

The Department of Homeland Security: A Partner but Not Necessarily a Model for the European Union

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I. Introduction

President Bush's well-crafted speech to Congress on 21 September 2001 served admirably its purpose of rallying a nation still understandably in shock, while at the same time launching the theme, much repeated since then, that this President had the personal qualities – perhaps unsuspected until then – to provide the kind of “war leadership” which the dramatic circumstances required. Tucked away about two-thirds of the way through the speech were a couple of paragraphs which to some observers across the Atlantic seemed curiously out of tune with the generally rousing, almost Churchillian, language which preceded and followed them. There the President announced (to applause), as if it would somehow provide much-needed comfort and reassurance to a traumatized nation, that he was inviting his good friend, Governor Ridge of Pennsylvania, to set up and lead a new office in the White House basically to ensure that something like 11 September could never happen again.

Two and a half years later on 1 March 2004 that “office” had become the Department of Homeland Security (DHS) and was celebrating, in the presence of the President, the first anniversary of its operational existence. No longer a mere “office”, it was now a massive new administrative creation and one of the largest departments in the US Government - comprising about 180,000 personnel and much trumpeted as the biggest government restructuring since the setting up of the Department of Defense in the aftermath of the Second World War. Its success or otherwise could well constitute a major plank in the 2004 presidential election campaign, even if, given the background which led to its creation, it appears almost taboo in party political terms to question the wisdom of the decision to go down the road of setting up a whole new cabinet-

level department rather than just a new office in the White House such as the President appeared initially to have in mind.

The purpose of this paper is to examine, with the luxury allowed to an outside observer when looking at someone else's sacred cows, the extent to which the creation of the DHS has the prospect of meeting its lofty ambitions to reassure Americans that they live in a place better equipped to face the dangers of the twenty first century than they would without this kind of administrative structure.

Part of the purpose of the paper is also to examine whether this substantial reorganization of long-established administrative traditions and structures may have lessons (positive or negative) for the European Union and its various institutions. Without fear therefore of being exposed to charges of lack of patriotism in the American context, the approach adopted is that of "Aunt Sally" i.e. to set out frankly some instinctive doubts that come to mind and to form as objectively as possible a view on whether they appear justified on closer examination. With one exception (the potential impact on immigration-related issues), it does not seek to pass judgments on the substance of the policies which the DHS has formulated and is engaged in implementing, but rather on the inherent appropriateness of such a structure for the purpose of protecting the homeland, regardless of the content of the policies themselves or the way in which they are being implemented.

To these ends, the paper looks at:

1. The reasoning and the debate, to the extent that there was one, which led to the creation of the department in the first place;
2. The component parts and consequent "manageability" of the new department (i.e. which existing services or agencies were included or excluded and why);

3. The relationship between the federal centre on the one hand and the states and localities on the other. This takes on a particular significance when large sums of money are available for distribution, with corresponding requirements on personnel to issue clear guidelines on eligibility and to ensure accountability;
4. The consequences of being incorporated in the security-centric DHS for the traditional work of certain agencies. For a country whose strengths derive from its (positive) immigration traditions, this is particularly interesting and potentially significant in the case of the previous Immigration and Naturalization Service (INS);
5. The “transposability” of all or any of this to the context of the EU collectively, taking account of both the different relationship which exists in Europe between the federal centre (the European Institutions) and the States (the EU Member States), and of the fact that Europe, despite the 11 March 2004 bombings in Madrid, does not (yet) consider itself to be on a war footing.

II. Why a DHS?

In the almost immediate after-shock of the 11 September attack, the President's announcement of the creation of an Office of Homeland Security in the White House seemed to carry some of the hallmarks of a hastily considered reaction to an overwhelming need to be seen to do something – anything – in response to the tragedy. To that end, it no doubt had at least two attractions at the time. First, it was entirely in the power of the executive to implement immediately, being a new function in the White House not requiring prior congressional authorization. Secondly, it offered an answer to, or at least a recognition of, a widespread public feeling – instinctive and probably inevitable, even if only dimly perceived at the time – that such an appalling event must in some way be attributable to a structural and/or organizational failure on the part of those whose task it was to prevent such things.

Furthermore, this apparently rushed decision had the additional advantage that the administration was not starting from a blank sheet of paper. For some time before the 11 September tragedy, in particular following the first terrorist attack on the World Trade Center in 1993, much time, thought, and ink had been devoted by significant and qualified people, not least from within the previous Clinton administration itself, to ways of improving the nation's defenses against terrorism or other forms of non-conventional attack. These included two formally appointed commissions:

- The Commission on National Security/21st Century (“Hart-Rudman”) that had submitted its final report in March 2001;
- The Gilmore Commission, whose work had begun well before 11 September 2001 but whose fifth and final report appeared well after the event, as originally scheduled, in December 2003.

Even though they came up with different answers, these two commissions could both be said to validate the view that some substantial reorganization was needed to the way in which the nation handled what came to be called “homeland security” issues. Hart-Rudman favored the creation of large new department, Gilmore preferring a powerful coordination function in the White House.

The fact that the administration went for yet a third option does not detract from the usefulness of this ground work having been done, particularly since that option could be said to combine the main features of both commissions’ recommendations. In coming down in favour of setting up a major new cabinet-level department, the administration ensured high political visibility for its commitment to homeland security as well as an ongoing relationship with Congress, whose support would be indispensable, in particular for the purposes of ensuring the essential budgetary underpinning for the department. At the same time the administration equipped itself to ensure the necessary cooperation between the DHS and other major departments through the maintenance of a residual coordination function in the White House in the form of a Homeland Security Council.

A certain amount of heat, but not much light, has been generated by the question of whether the administration finally opted for the creation of a fully fledged new department spontaneously or under pressure from senior Democrats in the Congress, notably Senator Lieberman. He and others had picked up this recommendation in the Hart-Rudman Report and briefly appeared to be taking the matter more seriously than the administration, which was reported to favour the more “modest” solution of a new council within the White House along the lines of the well-established National Security Council. White House insiders, however, insist that the President had no fixed views on the optimal long-term solution when he decided in

the immediate aftermath of the attacks to begin by setting up his new office in the White House (the only option in his immediate power to implement); and that it was certainly not pressure from Senator Lieberman which led him later to decide to go for something bigger and higher-profile. The fact that the President was able later to recapture the political high ground (to very useful effect in the 2002 mid-term elections) in the course of the subsequent congressional discussion of his proposal to create the DHS was, these insiders argue, an additional bonus which flowed from a well thought out proposal justified entirely on its own intrinsic merits.

Whatever the truth, the important consequence would seem to be that the DHS emerged with almost serendipitous bipartisan support, and it would not appear to be easy for any successor administration, Republican or Democrat, to attack the concept (as opposed to the operational effectiveness) of the huge structure that has been created: any attempt to dismantle it or to return some or all its component parts to their original owners would invite charges of downgrading the commitment to homeland security. So the DHS or something like it is probably here to stay, and third countries and international organisations will have to get used to dealing with this new actor on the Washington, and therefore the world scene.

III .The component parts of DHS

The structure of the DHS is set out its simplest presentation in the one-page “organizational chart” attached as Annex I. This summarises in tabular form the lengthy and very detailed language of the Homeland Security Act itself and of the subsequent 25 November 2002 DHS Reorganisation Plan.

