland Security Council Principals Committee as well as eleven Homeland Security Council Policy Coordination Committees covering these functional areas: detection, surveillance, and intelligence; plans, training, exercises, and evaluation; law enforcement and investigation; weapons of mass destruction consequence management; key asset, border, territorial waters, and airspace security; domestic transportation security; research and development; medical and public health preparedness; domestic threat response and incident management; economic consequences; and public affairs.

[27] The language of the executive order leaves some ambiguity when it makes the Homeland Security Council "responsible for advising and assisting the President with respect to all aspects of homeland security," without any further qualification. It would, however, make little sense to have different mandates for the office and the council.

[28] S. 1449 (107th Congress, 1st Session) establishes a National Office for Combating Terrorism. H.R. 3026 (107th Congress, 1st Session) establishes an Office of Homeland Security as well as a Homeland Security Advisory Council.

[29] S. 1534 (107th Congress, 1st Session) establishes a Department of National Homeland Security. H.R. 1158 (107th Congress, 1st Session) establishes the National Homeland Security Agency.

[30] This confusion results in part from the broad language in the bill establishing a new homeland security agency, which calls upon the director to "plan, coordinate, and integrate those United States government activities relating to homeland security, including border security and emergency preparedness" (H.R. 1158). Similar language appears in S. 1534.

These congressional bills raise some other issues as well. One is the issue of whether the head of the homeland security office should receive Senate confirmation, as the ONDCP and OMB directors do. With Senate confirmation comes congressional testimony and public accountability. President Bush chose instead the model of the National Security Advisor, whereby the Assistant to the President for Homeland Security will be a private presidential confidant. Members of Congress can be expected to question why the American people should not hold publicly accountable a figure as important as this or why he should be available to answer the questions of the media but not those of Congress.

Those in Congress favoring the creation of a dedicated White House counterterrorism or homeland security office are also interested in giving it a statutory foundation. Whether such a step would enhance the influence of the office is a matter of debate. What is really at stake is the nature of its responsibilities. The congressional bills could be interpreted as expanding their offices' responsibilities beyond those given to the Office of Homeland Security, possibly including foreign as well as domestic activities. For example, H.R. 3026 calls for the new office to coordinate the "planning and implementation of all Federal homeland security activities." The responsibilities proposed in S. 1449 cover "the prevention of and response to terrorism."

Perhaps the most critical issue to Congress is what budget authorities should reside in the new White House office. Presently, the individual departments and agencies have extraordinary powers. The President, through the OMB staff, can provide overall direction by setting fiscal guidance and singling out priority programs. He becomes personally involved in only a few disputed issues. Although counterterrorism activities now have high priority, the President has decided that the traditional budgetary process is adequate and will not be changed in any significant way. This is not surprising—presidents have historically been very reluctant to reduce the OMB role or to establish duplicate White House budgetary staffs. But in this case, the more important consideration was probably that of avoiding the separation of the foreign and domestic counterterrorism budgets, even though interagency coordinating responsibilities are split.

The congressional bills give their new White House offices broad budgetary responsibilities, but the language leaves many uncertainties as to what those responsibilities would actually amount to in practice. H.R. 1158 has the office "developing, reviewing, and approving, in collaboration with the OMB Director, a national budget for homeland security." S. 1534 gives the office responsibility to "coordinate the development of a comprehensive annual budget for the programs and activities under the [National Terrorism Prevention and Response] Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism."

What would enable the Office of Homeland Security to play a more significant role in the budget process? The experiences of the DCI and ONDCP directors suggest that the relationship between the homeland security director and OMB will be most critical, not whether the authorities are established in statute. Governor Ridge would need to be responsible for defining a baseline budget for domestic counterterrorism, signing off on the methodologies agencies use to define the programs to be included in their budget submissions, and establishing overall fiscal guidance for the programs and budgets in each of the relevant federal departments and agencies. He would be involved in the early phases of their budgetary processes, rather than waiting until fall. He would be able to suggest alternative departmental programs and expenditures and to take any disputes directly to the President. The homeland security director would also need to be able to reprogram funds within the departments and agencies over the course of the year and would therefore need a staff of budget examiners and programmers along with substantive experts. He would, in effect, replace OMB for the domestic counterterrorism budget and would carry out a parallel but similar budget process. The President, then, would be required to institute an entirely new White House process for integrating the foreign and domestic counterterrorism budgets.

