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**THE ROLE OF THE U.S. CIVILIAN AUTHORITIES
AND MILITARY FORCES IN THE BATTLE
AGAINST TERRORISM**

BY

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THE ROLE OF THE U.S. CIVILIAN AUTHORITIES AND MILITARY FORCES IN
THE BATTLE AGAINST TERRORISM

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ABSTRACT

AUTHOR: Guy A. Giancarlo, LTC, USAR

TITLE: The Role of the U.S. Civilian Authorities and Military
Forces in the Battle Against Terrorism

FORMAT: Strategy Research Project

DATE: 10 April 1996 PAGES: 23 CLASSIFICATION: Unclassified

Terrorism is increasingly in the news. The United States, as the preeminent world power, will become increasingly a target of terrorist acts. This paper analyzes the role of the U.S. Civilian Authorities and Military Forces in the battle against terrorism. It reviews U.S. policy and lead agency responsibilities as well as the impact on international law and American Civil liberties. It reviews current and possible future threats and makes recommendations regarding proactive measures the U.S. should be taking now to prevent successful terrorist attacks.

Terrorism has been increasingly in the news. Terrorism takes on many forms, and terrorists are using a wide range of weapons. Terrorism has indeed become a media event. With the advent of CNN Headline news, terrorist actions are often conducted for the impact they will have not only on those directly affected by the action, but also on the larger television audience which will be shown the results ad nauseam. The terrorist may be attempting to gain attention for their cause, to incite fear, or to cause an adverse reaction or overreaction to their tactics. To preserve the American form of democracy, the U.S. government must have an effective strategy - defining ends, ways, and means - to counter this menace of terrorism. While the U.S. government must maintain a firm policy for dealing with all forms of terrorism to protect its citizens, national treasure and property, it must as well avoid infringing on the constitutional rights of U.S. citizens or violating international laws.

What actions should the U.S. government take, or be prepared to take, against terrorists, whether individuals or groups, whether sponsored by a foreign state or other Americans belonging to a group intent on conducting terrorist activities within the U.S.? When should military intervention or preemptive, retaliatory strikes be exercised? Against whom? What should be the U.S. response when threatened by terrorism? Should the U.S. attack terrorists' bases or countries that are supporting these

groups with arms, materials, and money?¹

This paper analyzes the role of the U.S. government, civilian agencies and its military forces, in the battle against terrorism. Any discussion of terrorism should begin with a shared understanding of the terms/definitions of terrorism, antiterrorism, and counterterrorism. Department of Defense Directive 0-2000.12, defines terrorism as: The calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.² The following definitions are drawn from Joint Pub 1-02. They are generally accepted as standard by all official U.S. government agencies.

Antiterrorism. Defensive measures used to reduce the vulnerabilities of individuals and property to terrorists acts to include limited response and containment by local military forces. Also called AT.

Counterterrorism. Offensive measures taken to prevent, deter, and respond to terrorism.³

Next it is important to review America's counterterrorism strategy. American counterterrorist policy stands on three solid pillars.

First, we will not accede to terrorist demands. We will not pay ransom, pardon convicted terrorists, or pressure other countries to give into terrorists demands. In other words we will make no deals. But we will talk to anyone authoritative-anywhere, anytime-about the welfare and unconditional release of our hostages.

Second, we have taken the lead in pressuring

states which support terrorist groups and use terrorism as part of their foreign policy. We have shown these states that they will be penalized for supporting terrorism. The United States will not tolerate their abiding and abetting terrorist groups by supplying them with weapons, money, passports, training bases and safehouses.

Third, we are imposing the rule of law on terrorists for their criminal actions.⁴

Ambassador at Large for Counterterrorism, L. Paul Bremmer III, articulated this policy before the House Foreign Affairs Committee, Washington, D.C. February 9, 1989. A review of the United States Department of State Annual Report on "Patterns of Global Terrorism, 1994" reveals that the official government position is virtually unchanged six years later.

U.S. counterterrorism policy follows three general rules:

First, do not make deals with terrorists or submit to blackmail. We have found over the years that this policy works.

