

**STRATEGY
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**MILITARY COUNTERDRUG PATROLS ALONG THE SOUTHWEST
BORDER: A BRIDGE TOO FAR**

BY

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USAWC STRATEGY RESEARCH PROJECT

**Military Counterdrug Patrols Along the
Southwest Border: A Bridge Too Far**

by

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ABSTRACT

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This paper examines the current policy of deploying military units along the Southwest Border as part of the overall DOD counterdrug strategy. The paper looks at the impact of drug abuse in America, describes the National and Military counterdrug strategies, details the history of U.S. militarization of the Southwest Border and its relationship to current tactical operations, and examines the legal constraints of Posse Comitatus. Finally, an analysis of the effectiveness of the policy of employing military ground forces along the Southwest Border as part of the overall DOD counterdrug strategy is accomplished using the criteria of: acceptability, feasibility, and adequacy.

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Military Counterdrug Patrols Along the Southwest Border: A Bridge Too Far

Drug abuse continues to seriously concern the American public. Many would agree that the US "is facing a threat as dangerous to its national well-being and moral fiber as anything encountered in the past 200 years."¹ President Bush described the drug problem as so serious and solving it so vital to our national interest that he declared his Administration's "War on Drugs." President Clinton reaffirmed this strategy, giving Cabinet rank to the Director of the Office of National Drug Control Policy, and then appointing him a member of the National Security Council.² Congress enacted legislation which thrust a somewhat reluctant military across the counterdrug line of departure. The battle lines were drawn; the United States was at war.

These essentially political actions thus responded to the public's outcry against the abuse of illegal drugs. According to recent estimates, more than \$146 billion annually is lost from the American economy to illegal drugs use.³ Of course, this monetary estimate does not include the damage to American social values and institutions. Given this situation, it is understandable and perhaps urgent that the President fully employs the nation's arsenal of instruments of power to combat a social problem of this magnitude.

The military's role in the counterdrug effort is both global and domestic. Although modest and narrowly focused, the military role has become key to the National Drug Control Strategy. Globally, Department of Defense (DOD) missions target the illegal drug trade at host country sources and track drug movement through transient countries and open waters. Sophisticated military technology is proving valuable in the global search for illegal drugs. Domestically, DOD supports Drug Law Enforcement Agencies (DLEA) in their effort to prevent penetration of the U.S. borders by illegal drug trafficking. One part of the military's domestic effort is the employment of armed military units along the U.S.-Mexican border (Southwest Border).

Recently, however, this type of military counterdrug mission has come under increasing scrutiny, and national leadership is questioning the use of armed military counterdrug patrols along the U.S.-Mexican Border. Indeed, Secretary of Defense Cohen just halted these Southwest Border missions. The catalyst for this policy shift was the May 20, 1997 shooting death of a 18-year-old Texan, Ezequiel Hernandez. Marines on a covert anti-drug patrol along the Rio Grande near Redford, Texas, shot the teenager, claiming self defense. A subsequent Grand Jury investigation acquitted the shooter of any wrongdoing in Hernandez's death, finding the Marine had followed the military rules of engagement.⁴ Nevertheless, the death of this U.S. citizen by

domestically employed military forces raises serious concerns for the military as well as the American public.

The purpose of this paper is to examine the policy of deploying military units along the Southwest Border as part of the overall DOD counterdrug strategy. The examination will begin by first looking at the impact of drug abuse in America, describing the National and Military counterdrug strategies, detailing the history of U.S. militarization of the Southwest Border and its relationship to current tactical operations, and finally, examining the legal constraints of Posse Comitatus. With this background, the policy's effectiveness will be analyzed using the criteria of: acceptability, feasibility, and adequacy.

Before proceeding, it is appropriate to establish a specific framework to preclude potentially peripheral debates.

First, some will argue the appropriateness of any counterdrug mission for the Armed Forces, and there are certainly valid arguments on both sides. However, Department of Defense (DOD) involvement in the counterdrug effort has been established by law and policy, and this paper will accept current decisions that counterdrug operations constitute an appropriate DOD mission.