If the general debate about the desirability of creating a new and comprehensive department took place in the public domain, the details were prepared with a remarkable lack of transparency. A few false trails were laid and gave rise to some not very relevant discussion. But it was essentially a very small team in the White House who worked out in considerable secrecy what the new structure should look like, and it was their proposed ideas which were presented by the President to his Cabinet more or less on a “take it or leave it” basis. They then proceeded – with the President’s backing – to knock together the heads of those existing departments and agencies who would be losing whole and, in some cases, large areas of responsibility and their accompanying human resources to the new DHS. There appears to have been little room for negotiations offered to the “losers” or openness on the part of the White House to reconsider its ideas. In the post-11 September circumstances the President did not hesitate to demand of his Cabinet members that they no longer block his clear wishes for the sake of preserving individual turf, as some of them had sought to do earlier when presented at the end of 2001 with a less radical reorganization proposal.

Be that as it may, whatever reluctance may have been expressed later by senior officials in those entities which were earmarked for transfer to the DHS, the political- level management of the sending departments seemed surprisingly willing to let them go. This may partly reflect the fact that the departments concerned (essentially Justice, Treasury and Transportation) viewed

the responsibilities they would be losing as being, at best, not central to their primary function or, at worst, a source of potential or actual trouble they would be glad to shed. This was particularly the case of the luckless INS, which the Department of Justice (DOJ) had anyway only inherited in the atypical circumstances of World War II, and for which it was already planning an important reorganization. It is difficult to imagine that DOJ would have given in so easily if there had been a serious or sustained attempt to take away its other, much higher-profile agency, the FBI, the retention of which enables it to maintain a real handle on homeland security issues.

The agencies and entities to be transferred to the new department were listed in detail in the relevant section of the 25 November 2002 DHS Reorganisation Plan (see Annex II). There are 22 of them, comprising about 180,000 people.¹⁹ have been reorganized into four policy directorates, while 3 (the US Coast Guard, the US Secret Service and the Bureau of Citizenship and Immigration Service) come into DHS as distinct entities with their Commandant/Directors responsible direct to Secretary Ridge and his deputy, Admiral Loy.

The impressive figure of 180,000 needs, however, to be disaggregated: the overwhelming majority of the personnel transferred are accounted for by 4 entities alone: the US Coast Guard (39,000), the INS (30,000), the Customs Service (40,000) and the (only recently created) Transport Security Agency (45,000). The rest are made up of much smaller and more specialized bodies whose work was considered to have a link with or usefulness to that of the DHS.

One, at first sight surprising, absentee from the list of entities to be transferred to the DHS was any representative of the family of intelligence agencies. It was, after all, these very agencies whose performance and perceived failures have been very much under the spotlight both immediately after 11 September and with increasing intensity. If the findings of the “9/11

Commission” are any guide, they may well be destined for a major shake-up in due course; but the fact that they all escaped the immediate restructuring process which created the DHS was perhaps, at least initially, due in part to their supporters in Congress, the weight carried within any administration of the department secretaries for whom they work (Defense, Justice, State) as well as to the aura of mysterious specialization that has traditionally surrounded their work. But it was also logically defensible, given how much more widely their responsibilities ran than homeland security alone. This is particularly the case of those agencies with a major overseas component to their work (CIA, DIA, NSA, INR). The one candidate for possible transfer to the DHS might have been the FBI, an option that was apparently briefly considered but rejected, partly on the grounds that adding it to the DHS would have produced too powerful a new structure, with an unwelcome resemblance to a European-style Ministry of the Interior.

The resulting structure, even without the FBI being added, is nevertheless huge, and its component parts heterogeneous in their nature and size. It is obviously too early in the life of the new department to pass informed judgments on whether it will turn out to be “manageable”. For that, the DHS will anyway need to be given time to settle; an appropriately sized and located Headquarters (in testimony before the relevant Congressional Committee as recently as 6 May 2004, Deputy Secretary Loy was still highlighting the absence of a stable Headquarters space); and, no doubt, some visible victories in the inevitable turf battles which will follow. It will also face real and delicate difficulties in building up solid credibility in an area where, on the one hand, “no news is good news”; but, on the other, election-year politics seem likely to require the public’s state of anxiety and preparedness to be kept on the simmer or even the boil. Ensuring the full cooperation of the various members of the intelligence community, particularly if it is anyway in a state of turmoil, without any real administrative handle on its component parts will

be essential but not necessarily easy. Last but not least will be the challenge of infusing a pride, a morale and a culture in a new organization which is both charged with a politically high-profile task, but is also a vast and sprawling enterprise, built up at least in part from a certain number of administrative “orphans” a little too readily abandoned by their previous parents.

IV. Federal, State and Local Interaction

Although the range of activities and agencies for which the DHS has taken responsibility is large and varied, they can conveniently be divided into two broad categories. Even if the precise dividing lines can fall in very different places either side of the Atlantic, these categories have their equivalents in Europe: those activities which are the direct responsibility of the Federal authorities, and those which remain the responsibility of the individual States and local authorities, while depending on the centre for guidance and possible financial support.

In the US context the distinction has been relatively simple: in terms of direct responsibility, the DHS more or less took over what its component parts brought with them from the government departments of which they had been part. This applies most clearly in the case of preventive measures designed to strengthen the nation's external frontiers. Legitimate questions can be asked about the real usefulness of the "one face at the frontier" approach, but it is clear that in the US (not yet in the EU) these are federal responsibilities requiring common standards, rules and training. The thrust is, of course, for tighter and more rigorous entry and exit controls in order to be able to ensure a much clearer and more complete picture of which non-US citizens are admitted into and legally present in the country at any given moment. These reinforcements will involve significant commitments of human and financial resources, as indicated by the fact that in FY 2004 the budgetary provisions for frontier and transportation security amounts to over \$14 billion (which does not include a further \$7 billion earmarked for the partially supporting functions of the US Coast Guard) out of the federal budgetary appropriations for DHS of \$36.5 billion -see Annex III.

The DHS' efforts are, however, also and significantly to be directed towards strengthening disaster preparedness and the capacity of "first responders" for which

responsibility still rests primarily with the state and local authorities. To the extent that there is an equivalent in Europe, it goes by the name of “civil protection” where relatively little currently takes place at EU, as opposed to national, level. It is an area whose success or failure in the US context could be of considerable interest to Europe.

In the US, where the effort (and therefore the supposed effectiveness) put into most activities is inclined to be measured in terms of the budgetary resources directed towards it, the identified needs of preparedness and first response, as epitomized by the fire service heroes of 11 September, should be able to look forward to significant (but, in the view of several well-informed commentators, seriously inadequate) enhanced support from Washington (\$5.0 billion out of a DHS budget of \$36.5 billion in FY 2004 – see Annex III). Not surprisingly, the state and local authorities are taking an active interest in being able to benefit from these newly available resources to supplement their own State budgets (which will, in accordance with the constitution, continue to provide the bulk of financial support for the activities concerned).

There is an obvious need for Washington to establish clear guidelines, based on sophisticated and defensible criteria, on what kind of activity would qualify for support from these federal funds, as well as a disbursement system that achieves the difficult balance between swift processing and full and transparent accountability. This in turn will be a major call on the time and energies of DHS staff for auditing purposes.

Leaving aside the budgetary dimension, the American effort to provide from the centre well-informed and operational guidance to the states on how to prepare for and respond to terrorist, as well as natural, catastrophes could well offer lessons for Europe. In this context, it is useful to draw attention to the significantly different roles played by the private sector in the US and EU in this area. The importance of the private sector in the US, including particularly the

universities and other research organizations, is well known. Less well known is the extent to which the private sector owns and operates much of America's critical infrastructure of the kind that could easily attract the attention of terrorists looking for high profile and potentially vulnerable targets. This dimension of vulnerability, in particular the risk that responsibility for security and protection might fall into the gaps between the public and private sectors, may be less widespread in Europe than in the US; but it exists, and the fora and ideas (for example standard-setting and its consequences for insurance policy-making) generated by the American context would also usefully be monitored in Europe at Union as well as at national level.

