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HOMELAND SECURITY:

UNDER ORGANIZED AND OVER INVOLVED

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HOMELAND SECURITY: UNDER ORGANIZED, OVER INVOLVED

Homeland Defense is the latest hot topic making the rounds within the Beltway. Articles are being written, committees formed, and think tanks are being engaged to express thoughts, commentary, and perhaps just to make noise about homeland defense. The buzz is all around town. The central thesis of this paper is that the federal government is not organized for success in homeland defense. The second and subordinate thesis is that the DoD is overly involved in domestic homeland defense, and has wandered deeply into the area of responsibility of civil authorities. This paper will seek to redefine homeland defense into a broader concept of homeland security, review key points of the current discussion, and make recommendations regarding next steps.

TOWARD A DEFINITION OF HOMELAND DEFENSE

Words matter. The definition of homeland defense is not commonly acknowledged or understood, which contributes to the fog surrounding the subject. Joint Publication 1-02, always a good starting point, does not contain a definition. No standard dictionary has a definition. The NWC elective course struggled for hours to define it. Most of the commissions, reports, articles and seminars simply avoid defining homeland defense. The 1997 National Defense Panel (NDP97) and 2001 Commission on National Security in the 21st Century (Hart-Rudman) didn't tackle the definition. The NDU 2001 QDR Working Group Report (QDRWG) both broadened and limited their definition by using the broader concept of *homeland security* while limiting their definition to *military aspects* alone:

We defined the military dimensions of homeland security as military operations and activities to deter, prevent, defend against, and respond to attacks on the homeland, including national missile defense, territorial defense, critical infrastructure prevention, counterterrorism activities, consequence management, and other activities in support of domestic civil authorities.¹

¹ Flournoy, *Quadrennial Defense Review 2001 Working Group*, p. 13.

The lack of an agreed-upon definition simply underscores the complexity of the issue. Where are our nation's borders in today's cyber-world? Given the international web of finance and trade relationships that exist today, what role should the private sector play, much less DoD and civilian agencies? How will Constitutional privacy protections be afforded? Technology has blurred the concept of border distinctions in finance, transportation, and commerce. The volume of shipping containers entering the U.S. has doubled since 1995, and only a miniscule fraction can be inspected. Overlapping jurisdiction has incited bureaucratic turf wars, as agencies attempt to gain primacy—and scarce budget dollars—across an expanding array of services and threats. The recent Commission on Crime and Security in U.S. Seaports (Seaport Commission) listed eight separate federal agencies with jurisdiction over terrorist incidents at seaports, not including state and local agencies.² Smuggling of strategic or sensitive materials was also within the jurisdiction of eight agencies, albeit slightly different agencies. DoD was not even a part of the study since the focus was on “crime and security”, but DoD clearly plays a role in ensuring that our nation's strategic outload ports are secure during times of crisis or war. Imagine the impact on strategic lift to Desert Storm if the ports of Norfolk, Savannah, or Port Canaveral were closed or severely disrupted.

DEFINITION: HOMELAND SECURITY, NOT “DEFENSE”

The dilemma remains: how to define homeland defense? First, the concept of homeland defense is a limiting term and a stumbling block. Homeland security must be broader in scope and more proactive in nature than simply defense. Necessarily then, the definition will include civil and military aspects, as well as private enterprise when appropriate. Further, the basic ideals of American civil liberties must be preserved in the definition as well as the practice of

² *Report of the Interagency Commission on Crime and Security in U.S. Seaports*, p.30-31.