Second, there is considerable debate on the best strategy for the National Drug Control Policy. Current analysis separates the approach to the national drug problem into two distinct

strategies: supply reduction and demand reduction. Those advocating a supply reduction strategy focus on reducing the amount of illegal drugs available to the users thus increasing prices which will ultimately reduce drug abuse. Those advocating a demand reduction strategy target potential and current users with efforts to reduce their desire for illegal drugs. (These two strategies are being challenged by others who believe the center(s) of gravity of the national drug problem falls outside current thinking. For further discussion on the center(s) of gravity see Annex A.) For the most part, DOD involvement supports the supply reduction strategy. This includes DOD's use of armed military patrols to reduce the flow of illegal drugs across the Southwest Border. Again, this examination accepts supply reduction as a valid part of a national counterdrug strategy.

THE DRUG THREAT

The current drug problem in the United States is reaching levels of staggering proportion. It is an epidemic which touches every American. Currently the Office of the National Drug Control Policy estimates that there are more than sixteen million illegal drug abusers in the United States. These sixteen million Americans support an illicit drug trade with annual revenues in

excess of \$60 billion.⁵ Recent statistics show that these sixteen million drug abusers also account for a large part of the nation's crimes. The court systems overflow with drug cases, ranging from simple possession to major drug trafficking offenses. In a recent survey of 12 major metropolitan areas, the percentage of males arrested testing positive for drugs ranges between 60-80%.⁶

Economically, drug abuse places a tremendous burden on the American taxpayer. In the workplace drug abuse contributes significantly to lost productivity, which ultimately means lost profit and higher consumer prices. Drug users are three-and-a-half times more likely than nonusers to be involved in a plant accident, five times more likely to file a worker's compensation claim, receive three times the average level of sick benefits, and function at only 67 percent of their work potential.⁷ In some cases, the inability to detect workplace drug abuses has catastrophic results where innocent victims become casualties.

Annual expenditures of federal, state, and local governments on drug control efforts total about \$30 billion. The social cost of drug related crime, excluding the impact drug abuse has on the spread of AIDS, accounts for another \$67 billion⁸. DOD's share of the counterdrug fight is approximately \$1 billion, primarily expended in the supply reduction effort.⁹ Despite these expenditures the nation's drug problem continues to exist. One

of the prime targets for drug abuse is school age children. Although overall drug use statistics show a relative constant trend, drug abuse among America's youth is on the rise. Further, surveys show an alarming trend: fewer young Americans consider drug abuse dangerous.¹⁰ Extrapolating this trend, the drug problem will only get worse.

Finally, in the past decade more than 200,000 Americans have died from the direct effects of drug abuse. This is twice the number of U.S. personnel killed during the Vietnam and Korea Conflicts combined.¹¹ Unknown are the thousands of Americans who are the victims of indirect drug abuse such as violent crimes, AIDS, etc.

Barry McCaffrey, currently Director of the National Drug Control Policy, compares the abuse of illegal drugs to a cancer eating at the lives of American citizens.¹² Drug abuse fosters crime and takes a tremendous toll on American society. The cost to society far exceeds monetary bounds. Drug use facilitates the spread of diseases, damages or destroys family units, and disrupts economic relationships.¹³ Therefore, it is understandable why many Americans consider drug abuse to be a national threat. Gallop pollsters have determined that Americans believe the two most important issues facing the nation are crime/violence and drugs.¹⁴

A NATIONAL STRATEGY

The United States has confronted the drug abuse problem in varying degrees since the latter half of the nineteenth century. Early laws focused primarily on illegal distribution of certain addictive drugs. These tough laws were credited with keeping the abuse of illegal drugs at a relatively low rate. Then the 1960's social revolution, with the "drugs, sex and rock and roll" slogan, propelled drug abuse to epidemic proportions.¹⁵ For two decades the national strategy for combating drug abuse vacillated between supply side and demand side strategies, with little success in either approach.

Facing a national crisis, political leadership rallied to attack drug abuse. The Reagan Administration focused the U.S. drug control effort and increased the resources committed to it.

