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“Weighing the Non-Missile Threat to the U.S. Homeland”

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a hearing of the

National Security and Foreign Affairs Subcommittee Committee
Committee on Oversight and Government Reform
United States House of Representatives

on

“Oversight of Ballistic Missile Defense: Threats, Realities, and Tradeoffs”

by

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Chairman Tierney, Ranking Member Shays, and distinguished members of the House Subcommittee on National Security and Foreign Affairs. Thank you for inviting me this morning to assess whether the priority that has long been assigned to the ballistic missile threat is appropriate given that our adversaries might exploit other ways to target the U.S. homeland with a nuclear weapon.

First, I would like to commend the subcommittee for requesting a homeland security perspective when undertaking an assessment of Ballistic Missile Defense. Despite the events of September 11, 2001, Washington continues to look at the security challenge confronting the United States as if it was exclusively an away game. Debates about threats, tactics, and strategies within the traditional national security community have remained remarkably—and disturbingly—isolated from an assessment of the threats, vulnerabilities, and policies commonly associated with homeland security.

The U.S. national security community also continues to assign a higher priority to programs designed to confront conventional military threats such as ballistic missiles than unconventional threats such as a weapon of mass destruction smuggled into the United States by a ship, train, truck, or even private jet. While terrorists demonstrated on 9/11 that their preferred battle space is in the civil and economic space, the Pentagon has resisted becoming engaged in that reality when it translates into working closely with civilian agencies, state and local governments, or the private sector. White House and Congressional staff with oversight responsibilities for defense, intelligence, and foreign affairs have also held the homeland security mission at arms length. As a consequence, there is no place within the U.S. government where trade off issues associated with national security and homeland security are routinely raised or adjudicated. This hearing today is an exception to that rule.

An example of how the national security/homeland security divide can end up generating harmful unintended consequences for the nation is highlighted by the disparity between what the Department of Defense is spending to protect its military bases within the United States and what state and local governments are spending to safeguard ports, mass transit, and critical facilities. In 2006, the Pentagon asked for and received \$16.5 billion to protect its forces—the majority of which are located inside the United States—from terrorist attacks. This amount represents nearly twenty times more than the federal government will make available in 2008 to safeguard critical infrastructure around the United States. The imbalance between the funding to harden U.S. military assets on U.S. soil and the funding available to safeguard critical civilian infrastructure has an inevitable and disturbing consequence: the Department of Defense is actually creating a situation where American civilians are becoming relatively softer and more attractive potential targets than military ones.

This same disconnect is at work in the area of ballistic missile defense. The executive and legislative advocacy to build defenses for nuclear-armed missiles has not included a side-by-side consideration of the risk that nuclear weapons might be smuggled into the United States by other means such as aboard a small vessel, within a cargo container, or carried across U.S. land borders. Nor is the investment in programs whose aim is to mitigate the non-missile threat weighed against the costs associated with developing BMD. The reason for this is that addressing the smuggling issue is viewed primarily as a homeland security responsibility to be managed by agencies such as the Domestic Nuclear Detection Office (DNDO), the Customs and Border Protection Agency, and the U.S. Coast Guard. The program reviewers in the Office and Management and Budget and the congressional authorization and appropriations process move on separate tracks. In the end, the combined budgets for funding all the domestic and international maritime and port of entry interdiction efforts pursued by CBP and the Coast Guard plus the nuclear detection activities performed by DNDO is equal to roughly one-half of the annual budget for developing missile defense. No where in the U.S. government has there been or is there now an evaluation of whether that represents an appropriate balance. What seems clear however is this: should a missile defense system continue to be developed without a parallel commitment to putting in place protective measures to detect and intercept the transport of a nuclear weapon by non-missile means, the Department of Defense will end up fueling the incentive for America's adversaries to rely on non-missile conveyances.

