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Intelligence Community Support to Pandemic Preparedness and Response

Introduction

Congressional interest in coronavirus disease 2019 (COVID-19) includes understanding its origins, how it evolved into a global pandemic, and the effectiveness of measures to mitigate its impact on communities. Multiple government agencies are involved in responding to these queries both domestically and globally. The Intelligence Community (IC), for example, supports disease surveillance efforts of the Department of Health and Human Services' (HHS) Centers for Disease Control and Prevention (CDC). The use of surveillance in the COVID-19 response has raised concerns among privacy and civil liberties advocates about what "surveillance" means, and which government agencies are responsible for implementing surveillance programs. There are also questions some have raised about what the United States knows about the origins of the pandemic and when it first learned of its existence. This In Focus describes and explains the IC's specific role in pandemic preparedness and response.

Key Non-Intelligence Surveillance Terms

Public Health Surveillance. "The ongoing, systematic collection, analysis, and interpretation of health-related data essential to planning, implementation, and evaluation of public health practice." The IC is generally not involved in public health surveillance

Biosurveillance. "The process of gathering near real-time biological data that relate to human and zoonotic disease activity and threats to human or animal health, in order to achieve early warning and identification of such health threats, early detection and prompt ongoing tracking of health events, and overall situational awareness of disease activity." The IC may be involved in supporting biosurveillance.

Intelligence Community Authorities to Conduct Surveillance and Collection

The IC has statutory authority on the collection and reporting of information relevant to infectious diseases, especially in the foreign environment. The goal of the IC, as stated in Executive Order (E.O.) 12333, *United States Intelligence Activities*, is to provide "the President, National Security Council, and Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats."

Foreign Intelligence

Intelligence related to foreign security threats is generally understood as *foreign intelligence*, which E.O. 12333

defines as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists."

Although foreign intelligence is primarily collected in a foreign environment, there are opportunities to collect foreign intelligence and counterintelligence domestically. The IC's authority to collect foreign intelligence and counterintelligence within the United States is subject to policies and procedures approved by the Attorney General. No foreign intelligence or counterintelligence may be collected domestically for the purpose of indirectly acquiring information about the domestic activities of U.S. persons.

Medical Intelligence

Medical intelligence is a category of foreign intelligence that the Department of Defense (DOD) defines as "resulting from collection, evaluation, analysis, and interpretation of foreign medical, bio-scientific, and environmental information that is of interest to strategic planning and to military medical planning and operations for the conservation of the fighting strength of friendly forces and the formation of assessments of foreign medical capabilities in both military and civilian sectors."

Medical intelligence related to a pandemic could include, for example, intelligence on the foreign origins of, foreign government reporting on, and responses to, a pandemic. The IC role in collecting and assessing medical intelligence may include corroborating information from secondary sources and providing original reporting on matters that may not be publicly available. Examples of medical intelligence that could be collected by the IC include information that might indicate efforts by a foreign government to conceal or manipulate material regarding a health emergency or evidence of efforts by terrorist groups to weaponize biological agents to attack the U.S. homeland or interests overseas. Medical intelligence could be used to assess possible human, political, and economic impacts of pandemics, such as threat to food and medical supply chains and the readiness of foreign or U.S. military forces.

Intelligence Community Collection and Reporting on Health Security

The National Intelligence Strategy of 2019 includes among its mission objectives the collection and analysis of information that provides indications and warning of events or changing conditions of concern to U.S. national security. The strategy identifies *infectious disease* as one of a number of pressure points that can exacerbate migration and refugee flows and contribute to international instability.

In addition, the Director of National Intelligence's (DNI) annual Worldwide Threat Assessments briefed to Congress have regularly included a general warning underscoring the potentially devastating human and economic costs posed by the threat of a pandemic or global health emergency.

These annual assessments do not provide specific indications of a pandemic, however. Within the IC, those can come in the form of intelligence *tippers* (alert messages) or summary products such as the President's Daily Brief (PDB) drawn from multiple sources.