V. Security-centricity

One consequence for the services that have been moved to the DHS is that they will inevitably be expected to look at their work primarily through a security lense. This may not have any particular downside effects in the case of those services whose job description was anyway already mainly security-related. It could be argued, for example, that the revenue-raising role of customs had anyway become increasingly distinguishable from its law-enforcement responsibilities, especially at the borders. Similarly, the services from the Department of Transportation that have joined the DHS have an identifiable security focus which can reasonably be hived off without damage to the wider mission of their sending department. For the US Coast Guard (USCG), however, the increased emphasis on homeland security can, at least initially, only be achieved at the expense of other activities. Given the sanctity of the USCG's "search and rescue" mission, this re-ordering of priorities would logically mean less attention being paid to its fishery protection and counter-narcotic tasks.

Real and understandable concern has, however, been expressed in connection with the almost wholesale move of responsibility for immigration issues from the DOJ to the DHS. Tempting though it might be to read more than just symbolism into the name change from "Justice" to "Security" as indicating a changed role for the service, that change of nomenclature is not the main issue. Indeed, it could be argued that the name of the department matters little and that much more depends on the respective personalities and policy instincts at any given moment of the Attorney General on the one hand and the Secretary of Homeland Security on the other. INS has anyway over the years of its existence been shunted from one department to another and, ironically, was only moved from the Labor Department to the Department of Justice

in the first place as a reflection of the security concerns with regard to certain immigrants that surfaced in World War II.

The issue now is the missed opportunity of finding a way of upgrading the political responsibility for immigration, and providing it with the profile and resources it needs if it is to carry out its very difficult dual role of an agency responsible both for enforcement and for service-providing. Work on better recognizing this distinction had in fact already begun within the DOJ before the agency's transfer to the DHS. It is also reflected in the new structure of the DHS where the importance of the service function finds recognition, at least on paper, in the fact that the relevant DHS director reports directly to the Secretary. However, the move of the whole service to the new department seems to perpetuate its orphan status under which it finds itself once again attached to a department whose main focus and mission lies elsewhere. For a nation built on the contribution, the creativity and the success of its immigrant communities, and at a time when the whole complex of issues surrounding immigration are increasingly under the political and sociological spotlight, it seems strange that in the United States, of all places, immigration issues should be reduced to a sub-theme of homeland security.

VI. Does the creation of the DHS bring added value to the US?

It is too early to pass a firm and reasoned judgment on whether such a newly established department makes sense in the American context. There must be a danger that the highly charged political context in which the creation of DHS was decided and announced, together with the ongoing focus on homeland security which will be a feature of the electoral season, may result in the time needed for a normal shake-down period simply not being available. The pressure on DHS to be seen, or at least to be portrayed as having succeeded in its mission will be too intense to be compatible with any fair assessment of its real impact.

How anyway can the success or failure of the DHS experiment be measured? One way of claiming success might be by reference to its own declared mission to “prevent terrorist attacks within the US”. So far, so good. It is possible to point to the lack of any further terrorist incidents in the US since the department was established, and to attribute this success to the well-publicised defense mechanisms and procedures it has introduced as having led would-be terrorists, who can be viewed as risk assessors like anybody else, to look for softer targets outside the US. There are obvious dangers in this line of reasoning, however, not least in facing up to its corollary: if the absence of further terrorist incidents is evidence of success, would a new incident provide evidence of failure, however skillfully the spin doctors seek to present it?

Furthermore, the greater the emphasis placed on this link between cause and effect, the greater the incentive for terrorists to exploit it to further their own agenda as they appear to have done in Madrid in March 2004. But perhaps an equally plausible explanation for the current absence of further attacks on US soil could be the difficulty of mounting anything on the same spectacular scale as 11 September 2001. Anything remotely comparable could anyway, with or without a DHS, be expected to require considerable time and planning which might also go some

way to explaining why there has been no follow-up attack on US territory since 2001. Moreover the apparent sophistication of the planning behind the Madrid attacks suggests that the terrorists are well able to make their own calculations of the political impact of the timing of their actions and their choice of victim during an electoral period.

A less publicly visible, but more convincing positive outcome of the reorganisation that led to the creation of the DHS is bureaucratic. If part of the purpose of the creation of the department is to issue an administration-wide wake-up call that security is now a, if not the new priority, it could be argued that it has been successful. Changes that were already under consideration, such as the separation of the INS law enforcement and service-providing functions, received a new momentum and have moved quickly to the implementation stage. Agencies brought into the DHS that may not previously have been primarily focused on homeland security, such as the USCG, have now become so, particularly in how they must justify the use of any new resources steered their way. The question nevertheless arises of whether these changes of mindset or accelerated implementation really required the creation of a whole new department, rather than a strong message from the White House, conveyed and monitored either through the existing NSC or a newly created Homeland Security Council. Defenders of the DHS say it was necessary to go down the road of creating a new department, both in order to provide the kick-start needed and to ensure the essential support and involvement of Congress. This may or may not be true in the post-11 September US context, but does not necessarily offer any guidance for Europe.

In any case, despite the bipartisan political support the initial idea enjoyed, there was no shortage of qualified observers who were from the beginning sceptical about the wisdom or usefulness of so much effort being devoted to renaming and re-organising rather than to the

substance of combating the terrorist threat. And by March 2004 the first openly critical attacks on the DHS achievements (or lack of them) were appearing in the press and indicating that the honeymoon truce could be fragile. These attacks, however, have not so far been directed against the concept of a “giant” department as such but more to its failure to make its mark on the Washington scene faced with older-established departments and agencies, as well as on some policy options chosen and the way in which they are being implemented.

Despite the inauspicious and pressurized circumstances in which the DHS was born and is growing up, which are not particularly inductive to cool and objective evaluation, there is still room and time for questions to be asked about whether the creation of something on this scale was a useful contribution to the security of the American homeland in the first place. To be sure, the events of 11 September 2001 were bound to focus attention on the role and responsibility of the Federal authorities for preventing and responding to such an attack. The speed with which the language of war and retaliation entered the vocabulary of the moment will have played its part in shaping public expectations and the political search for an appropriate reaction. The perfectly understandable comparisons immediately drawn with Pearl Harbor and the government’s mobilization of the national response at that time, leading eventually to the creation of the Department of Defense (DOD), could have appeared to call for something similar. In such times, size can be said to matter. It is worth recalling, however, that the political and administrative effort needed to create the DOD was left until after the war had been won, and not at a time when the urgent need was to fight the war itself with the instruments and organization available, however imperfect.

Fortunately for the administration from this point of view there was an identified enemy against which immediately available size and power could quickly be directed: the Taliban

regime in Afghanistan and its association with al-Qaida provided a perfect, almost classical target against which American fury and resources could be unleashed in a way which commanded not only national but also international support. The success of this opening salvo of the “war against terror” showed reassuringly the effectiveness of such power exercised at the national level. But it did not ipso facto prove that, just because the nation was on a war footing, the needs of homeland security would best be met by pulling together under a single command all those who wholly or partly had something to contribute.