Second, treat terrorists as criminals and apply the rule of law.

Third, bring maximum pressure on states that sponsor and support terrorists by imposing economic, diplomatic, and political sanctions and urging other states to do likewise.⁵

In fact, the Nixon administration initiated the no-concessions policy of the U.S. government.⁶

In April 1982, the U.S. government defined specific lead agency responsibilities for coordination of the Federal response to terrorist incidents as follows:

- o Department of State (DOS) - incidents that take place outside U.S. territory.

- o Department of Justice (DOJ) (FBI)- incidents that take place within U.S. territory.

o Federal Aviation Administration (FAA)- incidents aboard aircraft that take place within the special jurisdiction of the United States.⁷

These lead agency responsibilities remain unchanged today.

The most recent documented acts of terrorism against the U.S. and the ones which have claimed the boldest headlines have occurred within our borders: The World Trade Center bombing on February 26, 1993; the Oklahoma City Federal Building bombing on April 19, 1995, allegedly by a militia member intent on avenging the government attack on a Waco, TX compound of the Branch Davidian sect; the 1995 train sabotage in Arizona, which has still not been tied to any group; and the foiled bomb plot by Islamic fundamentalist in New York City. Even so, the U.S. government and military cannot disregard the need for a counterterrorism policy and effective capability to protect American citizens and property, for example U.S. embassies and military installations abroad. Few adult Americans can forget the October 23, 1983 suicide attack on the Marine barracks in Beirut, Lebanon, that claimed the lives of 241 Marines.

The U.S. government recognizes that terrorism is not a conventional form of warfare.

Terrorism is political theater designed to undermine or alter governmental authority or behavior. The apparent inability of established governments to respond effectively to incidents affects the confidence of citizens and allies alike. America's foes take comfort in the apparent weaknesses of our society that terrorism exposes.⁸

Clausewitz asserted that "'Defense is the stronger form of

combat," but that precept does not hold when it comes to terrorism.⁹ The terrorist can choose the time, place and means of attack; the defender, on the other hand, must anticipate every eventuality and be on guard 24 hours a day, seven days a week, 365 days a year. The U.S. government must remember that a terrorist only needs to be lucky once, while it must not only be prepared and vigilant, but lucky always. The most efficient method of counterterrorism and the first line of defense against terrorism is intelligence.

Success in combatting terrorism is predicated on the availability of timely and accurate intelligence... Long-term intelligence programs to combat terrorism involve collection and analysis that address regional history, culture, religion, politics, psychology, security conditions, law enforcement and diplomatic relationships. The requirement for accurate analysis applies both to long-term threat assessments and to support incident management. All terrorism related intelligence collection and analysis must be directed toward production and dissemination of clear, concise, and accurate threat warnings and assessments to decision makers in time for them to take necessary action.¹⁰

The new director of the Central Intelligence Agency (CIA), John Duetch, recently warned of the likely increase in terrorism. In testimony before the House Intelligence Committee, he declared, "I regret that I have come to the conclusion that there is going to be tremendous growth in international terrorism over the next decade or so. Not only directed against Americans but throughout the world. It is a very, very serious matter, and it deserves a very high priority." The director went on to inform the lawmakers that to combat terrorists, the CIA will need to

rely more heavily on human intelligence and clandestine operations. He informed the committee that the CIA was shifting resources from other departments into the counterterrorism organization.¹¹ Yet one of the foremost principles upon which the American form of democracy is founded is the right of privacy. So the challenge to the U.S. government is to insure that it does not violate its own laws, the constitutional rights of its citizens, and international law while protecting its citizens and resources.

Current U.S. government policy in dealing with terrorism, set forth by President Clinton, clearly lays out our national objectives (or Ends, Ways and Means):

As long as terrorist groups continue to target American citizens and interests, the United States will need to have specialized units (means) available to defeat such groups. From time to time, we might also find it necessary (ways) to strike terrorists at their bases abroad or to attack assets valued by the governments that support them.