homeland security. Indeed, if a serious erosion of civil liberties result from “protecting against terrorists”, the terrorists have undermined the United States and have come out victorious in the war on terror. Further complicating the issue is the wide spectrum of possible threats from “mere” crime, to an isolated terrorist incident, and a determined attack on the United States by an adversary. These distinctions are fuzzy in themselves, since the “ILOVEYOU” virus shut down entire businesses and caused billions of dollars in damage and lost business worldwide. Was this a petty crime by a hacker in the Philippines, or could it be considered a crime against the United States? Who has jurisdiction and how is the perpetrator brought to justice? Two recent isolated terrorist incidents, the World Trade Center and Oklahoma City bombings, were treated as a crime. The situation would have been different if the perpetrator was found to be a nation state such as Libya, or the bombings had been the precursor to an overseas attack on American interests. Lastly, the classic concept of nation-states has been supplanted with a more complex montage of nation-states, failed states, transnational actors, state supported groups, and asymmetric threat opportunities. No longer will the nation-on-nation conflict of past security constructs apply to the realities of today. The working definition of homeland security for this paper is:

Homeland security is the fundamental purpose of the entire federal government. The homeland security mission is to ensure Constitutional freedoms, while preventing, deterring, protecting, or responding to attacks against United States territory and associated economic and social infrastructure. Among the critical homeland elements are: the population; government services; water supply; energy supply and distribution; transportation infrastructure; emergency services; financial infrastructure; communications infrastructure; and military defense infrastructure.³

Homeland security is first and foremost a civil function performed within the bounds of the United States, and overseas in prevention and deterrence,

³ List of critical homeland elements adapted from McKenzie, “*The Revenge of the Melians: Asymmetric Threats and the Next QDR*”, p. 60-64.

against criminal or non-state organizations. Civil authorities at the local, state, and federal level will be the first responders to most acts against the United States, and will maintain lead agency status throughout most developments. The military has both a direct and supporting role in homeland defense. The military's direct role is to prevent, deter, or respond to a direct attack on the United States by the military forces of a nation-state aggressor. The military's supporting role is to assist when called by civil authorities to respond to the consequences of criminal or non-state actions taken in the United States.

HOMELAND SECURITY: NOT ORGANIZED FOR SUCCESS

A true cottage industry has formed to look at the many forms of homeland security. Most observers credit the NDP97 report as the first significant call for action in the military concept of homeland defense. NDP97 underscored the very different challenges facing the nation from the future vulnerabilities posed by terrorism, information warfare, WMD, and missile proliferation. NDP97 clearly saw a shift in future DoD mission priority toward homeland defense. Among its recommendations, NDP97 called for integration of defenses, better sharing of intelligence between military and civil authorities, deployment of a limited NMD, and shifting the mission of consequence management to the National Guard and Army Reserve.

Congress got into the act, literally, with the Nunn-Lugar-Dominici Act of 1996 (Nunn-Lugar). This act designated DoD as the lead agency to enhance domestic preparedness for responding to and managing the consequences of WMD events inside the United States. DoD was specifically authorized to provide training, conduct exercises, provide expert advice to emergency response personnel, and to lend equipment to 120 local jurisdictions. GAO reviewed DoD's execution of the Congressionally mandated program, pointing out serious flaws in the interagency process, duplicative programs managed by FEMA, DoJ, and PHS, and "the fragmented and wasteful federal approach toward combating terrorism."⁴ While the GAO did

⁴ *Combating Terrorism: Opportunities to Improve Domestic Preparedness Program Focus and Efficiency* (GAO, NSIAD-99-3), p. 2-7.

not provide any specific recommendations, it was clear that the Nunn-Lugar Act was not providing the needed impetus for change. The Nunn-Lugar Act reached for DoD as a known tool with competent management and adequate resources, but in the process put the wrong agency into the lead on the burgeoning homeland WMD issue.

The Clinton Administration issued PDDs 39 (United States Policy on Counterterrorism, 1995) and 62 (Protection Against Unconventional Threats to the Homeland and Americans Overseas, 1998), and PDD 63 (Protection of Critical Infrastructure, 1999) in an effort to bring Executive Branch coherence to the threats from terrorism and threats to critical infrastructure. A National Coordinator for Security, Infrastructure Protection and Counter-Terrorism was established at the NSC, reporting to the President through the National Security Advisor. The result of PDDs 39 and 62 was an Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), signed by seven of the lead agencies tasked by the PDDs. The FBI was designated as lead agency for crisis management and FEMA was designated as lead agency for consequence management. The reality of an incident, particularly a no-notice WMD event, makes the distinction between crisis and consequence management irrelevant. DoD was mentioned in a strictly supporting role in both crisis and consequence management, but could only act when specifically requested by the Attorney General and approved by the Secretary of Defense.