Congress has also addressed whether steps should be taken to consolidate homeland security operations, as it did in the 1970s, when it established the Drug Enforcement Administration. This act consolidated within the Justice Department all federal domestic and international anti–drug-trafficking and enforcement activities.[31] A variety of homeland security operations are potential candidates for consolidation; Congress has so far focused on two of them—border security and critical infrastructure protection.

One organizational issue raised by border security is where to draw the line, if consolidation is to be pursued, since enforcement activities exist in a variety of departments, including Transportation, Treasury, Justice, Defense, and Agriculture. Another issue is whether to create an entirely new agency or transfer these operations to FEMA. Congressional bills S. 1534 and H.R. 1158 transfer to FEMA as distinct entities only the Border Patrol,

[31] For a brief history of the Drug Enforcement Administration, see http://www.mninter.net/~publish/deahist.htm.

Customs Service, and Coast Guard. So far, the Bush administration has not taken a position on these issues.

Protecting the nation's critical infrastructure raises perhaps the most difficult organizational challenge. The central issue is how to define the respective responsibilities of the White House coordinating staffs and the operating agencies in the federal government. Because of the potential vulnerabilities of the supporting information systems and their largely private ownership, pressures have mounted to centralize activities in the White House.[32] President Bush's approach, including the establishment of the President's Critical Infrastructure Protection Board, suggests that such centralization will continue. The congressional bills establishing a new homeland security department or agency favor a more decentralized approach, whereby an operating agency would be responsible for many of the coordinating activities.

Congressional Oversight

After the September terrorist attacks, the House transformed the Speaker's Working Group on Terrorism into a regular subcommittee of the House Permanent Select Committee on Intelligence. A bill (S.R. 165) has been introduced in the Senate to create a Select Committee on Homeland Security and Terrorism. Otherwise, Congress has been noticeably silent with respect to reform of its own homeland security organization, which today involves some two dozen congressional committees, many with overlapping jurisdictions. This is perhaps not surprising, given the inherent nature of power in Congress and the failure of many past efforts at reform. Since there is no consensus as to what should be done either in or outside of Congress,[33] this issue remains very much on the agenda.

[32]This pattern of increasing centralization began in 1997 when the NSC took responsibility for implementing the recommendations of the President's Commission on Critical Infrastructure Protection.

[33]The Gilmore Commission called for the establishment of a Special Committee for Combating Terrorism, "either a joint committee between the Houses or separate committees in each House" (2000, p. 17). The Hart-Rudman Commission recommended the establishment of a "special body to deal with homeland security issues," but this body "would have neither a legislative nor an oversight mandate, and it would not eclipse the authority of any standing committee" (pp. 27–28). The National Commission on Terrorism urged "Congress to consider holding joint hearings of two or more committees on counterterrorism matters" (p. 35). The objective of Congressional reform for the CSIS working groups was "for each legislative body to have only one authorization and one appropriations committee for cyber threats, [chemical, biological, radiological, nuclear, and explosives] terrorism, and critical infrastructure protection" (pp. 14–15).

ISSUES FACING THE NEW HOMELAND SECURITY ORGANIZATION

Now that the Homeland Security Council and Office are in place, it is time to consider the most critical issues they will face. Some issues will arise as a result of the organizational model that was chosen; others will emerge as the council and office seek to carry out their substantive responsibilities. Historical experience and the insights of past commissions may prove useful in dealing with all of these issues.

Coordinating Responsibilities

The Office of Homeland Security can succeed in carrying out its functions only if it finds ways to translate its various coordinating responsibilities into practice. It will not be enough for the Homeland Security Council to meet or for the agencies simply to report on their plans and activities. A process needs to be introduced whereby the individual agencies share information prior to their decisions and take the advice of others. This in turn will require the Secretary of the Treasury, the Secretary of Defense, and the Attorney General, among others, to yield some of their existing power and independence.

