

U.S Congress and Boko Haram

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CAITLIN POLING, NOV 6 2013

The attack on the United Nations building by Boko Haram in Abuja, Nigeria sent the nascent terrorist group into the headlines worldwide in August 2011. The attack also sent the group to the top of the U.S. House of Representatives Homeland Security Committee's (HHSC) priority list. The Committee's Chairman Peter King had long been concerned with emerging threats to the U.S. Homeland. He believed this attack signaled a threat to U.S. and Western interests once Boko Haram showed that it was capable of staging an attack like that which took place in Abuja.[1]

Following the bombing in Abuja, HHSC staff began studying Boko Haram more closely, receiving briefings from the Council on Foreign Relations, Congressional Research Service, National Counterterrorism Center, and the Sahel Blog.[2] Their research and attention to the issue culminated in a HHSC report and hearing on Boko Haram, several letters to the Obama Administration, and legislation on a Foreign Terrorist Organization (FTO) designation for the group. Prior to the HHSC hearing and report released in November 2011, Boko Haram received little attention on Capitol Hill. Before the U.N. attack the group was merely tangentially mentioned as a concern in Nigeria in committee testimonies before both the House and Senate by Director of National Intelligence James Clapper and Director of the National Counterterrorism Center Matthew Olson earlier in 2011.[3]

The U.S. Congress has many avenues through which it can bring change or attention to an issue of importance, such as the growing threat of Boko Haram. As Congress has the "power of the purse," it sets budgets for policy ideas to become a reality—such as funding for the Trans Saharan Counterterrorism Partnership (TSCTP) or defense budgets for U.S. Africa Command.[4] The various committees of jurisdiction can hold hearings and issue reports to draw attention to an issue, demand accountability and answers from administration officials and other experts, and spur further analysis on issues.[5] Individual members of Congress can draft legislation to bring about policy changes or require parts of the administration to act. In the case of Boko Haram, the House and Senate have been active in all of these ways. This article will discuss the legislative actions taken by the U.S. Congress on Boko Haram and the policy disagreement that ensued between the Congress and the U.S. Department of State (DOS).

Emerging Threat: Counterterrorism and Intelligence Subcommittee Hearings and Report

On November 30, 2011 the HHSC's Subcommittee on Counterterrorism and Intelligence held a hearing entitled 'Boko Haram—Emerging Threat to the U.S. Homeland', and released a full committee report under the same name.[6] Subcommittee Ranking Member Jackie Speier stated 'our report and hearing today should serve as a solid starting point to raise awareness of a potential new threat and spur further discussion and examination to build an effective strategy for dealing with Boko Haram'.[7] At the time of the report and hearing, there was a dearth of scholarship or in-depth study of the group. The report summarized the Committee's extensive study of Boko Haram's history and current activity and pulled together disparate pieces of open source intelligence on the group to present the fullest picture available at the time. The Committee's report used the examples of al Qaeda in the Arab Peninsula (AQAP) and Tehrik-i-Taliban Pakistan (TTP) to illuminate the potential threat from the emerging Boko Haram.[8] Subcommittee Chairman Patrick Meehan stated:

It is critical that the U.S. Intelligence Community thoroughly and carefully examine the extent of the threat from Boko Haram to the U.S. Homeland. Our report found that the August attack on the U.N. represented a major escalation in

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the targeting and tactics of Boko Haram, an evolution that mirrors the rise of other al Qaeda affiliate groups, including Al-Qaeda in the Arabian Peninsula.[9]

The report outlined key findings and explored options for U.S. engagement and assistance to the Nigerian government. The key findings detailed that Boko Haram has evolved rapidly and poses an emerging threat to the U.S. Homeland, and that the United States should work to preemptively counter the nascent terror group.[10] The report also gave five recommendations for dealing with the threat. The report stressed the importance of avoiding underestimating the threat of Boko Haram. Additionally, the Committee recommended determining whether Boko Haram should be designated an FTO, increasing U.S. intelligence collection on the group, increasing outreach to the American diaspora community, and increasing U.S. support for Nigerian counterterrorism and intelligence programs.[11]

