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**THESIS**

**COMBATING PARAMILITARY TERRORISM ON THE  
HOMEFRONT: AN EXAMINATION OF CAPABILITIES  
AND LIMITATIONS OF U.S. RESPONSE FORCES**

by

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December 2015

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EXAMINATION OF CAPABILITIES AND LIMITATIONS OF U.S. RESPONSE  
FORCES**

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## **ABSTRACT**

After the September 11 attacks, it was expected that terrorists would continue their innovations in tactics to eventually use high-tech weapons of mass destruction (WMD). Such a WMD attack has not occurred. During the past decade, however, law enforcement and military authorities in the United States and in other countries have faced a number of terrorist attacks carried out using more conventional paramilitary methods with devastating results.

This thesis examines the paramilitary terrorist attacks that occurred in Beslan in 2004 and in Mumbai in 2008 in an attempt to understand the threat and to establish the criteria for an effective U.S. response to paramilitary terrorism. It is important to understand that a drastic difference exists between requirements for response to paramilitary terrorism and the more common active shooter protocols. This thesis examines the capabilities and limitations of law enforcement, the National Guard, and the active component (AC) of the military to recommend a response that could be uniformly achieved across the United States. It was determined that the AC of the military is the only capable response force. It requires additional planning, coordination, and cross-training with regional civilian counterparts for an effective response to a paramilitary attack to be established.

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# TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>A.</b>	<b>IMPORTANCE.....</b>	<b>2</b>
<b>B.</b>	<b>PROBLEMS AND HYPOTHESES .....</b>	<b>3</b>
<b>C.</b>	<b>LITERATURE REVIEW .....</b>	<b>4</b>
<b>1.</b>	<b>Is Paramilitary Terrorism a Threat?.....</b>	<b>4</b>
<b>2.</b>	<b>The Appropriate U.S. Response to Paramilitary Terrorism.....</b>	<b>7</b>
<b>D.</b>	<b>METHODS AND SOURCES.....</b>	<b>13</b>
<b>E.</b>	<b>THESIS OVERVIEW .....</b>	<b>14</b>
<b>II.</b>	<b>CASE STUDIES.....</b>	<b>17</b>
<b>A.</b>	<b>NORTH HOLLYWOOD .....</b>	<b>17</b>
<b>1.</b>	<b>Armament and Equipment .....</b>	<b>17</b>
<b>2.</b>	<b>Chronology of the Attack .....</b>	<b>18</b>
<b>3.</b>	<b>After Action and Lessons Learned.....</b>	<b>19</b>
<b>B.</b>	<b>BESLAN.....</b>	<b>20</b>
<b>1.</b>	<b>Armament and Equipment .....</b>	<b>20</b>
<b>2.</b>	<b>Chronology of the Attack .....</b>	<b>21</b>
<b>3.</b>	<b>After Action and Lessons Learned.....</b>	<b>24</b>
<b>C.</b>	<b>MUMBAI.....</b>	<b>25</b>
<b>1.</b>	<b>Armament and Equipment .....</b>	<b>26</b>
<b>2.</b>	<b>Chronology of the Attack .....</b>	<b>26</b>
<b>3.</b>	<b>After Action and Lessons Learned.....</b>	<b>30</b>
<b>D.</b>	<b>CONCLUSION .....</b>	<b>31</b>
<b>III.</b>	<b>RESPONSE COMPARISONS .....</b>	<b>33</b>
<b>A.</b>	<b>CIVILIAN LAW ENFORCEMENT .....</b>	<b>33</b>
<b>B.</b>	<b>NATIONAL GUARD .....</b>	<b>37</b>
<b>C.</b>	<b>MILITARY ACTIVE COMPONENT.....</b>	<b>40</b>
<b>D.</b>	<b>CONCLUSION .....</b>	<b>43</b>
<b>IV.</b>	<b>LEGAL EVALUATION .....</b>	<b>45</b>
<b>A.</b>	<b>CIVIL RESPONSE.....</b>	<b>45</b>
<b>B.</b>	<b>NATIONAL GUARD RESPONSE .....</b>	<b>48</b>
<b>C.</b>	<b>ACTIVE DUTY MILITARY RESPONSE.....</b>	<b>52</b>
<b>D.</b>	<b>CONCLUSION .....</b>	<b>56</b>

<b>V.</b>	<b>CONCLUSION .....</b>	<b>59</b>
<b>A.</b>	<b>FINDINGS AND RECOMMENDATIONS .....</b>	<b>60</b>
<b>1.</b>	<b>Law Enforcement.....</b>	<b>61</b>
<b>2.</b>	<b>National Guard.....</b>	<b>62</b>
<b>3.</b>	<b>Military Active Component .....</b>	<b>63</b>
<b>4.</b>	<b>Legal Considerations .....</b>	<b>63</b>
<b>5.</b>	<b>Findings Compared to the Literature .....</b>	<b>64</b>
<b>B.</b>	<b>CONCLUSION .....</b>	<b>65</b>
	<b>LIST OF REFERENCES .....</b>	<b>67</b>
	<b>INITIAL DISTRIBUTION LIST .....</b>	<b>71</b>

## **LIST OF ACRONYMS AND ABBREVIATIONS**

AC	active component
CBRN	chemical, biological, radiological, or nuclear
CIRC	critical incident response capacity
CRC	critical response command
DRF	division ready force
ESU	emergency service units
FBI	Federal Bureau of Investigation
FSB	Federal Security Service
HRF	homeland response force
IRC	initial ready company
JTF-6	Joint Task Force Six
LAPD	Los Angeles Police Department
MACTAC	Multiple Assault Counter-Terrorism Action Capabilities
MARCOS	Marine commandos
MVD	Ministry of Internal Affairs
NG	National Guard
NORTHCOM	Northern Command
NSG	National Security Guard
NYPD	New York Police Department
OLC	Office of Legal Council
PCA	Posse Comitatus Act
PIRA	Provisional Irish Republican Army
RUC	Royal Ulster Constabulary
SWAT	special weapons and tactics
USAF	United States Air Force
WMD	weapons of mass destruction

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## I. INTRODUCTION

After 9–11, the vulnerabilities to terrorism in the United States (U.S.) were often examined and evaluated through a lens colored by the expectation that terrorists would continue their innovations in tactics. Many of these evaluations focused on the possibility of an attack using weapons of mass destruction (WMD), including chemical, biological, radiological, or nuclear (CBRN) components.<sup>1</sup> These assessments led the White House to state in 2002 that CBRN and WMDs “represent one of the greatest security challenges facing the United States.”<sup>2</sup>

Such a WMD attack has not yet occurred. During the past decade, however, law enforcement (LE) authorities in the United States and in other countries have faced a number of major terrorist attacks carried out using more conventional methods. Attacks in Mumbai, India, in 2008, made it clear that terrorists do not need a WMD or other high-tech device to wreak havoc on a major city. They also made it clear that LE agencies in urban areas are not prepared for such attacks, which can be described as paramilitary terrorism.<sup>3</sup> These attacks highlighted the need for further research into the methods, equipment, and manpower needed from LE or the military to respond to such tactics. The lessons learned by Mumbai are directly applicable to major cities in the United States that share similar vulnerabilities in similar urban areas.

Paramilitary terrorism is best understood as a “sizable group of highly motivated individuals trained, organized, and equipped like an infantry or special operations unit but without the status or accountability of a state-controlled military force.”<sup>4</sup> The capabilities

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<sup>1</sup> Department of Homeland Security Releases Summary Conclusions From National Exercise,” U.S. Department of Homeland Security Press Office, December 19, 2003, <https://www.hsdl.org/?view&did=477996>.

<sup>2</sup> George W. Bush, *National Strategy to Combat Weapons of Mass Destruction* (Homeland Security Presidential Directive 4) (Washington, DC: White House, 2002), 1.

<sup>3</sup> Terrorist attacks in San Bernardino, CA and Paris, France in 2015, while extremely deadly and brutal, were not paramilitary style attacks; the threat this thesis addresses is far greater than the active shooter threat seen in those attacks.

<sup>4</sup> Bill Tallen, “Paramilitary Terrorism: A Neglected Threat” *Homeland Security Affairs* IV, no. 2 (June 2008), 11.

of civilian LE must be weighed against what their military counterparts could bring to bear if a Mumbai-like terrorist attack occurred on U.S. soil. The questions to be considered by this thesis are: What is the level of the threat of paramilitary terrorism to the United States? Is it something for which the United States needs to prepare? How should the United States respond to this threat? And, should that response be a military or civil effort?

## **A. IMPORTANCE**

The importance of this thesis lies in the question of whether current civil responses to possible paramilitary attacks are adequate or appropriate. The current response of LE to an attack of this scale would utilize mutual aid capabilities, through which neighboring police units would respond to the area under attack. Current measures in most U.S. cities require local authorities to exhaust all their mutual aid resources before calls can be made to the state for military assistance.<sup>5</sup> This process takes time for mobilization of forces, while a Mumbai-like attack would continue to devastate the city in question. This shortfall in response efforts highlights the need for a new approach to be devised.

In thinking about paramilitary terrorism, it is a mistake to associate the actions seen in traditional active-shooter doctrine, developed after the killings at Columbine in April 1999, with the correct measures necessary for situations similar to Mumbai. An active shooter is defined as “an armed person who has used deadly physical force on other persons and continues to do so while having unrestricted access to additional victims.”<sup>6</sup> The doctrine that civil LE developed to respond to an active-shooter requires the earliest deployment of officers to search out the shooter aggressively.<sup>7</sup> In the case of paramilitary terrorism, active-shooter doctrine would only cause more death on the part of first responders. If first responders followed active-shooter doctrine, they would be

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<sup>5</sup> California Emergency Management Agency, *LE Mutual Aid Plan* (2009), 18, <https://www.hsd1.org/?view&did=446627>.

<sup>6</sup> El Paso County Sheriff's Office, *Policy and Procedure Manual* (2004), 1, [http://shr2.elpasoco.com/PDF/policy/chapter\\_07/731\\_policy.pdf](http://shr2.elpasoco.com/PDF/policy/chapter_07/731_policy.pdf).

<sup>7</sup> *Ibid.*

victims of the more heavily armed and better-equipped paramilitary terrorists depicted in this thesis. This response doctrine displays a weakness in current active-shooter procedures because the doctrine has not prepared for the threat of paramilitary terrorism.<sup>8</sup> The differences between active shooters and paramilitary terrorists show that a change in tactics and equipment is required to respond to a paramilitary terrorism attack.

This research is also directly relevant to current debates on the use of the military in domestic counterterrorism efforts. The use of the military inside the United States in a LE capacity has been legally restricted since 1878 when the Posse Comitatus Act (PCA) made it illegal except when directed by Congress or the President.<sup>9</sup> However, thinking about the appropriate domestic role for the military has changed since the attacks of September 11. The nature of this debate can be seen in the John Warner National Defense Authorization Act for Fiscal Year 2007. In section 1076 of this legislation, limits on the use of military forces inside the United States were relaxed so that the President could address a critical incident more quickly.<sup>10</sup> These issues highlight the importance of addressing the necessary response to paramilitary terrorism at home. The current problems range from the first responders who do not presently have the necessary doctrine to the federal level, where modifications to the law have shown the need for a new answer to the paramilitary terrorism threat.

## **B. PROBLEMS AND HYPOTHESES**

The problems of addressing paramilitary terrorism are the ease of its execution, the difficulty of identifying an effective and feasible response, the legal limitations on response, and the lack of attention it has been given. The equipment and training required for a successful paramilitary attack are both legally available and easy to acquire inside the United States. The response to paramilitary terrorism is difficult because it requires

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<sup>8</sup> John Giduck, *Terror at Beslan: A Russian Tragedy with Lessons for America's Schools* (Canada: Archangel Group, 2005), 316.

<sup>9</sup> 18 U.S.C § 1385 Use of Army and Air Force as Posse Comitatus, <http://www.law.cornell.edu/uscode/text/18/1385>.

<sup>10</sup> Michel Chossudovsky, "The 'Use of the Armed Forces' in America under a National Emergency Unrestricted & Arbitrary Powers conferred to the President & Vice President," Global Research, June 27, 2007, <http://www.globalresearch.ca/index.php?context=va&aid=6169>.

military-style tactics and strength, while at the same time observing legal restrictions and minimizing collateral damage. Such legal restrictions as Posse Comitatus further complicate formulating an effective response that may require domestic military assistance. The attention required to ensure the proper preparations are made to counter such an attack are also absent, slowing the process of improvement for this issue. These problems come together to present a situation in which a dangerous type of attack has not been given the attention necessary to develop an appropriate response.

The hypothesis for this thesis is that state and local LE authorities, as they currently stand, are not capable of addressing the paramilitary terrorist threat. LE officers may be able to mitigate short-term losses before the arrival of military forces, but it appears that military-style forces will be required to bolster the current civil response. This thesis recommends organizational and policy changes to ensure that an adequate response to domestic paramilitary terrorism is available.

## **C. LITERATURE REVIEW**

The literature review is divided into two sections. The first section, titled “Is Paramilitary Terrorism a Threat?,” provides background on the use of paramilitary terrorism and how the United States may be vulnerable to an attack from it. The second section, “Appropriate U.S. Response to Paramilitary Terrorism,” examines the literature supporting a civil or military response to a paramilitary terrorism attack inside the United States. This section shows different schools of thought on the capabilities of civil and military response, as well as the problems of using military forces for domestic security purposes.

### **1. Is Paramilitary Terrorism a Threat?**

Adam Dolnik examined the use of paramilitary terrorism in his book, titled *Understanding Terrorist Innovation Technology, Tactics and Global Trends*. In this work, Dolnik primarily focuses on the idea of terrorist innovation and the likelihood of each new tactic being used. Dolnik’s work makes initial predictions about terrorists’

desires to move from more focused armed attacks to the indiscriminate mass killings made possible by the use of CBRN means.<sup>11</sup>

Although Dolnik set out to shed light on the likelihood of CBRN attacks, he instead shows that high-tech attacks have been mostly unsuccessful for terrorists, making more basic techniques like armed paramilitary attacks attractive for their ease of execution.<sup>12</sup> Dolnik also discusses the lessening of terrorists' inhibitions to conduct mass casualty attacks. He attributes this change to the religious character of contemporary terrorism. He adds that terrorists have shown interest in such paramilitary weaponry as large-bore sniper rifles and heavy automatic rifles commonly used in paramilitary attacks.<sup>13</sup> Dolnik argues that terrorists display a shift toward old tactics to satisfy new terrorist desires.