Our policy in countering international terrorists is to make no concessions to terrorists, continue to pressure state sponsors of terrorism, fully exploit all available legal mechanisms to punish international terrorists and help other governments improve their capabilities to combat terrorism.¹²

U.S. policy addresses not only state-sponsored terrorism but loosely organized terrorists groups, such as the one responsible for the World Trade Center bombing. These same themes have also been addressed by the leaders of our Defense Department. They are reiterated in William J. Perry's "Secretary of Defense Annual Report to the President and the Congress, February 1995" and General John M. Shalikashvili's, Chairman of the Joint Chiefs of

Staff, "National Military Strategy of the United States of America, 1995".

A review of U.S. doctrine as espoused in various unclassified documents is now in order.

The Defense Planning Guidance, FY 1997-2001 addresses the DOD role in combatting terrorism as follows:

Planning guidance for Other Missions: In addition as long as terrorist groups continue to target American citizens and interests, the U.S. will need to have specialized units available to defeat such groups. From time to time, the nation might also find it necessary to strike terrorists at their bases abroad or to attack assets valued by governments that support them.¹³

The Joint Staff provides the following guidance:
DOD Role. The DOD is not the lead agency for combatting terrorism; however, the Department of Defense is responsible for protecting its own personnel, bases, deployed forces, equipment and installations. At times, the Department of Defense is responsible for providing technical assistance or forces when directed or requested by the lead agency (previously identified as either, Department of State, Department of Justice (FBI) or Federal Aviation Administration).

A critical factor in understanding terrorism is the importance of the emotional impact of the terrorist act on an audience other than the victim.¹⁴

U.S. lead agencies cite two concepts pertaining to the ends, ways, and means of its counterterrorism policy:

1. The military and various intelligence agencies will take the lead role in operations outside the U.S. in conjunction with the Department of State.

2. The right of the President to use the military in fighting international terrorism is based on the Laws of Armed Conflict (LOAC), "an internationally recognized body of law."

LOAC specifically authorizes the use of military force to combat terrorism: "Because terrorist acts are serious criminal offenses, the LOAC imposes an obligation to prosecute or extradite. Furthermore, under the LOAC, terrorism becomes primarily a military responsibility."¹⁵ Clearly, then, we are justified in using our military abroad in a counterterrorism role. Numerous precedents have been established, such as the February 1976 French rescue of school children in Djibouti. In fact, as far back as December 29, 1837, the British attacked the U. S. merchant ship **Caroline** in the Niagara River, near Buffalo, N.Y., in response to the role that ship played in supporting the Canadian insurrection against British rule.¹⁶

America has the capability to fight terrorism, but does it have the national will to use its military power to stop terrorists? A brief review of three well-known actions by the U.S. military in the recent past indicates that the U.S. government is ready to use its military forces when deemed appropriate to respond to terrorist actions abroad. President Carter approved a military rescue action to free hostages held by Iranian fundamentalist in the U.S. Embassy in Iran in 1980. This was a clear case of state sponsored and supported terrorism. Although, the rescue attempt did not succeed, the U.S. government established that it would take all steps necessary to combat terrorism and protect its citizens. The U.S. has come a long way since this "Desert One" operation as evidenced in the following paragraph.

National Security Decision Directive 138, signed by President Reagan on April 3, 1984, authorized pre-emptive and retaliatory strikes by the U.S. against terrorist targets overseas. In April 1986, President Reagan approved an air raid against "targets in Libya in answer to evidence that the Libyan leader, Colonel Gaddafi, was guilty of state-sponsored terrorist attacks against Americans"¹⁷. More recently, President Clinton authorized a Tomahawk Cruise Missile attack against the Iraqi Intelligence Agency headquarters building in 1993, after it was determined that country was planning an assassination attempt against former President George Bush while he was visiting Kuwait.

Today, the U.S. faces challenges that are greater than ever, primarily because it is the only remaining super power and the acknowledged leader of the democratic world. These circumstances make the U.S. a lucrative target for any individual or group intent on getting itself into the worlds headlines.