Congress, the State Department, and the FTO Debate

While there was not a contentious debate within Congress on the FTO designation for Boko Haram, a tense debate ensued between Congress and the DOS on this issue. In order to understand the ongoing debate on the FTO designation for Boko Haram, one must be familiar with the process to designate a group as an FTO and the results that can be achieved from such a label. First and foremost, it is important to note that the Secretary of State must initiate the designation of a group as an FTO.[12] According to the HHSC report as well as independent analysis by The Heritage Foundation, an FTO designation would help the U.S. intelligence community in its efforts to curb the activities of the group.[13] An FTO designation allows the United States to impact financing and immigration of group members; sanctions can include the denial of visas, blocking of assets, prosecution of supporters who provide material support or funds, and deportation of members.[14] Adding a group to the FTO list can also influence other nations to make similar designations, which further hinders the group's ability to access its resources or travel abroad. [15]

Lisa Monaco, head of the Department of Justice's national security division sent a letter to the DOS in January 2012 requesting that Boko Haram be added to the FTO list.[16] In her letter, Monaco stated that though Boko Haram attacks thus far have occurred only within Nigeria, the U.S. should not underestimate the threat the group represents to American interests. She also highlighted the links Boko Haram has forged with 'transnational terrorist groups', including AQIM, and that Boko Haram has 'openly espoused violence against the West'.[17]

The Chairs of the full HHSC and the Subcommittee on Counterterrorism and Intelligence sent two letters to Secretary of State Clinton, urging the FTO designation for Boko Haram on March 30 and May 18, 2012. In their first letter, the Chairs noted:

Currently, neither the Departments of Justice nor Treasury can take such actions without FTO designation creating unnecessary risk. In addition, FTO designation will also ensure that all other members of the U.S. Intelligence Community have every military, intelligence, diplomatic, and economic tool at their disposal to disrupt and deter Boko Haram's operations, planning, and fundraising both internationally and domestically.[18]

The second letter expressed the concern of the Chairs that the DOS had neither taken any action regarding the designation—despite repeated calls from the Committee as well as from the DOJ—nor responded to the first letter.[19] The Chairs stressed:

Designating Boko Haram an FTO is essential to giving our intelligence and law enforcement agencies the legal authorities to deter individuals who might be providing support to Boko Haram in the U.S. and abroad, and freeze any known Boko Haram assets. FTO designation can no longer wait.[20]

Despite these calls from Congress, the DOS repeatedly referred to Boko Haram as 'not a monolithic group' whose 'aims are largely to discredit the Nigerian government', and do not represent a threat to the U.S. Homeland. [21] Members of the House and Senate have generally reached a consensus on the growing threat of Boko Haram in that at least the majority of them would like to see rationale on *why* not to designate from the DOS. The general

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consensus within Congress was that the DOS should issue a report to Congress on the threat of Boko Haram and on why the group should or should not be listed as an FTO, but did not direct the Secretary to designate the group as an FTO.[22] In Congressional hearings, few members even expressed opposition to an FTO designation.[23]

On June 21, 2012 the DOS designated three Nigerian leaders of Boko Haram as Specially Designated Global Terrorists (SDGT): Abubakar Shekau, Abubakar Adam Kamar, and Khalid al-Barnawi.[24] Per Executive Order 13224, 'those foreign persons that support or otherwise associate with...foreign terrorists' are subject to SDGT listing.[25] The DOS claimed that the SDGT designations were sufficient for Boko Haram, and that designating individuals allowed the U.S. to focus on the people most responsible for threats and extremist violence, thus obviating the need for a group FTO designation.[26] Several Members of Congress disagreed with this assessment.