C. J. M. Drake's work on *Terrorists' Target Selection* takes a slightly different approach than Dolnik's and states that terrorists were opportunistic when choosing tactics. Drake underscores a simple and important point that the tactics of many terrorists were determined by the resources available to them. In this way, he shows that the weapons and tools available to terrorists could determine what type of attack they undertook.<sup>14</sup> Drake depicts the United States as a country ripe for paramilitary terrorism due to "the relatively unrestricted gun laws ... [that] have made it possible to openly purchase small arms up to the level of automatics and [high powered] semi-automatic rifles in shops."<sup>15</sup> This same ease of access to high-grade weapons in the United States also supported other paramilitary terrorists in the past. For example, Armalite assault rifles and .50-caliber sniper rifles recovered in Northern Ireland from the Provisional Irish Republican Army (PIRA) were all purchased in the United States.<sup>16</sup>

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<sup>11</sup> Adam Dolnik, *Understanding Terrorist Innovation: Technology, Tactics and Global Trends* (New York: Routledge, 2007), 2–3.

<sup>12</sup> *Ibid.*, 172.

<sup>13</sup> *Ibid.*, 1–2, 25.

<sup>14</sup> C. J. M Drake, *Terrorists' Target Selection* (New York: St. Martin's Press, 1998), 93.

<sup>15</sup> *Ibid.*, 89.

<sup>16</sup> *Ibid.*, 89, 68.

The opportunity, likelihood, and effectiveness of paramilitary attacks were also addressed by the London Emergency Planning Information Center in January 1991. The head of the Center believed that this type of attack was probable and that the consequences could be grave. The British official stated, “Frankly if a terrorist group really wanted to make a mess of London, they could... We would not be able to cope. By that I mean we would be limited to chasing after the effects of a disaster.”<sup>17</sup> This quote was something of an omen for the authorities who would later be forced to do the same in Mumbai.

In their respective works on paramilitary terrorism, Bill Tallen and John Arquilla both agree that it is a likely form of attack in the United States due to its effectiveness seen in Mumbai and other places. John Arquilla states that paramilitary terrorism has already been adopted by terrorist organizations around the globe and that it is a tenet of their organizations. Bill Tallen believes paramilitary attacks should be expected, thanks to the ease of development and execution of such assaults. Both authors criticize the United States for not being more prepared for this type of attack, granted its likely use by terrorists in the future.<sup>18</sup>

Authors who have addressed paramilitary terrorism agree uniformly that it is a large threat to the United States. The only argument against the likelihood of a paramilitary terrorism attack is that some other form of terrorism is more probable. A specific argument against the likelihood of paramilitary terrorism itself has not been raised. Adam Dolnik’s work, for example, initially argues that the use of WMD is a very likely a form of attack to be expected in the United States. In the end, however, when the distinct topic of paramilitary terrorism is addressed, no argument against the likelihood of its use has been raised. Dolnik proves in his work that the likelihood of a paramilitary attack is high when the ease of paramilitary terrorism is compared to difficulties of terrorists using WMD.<sup>19</sup>

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<sup>17</sup> Ibid., 107.

<sup>18</sup> Tallen, “Paramilitary Terrorism,” 9–10; John Arquilla, “U.S. Not Prepared for Mumbai-Like Terror Attacks,” *San Francisco Chronicle*, November 21, 2010, 1.

<sup>19</sup> Dolnik, *Understanding Terrorist Innovation*, 2–3, 172.

## 2. The Appropriate U.S. Response to Paramilitary Terrorism

The responses to domestic paramilitary attacks are handled differently throughout the world. In some nations, the civilian arm of the government addresses these issues, while in others, the military is the only choice for response. Both civilian and military responses carry with them advantages and disadvantages when it comes to effectiveness, feasibility, and legality. The literature on the U.S. response to domestic paramilitary terrorism can be broken into two groups. The first group is made up of authors who believe the problems of military forces fighting inside their own borders outweigh their benefits and think that that progress in civil LE since Mumbai has prepared them to respond adequately to paramilitary terrorism attacks. The second group is comprised of those who believe that the military is the only viable answer and that a new approach using the National Guard (NG) or active duty military must be devised to deploy forces more quickly and efficiently during attacks on U.S. soil.

Maria Jose Moyano Rasmussen represents the first group of authors in her paper, “The Military Role in Internal Defense and Security: Some Problems.” In this paper, she describes problems relating to military use in the homeland. The two case studies used to bolster Rasmussen’s points are the 1992 Los Angeles riots and the ongoing struggle between the PIRA and the British military in Northern Ireland.

In both cases, Rasmussen shows that the total capacities of civilian LE were not used before the military was put to work. In this way, the military in both cases was a “crutch” instead of a practical option.<sup>20</sup> In Los Angeles, the call for the military was in response to civil unrest. In this situation, many other options were available instead of using the active duty military, such as LE mutual aid and the NG, who have LE training and experience.<sup>21</sup> In Northern Ireland, the British military took over positions that should have held by civil officials and confusion over LE roles and responsibilities persisted for

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<sup>20</sup> Maria Jose Moyano Rasmussen, *The Military Role in Internal Defense and Security: Some Problems* (Occasional paper #6) (Monterey, CA: The Center for Civil-Mil Relations, Naval Postgraduate School, October 1999), 9–10, 17.

<sup>21</sup> *Ibid.*, 10.

some time.<sup>22</sup> Overall, the tactics used by the British military did not help to assuage the violence in Northern Ireland and instead made it worse. In both cases, the military brought a great deal of capability, but it was not used correctly.

Paul Shemella considers the same topic from the point of view of the second group of authors who favor a military response to an overwhelming paramilitary attack. In “The Spectrum of Roles and Missions of the Armed Forces,” Shemella considers a list of factors before recommending a type of response to terrorist violence. These factors included the nation’s history of civilian-military relations, the types of targets that terrorists choose, and the terrorists’ methods of attack.<sup>23</sup> He admits that “the classic and preferred role for armed forces is to defend a nation from external attack; the only role for police is to enforce the laws,” but he also states that “if terrorism begins to threaten national security and promises to continue, decision makers will need to assign certain military forces the role of dealing with it.”<sup>24</sup>

Rasmussen and Shemella do not agree on the use of the military, but their disagreement owes to the different situations they discuss. Shemella discusses situations in which large-scale terrorist attacks cannot be addressed by police. Rasmussen’s analysis of military use addresses the situations of localized civil unrest and protracted rebellion, not terrorist attacks against civilians. Shemella made this clear when he states that “when citizens are attacked by organized, heavily armed groups...governments often have no choice but to involve military forces.”<sup>25</sup> In this light, it appears that Rasmussen does not argue against the use of the military to defend the populous. She instead argues against the military being used as police officers when a civil approach would have been more appropriate. Both authors insist on the necessity for clear roles and responsibilities for the parties involved in response.

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<sup>22</sup> Ibid., 23.

<sup>23</sup> Paul Shemella, “The Spectrum of Roles and Missions of the Armed Forces,” in *Who Guards the Guardians and How*, ed. Thomas C. Bruneau and Scott D. Tollefson (Austin: University of Texas Press, 2006), 125.

<sup>24</sup> Ibid., 124, 133.

<sup>25</sup> Ibid., 136–137.

John Arquilla and Bill Tallen agree that a bolstered response is needed to a paramilitary terrorism attack, but they disagree on who should lead the response. John Arquilla believes, in line with the second group of authors, that a military response is the most viable option to counter a Mumbai-like terrorist attack inside the United States, and he makes recommendations on how to improve the organization of military forces to do so. Arquilla believes that standing brigade-size forces are too large to move quickly and that they should instead be broken into smaller units for faster response. Bill Tallen agrees with the necessity of a quicker, stronger response, but he believes (in line with the first group of authors) that civil leadership by the Federal Bureau of Investigation (FBI) would be more efficient for command-and-control purposes, as well as response time.<sup>26</sup>

It is important to note that whether they were correct or not, American civilian and military leaders have recently made policy and statements in line with Shemella and Arquilla from the second group of authors who favor a domestic military response to paramilitary terrorism. John S. Brown speculates in “Defending the Homeland, A Historical Perspective,” that:

to this point the focus of JTF-6 [a military unit used inside the U.S. for security] has been the war on drugs, but the enormous mobilization of military assets for airport security and surveillance functions to support the war on terrorism presage a more permanent involvement of organizations like JTF-6 or similar efforts to assist civil counterterrorism efforts as well.<sup>27</sup>

In a more direct and controversial statement, the former U.S. Northern Command (NORTHCOM) Commander, General Ralph E. Eberhart, United States Air Force (USAF), discussed the topic of legislation affecting the use of active duty military inside the United States: “We should always be reviewing things like Posse Comitatus and other laws if we think it ties our hands in protecting the American people.”<sup>28</sup>

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<sup>26</sup> Arquilla, “U.S. Not Prepared,” 1; Tallen, “Paramilitary Terrorism,” 9–10.

<sup>27</sup> John S. Brown, “Defending the Homeland: An Historical Perspective,” *Joint Forces Quarterly* (Summer 2007), 14.

<sup>28</sup> Eric Schmitt, “Wider Military Role in U.S. Is Urged,” *New York Times*, July 21, 2002, <http://www.nytimes.com/2002/07/21/politics/21PENT.html>.

On this same topic, Davis, Mosher, Brennan, Greenberg, McMahon, and Yost from RAND agree with the rest of the authors in the second group and believe that situations involving terrorist attacks, beyond the capabilities of civilian LE, need to be addressed by a combination of active duty military and NG forces. They speculate that the standard mobilization of the Guard takes too long and an active-duty “dedicated Rapid-Reaction Brigade” needs to be created to assist in response. They think that this unit would be able to put around 600 qualified troops on the ground at an attack site in hours instead of days later.<sup>29</sup>

William W. Johnson agrees with the work of RAND and is another author who falls into the second group of those who favor a military response. Johnson took RAND’s idea further in a monograph he wrote at the U.S. Army General Staff College that states it is the military’s and federal government’s duty to respond to terrorist attacks of significance inside the United States. He also states that a rapid response unit of active-duty military should be available with the necessary resources to counter a threat along the lines of homeland defense or homeland security. Like Arquilla, he believes the on-call unit should be broken into smaller groups to be dispersed to each Federal Emergency Management Agency region for more rapid deployment.<sup>30</sup>

Individual police departments that have invested heavily in their abilities to respond to Mumbai-like attacks argue on behalf of the authors from the first group who favor a civil domestic response to paramilitary terrorism. These departments believe their ability to deal with terrorist attacks has greatly improved since the Mumbai attacks. Since those attacks, the Los Angeles Police Department (LAPD) has developed multiple assault counter-terrorism action capabilities (MACTAC) doctrine that considers the damage that could be done if police units waited for reinforcements during a paramilitary terrorism attacks. This doctrine admits that normal patrol units would not be able to defeat the attackers on their own using traditional tactics and weaponry. With the new MACTAC

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<sup>29</sup> Lynn E. Davis et al., *Army Forces for Homeland Security* (Santa Monica, CA: RAND, 2004), 22–23.

<sup>30</sup> William W. Johnson, *Active Component Rapid Response Force; The Answer to the Military’s Issues with Efficient and Effective Support during Response to and Recovery from Incidents of National Significance*, (Fort Leavenworth, KS: U.S. Army Command and General Staff College, 2007), 48–49.

doctrine, the LAPD has improved on these limitations by using new “small unit infantry tactics” to counter multiple attacks occurring simultaneously. The department’s new tactics and training utilize military methods used by some of their police officers in the war in Iraq and were furthered by inputs from special operations personnel. The result is a quicker response by better-trained teams armed with heavier weapons (AR-15 rifles).<sup>31</sup> The LAPD believes its new doctrine will allow the department’s personnel to respond to small paramilitary attacks, but it is questionable if it would allow them to counter the types of attacks seen in Mumbai. The benefits of the LAPD’s approach are its response time, familiarity of the officers with the terrain, and the officers understanding of the legal practices required inside the United States.

The New York Police Department (NYPD) also falls into the first group and argues for its own civil response to domestic paramilitary terrorism. The NYPD believes it has the answer to paramilitary terrorism after taking lessons from Mumbai and making changes to its doctrine for responding to multiple paramilitary shooters. Traditionally, the department deploys highly trained tactical teams known as emergency service units (ESU), also known as SWAT (special weapons and tactics) teams. The NYPD recognizes that in the case of a Mumbai-like attack that these teams would be spread thin while responding to numerous shooters at multiple locations. In response to this, the NYPD developed critical incident response capacity (CIRC) teams that draw their members from other elite investigatory and weapons units inside the NYPD. In this way, the NYPD was able to use advanced training for non-ESU members of the NYPD to increase the number of police officers qualified drastically to respond to a paramilitary attack.<sup>32</sup>

The two groups in the literature are separated by their preferred methods of response and each believes the other group does not properly address the issues surrounding their response. In the first group, Bill Tallen’s recommendation for a civil-

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<sup>31</sup> “The Los Angeles Police Department Receives California Peace Officer Standards and Training Excellence in Training Awards for Individual and Organizational Achievements,” Los Angeles Police Department, April 20, 2011, [http://www.lapdonline.org/april\\_2011/news\\_view/47751](http://www.lapdonline.org/april_2011/news_view/47751).

<sup>32</sup> David Reeder, “NYPD’s Elite E-Men: ESU & CIRC,” Tactical-Life, <http://www.tactical-life.com/online/tactical-weapons/nypds-elite-e-men/>.

led response highlights the issues in this debate.<sup>33</sup> Rasmussen added to Tallen's discussion by emphasizing that civil LE agencies have not been properly utilized in their full capacity before the military was brought in.<sup>34</sup> The LAPD and NYPD represent the type of civil forces that the authors in the first group support, and both departments believe that the progress in civil LE since Mumbai has prepared them adequately to respond to paramilitary terrorism attacks without additional assistance thanks to their increased resources and training.<sup>35</sup> The authors from the second group think that the military is the only viable answer and have shown that they have no faith in a civil response to paramilitary terrorism. In addition, they want a reorganization of military reaction forces to occur immediately for faster response time.<sup>36</sup>

These two groups do not agree on the capabilities of the forces they argue on behalf of or the advantages and disadvantages of their implementation. The first group focuses on situations where in which military forces have turned into police forces by fighting protracted engagements in their homeland. This group does not address the benefits of brief deployments of the military where authority could be quickly handed back to civil authorities as soon as they were ready. The first group also seems overconfident in the transition of their civil LE agents into combat troops and does not address the appropriateness of this move or their vulnerabilities to large-scale attacks like those that occurred in Mumbai. This group focuses too much on the civil capabilities to mitigate the loss of life in the short term instead of the long-term fight and recovery from heavy attack. The second group jumps very quickly to the deployment of the military domestically without properly utilizing the local assets available to the civil response. The second group also avoids the problems associated with the liberal use of the military in the homeland for counterterrorism efforts.

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<sup>33</sup> Tallen, "Paramilitary Terrorism," 9–10.

