

GAO

Report to the Chairman, Legislation and
National Security Subcommittee,
Committee on Government Operations,
House of Representatives

January 1992

NATIONAL SECURITY

The Use of Presidential Directives to Make and Implement U.S. Policy



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**National Security and
International Affairs Division**

B-246726

January 14, 1992

The Honorable John Conyers, Jr.
Chairman, Legislation and National
Security Subcommittee,
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

In response to your request, we attempted to determine whether national security directives (NSD), issued by the Bush administration through the National Security Council (NSC), have been used to make and implement U.S. policy; whether congressional committees have received copies of NSDs that discuss policy in their areas of jurisdiction; and how NSDs differ from executive orders.

Results in Brief

Because NSC did not give us access to the directives we could not analyze NSDs issued by the Bush administration. We do not know how many NSDs have been issued by the Bush administration, but we do know that 51 were issued through the fall of 1990. We examined unclassified NSC summaries of five NSDs issued by the administration and concluded that four of the five NSDs make U.S. policy. In addition, according to a Congressional Research Service (CRS) report, the administration also issued a classified NSD requiring a study of future U.S. international broadcasting policy.¹

NSC does not systematically or routinely inform congressional committees about NSDs before they are issued. Also, the Bush administration has not declassified any directives.

Unlike executive orders, NSDs

- embody foreign and military policy-making guidance rather than specific instructions,
- are classified,
- are usually directed only to NSC and the most senior executive branch officials, and
- do not appear to be issued under statutory authority conferred by Congress and thus do not have the force and effect of law.

¹U.S. International Broadcasting: An Assessment for Reform (CRS, Sept. 9, 1991).

Background

Since 1947, each administration has adopted and tailored a system for announcing and circulating within the administration presidential directives involving domestic, foreign, and military policies. Most of the directives issued during the Truman and Eisenhower administrations (1947-60) have been declassified and are maintained in the National Archives and Records Administration. In contrast, most of the presidential directives written since 1961 remain classified, and details about them are largely unavailable for congressional or public scrutiny.

In 1988 we issued a report on the use of presidential directives to make and implement U.S. policy.² The report includes an analysis of the directives that were publicly released between 1961 and 1988. We found that at least 1,042 presidential directives had been issued, and 247 had been publicly released. We also found that 116, or about half of the 247 examined served three functions; they established policy, directed the implementation of policy, and/or authorized the commitment of government resources.

The Bush Administration's Use of NSDs Is Not Fully Known

Without access to detailed information about NSDs, it is impossible to satisfactorily determine how many NSDs issued make and implement U.S. policy and what those policies are. Although we notified NSC on July 29, 1991, of our intentions to review NSDs issued by the Bush administration, to date NSC has not made them available to us. In this regard, an NSC letter written to you on September 9, 1991, reaffirmed NSC's position, taken 1 year previously, that if pressed on the matter of providing you with the title, number, and summary of each NSD issued by President Bush, the President would be advised to invoke executive privilege and not provide the information.

While the Bush administration has not declassified any NSDs, we obtained five unclassified summaries for NSDs that were issued early in the administration. One summary was issued as a press release from the White House and four were sent to implementing executive branch agencies. We obtained copies from the CRS and your Committee, which had received copies from executive branch agencies.

Our examination of the five unclassified summaries (see app. I) showed that four of the five NSDs established U.S. policy on such diverse issues as

²National Security: The Use of Presidential Directives to Make and Implement U.S. Policy (GAO/NSIAD-89-31, Dec. 28, 1988).

Soviet immigration, space, telecommunication security, and sealift. One NSD discussed the organization of NSC and did not address U.S. policy.

Also, according to the CRS report, the NSC issued NSD number 51 in the fall of 1990 that established two study groups to determine international broadcasting policy and consider the restructuring of U.S. government broadcasting organizations.

NSDs Are Not Made Available to Congress and the Public

We contacted the staff of the Senate and House Committees on Appropriations, the Armed Services, Foreign Relations/Affairs, and House Intelligence to determine if NSC had kept them informed about newly issued NSDs. None of the Committees are regularly receiving copies of NSDs or have been asked to review NSDs before they are issued. Instead, three Committees said they had learned about the existence of NSDs only if the executive branch had disclosed information citing a specific NSD and identified it by number.