In the first five years of the Reagan era (1981-1986) federal spending on drug control programs more than tripled from the preceding five years. Despite these efforts, drug abuse continued to increase.¹⁶ Subsequently, President George Bush and his Defense Secretary, Dick Cheney, identified the military as an untapped resource for Bush's declared "war on drugs." Cheney stated that "combating illegal drugs was a high-priority national security mission for the Department of Defense." Congress followed suit and in 1989 passed the Defense Authorization Act,

which tasked DOD with interdiction and counterdrug missions. Additionally, DOD became the lead agency for detecting and monitoring the drug flow.¹⁷ This Act is the cornerstone for current DOD counterdrug policy; it initiated a decade-long DOD counterdrug mission.

In addition, Congress in 1988 directed the President to prepare a National Drug Control Strategy and submit it annually for Congressional review. The purpose of this document is to outline the President's priorities and commitments regarding illicit drug control.¹⁸ In his 1997 National Drug Control Strategy(NDCS), President Clinton presents what he declares to be a "comprehensive and balanced approach to reduce the demand for illegal drugs and decrease their availability."¹⁹ The strategy sets five goals:

- Goal 1: Educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco.

- Goal 2: Increase the safety of America's citizens by substantially reducing drug-related crime and violence.

- Goal 3: Reduce health and social costs to the public for illegal drug use.

- Goal 4: Shield America's air, land, and sea frontiers from the drug threat.

- Goal 5: Break foreign and domestic drug sources of supply.

The fourth goal, shielding or protecting the national borders from drug trafficking, perhaps could be achieved in part by military means. The NDCS cites four ways of achieving this

goal:

- Conduct flexible operations to detect, disrupt, deter, and seize illegal drugs in transit to the U.S. and at U.S. borders.

- Improve the coordination and effectiveness of U.S. drug law enforcement programs with particular emphasis on the Southwest Border, Puerto Rico, and the U.S. Virgin Islands.

- Improve bilateral and regional cooperation with Mexico as well as other cocaine and heroin zone countries in order to reduce the flow of illegal drugs into the U.S.

- Support and highlight research and technology . . . to detect, disrupt, deter, and seize illegal drugs in transit to the U.S. and at U.S. borders.

MILITARY STRATEGY

Shielding America's borders from the drug threat continues as a theme through the Secretary of Defense's Annual Report, the Army Posture Statement FY98, Joint Vision 2010, and Army Vision 2010. As previously mentioned, the National Defense Authorization Act of 1989 significantly expanded the role of DOD in the counterdrug fight. Previously, DOD participation was minimal and usually executed through the military departments. Specifically, the 1989 act assigned three major responsibilities to DOD:

- Acting as the single lead agency for detection and monitoring aerial and maritime transit of illegal drugs into the U.S.;

- Integrating into an effective communications network the command, control, and communications, and technical intelligence assets of the United States that are dedicated to interdicting the movement of illegal drugs into the United States; and

-Approving and funding State Governors' plans for the expanded use of the National Guard to support drug interdiction and enforcement operations of the DLEA.²⁰

DOD counterdrug strategy is to attack the flow of illegal drugs along three fronts: at the source, in transit, and in the United States.²¹ Leading the DOD counterdrug effort is the Commander-in-Chief, Atlantic Command (ACOM). ACOM supports the DOD strategy by designating five counterdrug mission areas. These are:

- Provide counterdrug training, operational, and material support to drug-source and drug-transit nations.

- Support the domestic efforts of the U.S. drug law enforcement community.

- Give special support to the international cocaine strategy of the DEA.

- Detect and monitor the air and sea illicit drug transportation networks.

- Assist with the demand-reduction strategy in local communities and within DOD.²²

To support these missions the military provides DLEA a full range of technological capabilities. The spectrum of military participation in the drug war ranges from the use of highly sophisticated technical equipment to detect and track drug traffickers to soldiers on the ground conducting surveillance along high drug traffic areas.