<sup>34</sup> Rasmussen, "The Military Role in Internal Defense and Security," 10, 41.

<sup>35</sup> Los Angeles Police Department, "The Los Angeles Police Department,"; Reeder, "NYPD's Elite E-Men."

<sup>36</sup> Shemela, "The Spectrum of Roles and Missions of the Armed Forces," 125; Arquilla, "U.S. Not Prepared," 1; Davis et al., *Army Forces for Homeland Security*, 22–23; Johnson, *Active Component Rapid Response Force*, 48–49.

#### **D. METHODS AND SOURCES**

The goal of this thesis is to determine the appropriate response to an overwhelming paramilitary terrorism attack inside the United States. The development of the correct response will highlight the advantages and disadvantages of the civil and military response to domestic attacks.

The primary method used in this thesis will be a comparative case study examination of three well-known examples of paramilitary terrorism: the North Hollywood shootout of 1997, the Beslan school massacre of 2004, and the Mumbai attacks of 2008. The North Hollywood shootout is used to show the extreme measures undertaken by LE personnel to thwart two individuals who used basic paramilitary techniques to wage a major attack in Los Angeles. The lessons learned from this attack are used to measure the likelihood of success of different types of responses.

The Beslan attack is used in a similar fashion to show the extreme of what a paramilitary attack can encompass. This example includes a full spectrum of tactics and equipment available to terrorist groups who would want to undertake a paramilitary attack in the United States. Responses proposed by the pro-civil and pro-military groups can be evaluated to their maximum capability by using the Beslan case study.

Since Mumbai shares characteristics with large U.S. cities, the Mumbai attacks are used as a case study to show how a large-scale paramilitary attack could unfold across a major U.S. city. This case study provides a wider look into paramilitary attacks and builds on the initial lessons learned from North Hollywood and Beslan to formulate an appropriate U.S. response.

The methods used to measure the viability of each type of response to a paramilitary terrorist attack are the effectiveness of countering the attack, feasibility of the response, and legal issues that may affect the response efforts. The effectiveness of the response is gauged by whether or not the type of response would bring enough forces to bear to counter the attack in progress. The feasibility examines whether it is possible to execute each response. The legal measure evaluates the primary legal issues affecting the

implementation of each type of response. In the end, the most beneficial response will rise to the top by using the aforementioned three measures of effectiveness.

## **E. THESIS OVERVIEW**

Chapter II examines the North Hollywood Shootout of 1997, the Beslan school attack of 2004, and the Mumbai attacks of 2008 as case studies of paramilitary style attacks. The focus is on the characteristics of the tactics and equipment used by the enemy forces, as well as the tactics and equipment employed by the responders to those incidents. It also presents the lessons learned from each incident. These examples provide the context required to understand the paramilitary terrorism threat. The case studies also provide the characteristics of the possible enemy paramilitary terrorist force that each type of response would need to be able to overcome.

Chapter III focuses on the feasibility and effectiveness of the three types of response discussed by the pro-civil and pro-military response groups in the literature review. The purely civil LE response, argued for by the first group, is evaluated by its feasibility and effectiveness, and then the NG and active duty military responses, argued for by the second group, are evaluated in the same way. The feasibility evaluation discusses the factors affecting the employment of each type of response. Feasibility issues, such as the resources required to bolster civil LE, reducing military response time, increasing readiness of the NG, and increasing the spectrum of active duty military use domestically are all discussed. The criteria used for the effectiveness evaluation is whether each type of response proposed would be able to counter the enemy force discussed in the case studies chapter. By the end of the chapter, the effectiveness and feasibility of each response should be clear.

Chapter IV addresses the legal issues surrounding the response to paramilitary terrorism in the United States. This chapter brings to light the problem of providing an appropriate level of response to paramilitary terrorism and the legal issues that affect each type of response. The problems of militarizing civil LE and the implementation of the PCA against domestic military deployment are centers of the debate for those two types of responses to paramilitary terrorism. The issues of using the NG under federal

(Title 10) or state (Title 32) control are also discussed. The chapter concludes by providing a better understanding of legal advantages and disadvantages for each type of response.

Chapter V provides a conclusion to the discussion of the appropriate response to paramilitary terrorism in the United States. It summarizes the debate between the three types of response and determines which one was determined to be the best response after considering the feasibility, effectiveness, and appropriateness of the responses presented in Chapter III. It also makes recommendations for each type of response to increase readiness for a paramilitary attack. The findings then consider the legal restrictions and problems identified in Chapter IV to determine if the chosen response can be legally employed. The two academic schools of thought from the literature review presented in Chapter I are then discussed to determine which group of authors was the closest to the results found in this thesis. The conclusion then proposes the best way to respond to paramilitary terrorism in the United States after the advantages and disadvantages are weighed for each type of response.

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## II. CASE STUDIES

The case studies in this chapter describe three accounts of paramilitary terrorism in which existing civil efforts failed to respond to the attacks in question effectively. The three case studies are the North Hollywood shootout of 1997, the Beslan school massacre of 2004, and the Mumbai attacks of 2008. These case studies are used to highlight the tactics and equipment used by the enemy forces, as well as the tactics and equipment employed by the responders to those incidents. These case studies also show the ease of executing paramilitary terrorist attacks and the difficulty in responding to them even when the full scale of military force was used. The lessons learned are examined to draw conclusions for a better way to prevent these disasters from occurring in the United States. The final goal is for the threat of paramilitary terrorism to be understood so that an effective response can be determined.

### A. NORTH HOLLYWOOD

The North Hollywood shootout was much smaller in scale than either of the two other case studies, but it provided a great deal of insight into how a paramilitary attack could play out on American soil. In this case, a single pair of attackers squared off with local LE officers and required the deployment of over 350 police officers to subdue them.<sup>37</sup>

#### 1. Armament and Equipment

The two men began their attack with a type of bank robbery they had been successful with previously. They had on multiple occasions executed “paramilitary-style ‘takeover robberies’ in which they dressed in full body armor, equipped themselves with military firearms and raided their targets using brute force.”<sup>38</sup> In this case, the two men were armed with three fully automatic 7.62 mm AK-47 assault rifles, one 5.56 mm AR-15 assault rifle, and a collection of various handguns. Their assault rifles were fitted with

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<sup>37</sup> Bill Coffin, “WARZONE: The North Hollywood Shootout, 10 Years Later,” *Risk Management* 54, no. 3 (March 2007): 36–41.

<sup>38</sup> *Ibid.*

high capacity 100 round magazines of steel core, armor piercing ammunition. Their body armor, which would cause the largest problem for the responding officers, covered their entire bodies and was reinforced with steel plates making it impossible for any of the responding officers to penetrate with their weapons throughout the engagement with the attackers.<sup>39</sup>

The responding officers were armed very differently than the assailants at the bank. The initial officers and SWAT team officers thereafter had light armor vests and were armed with 12 gauge shotguns and small caliber pistols. Even the AR-15s that would later be provided to the LAPD patrol cars would still be outmatched by the assault rifles carried by the attackers in Los Angeles that day.<sup>40</sup>

## **2. Chronology of the Attack**

The attack unfolded when two police officers saw the two attackers enter the bank. The two police officers immediately called for backup, which arrived very quickly. With a large contingent of police officers already outside of the bank, one of the attackers stepped out for only a moment and fired one volley of 7.62 ammunition that wounded several of the officers who had arrived on scene.<sup>41</sup> Additional waves of police officers arrived on scene in response to the two gunmen. After the gunmen exited the bank and tried to depart, the officers on scene engaged them and were completely outmatched by the two gunmen. Officers scored hits with their handguns and shotguns on the two attackers over and over with no effect. The two attackers returned fire, and even though officers had taken cover behind small structures and cars, they were still wounded by the steel core, armor piercing ammunition.<sup>42</sup>

This robbery turned gunfight led to a response of over 350 LAPD officers, including SWAT teams. The assailants maintained the advantage in the gunfight and “so

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<sup>39</sup> John B. Alexander, *Convergence: Special Operations Forces and Civilian Law Enforcement* (JSOU Report 10-6) (MacDill Air Force Base, Florida: Joint Special Operations University, July 2010), 8–9.

<sup>40</sup> *Ibid.*

<sup>41</sup> Coffin, “WARZONE,” 36–41.

<sup>42</sup> *Ibid.*

lopsided was the disparity in weaponry that nine frantic officers, probably in violation of Los Angeles Police Department policy, barged into a North Hollywood gun shop and borrowed seven rifles and ammunition.”<sup>43</sup> Through overwhelming numbers, the LAPD was eventually able to control the situation after nearly an hour had passed. They won the battle thanks to successful cordon techniques and some lucky shots to the few unarmored parts of the assailants’ legs and neck.<sup>44</sup>

### **3. After Action and Lessons Learned**

In the aftermath of the attack, it was immediately determined that the patrol and SWAT capabilities of the police needed to be increased. The councilwoman in charge of the Public Safety Committee at the time made statements that “we have people equipped for warfare out there—it’s unbelievable” and “these people are better armed than our law enforcement experts.”<sup>45</sup> Thereafter, patrol cars in the LAPD, along with police departments across the United States, were armed with AR-15 assault rifles, which as previously stated, are still a lighter caliber than what was carried by the attackers.<sup>46</sup> What should also be considered is that higher caliber assault rifles and weapons are legally available to consumers across the United States today to include semi-automatic 50 caliber rifles. Higher quality body armor than what was used in Los Angeles by the attackers is also available for legal purchase. Even more so, the exact same type of body armor worn by soldiers and Marines in Afghanistan and Iraq is legally available for purchase by any consumer.

The fix that police departments have made by slightly increasing their firepower in roving units does not address the larger threat of paramilitary terrorism. The issue remains that superior weapons are legally available to the public than those with which civil LE officers are equipped. A disproportionate number of officers must thus be

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<sup>43</sup> Beth Shuster and Doug Smith, “The North Hollywood Shootout; Gunfire, Hostages and Terror; 2 Suspects Slain, 10 Officers Injured in Heist Gone Awry,” *Los Angeles Times*, March 1, 1997, 1.

<sup>44</sup> Coffin, “WARZONE,” 37–38.

<sup>45</sup> Shuster and Smith, “The North Hollywood Shootout,” A, 3.

<sup>46</sup> Alexander, *Convergence*, 9.

deployed to respond to better-armed attackers. In this case, over 350 police officers were deployed. More recently, over 300 police officers were also deployed for two lesser-armed attackers in San Bernardino in 2015.<sup>47</sup> This number is far too many responders for only two active shooters. If there were multiple pairs of attackers, as discussed later in the case of Mumbai, the departments would not have the capability, even now, to deal with the terrorists effectively.

## **B. BESLAN**

The attack that occurred in Beslan displayed the full spectrum of capabilities that a paramilitary group can bring to the table. It offered challenges to the local LE that initially responded and even later on to military forces who also responded. These challenges included dealing with a highly armed and highly trained terrorist force, as well as coordination issues between LE and military forces that had not trained to work together for this type of situation.<sup>48</sup> This case study offers a worst-case scenario for a single location attack.

### **1. Armament and Equipment**

Beslan School Number One was attacked by a highly trained and highly equipped group of terrorists coordinated by an Al-Qaida representative in Chechnya.<sup>49</sup> Due to the high level of training of the terrorists and their superior firepower, the local police had been completely useless at preventing or stopping the attack.<sup>50</sup> The terrorists were armed with light and heavy automatic weapons, sniper rifles, silenced rifles, grenades, grenade launchers, flame throwers, bounding fragmentation mines, bulk explosives, night vision

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<sup>47</sup> Camila Domonoske, “San Bernardino Shootings: What We Know, One Day After,” NPR, December 3, 2015, <http://www.npr.org/sections/thetwo-way/2015/12/03/458277103/san-bernardino-shootings-what-we-know-one-day-after>.

<sup>48</sup> John B. Dunlop, *The 2002 Bubrovka and 2004 Beslan Hostage Crises A Critique of Russian Counter-Terrorism* (Stuttgart: Ibidem-Verlag, 2006), 57.

<sup>49</sup> Gennady Kovalenko, “On the Events in Beslan,” in *Countering Urban Terrorism in Russia and the United States Proceedings of a Workshop*, edited by Glenn E. Schweitzer and A. Chelsea Sharber (Washington, DC: National Academies Press, 2006), 170.

<sup>50</sup> *Ibid.*, 170, 177.

goggles, and gas masks.<sup>51</sup> The terrorists were so well armed and equipped to stage the attack that it was rumored that some of their equipment was actually staged inside of the school prior to the day of the attack.<sup>52</sup>

The local LE were the first units to respond and were only armed with small arms and never engaged the terrorists; they instead cordoned off the school and acted as messengers throughout the engagement. The Russian army in company with Russian special forces (Spetsnaz) and representatives from the Russian Federal Security Service (FSB)<sup>53</sup> arrived thereafter and were armed as a standard military unit with access to light and heavy machine guns, grenade launchers, flamethrowers, sniper rifles, armored personnel carriers, and tanks.<sup>54</sup>

## **2. Chronology of the Attack**

At a little before 0900 on September 1, 2004, the group of terrorists numbering between 35–50 arrived at Beslan School Number One in a large military style truck along the side of the school while others mixed into the crowd of arriving students and walked right into the school. The terrorists quickly began rounding up students, teachers, parents, and any other people present. During the initial takeover by the terrorists, a local police officer tried to step in and was taken hostage herself. The most successful initial resistance to the terrorists came when a student's father who was dropping off his child at school saw what was happening and shot three terrorists, wounding two and killing one.<sup>55</sup> After rounding up their 1,200 hostages, the terrorists herded them into the gym and two smaller buildings with the majority of the hostages in the gym.<sup>56</sup>

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<sup>51</sup> Gidduck, *Terror at Beslan*, 115. Kovalenko, "On the Events in Beslan," 170, 171.

<sup>52</sup> Dunlop, *The 2002 Bubrovka and 2004 Beslan Hostage Crises*, 26.

<sup>53</sup> The FSB is a security service that operates under the umbrella of Russian military forces and has a robust military and intelligence capability.

<sup>54</sup> Dunlop, *The 2002 Bubrovka and 2004 Beslan Hostage Crises*, 57.

<sup>55</sup> *Ibid.*, 41–42, 29, 51.