As the U.S. implements its National Strategy of Engagement and Enlargement, the U.S. military will find itself increasingly involved in Other Military Operations. The probability of U.S. citizens, its military or dependents, becoming a target of a terrorist group grows with each involvement in a new crises. There have been numerous reports of Muslim fundamentalist terrorist groups waiting eagerly for the opportunity to strike at U.S. troops involved as part of the Bosnian peace implementation force. The Dayton Accords addressed this issue specifically by

directing that all foreign troops would be expelled from the countries of the former Yugoslavia. On February 16, 1996, the NATO forces raided a house near Sarajavo, arresting 11 Muslim soldiers, including several foreigners, and confiscating a large number of weapons and explosives. The captured individuals possessed plans to attack NATO military buildings in different areas.

On February 22, 1996, it was reported that Bosnian Serb soldiers were ordered to attempt to take American soldiers and other NATO forces hostage as they patrolled roads in Bosnia.¹⁸ Such terrorist acts could lead to an expansion of the NATO Peace-Keeping role if the NATO forces began to defend themselves or had to take offensive operations to free any captured NATO soldiers.

The U.S. Army addresses the need to prevent terrorism in FM 100-7: "Terrorist acts overseas are a constant threat to U.S. armed forces, civilians, and facilities."¹⁹ During Other Military Operations the Army Service Component Commander (ASCC) assumes that the host nation will implement counterterrorism procedures to protect guests (military and civilian) within their country. But what recourse is there when the host country is either unable or unwilling to provide this protection? The ASCC may assist in implementing antiterrorist actions as required, depending upon the nature of the terrorist threat.

For operations during conflict, the ASCC, in conjunction with the Commander In Chief (CINC) and the Joint Special Operations Component Commander (JSOCC), executes a variety of

operations that contribute to the achievement of theater strategic missions and goals, to include operations that combat terrorism. The Antiterrorism measures include:

- Being personally aware and knowledgeable of personal protection techniques.
- Implementing crime and physical security programs to harden the target.
- Making installations and personnel less appealing as terrorists targets.²⁰

Recalling that DOS has the lead in combatting OCONUS terrorism during peacetime, counterterrorism measures are normally carried out by the Special Operations Forces (SOF) under the direction of the National Command Authority (NCA).

The Army Special Forces Command states its primary Counterterrorism (CT) mission:

The primary CT mission of SOF is to apply specialized capabilities to preclude, preempt, and resolve terrorists incidents abroad. SOF involvement in CT is limited by Host Nation responsibilities, DOJ and DOS lead agency authority, legal and political restrictions, and appropriate DOD directives. When directed by the National Command Authority (NCA) or the appropriate unified commander, designated SOF units conduct or support CT missions that include:

- Hostage rescue
- Recovery of sensitive material from terrorist organizations
- Attack of the terrorist infrastructure.²¹

The SOF command points out that due to the very low profile that most terrorist organizations maintain, identifying targets can be extremely difficult. And while a preemptive strike is often preferred, CT missions must often be conducted after the terrorist have acted.²²

Domestically, military commanders are authorized to act

without prior approval to provide for public safety under the following emergency rule:

When the calamity or extreme emergency renders it dangerous to wait for instructions from the proper military department, a commander may take whatever action the circumstances reasonably justify. However, the commander must comply with the following:

1. Report the military response to higher headquarters.
2. Document all the facts and surrounding circumstances to meet any subsequent challenge of impropriety.
3. Retain military response under the military chain of command.
4. Limit military involvement to the minimum demanded by necessity.²³

Thus the U.S. is demonstrating its willingness to use its military forces to combat terrorism. It is also demonstrating U.S. capabilities: "[G]overnments sponsoring terrorism now must at least consider the possibility of military retaliation. At the same time, their caution will make it more difficult to obtain the chain of evidence needed to identify and justify a military response."²⁴

Domestically, however, we face severe constraints on using our military in counterterrorism activities. The role of the military is much narrower in this fight against domestic terrorist as compared to the role it plays in fighting terrorism outside the U.S. and its territories. Current U.S. law, primarily The Posse Comitatus Act of 1878, expressly forbids the use of our military forces in domestic law enforcement activities, unless in accordance with specific limitations of the Constitution or with the consent of Congress.²⁵ "It is generally

accepted that the catalyst for the passage of the Act was the excessive use of and resulting abuses by the Army in the southern states while enforcing the reconstruction laws."²⁶ We cannot use military forces to combat domestic terrorism, with the exception of nuclear terrorism. However, there are constitutional exceptions permitting the U.S. government to use military forces to help preserve law and order and continued governmental functioning within its territorial limits.