The use of highly sophisticated military equipment is a

significant enhancement to DLEA. Air Force E3C Sentry airborne warning and control system (AWACS) have the ability to detect and track vehicles, aircraft, and ships believed to be involved in illegal drug movement from points of origin to potential border crossings. Remotely monitored sensors such as the Army REMBASS and the Marine SCAMP detect possible illegal drug border crossings on the ground. The PPS 5 and 15 ground surveillance radars enable small teams to cover large areas and detect suspicious activity at long ranges. Even some of the military's newest technology, such as remotely piloted vehicles (RPV), have been credited with aiding in some drug seizures.²³

Mid-spectrum, the military provides an array of equipment. Military helicopters provide DLEA with rapid response and the ability to conduct reconnaissance over large areas in a relatively short amount of time. Night Vision Devices are an integral part of the 24-hour surveillance capability supplied by the military. Border terrain which once offered concealment for the smugglers is now vulnerable to observation.²⁴

The most requested military support from DLEA is at the lower end of the spectrum. Military units who man observation posts or conduct long range reconnaissance missions enhance the detection process, which will hopefully result in DLEA apprehension of illegal drug smugglers. Engineer units enhance border operations by constructing roads and fences and conducting

brush-clearing operations. Additionally, military units conducting training operations near remote border areas may act as inhibitors to potential traffickers.²⁵

One of the more frequently used criteria for U.S. military employment in the latter part of the 20th century, the Weinberger Doctrine, has as one of its six imperatives the need for "clearly defined military and political objectives."²⁶ The importance of defining the endstate of any military action is vital to mission success. Without a clear picture of the desired endstate, the method chosen to accomplish the task will most likely be in error with an equally wrong application of limited resources.

Strategically, the counterdrug endstate is to reduce the impacts of drug abuse on the United States. In the most recent publication of the National Drug Control Strategy, President Clinton establishes his endstate as the "reduction of illegal drug use and the harm it causes."²⁷ Similarly, Mendel and Munger in their Army War College student text, Strategic Planning and the Drug Threat, define victory, or endstate, in the counterdrug effort as, "Reducing the level of drug abuse, drug crime, and drug related violence to a level tolerable to U.S. society."²⁸

At the tactical level the endstate defines operations along the Southwest Border with the intent to reduce the flow of illegal drugs transiting the Southwest Border by at least fifty percent while simultaneously returning to the force a more

capable unit in terms of warfighting skills.²⁹

CURRENT OPERATIONS

Joint Task Force 6 (JTF 6) is the DOD command responsible for coordinating and planning military support to DLEA at the tactical level. JTF 6 was formed in 1989 and specifically oriented on the Southwest Border. However, in 1995 the command was given responsibility for all U.S. borders including Puerto Rico and the Virgin Islands. Subsequently, the latter two areas, however, were transferred to U.S. Southern Command. Even with an AOR reduction, the command is extremely busy, primarily with the Southwest Border region.

JTF 6's responsibility is twofold. First, it must ensure the missions assigned to military units provide "war-related training" value to the units. Second, it must "support law enforcement in reducing the domestic drug scourge, [and] assist with improvements to illicit drug interdiction and intelligence."³⁰ In other words, every mission JTF 6 approves must have a counterdrug objective or outcome.

The process of requesting military support for the Southwest Border region could be a very difficult and confusing one without the help of Operation Alliance, a senior interagency coordinating

center with the responsibility for providing a focus to the counterdrug effort. The center deconflicts and coordinates the counterdrug efforts of 27 federal, state, and local DLEAs, reducing duplication and providing economy of effort. One of Operation Alliance's primary duties is to insure intelligence sharing supports the Southwest Border counterdrug effort. Also, they examine investigative approaches to drug seizures and establish operational performance measures. Physically collocated with JTF 6, this interface between DLEA and the military has significantly enhanced Southwest Border counterdrug activities.³¹

Although not perfect, the interagency effort to reduce the flow of illegal drugs across the Southwest Border has been enhanced by the close coordination and interoperability of Operation Alliance and JTF 6. These organizations help focus the numerous agencies to support the national goal of shielding the border from illegal drug traffic.

JTF 6 classifies their support to DLEAs into five categories: operational, general, rapid, intelligence, and engineer. Operational support consists of ground reconnaissance, aviation reconnaissance, or sensor employment missions. General support augments DLEA with military skills and training. Rapid Support provides immediate response to actionable intelligence by military units. Intelligence support offers the assistance of

military experts in processing and interpreting military acquired intelligence for DLEA. As previously mentioned, engineer support normally entails road repair and other border construction projects. ³²

In 1996 JTF 6 approved a total of 530 missions in support of DLEA. Of these 530 approved missions; 166 were for Intel support, 131 were for operational support, 124 were for general support, 85 were for rapid support, and 24 were for engineer support.³³ Additionally, of the 530 total missions almost thirty percent (138) involved ground missions most likely to encounter hostile drug traffickers.