<sup>56</sup> *Ibid.*

The terrorists then prepared for the counterattack. They used their explosives to build booby traps all around the school, including the gym where they held their hostages. In addition, they also set up in all the areas where the hostages were being held. These mines were meant to kill the hostages and any personnel who were trying to save them. They also moved throughout the gym and cafeteria setting up shooting positions. For some of these positions, they stationed hostages as human shields over windows and would later use additional hostages as human shields during gunfights with Russian forces in other areas of the school. The terrorists also built intricate sniper positions throughout the school including one on top of the gym with a full field of view of the approaches being used by Russian forces.<sup>57</sup>

Initial command and control elements were set up very quickly by local representatives from the Russian Ministry of Internal Affairs (MVD) who manage the federal LE officers who had initially responded. The MVD representatives immediately set up a command center while the school was cordoned off by the LE officers. The Russian army quickly arrived thereafter at the school and soon after the Spetsnaz arrived with the FSB. When the army arrived, they too set up their own command center and an additional command center was set up by the FSB as well. The command centers did not integrate information or command and control efforts, and at 1200, after President Putin was briefed on the situation, he put all efforts in Beslan under the control of the FSB. This switch caused distress in the MVD command center since initial communications with the terrorists had already been established to push forward negotiations for the release of the hostages. With the FSB in charge, negotiations were put on hold. The terrorists continued to demand for specific negotiators from Moscow along with the release of their fellow fighters from prison. At the end of the first day when the terrorists' demands were not met, they killed 20 hostages to show their resolve.<sup>58</sup> During the first day, the local LE and federal forces did not attempt to undertake any type of incursion.

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<sup>57</sup> Kovalenko, "On the Events in Beslan," 170, 171. Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises*, 29, 91, 95.

<sup>58</sup> Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises*, 53–54, 57–58.

Their inability to coordinate between local, federal, and military forces slowed any efforts to rescue the hostages.

The second day of September began with negotiations for infants and young children to be released with their mothers. The rest of the negotiations that day were fruitless to achieve any progress toward a full release of the hostages. After seeing the results of the negotiations, the FSB and Spetsnaz soldiers began to take over equipment from the Russian army in preparation for an all-out assault of the school. During this time period, the FSB did not include the Russian army leaders in their plans to assault the school.<sup>59</sup>

Negotiators continued their efforts on September 3 for the release of the bodies of the hostages who had been executed the previous day. Rescue workers were allowed, to enter the school to remove the bodies of the deceased hostages, but during their efforts detonations were heard from inside the gym. The terrorists claimed they had accidentally set off some of their charges inside the gym after a sniper had fired on them from outside.<sup>60</sup> As hostages tried to flee after the explosions, they were gunned down by the terrorists.<sup>61</sup> At this point, the FSB executed their assault on the school. The FSB directed the Spetsnaz, and in turn, the Russian army units. In addition, the rest of the Russian forces on site fired a hail of semi-organized machinegun fire at the rest of the buildings on the campus where terrorists and hostages were located.<sup>62</sup>

The assault was haphazardly organized with much of the Russian army and MVD in the dark regarding the details. This issue was made worse by the local population who were also armed and wanted to take part in the fight against the terrorists. The MVD had been stretched beyond their depth and were not able to keep the civilians from firing rifles into the school at the terrorists while the FSB and Spetsnaz executed their assault.<sup>63</sup>

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<sup>59</sup> Ibid., 79.

<sup>60</sup> Ibid., 80–85.

<sup>61</sup> Kovalenko, “On the Events in Beslan,” 170, 171. Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises*, 172–173.

<sup>62</sup> Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises*, 91–93.

<sup>63</sup> Kovalenko, “On the Events in Beslan,” 173.

The Spetsnaz fighters were well armed and were able to use the APCs and tanks as shields, but they were not able initially to penetrate the defenses of the terrorists. The coordination of their attacks with the large numbers of Russian forces on site did not result in much progress. Instead, the bravery of the Spetsnaz commandos rushing into hails of machine gun and sniper fire allowed the rescue of some hostages with the lion's share left inside the gym. The gunfight raged on for 10 hours and the Russian forces were not able to gain much ground due to the terrorists using hostages as human shields and because of a highly reinforced terrorist sniper position on top of the gym. Throughout the gunfight, Russian forces received multiple casualties while trying to enter the school. During the same time, hostages continued to be shot inside of the school by the terrorists and addition hostages were injured while being used as human shields. At 1330 on September 3, a decision was made to assault the gym by an unknown member of the Russian forces on the scene at the school, without the knowledge of the three separate Russian command centers. Flamethrowers, tanks, and grenade launchers were used against the sniper position on top of the gym to try to gain access for the Spetsnaz commandos to get inside. The gym caught fire from the flamethrowers and soon after, the roof of the gym collapsed on the terrorists and hostages below.<sup>64</sup> At the end of the attack, 10 Spetsnaz commandos, 32 terrorists, and 186 children were killed and over 700 soldiers and hostages were wounded.<sup>65</sup>

### **3. After Action and Lessons Learned**

The public was outraged in the aftermath of the Beslan Massacre and demanded answers from Moscow. Russia's Vice Speaker at the time placed much of the blame on the shoulders of the local officials saying that the local leaders relied too much on guidance from Moscow and should have been able to coordinate efforts in their region.<sup>66</sup> In this case, Moscow was correct that the local offices of the MVD and their LE officers should have been better prepared to coordinate response efforts. President Putin,

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<sup>64</sup> Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises*, 94.

<sup>65</sup> Kovalenko, "On the Events in Beslan," 173.

<sup>66</sup> *Ibid.*, 176.

however, took over operations from Moscow with the FSB just as the MVD had begun their coordination efforts. In addition, local LE completely failed to integrate federal forces into their efforts, and in turn, federal forces made no efforts to include local leaders in their efforts to take back the school. Instead, three separate command centers were stood up that operated independently for much of the assault.<sup>67</sup>

In this case, the responding force had the weapons and tactics required to take back the school from the terrorists. They had in their company some of the most highly skilled commandos in the Russian army, as well as the brute force of a Russian armor unit. The lack of previous integration of the Russian army and FSB into the operations of the MVD doomed Beslan from the start. None of the responding units knew how to work with each other and the FSB kept the locals closed off from their communications and plans with Moscow. What is clearly seen in this instance is that the local MVD had no chance to engage the terrorists in open combat successfully and there was no choice but to include the military in the rescue attempt. With exercises practicing these efforts, better command and control could have been executed to preserve the lives of the hostages while engaging and killing the paramilitary terrorists.

### **C. MUMBAI**

The attacks during November 26–29, 2008, in Mumbai were perpetrated by terrorists from the group Lashkar-e-Taiba. These attacks showed the ability of paramilitary terrorism to shut down a major city with limited financial investment and training of the terrorist force. These terrorists were not armed nearly as well as the group from Beslan, but they were still able to execute their mission in Mumbai with near impunity from local LE and for a limited time from military forces as well. The terrorists in Mumbai attacked at multiple locations with precision timing and succeeded by not allowing the local police to engage them while they killed civilians at will. The lessons learned from Mumbai provide invaluable guidance for a possible Mumbai-like attack on U.S. soil.

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<sup>67</sup> Ibid.

## **1. Armament and Equipment**

The armament of the terrorists in Mumbai was not terribly advanced but it was enough to overpower the local LE and allow them to accomplish their attacks throughout the city. The terrorists were armed with Chinese-made AK-47s, handguns, grenades, and IEDs made of a high-grade explosive known as RDX. They traveled the streets of Mumbai with ample ammunition and grenades to attack targets at will.<sup>68</sup>

The security forces and police who first responded to the attacks were not so well armed. The police were armed with handguns and some had access to high caliber rifles. These high-caliber rifles, however, were bolt action .303 caliber and were the same type the British army used in the 1950s. In addition, the police did not have access to bulletproof vests that could stop the rounds fired by the AK-47s, which was demonstrated by the deaths of some of their top police officers after being struck in their vests. The Marine commandos (MARCOS) and elite national security guard (NSG) who eventually responded had access to equipment and armaments that a standard infantry and special operations force would have. They used helicopters for surveillance and insertion. The units were armed with MP-5 submachine guns, sniper rifles, and high caliber assault rifles in addition to other breaching and assault equipment.<sup>69</sup>

## **2. Chronology of the Attack**

The planning for the attack by the terrorists had been detailed and events were carried out with absolute precision. The attack began when 10 terrorists captured an Indian fishing trawler in Indian territorial waters 582 miles from the city of Mumbai. The terrorists loaded all their equipment onto the trawler and began their journey to Mumbai. After navigating within five miles of the coast of Mumbai, the terrorists killed the crew of

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<sup>68</sup> Ashok T. Duraphe, "Final Report: Mumbai Terror Attack Cases," November 26, 2008, <http://www.satp.org/satporgtp/countries/india/document/papers/kasab-chargesheet.pdf>, 3.

<sup>69</sup> Angel Rabasa et al., *The Lessons of Mumbai* (Santa Monica, CA: RAND, 2009), 10–11, 23; Scott Watson, *Terror Attack Mumbai, India November 2008: Reconstruction of Attack and Lessons Learned* (Dacula, GA: Jedburgh Corporation, 2010), 8, 12, 16.

the trawler and disembarked the trawler into a rubber dinghy with their gear and headed into Mumbai.<sup>70</sup>

After arriving in the port, the terrorists broke into two man teams and continued toward their preplanned targets. Two terrorists proceeded on foot to the Nariman boarding house, while two of the terrorists rode the dinghy a bit further to the Hotel Oberoi. The remaining six terrorists got into taxis that would take them to their targets to attack.<sup>71</sup>

The first two terrorists arrived in their taxi at the C.S.T. Railway station, a major traffic corridor in Mumbai. While exiting the taxi, one terrorist hid a RDX IED under the driver's seat on a timer to detonate later that evening. The two terrorists entered the busy train station and opened fire into the crowd of men, women, and children while throwing grenades into the more densely packed areas of the station. They proceeded down to the train platforms while continuing to open fire on civilians and throw grenades into crowds. At this point, some police had arrived on scene armed with handguns and small arms. The police were not able to subdue the terrorists who were thereafter able to exit the train station leisurely on foot and continue onto their next target.<sup>72</sup>

The first two terrorists arrived at the Cama Hospital soon after departing the train station. They had successfully killed more civilians while in route to the hospital and after arriving at the medical center they once again opened with AK-47 fire directed at the staff and patients of the hospital. A number of police officers at the hospital tried to engage the terrorists and were killed by gunfire and grenade blasts. The two terrorists departed the hospital and “nonchalantly” walked down the main road of Mahapalika Marg killing another police officer on their way to their next target.<sup>73</sup>

While on their walk to their next target, this same first group of two terrorists happened upon a police car with three policemen in it. The terrorists opened fire and

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<sup>70</sup> Duraphe, “Final Report: Mumbai Terror Attack Cases,” 11–12.

<sup>71</sup> Ibid., 12

<sup>72</sup> Ibid., 12–13.

<sup>73</sup> Ibid., 13.

killed two of the officers and badly wounded the third. These three officers were the most highly ranked officers in the Mumbai police force and one of those killed was the top counterterrorism officer in the force. After killing the officers, the terrorists stole the police car and fired on crowds alongside the busy streets while on their way to their next target. At this point, the Mumbai police set up a roadblock where they were lucky enough to capture the terrorists, but not until after the terrorists killed two more police officers and wounded another. Around this same time, the previously planted RDX IED in the taxi they had taken to the train station detonated near the City Swan Club on the Western Express Highway. The RDX produced a giant blast that left the taxi in pieces and killed the occupants. This blast, in turn, confused police who then thought that another attack had begun near the highway when in actuality the next attack was nowhere near that location.<sup>74</sup>

The next attack was on the Nariman house and was executed by the second pair of terrorists who departed on foot after arriving in Mumbai. The Nariman House was owned by an orthodox Jewish organization and was filled with residents at the time of the attack. While approaching the Nariman house, one of the terrorists planted an RDX IED near a gas pump at an adjacent gas station. The other terrorist in the pair planted an RDX IED in the parking level of the house. Upon entry into the house, the terrorists detonated their IEDs. The terrorists took the occupants of the house hostage and called the local media for increased visibility of their attack. While in the Nariman House, the terrorists also shot and killed residents in the buildings near the house and one NSG commando who had responded to the site.<sup>75</sup>

The third pair of terrorists took a taxi from their initial arrival in Mumbai to the Leopold Café. While in the taxi they too planted an RDX IED on a timer under the driver's seat to be detonated later near the domestic airport as a distraction. After arriving at the Café, the two terrorists opened fire with their AK-47s and threw hand grenades into

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<sup>74</sup> Ibid., 14–15; Julio Ribeiro, “Tackling Terror in Modern Times,” in *26/11 Mumbai Attacked*, ed. Harinder Baweja (New Delhi: Roli Books, 2009), 190.

<sup>75</sup> Duraphe, “Final Report: Mumbai Terror Attack Cases,” 15.

crowds of people. They then continued on their way and walked down the street into the Hotel Taj Mahal.<sup>76</sup>

The third pair of terrorists met up with the fourth pair of terrorists at the Taj Mahal Hotel. The four terrorists entered the hotel together and opened fire with their AK-47s while also throwing hand grenades into crowds. The terrorists proceeded through the pool area, lobby, bars, and restaurants located on the first floor of the hotel while killing all in their path. They moved through the rest of the hotel in the same fashion and detonated additional RDX IEDS in the main corridors of the hotel, damaging the structure and setting fires to other parts of the hotel. During this time period, the elite NSG had been activated along with the MARCOS to assist the police with subduing the terrorists. (The NSG would not arrive until the morning following the initial day of the attacks due to delays in their airlift from their headquarters near New Delhi.) The terrorists had free rein in the hotel, going room to room, killing as they wished. After arriving on scene, the NSG engaged the terrorists in a firefight utilizing their snipers and incredibly difficult room to room gunfights complicated by the presence of hostages and building fires. The terrorists' training and use of high vantage point shooting positions in the higher levels of the hotel made it extremely difficult for the NSG to make progress through the hotel. The 200 NSG commandos finally took back the hotel from the terrorists after a gunfight that lasted 59 hours.<sup>77</sup>

The fifth and final pair of terrorists walked into the Hotel Oberoi after disembarking their rubber dinghy on the pier. Once inside the Oberoi, they undertook an attack similar to their companions at the Taj Mahal. They opened fire in the first floor of the hotel killing indiscriminately and detonated RDX IEDs to disrupt any response to their attack. The attackers took hostages and proceeded to high floors in the hotel to gain the high ground prior to the arrival of security forces. From these positions, the terrorists rained down AK-47 fire and hand grenades on the security forces engaging them. The gun battle lasted 42 hours between the terrorists the NSG commandos who were able to

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<sup>76</sup> Ibid., 15–16.