Members of Congress used hearings on Boko Haram, al Qaeda affiliates, and Nigeria to ask meaningful questions regarding the growing threat of the nascent terrorist group. Most importantly, Members of Congress used these hearings to question DOS officials on its resistance to designating Boko Haram as a Foreign Terrorist Organization. Questioning in a House Foreign Affairs Africa Subcommittee hearing on U.S. policy toward Nigeria focused heavily on the resistance of the DOS to designate Boko Haram as an FTO. Representative Chris Smith (R-NJ) asked Ambassador Johnnie Carson why the DOS had classified individuals, and not the entire organization as an FTO.[27] Smith also inquired how often the DOS designates leaders of a group as terrorists, but not the entire group—a question to which he never received a response.[28] Congresswoman Bass was the sole Member who expressed views in line with those of the DOS by asking 'do you feel that if the organization was labeled [as an FTO] that it would embolden them?'[29] Ambassador Carson replied that FTO designation would serve to enhance Boko Haram's status and assist with recruitment and fundraising. In that same hearing, Dr. Darren Kew echoed the DOS's rationale, stating that '[a]n FTO designation now would hand the hardliners a public relations victory, since under their logic the condemnation of the United States is a badge of radical Islamist legitimacy'. Kew also claimed the FTO designation would make the Nigerian government appear weaker and could provoke a Boko Haram attack on U.S. interests.[30]

Legislative Action

As it became increasingly apparent that the DOS would not act on an FTO designation for Boko Haram, and attacks waged in Nigeria, Representative Patrick Meehan introduced H.R. 5822, the Boko Haram Terrorist Designation Act in May 2012.[31] In the Senate, Senator Scott Brown (R-MA) introduced companion legislation identical to Meehan's bill, S.3249 just one week later.[32] In addition to 'stand alone' legislation, Members can also use the amendment process to attach provisions regarding Boko Haram to germane legislation.[33] H.R. 5410, the National Defense Authorization Act of 2013, as passed by the House of Representatives contained a provision requiring the DOS to determine if Boko Haram qualifies for FTO status.[34] The Senate amendment to the NDAA contained a provision that would require the Director of National Intelligence (DNI) to submit an intelligence assessment on the threat posed by Boko Haram, following which, the Secretary of State would be required to submit a report to Congress on the U.S. strategy to counter this threat.[35] The Senate-passed version contained a similar provision that was introduced as an amendment by Senator Scott Brown.[36] The 2013 NDAA, including the Boko Haram provision, was signed into law on January 2, 2013.[37]

Several other Members of Congress weighed in on the issue of Boko Haram, thanks in part to the attention drawn to the group on Capitol Hill by the work of the HHSC. Congresswoman Michele Bachmann (R-MN) led a letter to Nigerian President Goodluck Jonathan regarding the growing violence of Boko Haram and suggestions for countering the insurgency.[38] Congressmen Mike Pompeo (R-KS) and Michael Capuano (D-MA) also sent a letter to Secretary Clinton with the House International Religious Freedom Caucus, asking that the Secretary denounce Boko Haram's actions and acknowledge the religiously-motivated nature of their attacks. The letter also encouraged Secretary Clinton to consider USCIRF's recommendation to designate Nigeria as a Country of Particular Concern.[39]

The Way Ahead: The 113th Congress and Beyond

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As Congress awaits a response from the DNI and Secretary of State, pursuant to the Boko Haram provisions in the 2013 NDAA, Senator Risch introduced S. 198, The Boko Haram Terrorist Designation Act on January 31, 2013. S.198 would require the DOS to submit a report to Congress within 30 days of passage that, after consultation with the intelligence community, determines whether Boko Haram meets the criteria necessary to be labeled as an FTO. Additionally, this legislation takes a harsher line on Boko Haram, by adding that '[i]t is the sense of Congress that Boko Haram meets the criteria for designation as a foreign terrorist organization...and should be designated as such'.[40] Additionally, during the Senate Armed Services Committee hearing for General David Rodriguez, the new commander of U.S. Africa Command, several questions were raised by Senator Kelly Ayotte (R-NH) and others regarding the threat of Boko Haram and American strategy to counter that threat.[41]

Despite the continued attention to the group, Congress did miss several opportunities to call even greater attention to the group. Confirmation hearings were held in early 2013 for the three highest national security positions in the administration: Secretary of State, Secretary of Defense, and Director of the Central Intelligence Agency. Unfortunately, political controversies dominated the line of questioning from senators during these hearings on issues ranging from use of drones to dedication to Israel, and no questions were asked regarding Boko Haram.[42]