Small squad-size units normally conduct these ground reconnaissance and surveillance missions. The usual objective is to spot "coyotes" or "mules." ("Mule" is a term used to describe drug smugglers who backpack the drugs across the border. "Coyotes" are drug smugglers who guide large groups, usually illegal aliens, across the border. They use the illegal aliens as a screen to escape if detected.)³⁴ Military counterdrug patrols use their unique military skills and high-tech devices to scan remote and rugged areas, thereby providing gap coverage for the Border Patrol. At present, because of the Hernandez incident, DOD has suspended these missions pending a legal and policy review.

SOUTHWEST BORDER

The importance of the Southwest Border to the United States is determined by geographic, population, and economic factors. Geographically, this vast border region consists of ten states-four U.S. and six Mexican. A total of twenty-three U.S. counties and 39 Mexican municipalities touch the border. The border state population exceeds sixty-five million, with 80% on the U.S. side.

Of the fifty-two million U.S. border residents, 26% are Hispanic, compared to the U.S. Hispanic national average of 9.1%.

Today, U.S.-Mexico trade exceeds \$150 billion. Exports to Mexico are critical to the border states, especially Texas. Texas ships 34% of their total state exports to Mexico.³⁵ This region is a principal linkage between the drug producers and the growing drug appetite of U.S. consumers.

Stretching more than two thousand miles along the California, Arizona, New Mexico, and Texas borders, this vast, sparsely populated region provides the narcotrafficker with an excellent avenue of approach into the United States. The Drug Enforcement Agency (DEA) estimates that more than 70 percent of the illegal drugs consumed in the United States cross the Southwest Border. In fact, the National Drug Control Strategy states, "If a single geographic region were to be identified as a microcosm of America's drug problem, it would be the U.S.-Mexican

border."³⁶

The three most significant U.S. illegal drugs originate from Latin America and travel north across the Southwest Border. Peru, Bolivia, and Columbia produce almost all of the coca crops to support U.S. legal and illegal consumption. Ninety percent of the marijuana imported into the United States is harvested in Mexico, Columbia, Jamaica and Belize. (Note, however, that the United States produces 25% of its own consumption). Mexico provides almost 40% of the heroin consumed in the United States.

The vast majority of these illegal drugs find their way into the streets of America via Mexico.³⁷

The Southwest Border region is one of the nationally designated High Intensity Drug Trafficking Areas (HIDTA) in the National Drug Control Strategy.³⁸ Because it is a center of illegal drug production, manufacturing, importation, or distribution, the Director of the National Drug Control Policy identifies the Southwest border as a "critical drug trafficking area that adversely impacts the United States."³⁹

Since the early sixties, federal, state, and local drug law enforcement agencies' attempts at reducing the trafficking of illegal drugs across the Southwest Border have been marginally successful at best. Unfortunately, the DLEA are unable to match the vast wealth and power of the drug cartels. With DOD's involvement, this effort is improving through a series of

coordination efforts focusing counterdrug activities in an economy of effort. These improvements come at a political cost, however, because of the historical relationship between Mexico and the U.S. military.

THE IMPACT OF HISTORY

The history of the U.S.-Mexican border, especially the role of the U.S. military, offers useful insight into Mexican perceptions of military border counterdrug missions. In many parts of the world military deployments along international borders are a signal of hostile intent. Is that the perception of the Mexican people when the U.S. conducts armed covert counterdrug patrols along the Southwest Border? Policies which appear to unjustly target people of Mexican origin, regardless of intent, may have a political backlash locally and perhaps nationally. In some cases, negative perceptions of U.S. border actions may reach deep into the Latin American communities worldwide. From this perspective, a complete understanding of the historical application of U.S. military forces in this region is prudent.