<sup>77</sup> Ibid., 16–17; Rabasa et al., *The Lessons of Mumbai*, 7, 10.

kill the two terrorists and take back the hotel through the use of close quarter battle fighting room to room and with additional assistance from military sniper positions in adjacent buildings.<sup>78</sup>

### 3. After Action and Lessons Learned

Numerous lessons learned have come from the attacks that occurred in Mumbai. The paramilitary attacks waged by the 10 gunmen were able to hold a major international city hostage for three days. From the onset of the attack at the train station, “the police were totally out of their depth.”<sup>79</sup> The primary response of the Mumbai police was to set up traffic checkpoints and cordon off areas around incidents, since that was what they did when any type of crime occurred.<sup>80</sup> Throughout the days of the attacks in Mumbai, “many police officers remained passive, seemingly because they were outgunned by the terrorists.”<sup>81</sup> The failure of the police to be able to respond to the 10 gunmen led the city to lose faith in their police during and after the attacks and often referred to their minimal efforts as “clueless.”<sup>82</sup> It was only with a deployment of India’s top military commandos that the city was finally retaken on the third day after numerous casualties and a dramatic impact on the local economy.<sup>83</sup>

The events of November 26–29, 2008, in Mumbai have led the people of India to request that federal NSG commandos be stationed in every major city across the country to allow the NSG to take a bigger role in counterterrorism efforts and reduce the response times seen during the attacks that occurred in Mumbai. The terrorists were able to kill numerous police officers and civilians and prepare their fighting positions all night before the NSG commandos arrived the following day. Indian people have come to believe that police officers should be left to fight day-to-day crime and that the military should protect

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<sup>78</sup> Duraphe, “Final Report: Mumbai Terror Attack Cases,” 17.

<sup>79</sup> Rahul Shivshankar, “The Fight for Nariman House,” in *26/11 Mumbai Attacked*, ed. Harinder Baweja (New Delhi: Roli Books, 2009), 29.

<sup>80</sup> Ribeiro, “Tackling Terror in Modern Times,” 189.

<sup>81</sup> Rabasa et al., *The Lessons of Mumbai*, 10.

<sup>82</sup> *Ibid.*, 191.

<sup>83</sup> Shivshankar, “The Fight for Nariman House,” 30.

the people from violent paramilitary threats.<sup>84</sup> This approach by the Indian people has great value since it avoids any ambiguity in roles and responsibilities. Local LE should be responsible for enforcing the laws, not fighting off terrorists waging war against their country.

Local LE in the United States is quite advanced when compared to the police in Mumbai. With that being said, if you examine the tactics used by U.S. police, similar problems that occurred in Mumbai would also likely happen in the United States. In instances in which active shooter attacks have occurred in the United States, police officers traditionally cordon off areas around where the shooters are located and wait for SWAT teams or other trained officers to make an assault on the shooters. These methods used by U.S. police even today would not work with multiple teams of shooters who do not intend to stay in one place inside a city.<sup>85</sup> Police departments would quickly exhaust their manpower by setting up multiple cordons throughout the city while shooters on the move would continue to wreak havoc as they did in Mumbai.

#### **D. CONCLUSION**

The case studies chosen in this chapter were picked to show the threat of paramilitary terrorism is real and that the effects of the attacks are devastatingly efficient. Understanding the threats portrayed in these three examples is important so that the correct preparations can be made so that the right forces are ready to respond with the right tactics, training, and equipment to minimize the loss of lives and damage to property in U.S. cities. A paramilitary terrorist group on the move in a U.S. city; styled after the attack used in Mumbai, armed like the attackers in Beslan and North Hollywood, would be a formidable attack to deal with. These case studies will assist to ensure the correct response force is chosen to ensure the safety of U.S. cities.

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<sup>84</sup> Ribeiro, "Tackling Terror in Modern Times," 193.

<sup>85</sup> Dina Temple-Raston, "Mumbai Attacks offer New Lessons on Terrorism," NPR, December 3, 2008, <http://www.npr.org/templates/story/story.php?storyId=97765988>.

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### **III. RESPONSE COMPARISONS**

In this chapter, three types of response are evaluated to propose the best way to respond to a paramilitary attack in the United States. The three types of response discussed are civilian LE, NG, and military active component (AC). The criteria utilized to evaluate the different types of response were firstly, the feasibility of shaping the responding force into a group that would be able to counter a paramilitary attack successfully. This evaluation identifies the required improvements that would need to occur for the group to be able to respond properly to and defeat a paramilitary attack. The next criterion is whether these changes and improvements to the force in question are appropriate when the identity of the force is considered. This criterion predicts whether Americans would accept the required changes to the responding force. The last criterion is a discussion about whether the force being evaluated would effectively defeat a paramilitary attack when the feasible and acceptable improvements are made to the force being evaluated. This discussion and evaluation will clearly show the best group to use in response to a paramilitary attack.

#### **A. CIVILIAN LAW ENFORCEMENT**

As the case studies displayed, most civilian LE organizations are not equipped or trained to the necessary level to defeat a paramilitary attack. For this evaluation, the NYPD model is examined and modified to see whether the maximum of U.S. civilian LE would be able to defeat a paramilitary attack similar to what was discussed in Chapter II.

The evaluation of the LE response begins with manpower and finances. The NYPD has 34,483 uniformed officers and an annual budget of \$4.678 billion (which does not capture all the private donations made to the department.)<sup>86</sup> In this incredibly large police department, the NYPD has over 10 trucks of ESU teams, which are its equivalent to SWAT teams. These teams are backed up by additional CIRC personnel who are

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<sup>86</sup> The Council of the City of New York, *Hearing on the Fiscal Year 2014 Executive Budget for the Police Department*, May 23, 2013, <http://council.nyc.gov/downloads/pdf/budget/2014/execbudget/2police.pdf>.

members of other organizations within the NYPD trained in similar disciplines as the ESU members. These CIRC personnel respond to cases when the ESU teams are overburdened. In addition, the NYPD also has the ability to deploy Hercules teams, which are yet another type of tactical team the NYPD has at its disposal with similar skill sets as its coworkers in the ESU teams. Even more recently, the NYPD formed the critical response command (CRC), a counterterrorism unit that will eventually be comprised of 572 officers armed with AR-15 assault rifles, body armor, and increased training for response to a Mumbai like attack.<sup>87</sup>

The ESU, CIRC, Hercules, and CRC members provide a large pool of manpower to respond to a paramilitary attack, but they still need improvement to be able to counter the type of attack discussed in Chapter II. Their manpower and training is ample; however, their equipment is lacking when compared to the attackers seen in Chapter II. The teams from the NYPD are currently armed with AR-15 assault rifles, Mossberg 579 shotguns, sniper rifles, and also have access to armored assault vehicles and limited body armor.<sup>88</sup> This equipage would need to be upgraded to include heavy machine guns, grenade launchers, large bore sniper rifles, and access to light tanks with large bore guns for the assault of fortified fixed terrorist positions. The officers would also need access to stronger infantry style body armor to add to the more basic armor currently carried by their tactical teams. In essence, the NYPD would need to acquire the equipment and training to field a company sized (approximately 200–300 personnel) element trained and equipped to fight as a military infantry unit. The NYPD already has most of these resources at its disposal and only requires an upgrade in equipment and access to the additional vehicles discussed to be able to defeat a paramilitary attack.

When the model of the NYPD was examined, it appeared as if the civilian LE in the United States could readily address paramilitary terrorism with only minor acquisitions and training. The NYPD, however, is a very special police department. It is

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<sup>87</sup> Reeder, “NYPD’s Elite E-Men”; William Finnegan, “The Terrorism Beat,” *New Yorker*, July 25, 2005, <http://www.newyorker.com/>; David Goodman, “With Permanent Squad, New York Police Step up Fight on Terrorism,” *New York Times*, November 20, 2015, <http://nyti.ms/1SNRvS8>.

<sup>88</sup> Reeder, “NYPD’s Elite E-Men.”

nearly twice the size of the FBI and has a larger budget as well.<sup>89</sup> The NYPD's manpower and finances allow it to do things not even approachable by the rest of the police departments across the country. For example, the annual budget for the Phoenix Police Department is \$572.9M and it only has 3,200 uniformed officers.<sup>90</sup> When compared to the \$4.678B budget and 34,483 uniformed officers available to the NYPD, the relatively large police department in Phoenix, AZ pales in comparison. The Phoenix Police Department has issues with scale and flexibility that the NYPD does not thanks to the large pool of officers and large annual budget available to the NYPD. The large cost of training and equipping a special response force is easy for the NYPD to overcome. This increased cost would not be possible for much smaller police departments across the country. The individual LE response forces developed in cities across the United States would therefore lack any standardization since it would be up to the local municipalities to work with their local and state governments to fund and execute the formation of paramilitary response units.

Since the formation of these units would be left up to the local constituents, the units may not be formed at all. Concerns of the militarization of police have been around for over 20 years and these concerns have come to a tipping point in instances, such as the civil unrest seen in Ferguson, Missouri, as recently as 2015. The militarization of police dates back as far as 1981 when legislation was passed amending the Posse Comitatus Act to allow easier channels for training and equipment to be received by police departments from the U.S. military. In 1989, Joint Task Force Six (JTF-6) was formed for direct military assistance to civilian LE officers. This assistance has come in the form of direct assistance by military members to LE and also the transfer of millions of pieces of military gear ranging from tanks and armored personnel carriers to tactical equipment and assault rifles.<sup>91</sup> More recently in 1997, Congress passed the 1033 program to make it even easier for police departments to gain access to military gear ranging from

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<sup>89</sup> Finnegan, "The Terrorism Beat."

<sup>90</sup> City of Phoenix, *The Phoenix Summary Budget 2015–16* (Phoenix, AZ: City of Phoenix), <https://www.phoenix.gov/budgetsite/Budget%20Books/Summary%20Budget%202015-16.pdf>.

<sup>91</sup> Rowan Scarborough, "Dangerous Alliances," *Insight on the News* 15, no. 39 (October 1999), 30–31.

assault rifles to amphibious tanks with machine gun mounts and tear gas dispensers. In 2001 alone, \$500M of military gear was handed over to small police departments across the United States.<sup>92</sup>

The public outcry over these acquisitions has been strong and continuous. The national debate was made more public by the response of police dressed in camouflage uniforms and armed with AR-15 rifles in Ferguson, MO. The police responded around Ferguson using tank-like MRAPs (mine-resistant ambush-protected vehicle) and parked them on many corners around town for a greater presence. The police looked and acted more like soldiers than police officers. The citizens of Ferguson and people across the United States displayed outrage with how the local police no longer acted like public safety officers at all.<sup>93</sup> The militarization of police is a hot political topic and the lack of support to create these units across the country could keep the civilian LE response from being a viable option.

With small additions of equipment and training, one or two police departments in the United States could possibly defeat a paramilitary attack as described in Chapter II. 2. With that being said, it is unrealistic to believe that the budget and manpower constraints of smaller police departments could support the creation of these counter terrorism units. Even more so, the political support for creating these units is not present at this point. It is not possible to ensure that a standardized capability could be reached across the United States to ensure that each individual city was safe from a paramilitary attack. In conclusion, outside of one or two major cities, the civilian LE option is not a viable answer for the United States to protect its cities from a paramilitary attack.

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<sup>92</sup> Michael Shank and Hank Johnson, "Stop Treating America Like a War Zone," *U.S. News and World Report*, August 22, 2014, <http://www.usnews.com/opinion/blogs/world-report/2014/08/22/ferguson-missouri-shows-police-militarization-in-america-must-end>; Robert Johnson, "The Pentagon Is Offering Free Military Hardware to Every Police Department In The US," *Business Insider*, December 5, 2011, <http://www.businessinsider.com/program-1033-military-equipment-police-2011-12>.

<sup>93</sup> Shank and Johnson, "Stop Treating America Like a War Zone."

## **B. NATIONAL GUARD**

The NG provides a response force with unique characteristics and capabilities. The NG has the benefit of being able to operate in a LE capacity while still having access to military training and equipment on a scalable level up to full combat. Since NG personnel are not always activated and instead have other civilian jobs, they are not always ready at a moment's notice to respond to major events. The NG has, however, formed quick reaction units called Homeland response force (HRF) units for response to natural disasters, CBRNE events, and other emergencies to reduce their response time. These HRF units are evaluated as a starting model for the NG response to see what changes would need to be made (if any) to ensure its ability to defeat a paramilitary attack.

Response time is an issue that must be discussed regarding the NG response since unlike civilian LE officers who would be on site within minutes or hours, activating NG forces takes time. The HRFs were formed for specifically this reason. The HRFs are regionally located within each FEMA region, which eases their activation, and thereafter, their integration into each state's emergency management office. These units have the ability in a best-case scenario to be on scene within 6–12 hours of activation. During this time period, the local LE would be on its own. This response time is similar to what was seen in the case studies and would not be adequate to preserve life and minimize damage.<sup>94</sup>

The manpower associated with HRF units is 570 personnel, which is ample for the initial response to an attack. The core personnel of the HRF units, however, are not tactical in nature. These units are primarily for CBRNE and natural disaster response. The HRF units do have ample command and control personnel and some security personnel, but they do not contain counter terrorism infantry troops or their equipment.<sup>95</sup>

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<sup>94</sup> Davis et al., *Army Forces for Homeland Security*, 4.

<sup>95</sup> "Homeland Response Force (HRF)," National Guard, September 2014, [http://www.nationalguard.mil/Portals/31/Features/Resources/Fact%20Sheets/new/Domestic\\_mission/homeland\\_response.pdf](http://www.nationalguard.mil/Portals/31/Features/Resources/Fact%20Sheets/new/Domestic_mission/homeland_response.pdf).

These HRF units would need to have a company-sized element of combat arms personnel who are highly trained in urban counter terrorism operations to be effective.

The idea of creating rapid response forces for counter terrorism operations with response times similar to the existing HRF units has been discussed at many levels in the Department of Defense (DOD), but the financial costs are large. Standing up these units with federal Title 32 funding would require a large amount of support from across the country to ensure the funding was approved in Congress. By supporting the increase in Title 32 funding for NG quick reaction forces, the federal government would in turn be funding an increase in the trust and confidence of the individual state governors. The federal government would be handing over money to fund standing armies under the control of the individual state governors. It is an idea that will not be taken lightly in the United States where so much of the authority and control in U.S. government is kept at the federal level with only a small amount of funds and authority available to state leaders. In addition, these units would require increased management at the state level from the governors' offices and state adjutant generals. Presently, the increase in funding that would be required to either add to the existing HRFs or to create the quick reaction forces from the NG inventory does not have political support.<sup>96</sup>

This funding issue is the only manpower related roadblock for using the NG as a primary response force. The NG is comprised almost entirely of combat arms personnel and their training and equipment is ample to support the response to a paramilitary attack. The issue is that these capable personnel are not funded to be in a constantly active status to be ready to respond quickly, and they are instead working in a civilian capacity day-to-day.<sup>97</sup> The NG has the ability to provide the appropriate manpower, but it is not funded to be able to provide them at this point for them to respond in time to a paramilitary attack.