The history of the NSC and the NEC suggests that this will not be easy. It took years for the NSC to succeed in coordinating DoD activities with other NSC members, and even today it has little role in DoD planning or budgeting. The NEC has had even less success in coordinating financial and trade policies where the Treasury Department and the Office of the U.S. Trade Representative have the lead. The lesson of these experiences is that coordination can be achieved only when the President becomes personally involved or when a department recognizes that its own interests will otherwise be put in jeopardy. The organizational structure recently implemented to prevent terrorists from entering the United States is unfortunate in this respect. Instead of turning to the Office of Homeland Security to coordinate the various federal efforts, as stipulated in its executive order, the President asked the Attorney General to create a new Foreign Terrorist Tracking Task Force whose director would report to the Deputy Attorney General and "serve as a Senior Advisor to the Assistant to the President for Homeland Security."[34]

Homeland Security Operations

By its constant repetition of the word "coordinate," the executive order leaves no doubt as to the mandate of the Office of Homeland Security. But there is often a very fine

[34]Homeland Security Presidential Directive-2, October 29, 2001.

line between coordination and operations, and strong pressures will develop—indeed they are already evident—for the office to take on operational responsibilities. This will especially be the case when departments and agencies are perceived to be acting either independently or ineffectively and also during crises and military engagements, when the political stakes are high. The Bush administration, in making the Assistant to the President for Homeland Security its public spokesman during the anthrax scare, took a major step toward an operational role. The more Governor Ridge accedes to these pressures, the more difficult it will become for him to play the role of honest broker in the decisionmaking process and thereby fulfill his coordinating responsibilities.

Foreign and Domestic Counterterrorism Activities

The challenge of integrating foreign and domestic counterterrorism activities is made even more difficult by the decision to divide responsibilities into two separate interagency coordinating processes. The nature of the terrorist threat gives rise to operational imperatives that are now at cross-purposes with the organizational incentives. Indeed, the commissions that studied this issue were unanimous in the view that the traditional foreign and domestic barriers needed to be broken down, not reinforced.

The Bush administration's approach is to introduce overlapping membership in the NSC and the Homeland Security Council. The new National Director and Deputy National Security Advisor for Combating Terrorism has also been given a global terrorism mandate. He will report to the Assistant to the President for National Security Affairs and "to the Assistant to the President for Homeland Security with respect to matters relating to global terrorism inside the United States."[35] However, such mechanisms may not be sufficient, as evidenced by the confusion and lack of coordination between the NSC and the NEC, particularly in the latter's early years.

State and Local Government Cooperation

Perhaps the most difficult organizational challenge will be that of finding ways to ensure cooperation among federal, state, and local officials. The executive order specifies such cooperation as a function of the Office of Homeland Security and includes "working with" state and local governments as an element in the performance of almost all of its other functions. Yet the order offers no guidance as to how this is to be accomplished. Equally silent is the directive setting up the Homeland Security Council's day-to-day interagency Policy Coordination Committees, which are enjoined only to coordinate federal homeland security policies with state and local governments. The CSIS working groups recommended state participation in their National Emergency Planning Council but simply called for biannual meetings.[36] The Gilmore Commission recommended that a national Advisory Board for Domestic Programs be established that would include, among others, "one or more sitting State governors [and] mayors of several U.S. cities."[37]

The Office of Homeland Security will need to address these threshold issues: Will informal or formal processes be established? Will the processes aim simply to share information or will they produce decisions? Where will attention be focused, on federal programs and activities or on those of the states? Obviously, the more formal, directive, and intrusive the processes are, the more difficult the office's challenge will be, but also the more likely it will be to succeed in carrying out its mission.

National Strategy

Every commission has exhorted the government to develop a national strategy. The Gilmore and Hart-Rudman commissions detailed the critical elements of such a strategy,[38] and the Gilmore Commission went further to provide examples of the kinds of priorities that such a strategy would need to establish.[39] But is this a reasonable and realistic goal?

The history of executive branch strategic planning efforts is not encouraging. Setting priorities and translating overall goals into specific implementing guidance is intellectually difficult, even with the best of intentions. Moreover, departments and agencies strongly resist defining such a strategy for fear of undermining their own prerogatives and budgets. Left to staffs charged with protecting departmental equities, the result of such efforts tends to be a listing of broad and multiple goals. Only department heads are empowered to make the serious choices and tradeoffs, and they tend not to have the time—or, more often, the inclination—to participate. The National Security Strategy defines only the most general goals, despite the statutory requirement and the National Security Advisor's steady accretion of power. Even where the ONDCP Director has the statutory authority to

[35] White House, *Fact Sheet on New Counter-Terrorism and Cyber-Space Positions,* October 9, 2001.

[36] CSIS Working Groups, pp. 13–14.