Even if one accepts that the post-11 September context in the US led remorselessly to the DHS solution, certain questions remain open:

- Has the creation of DHS helped all the various actors, inside and outside government, to play the parts assigned to them in the area of homeland security? Or has it, on the contrary, led to valuable time and effort being misdirected to turf and logistical problems at precisely the moment when the urgent need was for the existing structures better to co-ordinate their efforts and pull together?
- Even assuming that everybody’s respective roles have been correctly identified and attributed, to what extent does the federal government need to assemble all the human and financial resources available to it under a single command? What are the risks that previous non-security-related responsibilities will be neglected, lost, or distorted by such a move? Or, no less dangerous, that the existence of a large and powerful Department of Homeland Security will come to be seen as absolving other players of their responsibilities for security awareness?
- Conversely, what are the consequences of not bringing under the responsibility of the new department key federal responsibilities such as intelligence collection and analysis

or at least ensuring that DHS had access to top-quality intelligence material? Was it really more urgent to go through the considerable administrative effort of setting up DHS than it was to address the intelligence conundrum which is only just starting almost three years after the 11 September tragedy?

- Given that there is anyway an identified need to maintain a Homeland Security Council in the White House to coordinate the work of the DHS with that of the relevant departments not under its authority, would it not really have made more sense to build up that White House Office into something with the equivalent weight as the NSC, rather than create a whole new and not particularly homogeneous department? Or indeed to expand the remit of the NSC itself to ensure the continuum between the internal and external aspects of homeland security?
- Will the US derive the hoped-for benefits, in terms of public re-assurance, mobilization of resources and synergies, which such a major reorganisation could be expected to offer? Or could the same results have been achieved with less disruption, diversion of resources and potential interdepartmental tensions (such as still prevail, for example, between DHS and the Departments of State and Justice), by means of an intermediate-scale reorganization such as the setting up of three more modest agencies: one for border security issues; a second for preparedness and first response; and a third for all immigration-related matters as a subject in their own right?

The jury is, or should be, still out on many of these questions, but its verdict when delivered in due course could be especially interesting to others thinking about reorganisations of their own. What can be said already is that a combination of the need to keep homeland security

high on the political agenda and the tireless efforts of Secretary Ridge to keep the Congress and the American people informed about the department's activities and achievements, have ensured that the existence of the DHS has been kept very much in the public view. Although such publicity is always a potentially a two-edged sword, it has been pursued with such energy that it must be assumed that the administration sees advantage in it, particularly if it can continue to point to no further terrorist incidents on the US homeland for the rest of 2004.

VII. A model for Europe?

In the wake of the 11 March 2004 terrorist attacks in Madrid, the EU in its turn briefly directed its collective attention to re-examining and rectifying its own preparedness and capacity to respond to such outrages. The pressures to be seen to be doing something more than simply express solidarity with Spain were not unlike those which prevailed in Washington DC two and a half years earlier. The outcome of the deliberation of the Ministers responsible could, however, hardly have been more different. They appear to have concluded that all the necessary and available instruments had been adopted, but that they had not been sufficiently well implemented or put to proper use. And they vowed to do better. There was, however, no immediate willingness to introduce any concrete or useful, let alone Europe-wide arrangements for intelligence sharing. And the nearest they came to appointing a Tom Ridge equivalent was to nominate a former Dutch Secretary of State to provide coordination and information. He appears to have no operational role and, in contrast with Secretary Ridge's 180,000 staff, his direct support consists of one secretary.

That the EU should take the view that it has already in place the necessary instruments is perhaps not surprising. It did after all go through a similar exercise in soul-searching in the context of the 11 September attacks on the US and took a considered view on what gaps could usefully, and in a way compatible with the existing Treaties, be filled in its collective legislative armoury – and indeed filled them with a most commendable and atypical speed. Nor was it unexpected that they should show so little inclination to be more open in terms of intelligence sharing on a multilateral basis. However, it is noteworthy that, beyond the apparently purely symbolic gesture of appointing a coordinator, little consideration seems to have been given to

any possible organisational improvements to the way the EU and its institutions structure themselves to face the terrorist challenge.

Unlike the Member States, the EU as such has only relatively recently begun to organize itself collectively, institutionally and administratively in the area of homeland security. The first Treaty changes permitting such co-operation can be traced to the entry into force of the Maastricht Treaty in 1993. They were further enhanced by the relevant provisions of the Amsterdam Treaty in 1999, sufficiently so for the EU to be able to put together a credible and rapid response, at least on paper, to the events of 11 September 2001. By its own admission, however, the EU had not done enough to follow up this response with concrete action by the time of the March 2004 Madrid tragedy. To the extent that this can, at least in part, be attributed to a failure in the way the EU had organized itself, it is worth examining how the US has sought to remedy its own perceived organisational inadequacies in case it offers ideas which might lend themselves to the EU context, particularly since the very newness of this area of co-operation means that there is much less organizational “weight of the past” at the level of the EU as a whole than there is at national level. Equally, however, any such examination must take into account the important institutional differences on either side of the Atlantic between the powers exercised centrally/federally and those that remain with the Member States/States.

For convenience and EU-relevance, therefore, the DHS construct is examined below under three broad chapter headings:

- Intelligence gathering/sharing
- Prevention (border and transport security)
- Preparedness/response/infrastructure-protection

1. Intelligence gathering/analysis sharing. Clearly recognized on both sides of the Atlantic as a critically important element in homeland security protection, this is nevertheless the area that seems most resistant to any major organizational change (even more so, for understandable reasons, in the EU than in the US, where traditional resistance is likely to face major pressures from Congress and elsewhere). Even in the US, however, whatever other major overhaul may result from the increasingly shrill criticisms of the intelligence community, there has been no suggestion that there should be a transfer of responsibility for intelligence matters to the newly created DHS. The reasons for this are touched on in Section III above and their origins are traceable to administrative history and rivalries, as well as to the sensitive nature of intelligence activities, particularly on the collection side. At least, however, even before 11 September, the product of the various intelligence agencies, whichever department they happen to belong to, was pulled together by the Director of Central Intelligence. And, following its creation, the DHS has, in theory, been assured access to intelligence analyses relevant to its mission for further assessment and action, including for the purpose of the issuance of public advisories.

Whatever resistance can be expected from the existing American intelligence community to a major reorganization, how much more will there be in the EU where to varying degrees, depending on the intelligence capacities of each individual Member State, it could be magnified by a factor of up to 25, sometimes even within a single Member State? Despite many fine-sounding declared intentions, the one EU agency institutionally mandated to play an intelligence analysis role, EUROPOL, has never been provided with the material to conduct analyses which could add much substantive value to what the well-equipped Member States are willing to share on a bi- or tri-lateral basis with each other - and indeed with certain privileged third countries.

The effort made to strengthen EUROPOL's capacity in the immediate after-math of 11 September by the seconding of national intelligence experts did not produce much or last long. It remains to be seen if the resuscitation of this system of secondments following the Madrid attacks will do better. In any case, it seems unlikely that in this area the EU could envisage going at all far down this road in the foreseeable future. Moreover, the constraints placed on EUROPOL apply even more forcefully to the other main EU bodies (Commission and Council), which have no institutional or resource capacities in the area of intelligence collection or analysis.