The command and control of NG forces is an additional factor that must be evaluated when considering the use of NG forces for counter terrorism efforts inside the United States. Local LE has a highly developed command and control network inside

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<sup>96</sup> Davis et al., *Army Forces for Homeland Security*, 45–47.

<sup>97</sup> *Ibid.*, 56.

each city and state that is flexed and practiced every day by executing its LE duties. The use of the NG by different state governors is a rarer event that is not always undertaken in the appropriate manner or at the appropriate time. During Hurricane Katrina, Governor Blanco allowed New Orleans to descend into complete and utter chaos before making the necessary requests for assistance from the NG. Even after making a blanket request for “40,000 soldiers” from the federal government, she did not receive the assistance she needed. Instead of making specific requests for forces, Governor Blanco’s office made generalized statements and the support she wanted did not arrive in New Orleans in time. Eventually after prodding from the DOD, more appropriate NG units, such as military police and disaster response teams, began responding from other states to assist recovery efforts in New Orleans. It was determined very quickly that active duty military units would also be able to support recovery efforts, but Governor Blanco refused to relinquish her command of recovery efforts under the Insurrection Act so that active duty military members could be allowed to respond. In the end, numerous active duty members did eventually respond from all the services after the failures of Governor. Blanco elongated recover efforts and caused more injuries and death for her constituents. Even after this complete failure of command and control by the governor, the President did not take over efforts in Louisiana partially due to the fear of political fallout; meanwhile, initial response efforts suffered greatly.<sup>98</sup>

The NG could someday be a viable option as a quick reaction force in response to a paramilitary attack. At this point, however, adequate support for them is not available to be funded to ensure the correct personnel and equipment are available in time to respond to a paramilitary attack. The need for a standardized planning process and quick reaction procedures across the United States is hampered by the dependence on individual state governors making the right decisions at the right times while activating and commanding their NG forces. Increased funds need to be made available to stand up these units, as well as robust processes in place for a JTF from NORTHCOM to command the NG units so that a standard and effective response is ensured. In other words, the NG would be

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<sup>98</sup> Eric Lipton, Eric Schmitt, and Thom Shanker, “Political Issues Snarled Plans for Troop Aid,” *New York Times*, September 9, 2005.

used to provide its personnel the ability to create fully active units with DOD command and control. In turn, these units would be AC military in every aspect other than the inscriptions sewn into the patches on their shoulders.

### **C. MILITARY ACTIVE COMPONENT**

The active duty military response to a paramilitary attack brings with it the full spectrum of operational capability and funding of the DOD. The manpower, funding, issues of standardization, as well as other problems that plagued the LE and NG responses, do not affect the AC of the military response to a paramilitary attack. The model of response by the AC to be evaluated already exists in form of the initial ready company (IRC), which is the first responder component of the division ready force (DRF), which is a rotating army unit on standby to respond for major incidents.<sup>99</sup> The military response to a paramilitary attack is evaluated using the same criteria as the LE and NG responses.

Even in times of war when army units are being deployed overseas, an ample supply of AC troops are still available to respond to an incident. During these times, when units are rotated in and out of theater, units are available to support DRF requirements. It takes no additional effort by the on call units for them to be able to respond. They just need to be present at their home duty station for call up in times of crisis or attack. On a rotating basis, two Army brigades (one brigade is about 4,000 troops) are available for response for significant events in accordance with the DOD Civil Disturbance Plan. Five battalions (one battalion consists of 500–600 troops) in those divisions are also on call as rapid-reaction forces and quick reaction forces for emergencies including counterterrorism operations. Company sized elements (100–200 troops) inside of these battalions are also designated as IRC and would likely be the first to respond to the scene of an attack. The military response brings with it access to the most personnel and equipment with initial plans already drawn for up to 8,000–10,000 troops and all their equipment to respond when needed.<sup>100</sup>

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<sup>99</sup> Davis et al., *Army Forces for Homeland Security*, 7.

<sup>100</sup> *Ibid.*

Response times of these units are able to compete easily with the NG responses, and in most cases, beat them. (Since exact required response times of the first responding units are classified, previously observed response times are discussed as follows.) The first responding forces for the AC would be comprised of companies previously assigned as quick response forces. These companies would likely be able to deploy within 2–4 hours after an attack occurred. Five battalions would be able to follow closely within an 18-hour window after the paramilitary attack. Since these military units are comprised of active duty personnel, they are always on duty, and if assigned these alert duties, are already at a standard state of readiness. For the amount of manpower and equipment being deployed, these response times are adequate, but need some improvement. With regionally selected rotating response units and increased integration with their regionally located FEMA counterparts, these active duty units should be able to improve their deployment and response times to even more acceptable times. In addition, if mission specific personnel and equipment were pre-packaged for a specific response to a paramilitary attack and had airlift already on standby as well, these response times could be reduced even further.<sup>101</sup>

On the topics of budget and equipment, the military option for response stands far above the other two types of response. The units currently on standby for response already exist. In other words, the cost of manning, training, and equipping has already been paid. These units have already prepared for the full spectrum of urban combat overseas and are therefore ready for the response to a similar attack at home. Nothing needs to be created for these units to respond, only additional planning and training for coordination for success after responding on site at the incident.

This training for more efficient command, control, and coordination is the only real change that needs to occur other than a slight improvement on response time. The military units on a rotation to be on call for response at home should be required to conduct periodic training with the personnel they may work with on the ground in their region of responsibility. Thus, the leadership from NORTHCOM that would be in charge,

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<sup>101</sup> Ibid.; Arquilla, “U.S. Not Prepared.”

as well as the leaders from the responding units, needs to interact with Federal Emergency Management Agency (FEMA) and state leadership before the incidents occur. In addition, LE representatives from the major cities in these regions need to cross train with the military leaders from the responding units. The AC has legal restrictions that the other two response forces do not, which are further discussed in detail in Chapter IV. These restrictions highlight the need for cross training so that police can do police work in the cases of looting or civil unrest, while the military members are left to combat the terrorists. This cross training would also improve communication to mitigate breakdowns on the day of the attack.

It is without question that the full scope and strength of the U.S. military AC could possibly defeat a paramilitary attack. The AC brings capabilities and resources not achievable by the other two responses and could definitely defeat a paramilitary attack in the United States. The use of the AC of the military at home is a decision that must not be taken lightly. The question is, when the enemies of the United States attack its citizens inside its borders, then who should respond? Is the AC an appropriate choice? Some countries, such as Great Britain, have used military forces inside the borders of their nations with negative effects felt from their citizens. When the British Army was used in Northern Ireland against the Irish Republican Army, it only infuriated the Irish more. Other countries' citizens directly requested to have AC military stationed in all their major cities for protection. After the attacks in Mumbai, the citizens of India said they would only feel safe with the military guarding their cities from terrorists. When highly armed paramilitary commandos attack a city, the police should not have to be prepared to respond alone; they should be able to depend on a quick reaction force from the military AC to defeat the terrorist attack.<sup>102</sup> No more appropriate use of the AC of the U.S. military is its defense of its citizens from enemies of the United States even if it means deploying AC troops inside its borders.

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<sup>102</sup> Rasmussen, "The Military Role," 9–10, 17; Harinder Baweja (ed), *26/11 Mumbai Attacked* (New Delhi: Roli Books, 2009), 193; Shemela, "The Spectrum of Roles," 136–137.

## **D. CONCLUSION**

The LE, NG, and AC were all evaluated by examining their capabilities and limitations regarding their response time, manpower, training, equipment, budgetary limitations, and political and public support for the changes that would be required for each response to be successful in defeating a paramilitary attack.

The LE model represented by the NYPD was examined and showed great capabilities. Its response time was the fastest since it resides in the city it protects. The NYPD's manpower and budget were also more than satisfactory to deal with the paramilitary threat. Its training and equipment needed only small improvements to be able to be on level with the other two types of response. It is unrealistic, however, to expect police departments across the United States to be able to provide similar response forces without the manpower and finances with which the NYPD has to work. Moreover, outside of a city where 9-11 is still felt so strongly, the political and public support for militarized police units is not what it needs to be to ensure a standardized level of response across the United States. With the creation of the response forces left up to city and state governing bodies, the safety of U.S. citizens across the country cannot be ensured by a standalone LE response.

By definition, the NG seems to be the perfect answer to a paramilitary attack inside the borders of the United States, but with its current organization and funding, it has many challenges to overcome. The NG has units with outstanding response times; however, these units are ill suited to defeat a paramilitary attack successfully. If an additional unit was formed comprised of the correct personnel from the large pool of combat arms personnel of which the NG is composed, then their manpower, training, and equipment assets would be outstanding. At this point in time, however, funding or political support is not available to create these units. In addition, the historical failures at the state level in managing Title 32 forces leaves it unclear whether the NG would be properly activated, deployed, and commanded as necessary to defeat a paramilitary attack on its own.

The AC response had the least number of hurdles to overcome to provide an effective response to a paramilitary attack. The response time of the AC was not as good as the LE for obvious reasons, but it was better than the NG. The response was also comprised of the correct counter terrorism personnel. The amount of manpower available in a short time would also be more than enough to counter the terrorist attack. The AC units also bring a force that already received the correct counter terrorism training and are equipped with everything they need to defeat a paramilitary force. Since the units and processes already exist to respond, it was not necessary to overcome major budgetary issues. The AC could benefit from onsite training with its civilian counterparts. This cross training between civilian and military personnel up and down the military and civilian chains of command would improve the coordination between civilian first responders and AC first responders at the sites of the paramilitary attacks. It would also assist in ensuring an acceptance by the U.S. public of a military response inside U.S. borders since police would deal with police work and AC members could deal with fighting the terrorists.

From the criteria examined in this chapter of feasibility and effectiveness, the AC is the best response force to move forward with to prepare the United States better for a paramilitary attack. It has the least number of issues to overcome in a short amount of time to be able realistically to provide a quick and effective response to mitigate the loss of life and damage to property.

## **IV. LEGAL EVALUATION**

The process of choosing the best type of response to a domestic paramilitary terrorism attack includes the legal evaluation of each type of response. The civil LE, NG, and AC military responses all have legal issues that must be addressed before a viable method is identified to respond to a domestic paramilitary terrorism attack. This chapter examines the existing laws that could affect the employment of each response. Each type of response has inherent legal advantages and disadvantages to its use. At the onset, the civil response has the least inherent legal issues since it is already the day-to-day response force to any type of incident. The NG response is used less often in a domestic security capacity and therefore has more legal hurdles to overcome. The domestic military response has by far the most clear-cut legal problems and the recent increase in its involvement with the civil and NG responses has caused its legal problems to spill over into the other two domains. All three responses are evaluated and the one with the least amount of legal hurdles is recommended from a purely legal standpoint.

### **A. CIVIL RESPONSE**

Civilian LE personnel provide the day-to-day enforcement of laws that protect Americans and ensure their liberty. It could then be assumed that their response to paramilitary terrorism would be free of legal concerns. The reality is that a number of legal considerations still need to be considered regarding the civil response to paramilitary terrorism in U.S. cities. The civil response to paramilitary terrorism would likely come in the form of a very large SWAT team bearing military grade weapons, vehicles, equipment, and training. This civilian unit would have the appearance of an elite military unit, but would not have any of the military's PCA restrictions. The increased amount of force wielded by civil agents contradicts their duty to protect civil rights while at the same time dodging PCA rules that would restrict similar military units. It is these types of situations that have raised concerns among critics on the militarizing of police departments across the United States.

Civilian police departments have experienced a large increase in paramilitary teams once before thanks to the war on drugs in the 1980s and 1990s. Up until 2001, it was the threat of drug related violence on the streets of America that motivated the widespread cross training of civilian police departments by military personnel. These same police departments also saw large influxes of military-grade weapons and equipment to assist them in responding to violent situations beyond the ability of their standard patrol units.<sup>103</sup> Another increase in paramilitary training and influx of military grade equipment would be necessary to allow civilian LE units the ability to counter a major paramilitary terrorism attack. The legal problems brought to light after the increase in paramilitary police units in the 1980s and 1990s help show the problems that would likely occur if they were further militarized.

One of the problems identified after the 1980s and 1990s increases in paramilitary police units was the civil versus military mentality regarding violence. Critics of the increase in number of civilian paramilitary police units during the 1990s have contended that military personnel are traditionally trained to kill enemy combatants and that when used to train civilian police officers, they “encourage excessive violence.”<sup>104</sup> These critics argue that military personnel are trained to use deadly force to resolve their problems and that when they are used to train police units, deadly consequences can follow.<sup>105</sup> The cornerstone to this argument was recognized with the deadly standoff that occurred at the compound in Waco in 1993. The siege at Waco used military advisors and equipment and resulted in numerous unwanted casualties. The excessive Waco incident drew so much attention that Congress became involved in its evaluation.

The Congressional review of the events at Waco found that the uses of military resources and training for civilian paramilitary police units on the ground were legal, but warned of their continued use. The Committee on Government Reform and Oversight

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<sup>103</sup> Diane Cecilia Weber, *Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments* (Briefing Paper No. 50) (Washington, DC: CATO Institute, August 1999), <http://www.cato.org/pubs/briefs/bp50.pdf>, 1–2.

<sup>104</sup> Scarborough, “Dangerous Alliances,” 30.

<sup>105</sup> *Ibid.*, 30–31.

stated, “civilian law enforcement’s increasing use of militaristic tactics is unacceptable. ... Military training, especially specialized training in combat tactics, should be highly restricted.”<sup>106</sup> It is interesting that Congress wrote such a scathing review of military assistance to civilian LE agents, when it was legislation passed by Congress in 1981 that allowed it to happen in the first place. In 10 U.S.C., Chapter 18, titled the Military Cooperation with Law Enforcement Officials Act, Congress allowed the military to provide to civilian LE, “information collected during military operations, training and advice, the use of military equipment and facilities, and the use of some DOD personnel.”<sup>107</sup> Nevertheless, a future report along the same lines as the Congressional oversight report from 1996 could cause trouble for another increase in militarized police forces inside the United States.

A similar problem was seen with the development of the Royal Ulster Constabulary (RUC) in Northern Ireland. This police unit was developed to counter the violence caused by the Irish Republican Army. The RUC conducted joint patrols with the British army, fortified their police stations like army bases, and used search and seizure methods in violation of British law. All these techniques resulted in violations of individual rights and ended up distancing the police from the public they were charged to protect.<sup>108</sup>

Similar problematic uses of SWAT teams in the United States have been troubling critics as well. Police departments across the country have been developing dual uses for their newfound SWAT resources. Many departments have been deploying their SWAT teams in armored personnel carriers, dressed out in their full tactical uniforms and weaponry to conduct day-to-day police business. The police say they have done this deployment as a deterrent to crime and violence in problem areas, but critics have argued that this spectacle has displayed their military style training and increased the divide

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<sup>106</sup> Ibid., 31; Committee on Government Reform and Oversight and Committee on the Judiciary, Investigation into the Activities of Federal Law Enforcement Agencies toward the Branch Davidians, H.R. Rep. No. 104-749 (1996). <http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt749/html/CRPT-104hrpt749.htm>.