TOPOFF: EXERCISE IN FRUSTRATION

Congress took note that no top-to-bottom national level exercise had been conducted to test the effectiveness of the Nunn-Lugar Act, and in 1999 directed that the Federal government conduct no-notice comprehensive exercises. After a yearlong preparation period, the draft CONPLAN was exercised in May 2000 during the TOPOFF (“Top Officials”) Exercise.

TOPOFF simulated two WMD events with a BW agent in Portsmouth, NH and a CW agent in Denver, CO. TOPOFF turned out to be a disaster, pun intended.

During the exercise, it quickly became clear that the FBI wanted sole authority to prosecute a law enforcement crime scene without regard for the basics of a WMD incident: identifying the BW/CW agent, informing the populace, activating health emergency procedures, and caring for the immediate and subsequent victims. The FBI shut the EPA out of the exercise, even though the CONPLAN and Federal law required EPA participation. The BATF and FBI refused to cooperate with each other, requiring the Attorney General to intervene. FEMA stated that they were prevented from doing their mandated role due to FBI interference. Inter-agency spats grew so bad that the Attorney General sought to terminate the exercise, and ultimately settled for changing the scenario during the exercise to make real problems go away by simply stating they had been solved for the purposes for the exercise. State and local officials wondered aloud if the Federal government was a help, or simply another obstacle to overcome. In the aftermath of TOPOFF, the FBI has slow rolled the blunt exercise report via the inter-agency clearance process. To date, no follow on exercise has been planned while various agencies lick their wounds and plan their next steps.

The TOPOFF exercise highlighted the diffuse and sometimes uncoordinated military assets that would likely be in play during a WMD incident. Table 1 is a non-inclusive collection of military assets or command structures used in TOPOFF⁵. Given this imposing list of separate military teams involved with TOPOFF, it is little wonder that responders on the scene were quickly overwhelmed by both the WMD incident and the influx of separate and often competing teams.

⁵ Extracted from Draft *Top Officials (TOPOFF) 2000 Exercise Observation Report*.

Table 1: Military Elements in TOPOFF 2000

Defense Threat Reduction Agency	USA Director of Military Support	ARNG WMD Civil Support Teams
SecDef/CJCS/JFCOM chain	USA CBR Rapid Response Team	ARNG Rapid Assessment & Initial
ASD - SOLIC	USA Special Augmentation	Detection Team
JTF-Civil Support	Response Team - NBC	USCG Strike Team
USA Technical Support Unit	USA Radiological Advisory	USCG Marine Safety Offices
USA CBR Rapid Response Team	Medical Team	USCG/EPA National Response
USA Soldier & Biological Chemical	USMC Chem/Bio Incident	Center
Command	Response Force	

The GAO's recent report on TOPOFF took an unusually balanced stance. GAO cited a clear lack of national strategy as the primary cause of concern, especially since the proposed FY 2001 budget for counter-terrorism was \$11.3B. The GAO went on to state that there was no apparent link between strategy and resources, and that there was no clearinghouse for priorities among the competing budget requests. Further, GAO stated that there was neither a Congressional mandate nor an Executive Branch plan to repeat TOPOFF in the future. However, GAO also stated that TOPOFF was a realistic field exercise that met the overall intent of Congress to highlight successes and shortcomings in a complex incident.⁶ On balance, GAO saw the potential positive outcomes embedded within the exercise failure.