2.Prevention (border and transport security). In this area the US has gone very far in bringing together immigration, customs and phytosanitary controls, with support from the Coast Guard, under the authority of the DHS. On the EU side, the institutional basis for contemplating something similar is less inhospitable than on the intelligence front, though not without potential problems. Once established and operational, the envisaged EU Border Agency will have an opportunity to play a significant role in ensuring consistent standards of control on people crossing the EU's common external frontiers, even if there is no provision or apparent appetite for creating an EU-wide common external border service. Nor, given the link with considerations of national sovereignty, is it either likely or desirable that an individual Member State of the EU would wish to contemplate subcontracting to nationals of another Member State the responsibility for controlling access to its national territory at its own border crossing points (except possibly by invitation in emergency and temporary circumstances of sudden pressures beyond its national capacity to manage).

Beyond these sovereignty considerations associated with responsibility for controlling physical access to national territory, however, most EU Member States have gone a remarkably long way towards accepting the logic of the Treaty's provisions on immigration and visa policies. They have thus shown themselves willing to speak with one voice with third countries, most notably and topically the US, on the key flanking issues of transport, container and document security together with their associated data protection aspects.

In this area, therefore, the EU is for its own reasons already organising itself as well as the Treaty permits. In doing so, it may have been partly jolted into action by the drama of 11 September 2001 and subsequent events; but it did not need to look to the example of the DHS and its structural reorganisations for inspiration as to how to manage its responsibilities. The individual Member States, on the other hand, with their more far reaching law enforcement responsibilities than those of the EU institutions, may find it useful to monitor the effectiveness or otherwise of bringing together under a single department the various components of border control management which in most Member States are shared among Ministers responsible respectively for their interior, customs, and phytosanitary aspects. At this early stage of the DHS experiment, it is not yet obvious what advantage such a grouping of linked but different responsibilities under a single authority brings to security or to the traveling public.

3.Preparedness/response/infrastructure protection. This may well turn out to be the area where the DHS experiment has the most potential interest for the EU.

Before 11 September 2001, in particular during the latter part of the Clinton administration, more thought and attention was being given to these aspects of counter-terrorism than was publicly recognized at the time .To the frustration of those concerned, their planning efforts were

suspiciously regarded as virtual intrusions by the federal authorities into areas more properly the preserve of the states and localities, and were not followed up with any real vigour.

The Homeland Security Act set about reversing this negative attitude, as evidenced by the fact that three of the four operational titles of the Act are wholly or in part about these aspects (Title II “Information Analysis and Infrastructure Protection”; Title III “Chemical, Biological, Radiological and Nuclear Countermeasures”; and Title V “Emergency Preparedness and Response”). This new importance is also reflected in the DHS organisation chart, where the subjects occupy a comparable place of honour, as well as in the DHS budgets for 2004 and 2005 (\$ 5.0 billion each year, to which should be added a rapidly growing new component – an extra \$2.5 billion for 2005 - for “biodefense”).

To be sure, searching questions have been raised, including by Senator Hart himself, about the adequacy of the amounts provided for these purposes in the budget -but that would appear to be a debate without end as arguably no amount, however enormous, could ever be adequate to provide complete preparedness and protection to cover perfectly the whole of the US. The issue is rather one of prioritisation and transparency, so that taxpayers can know what level of preparedness they can reasonably expect for different levels of expenditure.

The important and interesting question would seem to be the extent to which, in a decentralized or subsidiarity-based system, the federal/central authorities should set standards or provide guidance and/or financial support in areas such as preparedness, response and infrastructure protection where the primary responsibility remains with the states/Member States, the localities and, to varying degrees, industrial corporations.

In setting up the DHS, the US has provided its answer, and it goes further than anything comparable at EU level. Its preparedness/response directorate comprises the existing Federal

Emergency Management Agency (FEMA), reinforced by the transfer of certain responsibilities previously exercised by the Department of Health and Human Services (DHSS), and empowered to call, when needed, on certain services from the Department of Energy and the Environmental Protection Agency. The directorate is under instruction to shift the emphasis of its planning towards responses to terrorism, even if in practice it has (happily) not been called on to act in that capacity since 2001. Its main activity remains the provision of financial support to areas hit by emergency circumstances which have been declared by the President, acting either in response to a request from a Governor or autonomously, to be a federal emergency. It has a well-honed system for providing such support and checking, through a network of subcontractors, that the money is properly spent on post-emergency repairs. The EU once had a very modest budget for comparable purposes, but even that has been discontinued. Nor would it seem worthwhile resuscitating it unless the budgetary authority were willing to give it considerably more funds and visibility.

The whole area of infrastructure protection does, however, open interesting possibilities. It would seem to offer a textbook case of the interface, in a common cause, between federal/central and state/Member State responsibilities, as well as between those of the public and private sectors. The contextual differences on the two sides of the Atlantic obviously need to be taken into account, but should not be exaggerated. Arguably, the EU, where the relationship in most Member States between governments and the private sector is less “arm’s length” than in the US, and the degree of private ownership of key infrastructure less extensive, is better placed to build up the fora for constructive and non-confrontational dialogue with industry than is the US. There, any move by government to involve itself in new areas turns quickly into a discussion about the limits of regulation and the inevitable question of who pays for its consequential costs,

including the costs of insurance .In the final analysis, however, the underlying concepts of any such dialogue are familiar enough: the sharing of information about risk, and partnership and best practice in confronting it. The EU has no shortage of experience in this kind of dialogue with the private sector on a range of subjects, and the matter of preparedness based on best practice could offer a fruitful avenue for serious collective cooperation stopping short of sensitive sovereignty issues.

In this area of reaching out to industry for the purpose of partnership in preparedness and infrastructure protection, the US is breaking what for it is new ground, and does not claim to know all the answers, showing itself to be interested in paradigms from other countries, including in Europe. It offers an aspect of the DHS mandate that deserves monitoring both for what the EU might learn, but also perhaps teach.

VIII. Conclusion.

There must be doubts as to whether in any circumstances other than the high drama of the immediately post-11 September period any US administration, least of all a Republican one with its well-known distaste for anything which smacks of “big government”, would have gone down the road of creating such an enormous and potentially unwieldy organization as the DHS. Even if it is too early to know whether it offers the best solution to American needs for homeland security (and other more streamlined constructs could be imagined), the DHS is now firmly part of the Washington landscape and growing in stature. Given how relatively recently it has come into existence and the sheer size of the reorganisation involved, it is hard not to be struck by what has been already achieved and the apparent absence of any second thoughts about the rightness of the formula chosen.

It was also a gamble. Leaving aside the question of whether the resulting creation is best designed to protect the American homeland against the unfamiliar external threat represented by the 11 September attacks, it was hardly the safest moment to embark on such a diversion of the time and energy of key players when there could be no certainty that further attacks might not be around the immediate corner and in need of full-time attention. The honeymoon period of unquestioning public support for every thing DHS does may be over, but critics generally stop short of questioning the basic concept of the department. So far the gamble can be portrayed as having paid off, at least in the sense that there have so far been no follow-up attacks on the American homeland. There could be many and diverse explanations for this, but it is certainly fair game for those who wish to do so to make a link with the existence and activity of the DHS. Even if there is a further spectacular incident, in particular before the Presidential election

(assuming, which may well not be the case, that the terrorists see advantage in mounting one during that period), it should not be too difficult to use it as an argument for more, not less DHS.

The attitude of those working in agencies that have been absorbed into DHS appears mixed. It ranges from the understandably positive and motivated senior staff in close contact with Secretary Ridge, who harbour no doubts about the planning and coordination gaps that the department can and must fill; to those far from the centre of power, for example on the Mexican border, who are not particularly impressed that they are now working for a new department with a new logo. Some, such as the USCG, have brought a markedly positive approach to their new tasks as part of DHS, due perhaps in part to the fact that they have received a degree of recognition of special status, as well as some financial and human reinforcements in which they see obvious advantage: for others, the main change is an extra level of bureaucracy and decision-making. These are still very early days for such a vast, new and dispersed organization. What is particularly impressive is the skill with which Secretary Ridge has succeeded in keeping Congress on his side, and receives from them a respect and appreciation not enjoyed by all his cabinet colleagues.