IC Elements Supporting Pandemic Detection and Response

Of seventeen IC elements, the ones that may be most likely to support pandemic preparedness and response with medical foreign intelligence include the Office of the DNI (ODNI), the Central Intelligence Agency (CIA), National Security Agency (NSA), National Geospatial-Intelligence Agency (NGA), the Defense Intelligence Agency's (DIA) National Center for Medical Intelligence (NCMI), and the Department of Homeland Security's (DHS) Office of Intelligence and Analysis (I&A).

The intelligence organization dedicated to providing the collection, analysis, and production of foreign medical intelligence is NCMI. Staffed by epidemiologists, virologists, veterinarians, toxicologists, and medical doctors, NCMI supports DOD with products and services that could include warnings of disease outbreaks with the potential to cause a pandemic or global health emergency, as well as foreign medical research and technology developments and the possible effect on U.S. or foreign military readiness.

The HHS CDC Global Disease Detection Operations Center (GDDOC) and the DHS National Biosurveillance Integration Center (NBIC) also compile information from the IC classified sources, international partnerships, domestic surveillance in the field, open-source internet research, and interagency coordination to provide early warning of and timely response to a pandemic or global health emergency.

Recently enacted legislation intends to clarify the IC's role in supporting pandemic detection and response. The Pandemic and All-Hazards Preparedness and Advancing Innovation Act (P.L. 116-22 § 402, enacted June 24, 2019), among other things, integrates the IC into a government-wide network, the *Public Health Emergency Medical Countermeasures Enterprise (PHEMCE)*. This entity is chaired by the HHS Assistant Secretary for Preparedness and Response with the goal of more effectively monitoring and responding to a global health emergency.

- As a member of the Enterprise, the DNI provides assessments of emerging threats of infectious disease (along with assessments of chemical, biological, radiological, and nuclear, threats, as required).
- Section 205 of the Act also provides for the Secretary, HHS to periodically update the DNI on public health situational awareness and the biosurveillance network.

The IC and Domestic Surveillance

In the past the IC conducted domestic surveillance in violation of the Fourth Amendment of the Constitution.

These instances, when made public, triggered congressional hearings in the mid-1970s that resulted in the establishment of the two permanent congressional select committees on intelligence, the creation of a detailed statutory intelligence oversight framework, and strict limitations on IC domestic intelligence activities. Consequently, IC capabilities are necessarily oriented toward foreign rather than domestic intelligence collection.

Yet in extenuating circumstances could IC capabilities, such as geo-spatial products and services, support domestic efforts to respond to a pandemic? The only explicit E.O. 12333 exception allowing the IC to conduct domestic collection of information not constituting foreign intelligence, which could conceivably involve support to a pandemic response, is the authority to conduct overhead (satellite or airborne) surveillance "*not directed at specific United States persons.*" The NGA, for example, has previously provided support to the Federal Emergency Management Agency (FEMA).

Therefore, while the IC has surveillance capabilities, it is not currently well positioned to provide added benefit to the capabilities of national, state and local public health authorities in a domestic context. Supplemental appropriations measures have included CDC funding for public health surveillance and disease detection both domestically and globally. Public health surveillance is not an intelligence activity, however. Rather, it applies to non-intelligence activities, such as health data collection, by national, state, and local health entities. Certain HHS biosurveillance programs such as CDC's Epidemic Intelligence Service, also do not directly involve the IC community.

Relevant Statutes

Title 42 U.S. Code, §§247(d)-6,300(hh)-10

Title 50, U.S. Code, §3002 (E.O. 12333)

CRS Products

CRS Legal Sidebar LSB10449, *COVID-19, Digital Surveillance, and Privacy: Fourth Amendment Considerations*, by Michael A. Foster

CRS Insight INI1361, *COVID-19: U.S. Public Health Data and Reporting*, by Kavya Sekar

CRS In Focus IFI1461, *The Global Health Security Agenda (GHSA): 2020-2024*, by Tiaji Salaam-Blyther

Other Resources

DOD Instruction 6420.01, *National Center for Medical Intelligence (NCMI), change 2 of April 25, 2018*

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