DOD: OVER-INVOLVED, ILL ORGANIZED FOR NEW HOMELAND SECURITY THREATS

As evidenced by the list of DoD organizations involved in TOPOFF, the DoD brings significant capabilities to a national WMD incident. Clearly the capabilities have been developed in response to battlefield requirements, but the challenge of applying them in support of domestic incidents is not being met. In addition to WMD and other terrorist incidents, the DoD has computer network attack and computer network defense responsibilities that cross over

⁶ *Combating Terrorism: Federal Response Teams Provided Varied Capabilities; Opportunities Remain to Improve Coordination*, (GAO-01-14) p. 22-27.

to the domestic arena as well. Joint doctrine should be the repository for guidance to the DoD community in domestic crisis management and consequence management. It is not.

Joint doctrine is fragmented to the point of dysfunction in the area of homeland security, or even domestic employment of the military. Nearly every part of the JP 3-07 “MOOTW” series (there are five in addition to 3-07 itself) contain domestic linkages. JP 3-08 addresses Interagency Coordination, JP 3-11 addresses operations in an NBC environment, and JP 3-57 covers joint civil affairs. Each has a significant part in domestic operations. JP 3-01.1 covers the long-standing NORAD mission of aerospace defense for North America. Logistics doctrine in JP 4 (series) also covers domestic employment of military forces, especially in disaster recovery operations. On the positive side, each JP appears to have an element of consistency in guidance and references. Of special note is the consistent reference to DoDI 3025.1 “Military Support to Civil Authorities”. At least the fragmented doctrine has a common DoDI reference point.

Joint doctrine describes basic organizational relationships. These are also fragmented, and certainly complex. The diagram model of coordination during domestic operations in JP 3-08⁷ is a wonderfully complicated flowchart at the strategic, operational, and tactical levels. Unfortunately, it is out of date since it does not include reference to JTF-Civil Support, which stood up in 1999. It also does not comply with the Domestic Terrorism CONPLAN to which the SecDef is a signatory.

A careful review of organizational relationships appears to show two distinct types of domestic responses by military forces. This paper makes no claim that this is actually correct,

⁷ JP 3-08, Figure III-1, *Model for Coordination Between Military and Non-military Organizations - Domestic Operations*, p III-4.

but after an extended study of 12 different JPs, it appears to be the distilled guidance. The first type of military response is for interagency crisis response operations within the United States (other than for acts of terrorism). The SecDef has designated the Secretary of the Army as the DoD Executive Agent for response to these types of incidents. Among these incidents are natural or man made disasters, or military support to law enforcement agencies.

The second type of military response is to an act of domestic terrorism, which SecDef has retained sole authority in deploying forces. There are significant legal and cultural constraints on the use of military forces, but a careful study of the exceptions to the Posse Comitatus Act appears to give the President the authority to use the military under nearly any circumstance he deems to be an “emergency”. While the Posse Comitatus Act remains a powerful statement of limitations on the use of the standing army for domestic purposes, the President is legally empowered to use the military in the following circumstances: to restore and maintain public order; to respond to requests for aid from state governors; to protect certain Constitutional rights; to assist the Secret Service in protecting the President and foreign dignitaries; to assist the Attorney General in drug abuse prevention and control; to assist the EPA in water pollution control; and to cope with domestic emergencies and protect public safety.⁸ The bottom line is that the President can use the military in nearly any domestic situation, subject to Congressional and public censure.

Given the fragmented guidance, the DoD has attempted to bring some coherence to its widely dispersed organization. After rejecting the concept of CINC-Homeland Defense, SecDef settled for the establishment of a JTF-Civil Support, reporting to CINCJFCOM, currently commanded by a two star Army officer. JTF-CS is staffed at about 80 personnel, although the

⁸ JP 3-07.2, *Joint Tactics, Techniques, and Procedures for Antiterrorism*, p. III-4 to III-6

projected staffing may reach as high as 160. JTF-CS's mission is to act as a standing DoD command and control element in support of FEMA during a WMD (specifically and exclusively a WMD) incident, when authorized by SecDef through CJCS and CINCJFCOM. This organization did not participate in TOPOFF. However, there remains an unresolved mission overlap between JTF-CS and CINCSOC, who has remained tasked with certain highly specialized domestic WMD response capabilities when requested by the National Command Authorities. JTF-CS is an organization that may eventually be able to bring coherence to DoD's WMD response, but it cannot extract DoD from over-involvement in both WMD and the wider range of homeland security issues.