NSDs are regularly classified and not required to be published in the Federal Register or any other public document. According to officials at the National Archives, the Bush administration has not sent any declassified NSDs to the Archives for release to the public.

NSDs and Executive Orders Differ in Many Important Respects

NSDs and executive orders are issued by the President and may impose general or specific responsibilities on subordinates; but in other important ways, they are quite dissimilar. Neither has been specifically defined in law, but they have been used for decades.

According to NSC, NSDs issued by the Bush Administration address national defense and foreign relations matters such as nuclear weapons, strategic forces, and arms control negotiations. Also, according to NSC, they communicate guidance directly from the President to NSC and senior officials such as the Vice President, the Secretaries of State and Defense, the Director of Central Intelligence, and the Chairman of the Joint Chiefs of Staff and are generally classified. It is unclear under what circumstances, if any, NSDs could have the force and effect of law because they (1) often embody policy-making guidance rather than specific instructions (2) are classified and are not readily available to the Congress or the general public (3) are not usually directed to the entire executive

branch and (4) do not appear to be typically issued under statutory authority conferred by Congress.

Executive orders, on the other hand, do not generally cover foreign policy guidance or military strategy and are generally instructions to executive branch officials about the performance of their duties. Many executive orders are issued under specific statutory delegations from Congress to the President. When the President issues an executive order under such authority, the order carries the force and effect of law. Executive orders are almost always unclassified, are readily available to the Congress and the general public, and most are published in the Federal Register under the Federal Register Act of 1935 (44 U.S.C. 1505).

Scope and Methodology

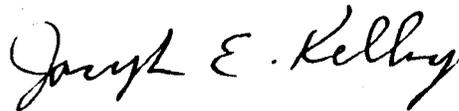
Although, we attempted to gain access to the NSDS issued by the Bush administration we were not given access. We did analyze unclassified summaries of five NSDS issued by the current administration. Our analysis was based on reading the summaries to determine if NSDS make and implement U.S. policy. In addition, we asked staff directors and key staff members of the Senate and House Committees on Appropriations, Armed Services, Foreign Relations/Affairs, and House Intelligence whether or not the Committees were systematically receiving NSDS. Finally, we reviewed pertinent legal documents to determine the differences between executive orders and presidential directives.

As you requested, we did not obtain agency comments on this report. We conducted our review between August and October 1991 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time we will send copies to appropriate congressional committees and the Director, Office of Management and Budget.

Please contact me on (202) 275-4128 if you or your staff have any questions about this report. The major contributors to this report were Charles A. Schuler, Assistant Director, and Doyle L. Reedy, Evaluator-in-Charge, Security and International Relations Issues; and Richard Seldin, Senior Attorney, Office of General Counsel.

Sincerely yours,



Joseph E. Kelley
Director, Security and International
Relations Issues

Unclassified Summaries of NSDs Issued by the Bush Administration

National Security Council Organization

NSD-1 established the organization of the National Security Council to assist President Bush in carrying out his responsibilities in the area of national security. According to NSD-1, NSC advises and assists the President in integrating all aspects of national security policy—domestic, foreign, military, intelligence, and economic—as it affects the United States.

U.S. National Space Policy

An NSD issued on November 2, 1989, approved a national space policy that was the result of the National Space Council's review of U.S. goals and activities in space. Areas affected include civil and commercial remote sensing, space transportation, space debris, federal subsidies of commercial space activities, and space station Freedom.

U.S. Policy on Soviet Immigration

NSD-27, issued on October 2, 1989, concerns the management of U.S. policy on Soviet immigration. The effect of the NSD was to create a larger U.S. immigration program to manage the growing number of Soviet emigrants applying for admission to the United States.

Policy for National Security Telecommunication and Information Systems

NSD-42 established policies to guide the conduct of activities to secure national security systems from exploitation, establish a mechanism for policy development and dissemination, and assign responsibilities for implementation.

National Security Sealift Policy

An NSD issued on October 5, 1989, supported the U.S. defense strategy for maintaining sufficient military and civil maritime resources to meet defense deployment needs and essential U.S. economic requirements. The NSD says that "implementation of this policy will be overseen by the Policy Coordinating Committee on Emergency Preparedness and Mobilization Planning," a policy coordinating committee of NSC.

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