The present US-Mexican border was established as a result of a war with Mexico in 1848. Since its inception, it has been the site of various forms of U.S. military action. Most of the early

military missions were conducted to maintain the territorial integrity of the border, whereas in more recent times drug trafficking and illegal immigrations have taken center stage. But from a Mexican and perhaps a Mexican-American point of view, many of the early military actions were conducted to assert Anglo control over Mexicans. Many believe that "for many decades, the border was a tenuous social construct, established and maintained by force."⁴⁰

From the end of the Mexican War in 1848 to the Mexican Revolution in 1919, the border remained in a constant state of violence and turmoil. The majority of the population on both sides of the border was of Mexican origin. For example, when the Texas-Mexico border was established at the Rio Grande, most of the indigenous population had been citizens of the former Mexican Province of Nuevo Santander. Mexican culture transcended the Rio Grande, so efforts to enforce Anglo control were often met with resistance from both sides. Many of the border inhabitants, along with the Mexican government, believed the demarcation of the U.S. and Mexico to be the Nueces River, which had previously been the northern border of Nuevo Santander. Physical and cultural factors precipitated the unrest. Eventually a number of U.S. Army border posts were established to maintain control. This became the first act of U.S. militarization of the Southwest Border.⁴¹

In addition to perceived cultural suppression, another contentious border issue during this period was the migration of land ownership from Texas-Mexican landowners to Anglo ranchers. By 1900, most of the Texas-Mexican landowners had been displaced through "fraud, declining livestock markets, coercion, and legal battles"⁴² attributed to Anglo intervention. Numerous conflicts erupted between those of Mexican origin and Anglos. Along with the Texas Rangers, military forces were tasked with the mission of enforcing what many Texas-Mexicans thought to be unjust and unfair Anglo laws.

In addition, responding to the overflow of the Mexican Revolution, by 1916 the borders were shielded by some 100,000 federalized National Guard and active component soldiers. In retaliation for Poncho Villa's cross-border military raid into New Mexico, the United States sent General "Blackjack" Pershing into Mexico in pursuit -- for what turned out to be a year-long expedition. This expedition by the U.S. military is viewed rather contemptuously, as one might expect, as an "Anglo invasion" by Mexican historians.⁴³

The U.S. military's role along the border region finally diminished greatly as a result of border pacification in 1919. But resolving the border stabilization issue was by no means a panacea for US-Mexico relations. Another, perhaps more emotional, issue soon became the central focus in the Southwest

border region. That issue was illegal Mexican immigration.

Enforcement of immigration laws became the mission of the Immigration and Naturalization Service's Border Patrol. Formed in 1924, it became guardian of what some refer to as the U.S. "revolving door" Mexican immigration policy. When U.S. border states required low cost labor, the door was opened. When the economy turned sour, immigration laws were enforced resulting in massive deportations of Mexican laborers. One example was "Operation Wetback." During this 1954 operation, the Border Patrol apprehended and deported some 200,000 undocumented persons in a military-style roundup. Beyond the racial implications of the title, Operation Wetback was viewed as a continuation of Mexican racial oppression. Today many Mexican-Americans and native Mexicans view the U.S. immigration laws and their enforcement as discriminatory.⁴⁴

By the 1980s, America's abuse of illegal drugs had grown to epidemic proportions. Federal agencies, primarily the Drug Enforcement Agency and the Border Patrol, proved ineffective in stopping the flow of drugs across the Southwest Border. President Bush saw the military as an appropriate instrument of power in the Drug War, and he deployed them on counterdrug missions both domestically and globally. Domestic employment was mostly focused on the shipping lanes in the Caribbean and along the Southwest Border with ground deployment limited to the

latter. Since 1989, military forces have participated in counterdrug missions with federal, state, and local DELA to shield the Southwest Border.

There are several important inferences which can be drawn from this discussion of the militarization of the Southwest Border to counter a declared national threat. The first is that U.S. solutions to the triad of U.S.-Mexico border issues (pacification, illegal immigration, and counterdrug) frequently include deployment of the military or military-like organizations (Border Patrol). Second, there is historical justification for Mexican-Americans and native Mexicans to view the border deployments of military forces to enforce immigration and counternarcotics laws as discriminatory in terms of racial oppression.⁴⁵ Third, the asymmetrical relationship between U.S. and Mexico desensitizes U.S. policy makers to Mexican perspectives. Nonetheless, there is clearly historical precedent for the U.S. military to be deployed to support civilian law enforcement along the Southwest Border. And this raises yet another historical issue: the doctrine of "posse comitatus."