For the partners of the US, particularly the EU, there are various consequences:

1. The DHS will continue to build up its role as an international player in search of interlocutors. This may well cause friction with the Departments of State and Justice who will want to ensure that their roles are not forgotten. But everybody will have to learn to live and deal direct with this new partner.

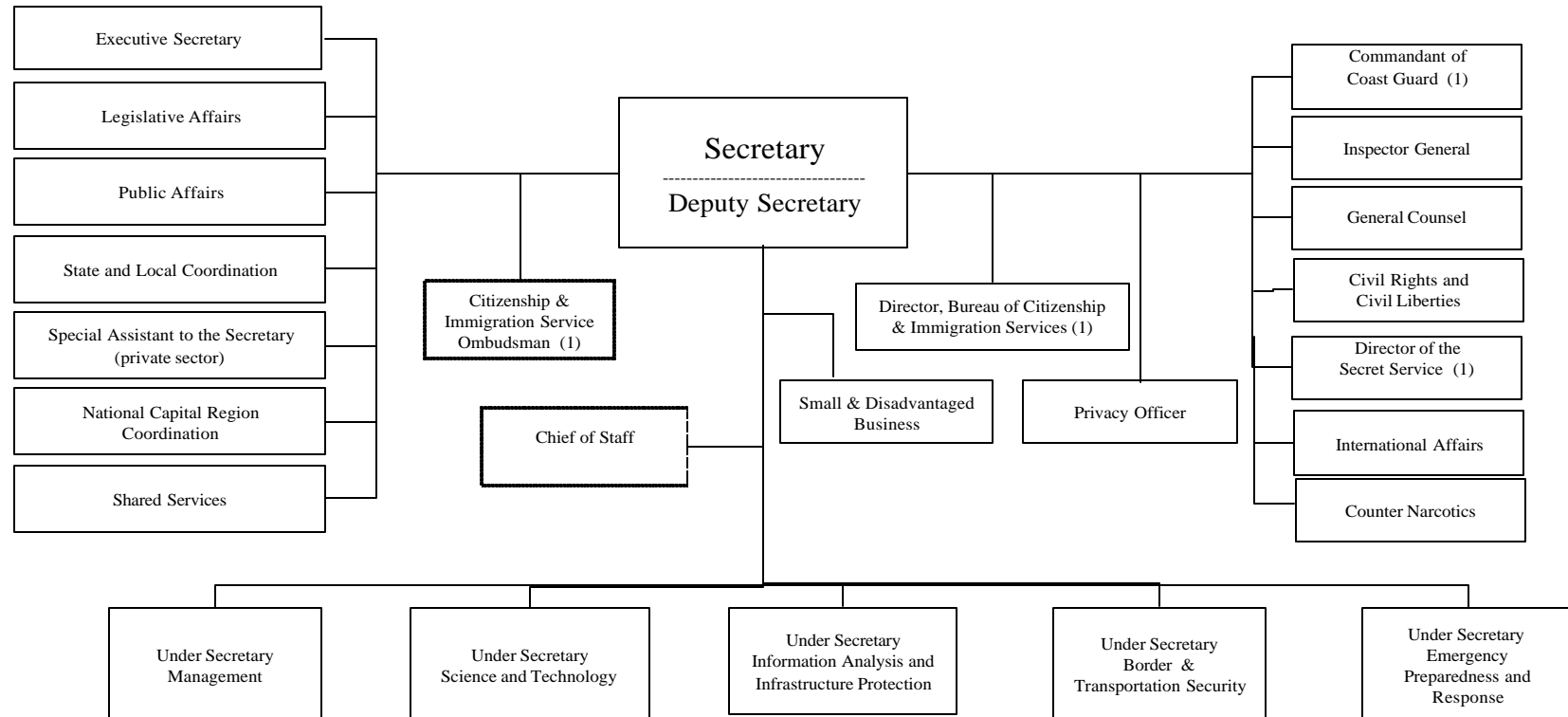
2. There is no ipso facto reason why other countries or international organizations should seek to adopt the US model and subject themselves to all the accompanying disruption involved. Not being under the same fever of events which led the US down this road, they will have the

time to observe the American experience and take a view on whether it makes sense for them. The EU will have the advantage of being new in this field and not too weighed down by past administrative arrangements.

3. The success or otherwise of the DHS in establishing its authority and in dealing with the issues of substance will be well worthwhile monitoring for potential lessons to be learned. These may turn out to be in some of the less high-profile areas of current EU cooperation such as “civil protection” and the cooperative relationship between the public and private sectors.

In watching the arrival and growth of this new “kid on the block”, it may also be worth reflecting occasionally that the last such new “kid” on this scale was the Department of Defense. We have all seen what that innocent-sounding creation has grown into; and most, if not all, countries have one now.

Department of Homeland Security



Note (1): Effective March 1st, 2003

Source: <http://www.dhs.gov/dhspublic/interweb/assetlibrary/DHS_Org_Chart.ppt>, accessed May 2004

Annex II—Extract from the Department of Homeland Security Reorganization Plan (25 November, 2002)¹

Introduction

This Reorganization Plan is submitted pursuant to Section 1502 of the Department of Homeland Security Act of 2002 (“the Act”), which requires submission, not later than 60 days after enactment, of a reorganization plan regarding two categories of information concerning plans for the Department of Homeland Security (“the Department” or “DHS”):

- (1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.
- (2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act. Section 1502(a).

Section 1502(b) of the Act identifies six elements, together with other elements “as the President deems appropriate,” as among those for discussion in the plan. Each of the elements set out in the statute is identified *verbatim* below, followed by a discussion of current plans with respect to that element.

This plan is subject to modification pursuant to Section 1502(d) of the Act, which provides that on the basis of consultations with appropriate congressional committees the President may modify or revise any part of the plan until that part of the plan becomes effective. Additional details concerning the process for establishing the Department will become available in the coming weeks and months, and the President will work closely with Congress to modify this plan consistent with the Act.

Plan Elements

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

Except as otherwise directed in the Act, all functions of agencies that are to be transferred to the Department pursuant to the Act will be transferred to the Department under the plan. The functions of agencies being transferred to the Department which the Act directs are not to be transferred are the following:

- ?? Pursuant to Section 201(g)(1) of the Act, the Computer Investigations and Operations Section (“CIOS”) of the National Infrastructure Protection Center (“NIPC”) of the Federal Bureau of Investigation (“FBI”) will not transfer to the Department with the rest of NIPC. CIOS is the FBI

¹ Source:
http://www.customs.gov/ImageCache/cgov/content/newsroom/safeguarding_5famerica/reorg_5fplan_2edoc/v1/reorg_5fplan.doc

headquarters entity responsible for managing all FBI computer intrusion field office cases (whether law enforcement or national security related).