The U.S. Congress should, and will, continue to shed light on the nature of the threat to the U.S. posed by Boko Haram as well as provide oversight and recommendations for military and diplomatic strategies to counter the group's threat and influence. As crisis rages on in Mali, with evidence of Boko Haram fighters involved, Congress remains attentive to the group. Representative Edward Royce (R-CA), the new Chair of the House Foreign Affairs Committee, has been following the rise of Boko Haram since at least 2009, as is documented by his 'Foreign Intrigue Blog', posts on the group.[43] As Chairman, he will have many opportunities to draw attention to Boko Haram in Congress.

In a recent speech, AFRICOM Commander General Carter Ham likened Boko Haram to AQ of the 1990s, which shows his perspective on the group's future potential.[44] In a time of fiscal austerity and uncertainty, it is essential that individual Members of Congress and Congressional Committees continue to highlight the threat of Boko Haram in order to maintain funding for intelligence collection as well as crucial programs and partnerships such as the USTSCP and humanitarian aid to Nigeria. It is imperative that Congress maintains its careful attention to the rise of Boko Haram and takes all steps in its power to prevent an attack on American interests abroad or the U.S. Homeland.

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[1] House Homeland Security Committee Subcommittee on Counterterrorism and Intelligence, *Boko Haram-Emerging Threat to the U.S. Homeland*, 112th Cong., 1st sess., 2011, 2-3

[2] U.S. House. Committee on Homeland Security. *Report on the Legislative and Oversight Activities of the House Committee on Homeland Security, Third Quarter 112th Congress*. (H. Rpt. 112-522). 12 June 2012. Washington: Government Printing Office, 2012, 172

[3] U.S. Senate. Committee on Armed Services. *Worldwide Threat Assessment of the U.S. Intelligence Committee* Hearing. 10 March 2011. Washington: Government Printing Office, 2011.

[4] The TSCTP is a partnership plan created by the U.S. government to combat terrorism in Africa by partnering with nations such as Algeria, Nigeria, and Mali. U.S. House. Committee on Foreign Affairs. *The Fiscal Year 2013 Budget: A Review of U.S. Foreign Assistance Amidst Economic Uncertainty* Hearing. 20 March 2012. Washington: Government Printing Office, 2012, 96

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[5] The committees of jurisdiction include: House Homeland Security Committee, House Foreign Affairs Committee, House Armed Services Committee, House Permanent Select Committee on Intelligence, Senate Armed Services Committee, Senate Foreign Relations Committee, Senate Homeland Security and Government Affairs Committee, and Senate Permanent Select Committee on Intelligence.

[6] U.S. House. Committee on Homeland Security. *Report on the Legislative and Oversight Activities of the House Committee on Homeland Security, Third Quarter 112th Congress*. (H. Prt. 112-522). 12 June 2012. Washington: Government Printing Office, 2012.

[7] U.S. House. Committee on Homeland Security. *Boko Haram—Emerging Threat to the U.S. Homeland* Hearing, 30 November 2011. Washington: Government Printing Office, 2012.

[8] Both AQAP and TTP were viewed by the intelligence community and American officials as strictly regional threats, until both attempted attacks on the American homeland. In the wake of the attempted AQAP and TTP attacks, the U.S. Intelligence Community admitted that they underestimated the potential of these groups to attempt attacks on U.S. soil. House Homeland, 'Boko Haram', 9-11

[9] 'Homeland Security Committee Report Details Emerging Homeland Threat Posed by Africa-Based Terrorist Organization, Boko Haram', [press release]. *House Committee on Homeland Security Home Page*, 2012. House Committee on Homeland Security. 30 November 2011.