In assessing the non-missile versus missile risk to the U.S. homeland, there are four attributes associated with smuggling a nuclear weapon that suggest it presents the higher probability risk. First, it is the only realistic option for a non-state actor like al Qaeda to pursue. While North Korea rattles the nuclear saber from time to time, and Iran seems intent on acquiring a nuclear weapon at some point, the United States is currently at war with al Qaeda. Al Qaeda options for deploying a nuclear weapon should they acquire it will not include a long-range missile. In short, we should be keeping our eye on the ball. The adversary we are now combating has made clear its desire to target us with a weapon of mass destruction. Since a ballistic missile will not be a part of al Qaeda's arsenal, we can safely presume the more immediate danger comes from radical jihadists pursuing a non-missile alternative.

Second, even for a state actor, smuggling a nuclear weapon into the United States provides an advantage that a ballistic missile does not: the potential for anonymity. When a missile is launched, the United States will have immediate and verifiable evidence of where it originated from. Given our overwhelming military capacity to retaliate, a state who undertakes a ballistic missile attack will face total annihilation. This represents a powerful deterrent. The best option for a rogue state armed with a small nuclear arsenal and intent on the attacking the United States is to obscure its connection to the nuclear weapon by relying on surrogates or covert operatives that will allow it to deny culpability. This suggests a smuggling option will be far more attractive.

Third, the millions of cargo containers, trains, trucks and vehicles that arrive at America's sea and land borders each year along with the tens of thousands overseas private jet flights provide a rich menu of non-missile options to exploit for getting a nuclear weapon into the United States. While some controls are in place, the current array of radiation portals in U.S. seaports and along U.S. borders would not detect a nuclear weapon. This is because the materials used to encase these weapons prevent high enough levels of radioactivity from being released to generate alarms by these portal monitors.

Finally, using a commercial conveyance, especially a cargo container, as a nuclear weapon delivery vehicle has another important advantage over a ballistic missile: its ability to generate cascading economic consequences by disrupting global supply chains. This results not so much from the specific attack—though the loss of a major transportation hub such as the Port of Los Angeles or on the Ambassador Bridge between Detroit, Michigan and Windsor, Ontario could be profoundly disruptive on a regional basis and have ripple effects throughout the national transportation system. The danger lies primarily with the inevitable response by the U.S. government that will almost certainly include efforts to conduct careful inspections of other containers to determine that they are not carrying additional nuclear weapons. Such efforts would create gridlock throughout the global intermodal transportation system.

Consider this scenario that was presented to the Senate Permanent Subcommittee on Investigations on March 26, 2006.

A container of athletic foot wear for a name brand company is loaded at a manufacturing plant in Surabaya, Indonesia. The container doors are shut and a mechanical seal is put into the door pad-eyes. These designer sneakers are destined for retail stores in malls across America. The container and seal numbers are recorded at the factory. A local truck driver, sympathetic to al Qaeda picks up the container. On the way to the port, he turns into an alleyway and backs up the truck at a nondescript warehouse where a small team of operatives pry loose one of the door hinges to open the container so that they can gain access to the shipment. Some of the sneakers are removed and in their place, the operatives load a dirty bomb wrapped in lead shielding, and they then refasten the door.

The driver takes the container now loaded with a dirty bomb to the port of Surabaya where it is loaded on a coastal feeder ship carrying about 300 containers for the voyage to Jakarta. In Jakarta, the container is transferred to an Inter-Asia ship which typically carries 1200-1500 containers to the port of Singapore or the Port of Hong Kong. In this case, the ship goes to Hong Kong where it is loaded on a super-container ship that carries 5000-8000 containers for the trans-Pacific voyage. The container is then off-loaded in Vancouver, British Columbia. Because it originates from a trusted-name brand company that has joined the Customs-Trade Partnership Against Terror, the shipment is never identified for inspection by the Container Security Initiative team of U.S. customs inspectors located in Vancouver. Consequently, the container is loaded directly from the ship to a Canadian Pacific railcar where it is shipped to a railyard in Chicago. Because the dirty bomb is shielded in lead, the radiation portals currently deployed along the U.S.-

Canadian border do not detect it. When the container reaches a distribution center in the Chicago-area, a triggering device attached to the door sets the bomb off.