[37] Gilmore Commission (2000), p. 14.

[38] Hart-Rudman Commission, pp. 10–13.

[39] Gilmore Commission (2000), p. 6.

prepare a National Drug Control Strategy, the result is disappointing.

What kind of process would offer the prospect of producing a credible and useful national homeland security strategy? First, and most important, the President would have to play a personal role in defining the overall strategic goals and priorities. The full members of the Homeland Security Council would then buy into these through a process of framing, drafting, and finalizing a strategy document. The Assistant to the President for Homeland Security would discipline the process, so that the goals would be operationalized, priorities would be established, and controversial issues would be resolved. The document produced by this process would remain a private planning document, to encourage candor and specificity. It would at the same time become the basis for enunciating a public strategy as well as for ensuring that the President's goals and priorities were being carried out in day-to-day department policies, programs, and budgets. OMB would then translate this strategy into its fiscal and programmatic guidance.

Domestic Counterterrorism Budget

A related issue concerns how the Office of Homeland Security can use its limited powers to importantly affect the domestic counterterrorism budget. The critical first step would be for the President to instruct the OMB Director, along with the Assistant to the President for Homeland Security, to identify the specific programs that should constitute such a budget. This itself is a highly political process, for department budgets can be expected to rise or fall in the near term as a function of the departments' antiterrorism contributions. The initial goal of the Assistant to the President for Homeland Security should then be to make sure that in the ensuing budget process the critical programs receive sufficient priority. This could be done in one of two ways. He could focus initially on only a few areas, relying on the President to back him up, both with the departments and with OMB. Or he could focus instead on establishing the fiscal guidance for the domestic counterterrorism budget in each agency, leaving the programmatic and budgetary details to others. The President would have to give him the authority to overrule OMB proposals. For either approach, the Office of Homeland Security would need to have a sizeable and dedicated budgetary staff.

Intelligence and Law-Enforcement Activities

Past counterterrorism operations have been hindered by the failure of the intelligence and law-enforcement communities to share information. This arises from the different cultures and responsibilities of these communities. Neither the DCI nor the FBI Director has been prepared to alter current practices in the absence of a clear Presidential directive. President Bush's executive order could be interpreted as providing such a directive, since it gives the Office of Homeland Security responsibility for ensuring that "all appropriate and necessary intelligence and law-enforcement information relating to homeland security is disseminated and exchanged." Making the DCI and Attorney General members of the Homeland Security Council would provide a mechanism for enforcing such a requirement. The problem is that homeland security is defined in the executive order as involving only terrorist activities within the United States. The Deputy National Security Advisor for Combating Terrorism has a broader global mandate, but he is dual-hatted and as a deputy lacks the necessary stature. Thus, the White House coordinating processes still do not ensure the sharing of all the necessary intelligence and law-enforcement information.

The Military's Role in Homeland Security

Putting the Secretary of Defense on the Homeland Security Council is a welcome signal that coordinating the military's role in counterterrorist activities within the United States will be on the agenda. Each of the commissions pointed to the current lack of such planning but then divided as to the appropriate DoD role in responding to terrorist attacks. The Gilmore Commission was clear: The President should "always designate a Federal civilian agency other than the Department of Defense as the Lead Federal Agency."[40] The National Commission on Terrorism called for the development of detailed contingency plans to "transfer lead federal agency authority to the Department of Defense if necessary during a catastrophic terrorist attack or prior to an imminent attack."[41]

The executive order itself focuses on the role of the Office of Homeland Security in coordinating efforts to improve the security of U.S. borders, territorial waters, and airspace. It provides no guidance on the many other potential military roles, although a number of issues need to be addressed (e.g., the respective civilian and military contributions to emergency preparedness and response measures for mass-casualty attacks, the integration of military and law-enforcement counterterrorism activities, and the potential role of the military in providing security for the nation's transportation systems and critical infrastructure). Each of these issues in turn raises the politically sensitive question of the National Guard's future role. The Office of Homeland Security clearly has the mandate to take up this issue—indeed, it is uniquely positioned, given

[40] Ibid., p. 28.

[41] National Commission on Terrorism, p. 40.

its links with state and local governments. But strong resistance can be expected from each of the interested parties (i.e., the National Guard, the Army, and the state governors). This could well be one of the first litmus tests of the seriousness and clout of the new office.