<http://homeland.house.gov/press-release/homeland-security-committee-report-details-emerging-homeland-threat-posed-africa-based>

[10] For the full list of key findings see House Homeland, 'Boko Haram', 4

[11] For more on the Committee's recommendations see *ibid.*, 5

[12] Audrey Kurth Cronin, 'The "FTO List" and Congress: Sanctioning Designated Foreign Terrorist Organizations', Congressional Research Service *Report for Congress*, 21 October 2003, 2. <http://www.fas.org/irp/crs/RL32120.pdf>. The process involves the departments of State, Justice, Homeland Security, and Treasury, but the initial decision to designate is made by the State Department. For more information on criteria for FTO designation, see Cronin.

[13] House Homeland, 'Boko Haram', 26-27 and Morgan Lorraine Roach 'The U.S. State Department Should Designate Boko Haram a Foreign Terrorist Organization', Heritage Foundation *Issue Brief* No. 3612, 22 May 2012, http://www.heritage.org/research/reports/2012/05/boko-haram-should-be-designated-as-a-foreign-terrorist-organization#_ftn3

[14] Cronin, 'The "FTO List" and Congress', 3-4

[15] House Homeland, 'Boko Haram', 26-27 and Roach

[16] Mark Hosenball and John Shiffman, 'U.S. Justice Dept urges terror label for Nigerian militants', *Reuters*, May 17, 2012, <http://www.reuters.com/article/2012/05/18/us-usa-security-bokoharam-idUSBRE84H01120120518>

[17] *Ibid.*

[18] "King, Meehan Letter to Secretary Clinton on Designating Boko Haram a Foreign Terrorist Organization" [press release]. *House Committee on Homeland Security Home Page*. 2012. House Committee on Homeland Security. 30 March 2012.

<http://homeland.house.gov/letter/king-letter-secretary-clinton-designating-boko-haram-foreign-terrorist-organization>

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[19] House Report 112-522, pp 172-173

[20] 'King, Meehan Urgently Request that Secretary Clinton Designate Boko Haram as Foreign Terrorist Organization', [press release]. *House Committee on Homeland Security Home Page*, 2012. House Committee on Homeland Security. 20 May 2012.

<http://homeland.house.gov/press-release/king-meehan-urgently-request-secretary-clinton-designate-boko-haram-foreign-terrorist>

[21] The DOS believes there are elements within Boko Haram that are more ideological and want a new Nigerian state based on Shari'ah law; some elements just want to destabilize the government due to disagreements with the central government; while others take advantage of the violence to rob banks and benefit personally. Response of Deputy Assistant Secretary of State Donald Yamamoto, U.S. House. Committee on Foreign Affairs. *LRA, Boko Haram, Al-Shabaab, AQIM and Other Sources of Instability in Africa* Hearing, 25 April 2012, Washington: Government Printing Office, 2012, p. 85

[22] The rationale of the Congress was that if the State Department had good reason for not designating Boko Haram as a FTO, they should explain it in a report to Congress. See 'Legislative Action' section for more on the legislation passed.

[23] U.S. House. Committee on Foreign Affairs. *U.S. Policy Toward Nigeria: West Africa's Troubled Titan* Hearing, 10 July 2012. Washington: Government Printing Office, 2012, p. 37

[24] 'Terrorist Designations of Boko Haram Commander Abubakar Shekau, Khalid al-Barnawi, and Abubakar Adam Kamar', [press release], United States State Department, 21 June, 2012, <http://www.state.gov/r/pa/prs/ps/2012/06/193574.htm>

[25] Executive Order 13224 blocks access to all property and interests in property of designated terrorists and individuals and entities supporting them under U.S. jurisdiction. The Treasury Department is the leading agency that adds individuals to the SDGT 'list' and then freezes their assets, but the process is done in consultation with the Departments of State and Justice. U.S. Department of the Treasury, 'Executive Order 13224—Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism', <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/terror.pdf>

[26] Response of Ambassador Johnnie Carson. *U.S. Policy Toward Nigeria: West Africa's Troubled Titan* Hearing, p. 76