POSSE COMITATUS

Any discussion of the domestic employment of military forces is incomplete without addressing the Posse Comitatus Act of 1878

(Act). It is generally accepted that American culture has an aversion to military power and authority. The writers of the Constitution provided for domestic use of the military but only in extreme cases to suppress rebellion. The post Civil War militarization of the South proved counterproductive to the successful reintegration of the Southern States into the Union. The tyrannical and harsh treatment of Southern citizens by the Union Occupation Army ran counter to Constitutional intent. So by 1878 the Congress deemed inappropriate the employment of the military to enforce civil laws, and so created the Posse Comitatus Act restricting such use.

The Posse Comitatus Act (18 US Code Section 1385) states: "whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be . . . [punished]." (The Air Force was included in the law in 1956.) The Navy and Marine Corps are not mentioned in the Act, but are held subject to it under DOD Regulation. The Coast Guard is exempt during peacetime, as are National Guard forces operating under the state authority of Article 32.

This Act provides a constraining framework as DOD formulates policies concerning domestic military support to counterdrug efforts. The perceived application of the Act to domestic

military patrols demands public attention since the political success of any American military mission depends upon "strict conformance with the legal framework established by the Constitution and federal laws."⁴⁶ However, the legal framework for domestic employment of the military is confusing at best. A noted military lawyer said it best: "At most . . . the use of military resources to enforce civilian law can be described as a developing but unsettled area of constitutional law."⁴⁷

In the Twentieth Century the Act received little attention until the sixties when considerations were given to using the military to quell domestic unrest. Then, in 1973 the greatest legal challenge to Posse Comitatus came as a result of an Indian uprising at the hamlet of Wounded Knee. The primary issue was the legal interpretation of indirect versus direct participation of military forces in civil law enforcement. The result of several court cases from Wounded Knee was inconclusive. In 1980 a special Attorney General's Task Force charged with the review of Posse Comitatus concluded that " . . . the parameters of the Act are substantially untested and remain unclear."⁴⁸

As the country entered the 1980s the national leadership was facing both a drug problem of epidemic proportions and a law which was legally vague regarding military support to the counterdrug effort.⁴⁹ In 1981 the American people and some members of Congress demanded drastic action. Congress responded

with several amendments to Posse Comitatus. It was clear from these actions that Congress' intent was to involve the military in the counterdrug effort, yet retain some limits on the military's involvement in law enforcement.

The 1981 amendment to the Posse Comitatus Act relaxes the original restrictions on military involvement in civil law enforcement. Specifically, it allows the military to provide civilian law enforcement officials with any information collected during normal military operations which relate to civil law violations (section 371); to make available equipment, base facilities, or research facilities to law enforcement officials for the purpose of law enforcement purposes (section 372); and to assign members of the military to train law enforcement officials in the operation and maintenance of loaned equipment and to provide advice relating to the equipment or facilities (section 373). The amendment also specifically prohibits military personnel from direct participation in search and seizure arrest or similar activities (section 375) and prohibits military assistance when, in the opinion of the Secretary of Defense, it adversely affects military preparedness (section 376).⁵⁰

The impact of this amendment on a somewhat reluctant military was significant. By 1984 almost 10,000 requests from civilian law enforcement agencies had been honored by DOD.⁵¹

Even with the Amendments to Posse Comitatus, the military

had, in principle, an objection to its use in the counterdrug effort. In 1988 then Secretary of Defense Carlucci advised Congress that, "The Armed Forces should not become a police force, nor can we afford to degrade readiness by diverting badly needed resources from their assigned missions."⁵² He thus candidly and realistically stated his views on military counterdrug involvement. He believed that military forces were not a panacea. He claimed, "all the eradication and interdiction programs in the world will not be effective as long as the demand for illegal drugs in the country is so great."⁵³ Many in the military leadership agreed with the Secretary, so they used Posse Comitatus as an argument against military involvement in the domestic counterdrug fight.