The lead agency in our domestic counterterrorism efforts must be the Department of Justice, especially the Federal Bureau of Investigation. But, in the aftermath of the Oklahoma City and World Trade Center bombings, Americans are openly questioning whether the government can do more to prevent terrorism while preserving our civil liberties.²⁷

The next great threat on the horizon may come from weapons of mass destruction (WMD)- not nuclear, but chemical and biological. For example, the Aum Shinrikyo cult was responsible for at least two attacks on large groups of innocent Japanese civilians with sarin gas. A review of recent hearings by the U.S. Senate Permanent Subcommittee on Investigations on Global Proliferation of WMD points out the rapid rise, growth, and danger of this terrorist group. Consider this synopsis of 1989 testimony before this same committee: The possibility of terrorist groups employing WMD was only hypothetical. Up to that time there had been no evidence of a terrorist group actually deploying such weapons, although there had been some occasional

reporting of their interest in these devices. Additionally, at that time the idea of a major terrorist attack occurring within the U.S. was not considered possible. Fast forward to the present: In just six short years, this has utterly changed. We have witnessed attacks from foreign terrorists in the bombings and foiled bombings in New York City, as well as the alleged attacks by American citizens, such as on the Oklahoma City Federal Building:

Commentators throughout the world now agree that these events are of major international significance. The proverbial genie has been let out of the bottle. In a quantum leap, terrorists responsible for the American and Japanese events have planted ideas and provided roadmaps for others to attack American domestic targets as well as to use such weapons against innocent civilian populations worldwide. As Bruce Hoffman of the Center for the Study of Terrorism and Political Violence at St. Andrews University in Scotland recently stated: We've definitely crossed a threshold. This is the cutting edge of high-tech terrorism for the year 2000 and beyond. It's the nightmare scenario that people have quietly talked about for years coming true.

In a large sense, the Aum incident is a remarkable yet frightening case study of the threat modern terrorism poses to all industrial nations. It raises a series of difficult questions about domestic and international preparedness as we enter the next millennium. It serves as a harsh wake-up call for the United States which until recently was rather complacent about the threat of terrorism.²⁸

What is most frightening about this group is that it grew from a mere score of members in 1984 to 10,000 members in 1992, then to over 50,000 in 1995; its membership in Russia is believed to be about three times larger than in Japan. It has expanded to over 30 countries, including the United States, where it had offices and conducted business, largely attempting to buy weapons

and weapon components.

Former National Security Advisor Brent Scowcroft acknowledges the dilemma: Terrorism poses some of the most difficult of all dilemmas for a democratic government. It is so easy to do: It takes so few people, the materials are so readily available. But countering terrorism is expensive in dollars and, more importantly, in civil liberties.²⁹

The U.S. has many resources to assist in our counterterrorism efforts. Anyone who flies by commercial airlines will notice increased airport security. Both the government and private corporations are making widespread use of metal detectors, barriers to prevent truck bombings, and security guards. Modern technology has provided counterterrorist commandos and security specialists with a wide variety of new weapons, detection systems, and other equipment for thwarting terrorist attacks.³⁰

But is this enough? Bombings of the Oklahoma City Federal Building and the World Trade Center, as well as the growth of radical groups such as militias and religious cults like the Aum Shinrikyo, indicate that we remain very vulnerable. The U.S. government is attempting to address these new threats through the Omnibus Counterterrorism Act of 1995 proposed by President Clinton and the Senate's additions to this Act, which makes the following recommendations:

1. Create a federal crime of international terrorism within the U.S.

2. Make it easier to deport aliens linked to terrorism. A special court would shield classified information from defendants who might receive only a summary of the charges against them.