<sup>107</sup> H.R. Rep. No. 104-749 (1996).

<sup>108</sup> Sean J. Kealy, “Reexamining the Posse Comitatus Act: Toward a Right to Civil Law Enforcement,” *Yale Law & Policy Review* 21, no. 2 (Spring 2003): 385, 422.

between them and their local residents.<sup>109</sup> The use of SWAT teams to respond to petty crime invalidates their existence and would make it much harder to develop an even more militant police unit to counter domestic paramilitary terrorism.

The incident at Waco and the increased use of paramilitary SWAT units across the United States have led to an amplified concern over the militant nature of civilian SWAT teams. Some critics have gone as far to say that “the Military Cooperation with Law Enforcement Officials Act has created a dangerous exception to the PCA ... [and] using police officers in a paramilitary role makes them resemble soldiers in appearance and actions.”<sup>110</sup> Some critics of SWAT units have stated that they understand the necessity for the existence of paramilitary police units for response during times of extremis, but decry their use in day-to-day LE.<sup>111</sup> If paramilitary police units are reserved for only the worst-case situations, then many of their legal issues should subside. As long as these SWAT units enforce the law and protect the rights of citizens, then their continued growth should not raise any complaints. The further development of SWAT units into bolstered civil response units, to combat paramilitary terrorism, should also be able to avoid most legal concerns if they follow these same guidelines.

## **B. NATIONAL GUARD RESPONSE**

The PCA and the federalism system in the United States are the two main legal issues affecting the NG response to domestic terrorism. Discussions over the increased federal employment of the NG overseas in combat roles have led to concerns over possible PCA violations when used at home. The problems presented by the federalism system are represented in this thesis by the issue of dual authority seen in the federal Title 10 and state Title 32 status of NG troops when they are used in domestic response.<sup>112</sup> The

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<sup>109</sup> Ibid., 386.

<sup>110</sup> Ibid., 387.

<sup>111</sup> Weber, “Warrior Cops,” 3.

<sup>112</sup> Kealy, “Reexamining the Posse Comitatus Act,” 415; Timothy J. Lowenberg, “The Role of the National Guard in National Defense and Homeland Security,” National Guard, <http://www.ngaus.org/ngaus/files/ccLibraryFiles/Filename/000000000457/primer%20fin.pdf>, 2.

NG exists to support large-scale responses to local events, but legal issues still arise regarding their practices and status while used to support these tasks.

The increased cross training of NG forces by active duty military and the recent deployment of NG troops to foreign wars have changed the NG. In its traditional status under Title 32 of federal law, the NG follows the orders of state governors and is available to respond to everything from natural disasters to terrorist attacks. In this status, the NG is not restricted by the PCA and is able to act in a LE capacity. More recently, however, the NG has been used more and more in what is known as Title 10 status, where it follows the orders of the President of the United States and resembles the active duty military. In its Title 10 form, the NG is restricted by the PCA in the same way the active duty military is.<sup>113</sup> The increase in use of the NG in its Title 10 form has lead critics to believe that:

The National Guardsmen look like soldiers, are trained as soldiers, and are equipped as soldiers, and, when federalized, they are in fact part of the military. To say that they are somehow different from active military personnel or the military reserves, as some commentators and courts have, is nothing more than semantics.<sup>114</sup>

The idea that National Guardsmen are no different than active duty military troops is hard to ignore when they have been used in the same capacity as active duty military in all of this nation's recent wars. Ironically, it is this same Title 10 experience that makes them a better choice for use against domestic paramilitary terrorism.

The use of the NG in Title 32 law enforcement duties has also been challenged in court. In *Gilbert v. the United States*, NG assistance to civil law enforcement agents was argued to be in violation of the PCA. In that case, the court determined that the National Guardsmen were in the service of the governor in a Title 32 capacity and not in violation of the PCA.<sup>115</sup> Even after similar court cases, critics continue to argue that “the National

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<sup>113</sup> *Ibid.*, 2.

<sup>114</sup> Kealy, “Reexamining the Posse Comitatus Act,” 433.

<sup>115</sup> *Ibid.*, 416.

Guard should...be prohibited from involvement in law enforcement.”<sup>116</sup> With that considered, “because state National Guard units are state entities, federal law cannot restrict a governor’s use of the National Guard for law enforcement.”<sup>117</sup> Defenders of NG service in LE capacities argue that while the NG is in its Title 32 status, the “abuses of federal power that the PCA was designed to protect against would not actually occur.”<sup>118</sup> Even with the encroachment of ideals, practices, and behaviors from the active duty military into the NG, the law still protects its deployment at home in the service of governors.

That being said, the use of the NG in its Title 32 status is not always free of federal government involvement. The National Guard forces may serve their governors in many operations while also serving at the request of the federal government. Major natural disasters, and in the case of this thesis, a major paramilitary terrorist attack, would require funding and tasking from the federal government to coordinate the necessary response. The practice of using Title 32 personnel to support federal tasking is put forth by Title 32 USC 901, which makes it possible for finances to be funneled from the federal government to NG forces during large-scale incidents.<sup>119</sup> For organizational purposes, the NG would stay under the authority of the governor, but would be working for the federal government all while maintaining the protection of its actions under the Title 32 umbrella.

It is this gray area in which NG command and control is most pronounced. The situation could arise where NG troops trained and equipped for previous Title 10 deployments are used on the streets of America in LE capacities doing the tasks set forth by the federal government and being paid by the same organization. The implications in this specific situation for PCA violations are the most pronounced and may draw attention from critics. The definition of federalization that leads to Title 10 assignment to

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<sup>116</sup> Ibid., 433.

<sup>117</sup> Ibid., 434.

<sup>118</sup> Ibid., 416.

<sup>119</sup> Lowenberg, “The Role of the National Guard,” 2–3.

forces could be argued in court if dramatic lines are not drawn between state and federal government authorities at the onset of an incident.

The problem of determining state or federal government authority over the NG response is indicative of the ongoing federalism versus strong federal government conflict in the United States. A number of state governors have expressed their desire to have the chance to respond to their own events with their NG forces in Title 32 status. Governor Perry from Texas commented on the ease in which the Stafford Act allows the federalization of response. He stated, “If the federal government assumes control of first response to catastrophes, I believe it will add needless layers of bureaucracy create indecisiveness, lead to rampant miscommunications and ultimately cost lives.”<sup>120</sup> The security measures enacted after the events of September 11 back up Governor Perry’s criticism. When it was determined that airports across the country, as well as the nation’s borders needed more security, the states, as well as the DOD were ordered to comply. The results of this order speak for themselves:

In stark contrast to the speed and efficiency with which Governors deployed National Guard troops to our airports (more than 450 airports were secured within a matter of hours or days), it took more than six months for the Defense Department to agree to a memorandum of understanding with the U.S. Border Patrol and increased security at our nation’s borders was delayed until these negotiations and legal arrangements had been finalized.<sup>121</sup>

Current law allows the federal government to act in response to local level incidents, but it has not shown exactly when it should act, or if it should act. The states have different levels of resources and deciding when and if the federal government should step in is precarious.<sup>122</sup> Some argue that “most large homeland security incidents will become federal events,” but does this mean that the forces responding must be federalized?<sup>123</sup> This question highlights the legal problem that the NG faces when it

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<sup>120</sup> James E. Baker, *In the Common Defense: National Security Law for Perilous Times* (New York: Cambridge University Press, 2007), 300.

<sup>121</sup> Timothy J. Lowenberg, “The Role of the National Guard,” 3.

<sup>122</sup> Baker, *In the Common Defense*, 301.

<sup>123</sup> *Ibid.*, 297.

comes to the Title 10 declaration by officials in Washington who are not required to consider the desires of state governors.

The Title 32 status of NG forces provides major benefits to the guardsmen who arrive on scene at a large-scale incident. In particular, PCA does not restrict their actions, and they can still benefit from federal funds and other federal resources. It is these considerations that the federal government must mull over before employing a federalized Title 10 response. Considerations of the benefits of federalism could in turn benefit the federal government by allowing local forces to solve local problems with less legal issues in the long run. By using this line of thought, NG forces could be used to respond to a paramilitary terrorism attack event at home without many legal problems as long as their use does not lead to Title 10 designation. If Title 10 status became necessary, then the number of legal issues would increase and would put the NG in the same situation as the active duty military.

### **C. ACTIVE DUTY MILITARY RESPONSE**

Using the active duty military to respond to a domestic paramilitary terrorist attack brings with it the highest level legal issues to overcome. The PCA is at the core of these legal restrictions, but at the same time, a great deal of legislation has been enacted that has created numerous exceptions to the PCA. The Insurrection Act, Stafford Act, and many others have created specific situations during which the PCA would not apply to the employment of federal military forces inside the United States. That being said, the level of approval required for a military response to a domestic attack creates even more bureaucratic problems to overcome for a timely response to be executed. Many legal issues are restricting and supporting the domestic military response to terrorism. This section examines these issues to determine the actual level of restriction in place against the use of the military inside the United States for counterterrorism operations.

The PCA “prohibits the use of the military to enforce civil criminal law within the United States, except as otherwise authorized by the Constitution or statute.”<sup>124</sup> The

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<sup>124</sup> Davis et al., *Army Forces for Homeland Security*, 60.

restrictions on military use by the PCA are very straightforward and make it appear as if it is not possible in any way for military forces to be deployed in the United States in any useful counter terrorism capacity. However, the war on drugs in the 1980s and 1990s, as well as the more recent threats of terrorism, has prompted criticisms of the PCA by those who would like to take advantage of the strengths of the military for protection at home. As one study noted, “Randy Larsen, a retired Air Force colonel and director of the ANSER Institute for Homeland Defense, calls the PCA ‘out of date’ and in need of revision.”<sup>125</sup> On the same point, Senator John Warner suggested to Secretary of Defense Donald Rumsfeld that an increase in domestic military use would increase the nation’s security and ability to respond to terrorist acts.<sup>126</sup> The views of Larsen and Warner reflect those of a large group of individuals who believe that a civil response will not be able to deal with a future domestic terrorism event.

Kealy writes that numerous exceptions to the PCA by recent legislation have chipped away at its credibility for application in modern times, which assists those who would like to see an increase in domestic military use. Kealy identifies an easier future for the military to be used at home and a conflict in its current use:

Major [Craig T. Trebilcock] argues that the numerous exceptions carved out of the PCA during the past twenty years indicate that the Act should pose no bar to the military involving itself in the fight against terrorism. He asks, “Could anyone seriously suggest that it is appropriate to use the military to interdict drugs and illegal aliens, but preclude the military from countering terrorists’ threats?”<sup>127</sup>

This question requires an examination of the recent legislation that has allowed for increased military involvement in domestic affairs. If so little of the initial PCA restrictions remain, then what barriers to military use in the United States still exist?

Even during its initial design, the PCA had exceptions to its restrictions of military deployment inside the United States. According to Article IV of the Constitution,

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<sup>125</sup> Kealy, “Reexamining the Posse Comitatus Act,” 426.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

the President may “call into Federal Service such of the militia of the other States, and use such of the armed forces, as he considers necessary to enforce the laws.”<sup>128</sup> In other words, the responsibility of the President to ensure the safety of U.S. citizens and the rule of law overrules the PCA. In this situation, the President has the right to deploy the military in a LE capacity domestically.

In similar situations where the rule of law has been disrupted, the Stafford Act was created to mobilize the military for domestic deployment. “The Robert T. Stafford Disaster Relief Act of 1984...authorizes the President to employ federal military forces and capabilities after a natural or manmade disaster following a request by a state governor or legislature.” It also allows the President to deploy military forces for aid even if a request has not been sent by a governor.<sup>129</sup> This deployment of the military aims at disaster-related duties, but can still be used to facilitate LE needs if deemed necessary by the President.<sup>130</sup> The Stafford Act allows states the legal right to request active duty military assistance and makes it even easier for the federal government to disregard the PCA during a domestic disaster.

The current War on Terror has shown that borders do not matter and that this war can be waged in faraway lands, as well as at home. It is this situation that likely motivated the writing of section 1076 of the 2007 John Warner National Defense Authorization Act. Section 1076 reduced the limits on the use of military forces inside the United States so that the President could address a critical incident more quickly.<sup>131</sup> It was believed that it was necessary for the administration to respond to the aftermath of an attack at home. This change in legislation to address an act of war at home is also representative of another piece of legislation that supports the domestic deployment of military forces.

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<sup>128</sup> 10 U.S.C., Chapter 15, Section 232.

<sup>129</sup> Davis et al., *Army Forces for Homeland Security*, 60–61.

<sup>130</sup> Baker, *In the Common Defense*, 297.

<sup>131</sup> Chossudovsky, “The ‘Use of the Armed Forces.’”

The War Powers Act authorizes the deployment of U.S. military forces to combat an enemy whenever “a national emergency created by an attack upon the United States, its territories or possessions, or its armed forces” has occurred.<sup>132</sup> During this “imminent danger and attack,” the President actually has a responsibility to deploy forces necessary to counter and recover from attacks.<sup>133</sup> This situation requires the President to waive the restrictions of the PCA and deploy all military forces necessary to combat the enemy. At this point, it is very clear that the military response to a domestic paramilitary terrorist attack is legally possible, but could this legal process actually work when it is needed?

A previous NORTHCOM commander, General Eberhart, stated, “his Command would only respond to [an incident] at the express direction of the President and the Pentagon.”<sup>134</sup> Since any military response inside the United States would have to go through NORTHCOM, Eberhart’s statement suggests that layers of bureaucracy would have to be navigated before the deployment of military forces could happen. Even after the legal navigation is complete and NORTHCOM deploys forces, the problem of local coordination arises. The interests of NORTHCOM and local officials like state governors have been known to run contrary in terms of authority and priorities. Governors oftentimes want to be part of the decision-making process when military forces operate in their states. Governors also have local priorities for the deployment of military forces that may not fall in line with the orders given to military commanders from Washington. Commanders of forces deployed by the federal government would have to work out these problems with local officials before executing their mission.<sup>135</sup> These factors show that a military response would likely be slow to deploy and local arguments over command and control could also arise.

While getting military forces on the ground could end up being a major bureaucratic challenge, empowering these forces with the necessary legal authorities to

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<sup>132</sup> Baker, *In the Common Defense*, 180.

<sup>133</sup> *Ibid.*

<sup>134</sup> Kealy, “Reexamining the Posse Comitatus Act,” 427.