There would be four immediate consequence associated with this attack. First, there would be the local deaths and injuries associate with the blast of the conventional explosives. Second, there would be the environmental damage done by the spread of industrial-grade radioactive material. Third, there would be no way to determine where the compromise to security took place so the entire supply chain and all the transportation nodes and providers must be presumed to present a risk of a potential follow-on attack. Fourth—and perhaps most importantly—all the current container and port security initiatives would be compromised by the incident.

In this scenario, the container originated from a one of the thousands of companies that now belong to the Customs-Trade Partnership Against Terrorism. It would have transited through multiple ports—Surabaya, Jakarta, Hong Kong, and Vancouver—that have been certified by their host nation as compliant with the post-9/11 International Ship and Port Facility Security (ISPS) Code that came into effect on 1 July 2004. Because it came from a trusted shipper, it would not have been identified for special screening by the Container Security Initiative team of inspectors in Hong Kong or Vancouver. Nor would it have been identified by the radiation portal. As a consequence, governors, mayors, and the American people would have no faith in the entire risk-management regime erected by the administration since 9/11. There will be overwhelming political pressure to move from a 5 percent physical inspection rate to a 100 percent inspection rate, effectively shutting down the flow of commerce at and within our borders. Within two weeks, the reverberations would be global. As John Meredith, the Group Managing Director of Hutchison Port Holdings, warned in a Jan 20, 2004 letter to Robert Bonner, the former Commissioner of the U.S. Customs and Border Protection: “. . . **I think the economic consequences could well spawn a global recession – or worse.**”

How probable is it that an adversary of the United States would undertake such a scenario with a nuclear weapon instead of a dirty bomb? Many analysts legitimately point to the issue that by placing a nuclear weapon within a container, a terrorist would give up direct control over a very precious weapon. Thus, if the goal of an adversary is to go after a specific target within the United States at a desired time, it is more likely that they will undertake a conventional smuggling effort using a small vessel, private jet, or other conveyance to enter the country. However, for an adversary intent on using its tiny nuclear arsenal as a “weapon of mass disruption,” as I have just outlined with the Surabaya scenario, using a cargo container will be far more consequential in economic terms. At a minimum, a reasonable assessment that weighs non-missile and ballistic threat side-by-side suggests that the motivation and opportunities for U.S. adversaries to focus their energies on smuggling a weapon into the United States are far greater than the ballistic missile threat.

I believe there are three bottom-line conclusions to draw from my testimony. First, the emphasis that ballistic missile defense has been receiving in the post-9/11 era is disproportionate to the more probable risk that other means will be sought by America’s

current and future adversaries to target the U.S. homeland with a nuclear weapon. Second, to the extent that the U.S. government continues to invest in Ballistic Missile Defense, it should be committed to a parallel effort to deal with the non-missile risk particularly since success at BMD will only elevate the non-missile risk. Finally, Congress needs to take a hard look at how it is organized to provide oversight of the missile and non-missile risk. The current jurisdictional barriers that separate an evaluation of the budgets for homeland security efforts to deal with the nuclear smuggling threat and the Department of Defense efforts to construct Ballistic Missile Defense must come down.

Thank you and I look forward to responding to your questions.

Stephen Flynn is the Jeane J. Kirkpatrick senior fellow for National Security Studies at the Council on Foreign Relations. He is the author of the *The Edge of Disaster: Rebuilding a Resilient Nation* (Random House, 2007) and *America the Vulnerable* (HarperCollins, 2004). Dr. Flynn is a Consulting Professor at the Center of International Security and Cooperation at Stanford University; a Senior Fellow at the Wharton School's Risk Management and Decision Processes Center at the University of Pennsylvania; and a member of the Marine Board of the National Research Council. He spent twenty years as a commissioned officer in the U.S. Coast Guard, was awarded the Legion of Merit, and retired at the rank of Commander. During his time on active duty he had two commands at sea, served in the White House Military Office during the George H.W. Bush administration, and was director for Global Issues on the National Security Council staff during the Clinton administration. He holds a Ph.D. and M.A.L.D. from the Fletcher School of Law and Diplomacy and a B.S. from the U.S. Coast Guard Academy.