3. Allow the President to designate certain foreign organizations as terrorist groups and prohibit U.S. citizens from raising or giving money to them.

4. Add 1,000 new federal law enforcement employees to track terrorism threats and prosecute offenders. Create an interagency center on domestic counterterrorism headed by the FBI.

5. Broaden federal wiretap authority under a court order for terrorism cases and allow improperly obtained surveillance information to be used in court as long as investigators acted in good faith.

6. Allow the military to assist federal law enforcement in cases involving chemical and biological weapons and other (WMD).

Following the President's lead, the Senate has proposed legislation to strengthen the governments hand in countering terrorism:

1. Allow the State Department to deny visas to certain people who belong to suspected terrorist groups, or in some cases who come from countries that sponsor terrorism.

2. Crack down on state-sponsored international terrorism by banning foreign aid to countries that assist terrorist governments.

3. Increase penalties for federal crimes linked to terrorism and designate "conspiracy" as one of the legal

components of terrorism. This would enable federal law enforcement agencies to combat crimes before they happen.³¹

The Senate passed its version of the legislation "Comprehensive Terrorism Prevention Act", S.735, on June 7, 1995, by a vote of 91 to 8.³² Unfortunately, this legislation appears to have been held up in the Republican controlled Congress because the President initiated it. He happens to be a Democrat. This legislation, which was considered certain to become law shortly after the Oklahoma City Federal building bombing, has now been derailed by an unusual coalition of conservative Republicans and civil-libertarian Democrats in the House.³³

The House of Representatives on March 14, 1996, finally passed a "diluted bill intended to fight crime and terrorism."

"What remains is a low-grade crime bill--cats and dogs from the Judiciary Committee...that have nothing to do with fighting terrorism," said Rep. John Conyers Jr. (Mich.), the House Judiciary Committee's top Democrat.

One of the key provisions deleted would have permitted the government to designate certain organizations as terrorist and deny entrance visas to their representatives.³⁴

There is a fine line in such pressing matters between doing too much and not doing enough. Protection of the majority must take precedence over potential infringement on the civil rights of the minority bent on terrorism and anarchism. However, to preserve the American form of democracy, the U.S. government must be careful to maintain its long established system of checks and balances. Passage of the Omnibus Counterterrorism Act must not provide the FBI, CIA, DEA, or DOD with carte blanche powers. The

courts must insure that the preliminary evidence justifies wire taps, evictions, denials of entry into the U.S., or covert military actions.

Conclusion.

The Congress must pass a strong Omnibus Counterterrorism Act of 1996, as a nation politics must be set aside. The elected representatives of the American people must recognize the new threats posed by terrorist and join forces to pass revised legislation, including granting the military a stronger role in combatting domestic terrorist. The military has been playing an increasing role in combatting the Drug War. The leaders of the Narcotic Organizations have been employing Narco-Terrorism for years. It is only a matter of time until these acts are conducted in the U.S. The military must continue to stand ready to protect American interests abroad. The military must be prepared to deploy members of the U.S. Special Operations Command, as well as traditional forces for larger scale operations. The military must stand ready to assist domestic agencies by providing training. The military must also remain ready to provide assistance in countering nuclear threats and weapons of mass destruction, should the need arise and the authority be granted. It may be time to review the Posse Comitatus Act in view of the new threats the American people face. A look back to the origins of the Posse Comitatus Act leads one to believe that what was relevant in 1878 when it was originally enacted is no longer applicable. After a catastrophe

such as release of any weapon of mass destruction, it will be too late. The 1996 Olympics is scheduled for Atlanta this summer; a terrorist attack during this period would be catastrophic. During the 1984 Olympic Games, presidential authority was obtained to place the SOF's Delta Force on reserve status to counter any terrorist attack³⁵. Given the greater threats we face today, this same authority should be granted in anticipation of the 1996 Olympic Games. The impact on the military would be minor, it currently has the forces, equipment and training to fight terrorism. It will be too late for any additional legislation if an attack occurs. The only thing left at that point will be hearings to designate a scapegoat.

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