<sup>135</sup> Charles R. Wise and Rania Nader, “Organizing the Federal System for Homeland Security: Problems, Issues, and Dilemmas,” *Public Administration Review* 62 (September 2002), 48.

safely do their jobs is another challenge all together. When military forces were deployed to New Orleans after Hurricane Katrina, they arrived to a city in chaos. They were physically and legally equipped to render aid and conduct search and rescue operations, but had no legal authority to defend themselves from or combat the heavily armed looters that had taken control over many parts of the city. Very few military members were allowed to carry sidearms during their search and rescue operations even while volleys of gunfire could be heard originating from the looters and criminals throughout the city. In this case, the deployment of military members never resulted in a PCA waiver that would allow them to execute their mission more safely and effectively. These circumstances were likely due to the political costs at the local and federal levels from having armed military members operating in a U.S. city. These political considerations must also be weighed when considering an active duty military response that may require a PCA waiver.<sup>136</sup>

Even with the numerous exceptions to the PCA, the use of military troops for domestic purposes is not easy. The reality is that making anything happen quickly in a large bureaucracy is an enormous challenge. In the case of a domestic paramilitary terrorism attack, the extreme conditions would hopefully drive the federal government to act quickly. At the same time, the federal government would hopefully grant the necessary PCA waiver in time for military members to execute their missions properly. From a purely legal standpoint, the military response to a domestic paramilitary attack is possible, but requires a large amount of high level bureaucratic approval to occur making it a less attractive choice.

#### **D. CONCLUSION**

The civil, NG, and military approaches to an attack in the United States all carry with them legal issues to address.

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<sup>136</sup> Lipton, Schmitt, and Shanker, "Political Issues Snarled Plans for Troop Aid." The author was a first responder in New Orleans during the aftermath of Hurricane Katrina and experienced these same issues.

The legal issues related to the civil approach focus mainly on the dangers of having a paramilitary police force that could lead to PCA violations from increased military cooperation. These issues end up being worries more than actual legal restrictions for the bolstered civil counter terrorism response considered in this thesis. It is not likely that the civil LE officers would forget that their first priority is the enforcement of the law and protection of the people. Due to this point, the civil response to domestic paramilitary terrorism should not have any substantial legal problems other than the already existing concern over their increased armament and training. Due to these factors, the civil response ends up being the best choice from a legal standpoint.

The NG's main legal concerns are PCA violations originating from the federal influence on their Title 32 forces and the split authority of their forces in the U.S. federalism system. The PCA violations find a bit more traction with the National Guardsmen due to their recently increased level of deployment as Title 10 forces. When these same units are considered for domestic deployments for incident response, the question of Title 32 authenticity is correctly raised. The additional complication of federal funding and tasking for Title 32 forces responding inside the United States makes their PCA status even more questionable. The NG response to a paramilitary attack inside the United States would be acceptable as long as the Title 32 status of designated forces was clear. The expected federal involvement in a major attack inside the United States would make this status more difficult to accomplish. This situation makes the NG response less legally viable than the civil one.

The military response to a domestic paramilitary terrorism attack faces the largest legal problem since the PCA is squarely focused on the use of military members in a LE capacity. Even with the additional measures that have been enacted to ease the difficulties of deploying the military domestically, many bureaucratic hurdles still must be overcome for the military to respond. Included in these bureaucratic difficulties is the political cost of waiving the PCA for an incident inside the United States. Due to the PCA and the bureaucracy that supports it, the military response has the most legal problems to overcome, which makes it the least desirable in this case.

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## V. CONCLUSION

The purpose of this thesis has been to identify the threat of paramilitary terrorism to the United States and to ensure that the correct force is prepared and ready to respond appropriately. It is imperative that paramilitary terrorism not be confused with the type of active shooter attacks observed as recently as 2015 in San Bernardino, California, at a county health office and in Paris, France, at a rock concert and other locations. The Paris attack was carried out at multiple locations, but even it did not reach the level of attack addressed by this thesis. Paramilitary terrorism pushes far beyond the required active shooter responses utilized for these two attacks. Chapter II of this thesis described how the terrorists in paramilitary attacks behaved as large, coordinated groups of military commandos with high levels of armament, as well as very advanced training and tactics. These types of attacks complicate the process of identifying the correct group or unit to respond during a paramilitary attack.

The problem of addressing paramilitary terrorism at home is difficult since it falls into a gray area of responsibility. An attack could immediately be interpreted as crime; however, the terrorists' level of armament, tactics, and training push beyond the capabilities of a traditional LE unit without numerous changes to armament, training, and tactics.

Thus, the NG and AC of the military are left to respond to defeat a paramilitary attack. Using the NG and AC of the military inside U.S. borders has to be considered carefully. The use of the NG and military inside the United States could quickly be perceived as a heavy handed action of a police state. Numerous academics and authors have written on the pros and cons of this decision, as was discussed in the literature review in Chapter I. Some of the authors against the use of the military domestically focused too much on the evils of the protracted use of the military as LE officers and to put down civil disturbances. They did not see the benefits of short-term deployments of the AC and NG for a situation like a paramilitary attack.

All three types of response discussed in Chapter III required changes to have the capabilities to defeat a paramilitary attack. While evaluating each group, the amount of changes and the appropriateness of these changes were evaluated to pick the best group for response. LE departments, for example, require numerous improvements across the United States to be able to provide a standardized response that could defeat a paramilitary attack. Many roadblocks have been set up to making these improvements to reach an end state for a purely LE solution to the paramilitary terrorism problem. The use of the NG also requires many improvements that would require a political consensus to change its organization, funding, and capabilities to defeat a paramilitary attack in time. The AC of the military will always be the maximum of capabilities and response. Even its use requires changes and developments in training and organization to defeat a paramilitary attack in an efficient manner. These issues, as well as other pros and cons, were all considered throughout Chapters III and IV. The military in the end stood alone as the most ready force to respond to an attack today.

The legal limitations stand as the gatekeeper for this choice to be considered prior to implementation. Even after the legal restrictions were finally considered, the AC military response was determined to be a viable response to a paramilitary attack. For the United States to be ready to counter this threat, the military must begin training with its regional and local civilian counterparts to minimize its response time to protect American lives. Local LE officers will still need to increase their readiness to hold out until AC members can arrive. LE improvements of new military tactics, training, and equipment, however, must only be used in the fight against U.S. enemies and never against U.S. citizens for other purposes.

## **A. FINDINGS AND RECOMMENDATIONS**

None of the three types of responses considered are presently ready to respond to a paramilitary attack effectively. The AC did, however, outshine the rest in its current state of readiness to defeat a paramilitary attack. All the groups could still make improvements to better fill their current roles in response to a paramilitary attack.

## **1. Law Enforcement**

The NYPD was used as a model of what civilian LE could achieve to respond to a paramilitary attack. This model was very close to the requirements necessary to defeat the attack. Even with the addition of their CRC, the NYPD still required an increase in heavy weapons and vehicles to round out its manpower to defeat an attack successfully. They would likely be able to come up with these additional requirements without too much effort. This solution may work for New York City, but it is not an answer that can work for the rest of the country. The rest of the cities across the United States do not have the resources that New York is able to bring to the table to pay for counter terrorism efforts. The current lack of support for police militarization across the country would also make it nearly impossible to create individual units in each major city with the requisite military capabilities. Civilian LE cannot be depended on to deal with a paramilitary attack on its own.

Local LE officers still have a role to play in fighting a paramilitary attack. It will be local first responders who first have to deal with the attack and these responders will need to provide a cordon and be able to provide as much security for the local people as possible until the AC force arrives. To be successful, LE in major cities should continue to receive equipment and training from AC military operators even though these efforts have drawn so much negative attention in places like Ferguson, MO. The primary focus for the training and equipment received from the military must remain counter terrorism operations. The equipment and training must not be deemed as multi-purpose in nature for the LE officers to use during normal LE operations. The militarization of the LE officers must be transparent to their local residents until an attack occurs; then, the presence of the military equipment and training would be lauded for the lives it saves instead of the responses seen across the country after Ferguson, MO. By accomplishing these simple tasks, LE professionals would be able to preserve life successfully with military methods while awaiting the AC response.

## **2. National Guard**

By its name and mission, the NG should logically be the best choice for response to a domestic paramilitary attack. It is manned with predominantly combat arms personnel and their units have the training and equipment necessary to fight and defeat a paramilitary adversary. The NG, however, is not currently organized or funded in the manner necessary to provide a quick reacting force that can defeat a paramilitary attack within the necessary time constraints. The HRFs created by the NG were well thought out in the way they were located within each FEMA region, but their focus is too much on the CBRNE threat instead of a much more likely attack in the form of a paramilitary attack. Creating these necessary combat arms units, though, would be a problem for the NG. The federal government would need to agree to an increase in Title 32 funds to every FEMA region to pay for these units that would in essence be standing militias under the control of their state governors. Each state governor would also have to be trusted to be able to execute the necessary command and control responsibilities to use these quick reacting NG units properly. The balance of authority and funds between the federal and state governments would add to the complications of having the NG be the sole answer to a paramilitary attack.

The way forward for the NG will not likely be in the form of the large standing militias discussed previously. The cost is great and the creation of the quick reacting forces hinges on bipartisan support in Congress to pay for the creation and sustainment of the units in each FEMA region. This problem still needs to be addressed on a smaller scale. The existing HRFs have been funded and the infrastructure for their sustainment has been established. The HRFs should each create a larger security force with a platoon to company sized infantry element to complement the already existing HRFs. These units would need to strive toward attaining heavy weapons and vehicles with the combat arms personnel trained to use them. In the case in which AC personnel are delayed in response to a paramilitary attack, NG forces should be able to conduct counterterrorism operations better in the interim.

### **3. Military Active Component**

The AC of the military has units ready today to take on and defeat a paramilitary attack. It does not have the issues that the LE and NG units have to deal with regarding manning, equipment, or training. The AC does still need to make some improvements to ensure an effective response is executed in an acceptable amount of time. The units that will be assigned to respond already exist on a rotating basis but their response times need to be shorter to address the paramilitary threat effectively. Predetermined mission packages and preplanned airlift requests with committed aircraft could reduce response times even more. In addition, AC units need to conduct training with their FEMA counterparts. AC units will also need to conduct periodic training with the state and local LE personnel to familiarize each other with operational practices so that both LE and AC personnel can work smoothly with each other while coordinating responses to an attack to allow LE personnel to do police work and enforce the laws while AC personnel fight the enemy terrorist force.

### **4. Legal Considerations**

The feasibility and effectiveness cannot be the only deciding factors for which type of response should be finally recommended. A consideration of the legal ramifications of using the AC of the military as a primary response to attack must be discussed to ensure the AC can be employed as swiftly as possible. As Chapter IV of this thesis discussed, the AC of the military has the largest legal roadblock to overcome to respond to a paramilitary attack inside the United States. The fear of lawmakers is that somehow during a use of the AC at home, military members would need to enforce laws for U.S. citizens during their response efforts. A PCA waiver would need to be processed in the form of enacting one of the various acts that allow the President to use the military to enforce laws.<sup>137</sup> It is a challenge that neither the LE or the NG response had to handle. With that considered, this challenge should not end up being a problem for the AC

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<sup>137</sup> Office of Legal Counsel, Authority For Use Of Military Force To Combat Terrorist Activities within The United States, October 23, 2001, *available at* 2001 WL 36190674 (O.L.C.).

response as recommended in this thesis since the AC will not be expected or ordered to enforce laws during their fight against the paramilitary attack.

This thesis specifically recommends continuing to increase the LE access to military resources to prepare the battlefield for the AC response and then stay in the vicinity to enforce the laws against any looting or other criminal acts that may occur during the distress that would likely occur if a large-scale paramilitary attack occurs. In turn, AC military responders would be allowed to focus on fighting the terrorists and their LE compatriots would be left to deal with the criminals. The Office of Legal Council (OLC) recognized this situation, and made its recommendation to the White House “that the prevention and deterrence of terrorism is ‘fundamentally military, rather than law enforcement, in character.’”<sup>138</sup> The OLC even went so far so to state “that the Posse Comitatus Act imposed no constraint on the President’s use of military forces domestically for anti-terrorism operations.”<sup>139</sup> The statements from the OLC may sound as if it opens Pandora’s Box regarding the use of the military domestically, but they in actuality keep it specific to “anti-terrorism operations.” The OLC had enough forethought to realize that further terrorist actions would occur in the United States that would require federal military assistance to LE officers to save American lives. With these topics considered, the AC use as a primary response could be employed without breaking the laws or infringing on the roles and responsibilities of the local LE officers. The AC would instead work with these officers to protect the residents of the city under attack, by only engaging the terrorists.

## **5. Findings Compared to the Literature**

The literature review in Chapter I identified two groups of thought in the approach to paramilitary terrorism. The first group decried the used of AC military forces domestically and focused greatly on the progress made by some LE organizations across the United States in being able to counter the paramilitary threat. The second group argued to use the AC quite liberally in the domestic realm to deter terrorism inside the

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<sup>138</sup> Ibid., 50.

<sup>139</sup> Ibid.

United States. The recommendation of this thesis to move forward with a AC response while also increasing coordination and training with LE and emergency management professionals falls between the first and second group of authors. The choice of the AC response does not argue as much against the first group as it seems. The approach recommended by this thesis recognizes the problems that can arise with the overuse of the military domestically that the first group of authors discussed. For this reason, the close involvement of the local LE officers is so important in the enforcement of the laws. The quick deployment and redeployment of AC forces to combat an attack further agrees with the issues identified by the first group of authors regarding the problems of the protracted use of the military domestically. The increase in anti-police militarization sentiment across the country more recently also inspired the move to keep the LE as police officers to avoid them being seen as soldiers instead of officers of the law. In the end, the recommendation of this thesis is a somewhat hybrid of the two groups of authors; moving for a more direct use of the AC while recognizing the importance of local LE in the process.

## **B. CONCLUSION**

In moving forward, the AC of the military must be publicly identified as the primary response force against paramilitary attacks at home. The planning processes must be commenced for military commanders to prepare for this responsibility. The goal is that when a paramilitary attack occurs that a smooth and quick, streamlined process is activated so that AC military operators can get to the location of attack and swiftly deal with the terrorists perpetrating the attack. Bureaucratic issues at the local and federal levels of government and any other hindrances that may cause a delay on the day of the attack must be identified and removed. NORTHCOM should prepare tripwires for the activation of pre-planned responses so that orders are given in a timely manner for these quick reaction AC units to respond. A comfort level needs to be achieved so that plans are in place and that AC units are standing by to respond at a moment's notice to ensure that no disaster, such as Mumbai or Beslan, ever happens on U.S. soil.

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