[27] Ibid, p. 29

[28] Ibid, p. 30

[29] Ibid, p. 37

[30] Ibid, p. 83-84

[31] The legislation had a total of 27 co-sponsors in the House of Representatives. U.S. House 112th Congress, 2nd Session. *H.R. 5822 Boko Haram Terrorist Designation Act of 2012*. 17 May 2012

http://thomas.loc.gov/home/gpoxmlc112/h5822_1h.xml

[32] U.S. Senate 112th Congress, 2nd Session. *S.3249 Boko Haram Terrorist Designation Act of 2012*. 24 May 2012 http://thomas.loc.gov/home/gpoxmlc112/s3249_1s.xml

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[33] In the case of Boko Haram, 'germane legislation' included the National Defense Authorization Act and the State and Foreign Operations Appropriations Act for FY 2013. Representative Charlie Dent introduced an amendment to the State and Foreign Operations Appropriations Act that would require DOS to explain why Boko Haram had yet to be designated an FTO, which passed the House Appropriations Committee on May 17, 2012. 'Appropriations Committee Approves Fiscal Year 2013 State and Foreign Operations Appropriations bill', [press release]. *House Committee on Appropriations Home Page*, 2012. House Committee on Appropriations. 17 May 2012. <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=295910>

[34] The Amendment was sponsored by Representatives Meehan (PA), King (NY), Miller (MI), McCaul (TX), and Rogers (AL). U.S. House. Committee on Armed Services. *Fourth Semiannual Report on the Activities of the Committee on Armed Services for the 112th Congress*. (H. Rpt 112-744). Washington: Government Printing Office 2013.

[35] The House and Senate must both pass legislation before it can be signed into law. If there are differences in the two, negotiators from the House and Senate come together and resolve the differences in the bill, creating a Conference Report, which both will vote on again. *National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013)*, Public Law 112-239, United States Code (2013). <http://www.gpo.gov/fdsys/pkg/PLAW-12tpubl239/html/PLAW-12tpubl239.htm>

[36] U.S. Senate. 112th Congress, 2nd Session. *S.AMDT.3036 to S.3254 National Defense Authorization Act for 2013*. <http://thomas.loc.gov/cgi-bin/query/R?r112:FLD001:S57196>

[37] *NDAA 2013*, Public Law 112-239

[38] Bachmann is a member of the House Permanent Select Committee on Intelligence. Michele Bachmann, Congresswoman to Nigerian President Goodluck Jonathan, Washington, 30 April 2012, Personal files of Goodluck Jonathan, Abuja. <http://votesmart.org/public-statement/690633/>

[39] 'Congressional Scorecard for International Religious Freedom 112th Congress', Open Doors USA, 2012 http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CDIQFjAA&url=http%3A%2F%2Fadvocacy.opendoorsusa.org%2Fwp-content%2Fplugins%2Fdownload-monitor%2Fdownload.php%3Fid%3D3&ei=_yVDUfOYJJHI4AP1koEQ&usq=AFQjCNGqHodz27omM6AOuc9mHKLqvsbmg&sig2=199G55KHVOvflyIQ2DUDfw

[40] U.S. Senate. 113th Congress, 1st Session. *S. 198 Boko Haram Terrorist Designation Act of 2013*. http://thomas.loc.gov/home/gpoxmlc113/s198_is.xml

[41] Spencer Ackerman, 'Military's Next Africa Chief Indicates 3 Terror Groups Are on His Hit List', *Wired*, 14 February 2013. <http://www.wired.com/dangerroom/2013/02/africa-rodriguez/>

[42] Jonathan Bernstein, 'Hagel, Kerry, Brennan: Is the Senate even trying?' *Salon*, 9 February 2013, http://www.salon.com/2013/02/09/hagel_kerry_brennan_is_the_senate_even_trying/

[43] Congressman Ed Royce 'Nigeria's Cancer Spreads', *Foreign Intrigue Blog*, 1 September 2011 <http://royce.house.gov/newsblog/documentsingle.aspx?DocumentID=258053> and Congressman Ed Royce, 'Education is prohibited,' *Foreign Intrigue Blog*, 5 August 2009. <http://royce.house.gov/newsblog/documentsingle.aspx?DocumentID=140976>

[44] General Carter Ham, 'Counterterrorism in Africa', *C-SPAN*, December 3, 2012 <http://www.c-spanvideo.org/program/309739-1>

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