THE WAY AHEAD

As competing and uncoordinated domestic federal agencies have chased the hope of homeland security funding, the military has been willingly legislated into over-involvement in a civil responsibility. The Founding Fathers, fearful of the impacts of military enforcement of civil authority, created Constitutional hurdles to prevent this very situation from occurring. Alexander Hamilton's warning is clearly highlighted in *The Federalist No. 8*:

This picture is not too highly wrought; though, I confess, it would not long remain a just one. Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.⁹

⁹ Alexander Hamilton, "The Federalist No. 8, The Consequences of Hostilities Between the States," *New York Packet*, Tuesday, November 20, 1787.

The primary template for change in the area of homeland security may become the Hart-Rudman Commission report, although many other commissions and working groups have added their voices to the chorus for change in the area of homeland security. Hart-Rudman tied together the disparate aspects of homeland security, civil liberties, military involvement, agency coordination, intelligence community involvement, and Congressional organization into a focused package of recommendations. Hart-Rudman placed homeland security first before all other issues facing the United States in terms national security. It is a compelling document.

Hart-Rudman seeks to create a new organization, the National Homeland Security Agency (NHSA) within the framework of FEMA, augmented by the transfer of Customs, Coast Guard, and Border Patrol to the new agency. The Director of NHSA would have Cabinet level authority and an NSC statutory participation. Hart-Rudman goes into significant detail concerning the organization of the NHSA, including interface points. The DoD is featured prominently in a supporting role with existing JTF-CS assets, but with a significant new role for the National Guard in homeland security. The Army National Guard would be reorganized, trained and equipped for the primary mission of homeland security, a significant change from the current Army National Guard mission to conduct sustained combat operations overseas. The intelligence community would also be recapitalized and refocused on homeland security, among other recommendations for intelligence. Congress, too, would require retooling in terms of committee structure in order to bring together the fragmented oversight provided by 12 current oversight bodies into a coherent single Congressional body.

The criticism of Hart-Rudman has come mainly from the organizations to be drawn into the proposed NHSA. In a recent speech to NDU, the Commandant of the Coast Guard gave little attention to Hart-Rudman, and somewhat dismissively stated that Hart-Rudman looked at the

Coast Guard thru the very narrow lens of homeland security, without addressing the wider and more comprehensive mandated roles and missions of the Coast Guard¹⁰. However, the transfer of the Coast Guard to the proposed NHSA would likely ensure appropriate attention to the whole organization in terms of funding and departmental priority. The likely downside would be the possible reduction of military specific skills and interoperability with DoD, which has long been a Coast Guard concern as one of the five Armed Forces of the United States.

Organization stature, personnel resources, funding, and advocacy are all critical elements to permit success within the federal bureaucracy. Hart-Rudman recommends the necessary organizational redesign as well as establishing resource advocacy within the Executive and legislative branches to address homeland security in a comprehensive manner. It is the best starting point for discussion of the way ahead.

Homeland security is receiving increased attention as the United States faces new threats in the new century. For homeland security to be improved, the bureaucracy needs to be changed. Maintaining the status quo will not change the current over-reliance on DoD for essentially domestic affairs. It will not get appropriate resources and coordination for domestic agencies, and it will not protect the United States against a known and growing threat. We've had enough wake up calls. It's time to answer the phone.

¹⁰ See in particular the Report of the Interagency Task Force on U.S. Coast Guard Roles and Missions, *A Coast Guard for the Twenty First Century*.

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