- ?? Pursuant to Sections 421(c) & (d) of the Act, the regulatory responsibilities and quarantine activities relating to agricultural import and entry inspection activities of the United States Department of Agriculture (“the USDA”) Animal and Plant Health Inspection Service (“APHIS”) will remain with the USDA, as will the Secretary of Agriculture’s authority to issue regulations, policies, and procedures regarding the functions transferred pursuant to Sections 421(a) & (b) of the Act.
- ?? Pursuant to Subtitle B of Title IV of the Act, the authorities of the Secretary of the Treasury related to Customs revenue functions, as defined in the statute, will not transfer to the Department.
- ?? Functions under the immigration laws of the United States with respect to the care of unaccompanied alien children will not transfer from the Department of Justice to DHS, but will instead transfer to the Department of Health and Human Services pursuant to Section 462 of the Act.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

A. Steps to be taken by the Secretary to organize the Department. The President intends that the Secretary will carry out the following actions on the dates specified. All of the following transfers shall be deemed to be made to DHS, and all offices and positions to be established and all officers and officials to be appointed or named shall be deemed to be established, appointed, or named within DHS.

January 24, 2003 (effective date of the Act pursuant to Section 4):

- ?? Establish the Office of the Secretary.
- ?? Begin to appoint, upon confirmation by the Senate, or transfer pursuant to the transfer provisions of the Act, as many of the following officers as may be possible:
 - (1) Deputy Secretary of Homeland Security
 - (2) Under Secretary for Information Analysis and Infrastructure Protection
 - (3) Under Secretary for Science and Technology
 - (4) Under Secretary for Border and Transportation Security
 - (5) Under Secretary for Emergency Preparedness and Response
 - (6) Director of the Bureau of Citizenship and Immigration Services
 - (7) Under Secretary for Management
 - (8) Not more than 12 Assistant Secretaries

- (9) General Counsel
- (10) Inspector General
- (11) Commissioner of Customs

?? Name, as soon as may be possible, officers to fill the following offices created by the Act:

- (1) Assistant Secretary for Information Analysis
- (2) Assistant Secretary for Infrastructure Protection
- (3) Privacy Officer
- (4) Director of the Secret Service
- (5) Chief Information Officer
- (6) Chief Human Capital Officer
- (7) Chief Financial Officer
- (8) Officer for Civil Rights and Civil Liberties
- (9) Director of Shared Services
- (10) Citizenship and Immigration Ombudsman
- (11) Director of the Homeland Security Advanced Research Projects Agency

?? Establish, within the Office of the Secretary, the Office for State and Local Government Coordination, the Office of International Affairs, and the Office of National Capital Region Coordination.

?? Establish the Homeland Security Advanced Research Projects Agency and the Acceleration Fund for Research and Development of Homeland Security Technologies.

?? Establish within the Directorate of Science and Technology the Office for National Laboratories.

?? Establish the Bureau of Border Security, the Bureau of Citizenship and Immigration Services, and the Director of Shared Services.

?? Establish the Transportation Security Oversight Board with the Secretary of Homeland Security as its Chair.

March 1, 2003:

?? Transfer the Critical Infrastructure Assurance Office (“CIAO”) of the Department of Commerce, the National Communications System (“the NCS”), the NIPC of the FBI (other than the CIOS), the National Infrastructure Simulation and Analysis Center (“NISAC”), the Energy Assurance Office (“EAO”) of the Department of Energy, and the Federal Computer Incident Response Center of the General Services Administration (“FedCIRC”).

?? Transfer the Coast Guard.

- ?? Transfer the Customs Service, the Transportation Security Administration (“the TSA”), functions of the Immigration and Naturalization Service (“the INS”), the Federal Protective Service (“the FPS”), the Office of Domestic Preparedness (“the ODP”), and the Federal Law Enforcement Training Center (“the FLETC”).
- ?? Transfer the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in Section 421(b) of the Act from the Animal and Plant Health Inspection Service.
- ?? Transfer the United States Secret Service.
- ?? Transfer the following programs and activities to the Directorate of Science and Technology:
 - The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program of the Department of Energy.
 - The life sciences activities related to microbial pathogens of the Biological and Environmental Research Program of the Department of Energy.
 - The National Bio-Weapons Defense Analysis Center of the Department of Defense.
 - The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program of the Department of Energy.
 - The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program of the Department of Energy and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory of the Department of Energy.
 - The Environmental Measurements Laboratory of the Department of Energy.
- ?? Transfer the Federal Emergency Management Agency (“FEMA”).
- ?? Transfer the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed “FIRESTAT.”
- ?? Transfer the National Domestic Preparedness Office of the FBI, including the functions of the Attorney General relating thereto.

- ?? Transfer the Domestic Emergency Support Team of the Department of Justice, including the functions of the Attorney General relating thereto.
- ?? Transfer the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.
- ?? Transfer the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.
- ?? Transfer the Office of Emergency Preparedness and the Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.
- ?? Transfer to the Secretary the authority (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States) to direct the Nuclear Incident Response Team of the Department of Energy to operate as an organizational unit.

June 1, 2003:

- ?? Transfer the Plum Island Animal Disease Center of USDA.
- ?? Establish the Homeland Security Science and Technology Advisory Committee.

By September 30, 2003:

- ?? Complete any incidental transfers, pursuant to Section 1516 of the Act, of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by the Act.

- B. Delegation or Assignment Among Officers of Functions Transferred to the Department. The President intends that the Secretary will delegate or assign transferred functions within the Department as follows:

1. Information Analysis and Infrastructure Protection

- a. Under Secretary for Information Analysis and Infrastructure Protection (“IA and IP”): Will be responsible for oversight of functions of NIPC, NCS, CIAO, NISAC, EAO, and FedCIRC transferred by the Act, the management of the Directorate’s Information Analysis and Infrastructure Protection duties, and the administration of the Homeland Security Advisory System.
- b. Assistant Secretary for Information Analysis: Will oversee the following Information Analysis functions:
 - ?? Identify and assess the nature and scope of terrorist threats to the homeland; detect and identify threats of terrorism against the United States; and, understand such threats in light of actual and potential vulnerabilities of the homeland.
 - ?? In coordination with the Assistant Secretary for Infrastructure Protection, integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.
 - ?? Ensure the timely and efficient access by the Department to all information necessary to discharge the responsibilities under Section 201 of the Act, including obtaining such information from other agencies of the Federal Government.
 - ?? Review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.
 - ?? Disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.
 - ?? Consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating

to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

?? Consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

?? Ensure that—

1. Any material received pursuant to the Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and
2. Any intelligence information under the Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. Section 401, et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

?? Request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

?? Establish and utilize, in conjunction with the Chief Information Officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of statutory responsibilities, and to disseminate information acquired and analyzed by the Department, as appropriate.

?? Ensure, in conjunction with the Chief Information Officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

1. Are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

2. Treat information in such databases in a manner that complies with applicable Federal law on privacy.

?? Coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

?? Coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

?? Provide intelligence and information analysis and support to other elements of the Department.

c. Assistant Secretary for Infrastructure Protection: Will oversee the following Infrastructure Protection functions:

?? Carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

?? In coordination with the Assistant Secretary for Information Analysis, integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

?? Develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

?? Recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other

agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

- ?? In coordination with the Under Secretary for Emergency Preparedness and Response, provide to State and local government entities, and upon request to private entities that own or operate critical information systems, crisis management support in response to threats to, or attacks on, critical information systems.
- ?? Provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.
- ?? Coordinate with other agencies of the Federal Government to provide specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

2. Science and Technology

Under Secretary for Science and Technology: Will be responsible for performing the functions set forth in Section 302 of the Act, including the following:

- ?? Advise the Secretary regarding research and development efforts and priorities in support of the Department's missions.
- ?? Develop, in consultation with other appropriate executive agencies, a national policy and strategic plan for identifying priorities, goals, objectives, and policies for, and coordinating the Federal Government's civilian efforts with respect to, identifying and developing countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts.
- ?? Support the Under Secretary for Information Analysis and Infrastructure Protection by assessing and testing homeland security vulnerabilities and possible threats.
- ?? Conduct basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements

of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities.