LOOKING AHEAD

Given the dangers and the immediacy of the terrorist threat to the American homeland, it is understandable that President Bush would adopt a high-profile organizational response, creating a new office and new interagency coordinating process. And the complexity and highly sensitive political character of the war on terrorism made locating the new office in the White House attractive. The President could have given this role to the National Security Advisor, but the most compelling challenge is obviously domestic, not foreign. The NSC has also only recently begun to coordinate policies involving the national security and domestic agencies.

What is surprising is the limited focus and authorities of the new Office of Homeland Security. Countering terrorism within the United States is unquestionably an enormous task, but it is only a small part of the overall war on terrorism. Dividing coordinating responsibility between two presidential assistants—one for domestic and one for foreign counterterrorism activities—is of particular concern because intelligence, law-enforcement, and military operations at home and abroad need more integration, not less.

The prerogatives, including those for programs and budgets, of the federal departments and agencies have not changed, nor have those of state and local governments. President Bush's newly created organization is actually more decentralized than the one it replaces. The White House coordinating processes are extremely complicated, and the parallel establishment of the President's Critical Infrastructure Board and the Foreign Terrorist Tracking Task Force has diminished the role of the Office of Homeland Security.

Nevertheless, the Homeland Security Council and Office are now in place. It is time to move on to the urgent task of coordinating domestic counterterrorism activities. Even with its limited authorities, the new organization will be able to improve upon the current situation. With effort and creativity, these authorities can be used to accomplish even more, especially if the President is prepared to intervene personally. It is now necessary to turn to the substantive functions of the organization, while appreciating that the processes will necessarily evolve over time.

Congress must give priority first to addressing its own processes for providing oversight of homeland security programs and budgets. It is appropriate that Congress consider as well whether the authorities of the new Homeland Security Council and Office are sufficient for the task ahead. But it should focus on the organization that President Bush has put in place, rather than simply supporting the recommendations of past commissions. In considering its relationship to the Assistant to the President for Homeland Security, Congress should appreciate that while he is not directly accountable to the legislative body, his high public profile has made him accountable to the American public.

This does not mean that government reform should be entirely off the agenda. Experience over the coming months may suggest the need for further organizational refinements, particularly in the budget process, border security operations, and critical-infrastructure protection. A more basic restructuring may also be required, depending on whether the current organization can succeed in integrating foreign and domestic counterterrorism activities and in coordinating those federal, state, and local authorities responsible for responding to terrorist attacks. Congress may also insist on more public accountability on the part of the Assistant to the President for Homeland Security. But for now, it is time to get on with the task of providing homeland security for the American people.

Appendix

Summary of Commission Recommendations, Homeland Security Organization, and Congressional Views

	White House Coord. Organiz.	New Agency	Budget Respons.[1]	Breadth of Respons.	Basis of Authorities	Senate Confirm.
COMMISSIONS						
Gilmore	New Office with Director	No	++	Foreign & Domestic; Terrorism Only	Statute	Yes
Hart-Rudman	NSC	Yes	0	Foreign & Domestic; Terrorism & Other Activities[2]; Critical Infra-structure	Statute	Yes, for Agency Head
National Comm. on Terrorism	NSC	No	+	Foreign & Domestic; Terrorism Only	Executive Order	No
CSIS Working Groups	Vice Pres.; New Council; New Staff	No	0	Foreign & Domestic; Terrorism & Other Activities; Critical Infra-structure	Executive Order	Yes, for Chief of Staff
HOMELAND SECURITY ORGANIZATION						
White House	New Office; New Assistant to President; New Council	No	+	Domestic; Terrorism & Other Activities; Critical Infra-structure[3]	Executive Order	No
CONGRESSIONAL VIEWS						
S. 1449	New Office with Director	No	++	Foreign (?) & Domestic; Terrorism Only	Statute	Yes
H.R. 3026	New Office with Director; New Council	No	+	Foreign (?) & Domestic; Terrorism Only	Statute	Yes
S. 1534/ H.R. 1158	NSC	Yes	0	Foreign & Domestic; Terrorism & Other Activities; Critical Infra-structure	Statute	Yes, for Agency Head

[1]0 = baseline budget authority; + = slightly enhanced budget authority; ++ = greater budget authority.

[2]Includes such other homeland security activities as border security and missile defense.

[3]A separate board, not the Homeland Security Council, coordinates programs for protecting information systems for critical infrastructure.

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