- ?? Establish priorities for directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—
 1. preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and
 2. detecting, preventing, protecting against, and responding to terrorist attacks.
- ?? Establish a system for transferring homeland security developments or technologies to Federal, State, and local governments, and to private sector entities.
- ?? Enter into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities.
- ?? Collaborate with the Secretary of Agriculture and the Attorney General as provided in Section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. § 8401), as amended by Section 1709(b) of the Act.
- ?? Collaborate with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as ‘select agents’ in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to Section 351A of the Public Health Service Act (42 U.S.C. § 262a).
- ?? Support United States leadership in science and technology.
- ?? Establish and administer the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department.
- ?? Coordinate and integrate all research, development, demonstration, testing, and evaluation activities of the Department.

- ?? Coordinate with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs.
- ?? Develop and oversee the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

3. Border and Transportation Security

The Directorate of Border and Transportation Security (“BTS”) will include the following: the Bureau of Border Security; the Office for Domestic Preparedness; the Customs Service; the Transportation Security Administration; FLETC; and FPS.

The BTS Directorate will also have in place the key leaders of the new Directorate to include:

- a. Under Secretary for BTS: Will be responsible for oversight of all responsibilities set forth in Section 402 of the Act, including the following:
 - ?? Prevent the entry of terrorists and the instruments of terrorism into the United States.
 - ?? Secure the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.
 - ?? Establish and administer rules, in accordance with Section 428 of the Act, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.
 - ?? Establish national immigration enforcement policies and priorities.
 - ?? Administer the customs laws of the United States, except as otherwise provided in the Act.
 - ?? Conduct the inspection and related administrative functions of the USDA transferred to the Secretary of Homeland Security under Section 421 of the Act.

- ?? In carrying out the foregoing responsibilities, ensure the speedy, orderly, and efficient flow of lawful traffic and commerce.
- ?? Carry out the immigration enforcement functions specified under Section 441 of the Act that were vested by statute in, or performed by, the Commissioner of the INS (or any officer, employee, or component of the INS) immediately before the date on which the transfer of functions takes place.
- b. Assistant Secretary for Border Security: Will report directly to the Under Secretary for Border and Transportation Security, and whose responsibilities will include the following:
 - ?? Establish and oversee the administration of the policies for performing such functions as are--
 1. transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or
 2. otherwise vested in the Assistant Secretary by law.
 - ?? Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration.
- c. Director of the Office for Domestic Preparedness - Will report directly to the Under Secretary for Border and Transportation Security and will have the primary responsibility within the Executive Branch of the Federal Government for the preparedness of the United States for acts of terrorism, including the following responsibilities:
 - ?? Coordinate preparedness efforts at the Federal level, and work with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support.
 - ?? Coordinate or, as appropriate, consolidate communications and systems of communications relating to homeland security at all levels of government.
 - ?? Direct and supervise terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers.

- ?? Incorporate homeland security priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness.
- ?? Provide agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies, and international entities.
- ?? As the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperate closely with the FEMA, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of non-terrorist-related disasters in the United States.
- ?? Assist and support the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate.
- ?? Supervise those elements of the Office of National Preparedness of FEMA that relate to terrorism, which shall be consolidated within the Department in the ODP established pursuant to Section 430 of the Act.

4. Emergency Preparedness and Response

The Emergency Preparedness and Response Directorate will be headed by the Under Secretary for Emergency Preparedness and Response.

Under Secretary for EP&R: Will be responsible for all of those functions included within Section 502 of the Act, including:

- ?? Helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies.
- ?? With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to the Act):
 1. Establishing standards and certifying when those standards have been met;
 2. Conducting joint and other exercises and training and evaluating performance; and,

3. Providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.
- ?? Providing the Federal Government's response to terrorist attacks and major disasters, including:
1. Managing such response;
 2. Directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to the Act) the Nuclear Incident Response Team;
 3. Overseeing the Metropolitan Medical Response System; and
 4. Coordinating other Federal response resources in the event of a terrorist attack or major disaster.
- ?? Aiding the recovery from terrorist attacks and major disasters;
- ?? Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.
- ?? Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and
- ?? Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

5. Other Officers and Functions

- a. Director of the Bureau of Citizenship and Immigration Services: Will report directly to the Deputy Secretary; and will be responsible for the following:
 - ?? Establishing the policies for performing such functions as are transferred to the Director by Section 451 of the Act or otherwise vested in the Director by law.
 - ?? Oversight of the administration of such policies.

- ?? Advising the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations.
 - ?? Establishing national immigration services policies and priorities.
 - ?? Meeting regularly with the Ombudsman described in Section 452 of the Act to correct serious service problems identified by the Ombudsman.
 - ?? Establishing procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within three months after its submission to Congress.
- b. Citizenship and Immigration Services Ombudsman: Will report directly to the Deputy Secretary; and will be responsible for the following:
- ?? Assisting individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
 - ?? Identifying areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
 - ?? Proposing changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate identified problem

Annex III – Total Budget Authority by Organization²

As of January 31, 2004
(Dollars in millions)

ORGANIZATION	FY 2003 ³	FY 2004 ⁴	FY 2005
SECURITY, ENFORCEMENT, & INVESTIGATIONS	21,566	22,606	24,691
BTS Under Secretary	0	8	10
US VISIT	380	328	340
Bureau of Customs & Border Protection	5,887	5,942	6,199
Bureau of Immigration & Customs Enforcement	3,262	3,654	4,011
Transportation Security Administration	4,648	4,405	5,297
United States Coast Guard	6,196	6,935	7,471
United States Secret Service	1,193	1,334	1,363
PREPAREDNESS & RECOVERY	5,175	5,493	7,372
EP&R FEDERAL Emergency Management Agency (Less Biodefense) ²	5,175	4,608	4,844
Biodefense	0	885	2,528
RESEARCH, DEVELOPMENT, TRAINING, ASSESSMENTS & SERVICES	2,330	3,591	3,810
Bureau of Citizenship & Immigration Services	1,422	1,653	1,711
Federal Law Enforcement Training Center	170	191	196
Information Analysis & Infrastructure Protection Directorate	185	834	864
Science and Technology Directorate	553	913	1,039
DEPARTMENT MANAGEMENT AND OPERATIONS	2,111	4,851	4,294
Department Management	2,040	4,771	4,212
Departmental Operations	22	211	405
Technology Investments	47	184	226
Counter-Terrorism Fund	10	10	20
Office for Domestic Preparedness	1,961	4,366	3,561
Inspector General	71	80	82
TOTAL	31,182	36,541	40,167

FY 2003 Supplemental Funding

Policy Directorate	FY'03 sup. budget
BTS	3.4 billion
EP&R	99.75 million
Coast Guard	628 million
USSS	30 million
BCI	3 million
Counterterrorism Fund	150 million
Airline Support	2.4 billion
TOTAL	6.71 billion

² Source: http://www.dhs.gov/interweb/assetlibrary/FY_2005_BIB_4.pdf

³ FY 2003 includes supplemental funding for EP&R: FEMA (\$1,426 M); all other supplemental funding has been excluded.

⁴ FY 2004 total excludes was supplemental funding.