Despite DOD advice, Congress enacted the National Defense Authorization Act of 1989. This Act directs the DOD to be the "lead agency for detection and monitoring of air and sea drug trafficking across our borders" and to "integrate the command, control, communication, and technical intelligence assets dedicated to drug interdiction into an effective communications network . . . "⁵⁴ For the first time Congress appropriated \$300 million specifically for drug interdiction efforts. In direct confrontation with over 100 years of the Posse Comitatus Act, these recent Congressional actions put counterdrugs on the national security agenda, directly involving the military

instrument of power in civil law enforcement.

POLICY EVALUATION

Secretary Cohen's decision to halt the employment of military counterdrug patrols along the Southwest Border reveals his reluctance to support such a risky policy. In deciding whether to reinitiate such employment, his systematic examination of this policy must convince him (and he must then convince the American people) that the resources DOD expends to execute this policy are worth the outcome.

There are a variety of methods by which one can evaluate a policy. All provide unique perspectives and diverse viewpoints. In this case, the recommended method for evaluation uses three criteria: First, is the policy acceptable legally, politically and militarily? Second, is the policy adequate in scope and nature to accomplish the task and complement the endstate? And third, is it feasible to carry out the policy with the available resources? These criteria of acceptability, adequacy, and feasibility facilitate a broad, detailed examination of this unique policy.

First, acceptability: The employment of military forces in

a ground surveillance role must be acceptable legally, politically, and militarily. Legally, it must abide by the intent of existing laws. The litmus test for this particular policy is whether or not it conforms to the intent of Posse Comitatus. Politically, the policy must have the support of the American people; in this case, it must be acceptable as it relates to international policy with Mexico and Latin America. Militarily, the outcome of the policy must be acceptable to the military, an institution within a democracy.

Posse Comitatus presents a legal challenge to the domestic employment of military forces along the Southwest Border. The first part of this legal challenge is to determine whether or not the policy conforms to the intent of Posse Comitatus. Secondly, in view of court rulings from the Wounded Knee trial, one must make a clear distinction between indirect support to DLEA and direct enforcement of civil law.

A noted military analyst commenting on Posse Comitatus has observed that, "There is very strong claim that we are already pressing the bounds of what is constitutionally desirable."⁵⁵ For decades, Posse Comitatus has stood as a legal boundary between the nation's protectors, the Armed Forces, and those enforcing civil law. The intent of Posse Comitatus is "as the clear demonstrable indicator of the properly circumscribed limits of a civilian-controlled army in a representative democracy."⁵⁶ This

steadfast boundary has been blurred by the recent congressional amendments to the Act and by counterdrug policies which have thrust military personnel with little civil law training into direct confrontations with hostile drug traffickers. The purpose of Posse Comitatus is essentially to prevent military forces from acting against U.S. citizens on American soil. A strict interpretation of the original Act leads to the conclusion that domestic military employment along the Southwest Border is inappropriate and presents legal jeopardy. The Hernandez family in all probability agrees with this conclusion.

The latest legal reasoning restricts the military to providing only indirect support to DLEA in the counterdrug effort. The opinions from the Wounded Knee court cases provide the basis for this restriction. In most types of DOD assistance to counterdrugs crossing this narrow line is never in question. Intelligence gathering, DLEA training, and border construction missions clearly fall into the indirect category. However, categorizing the missions of armed military patrols in remote border areas becomes more difficult. What starts out to be a passive border observation mission can quickly turn into direct hostile confrontation. The significant increase in drug and alien smuggling in the Southwest Border region has resulted in an escalation of violence directed at law enforcement agencies. These incidents range from rock throwing to gunfire; they occur

almost daily. The most violent acts normally occur outside Ports of Entry (POE) along the vast and remote border areas.⁵⁷ In these areas, military patrols confront the most dangerous and violent narcotraffickers. Even with strict ROE, the situation may justify direct action by military forces. In such cases, military patrols are enforcing civil law in direct violation of Posse Comitatus.

Political acceptability along the domestic front varies. On one side are those who view the counterdrug effort as a war which must be won at the borders. A Texas border resident laments that, "It's we private citizens who have upheld the integrity of the border . . . and we can't do it anymore. We're losing America."⁵⁸ Conversely, some members of the border community, especially those of Mexican origin, believe they are "treated like criminals simply because they live on the border."⁵⁹ Like most U.S. political issues, those most affected by the issue are most interested, while most others are apathetic.

Perhaps more important than the domestic aspect of this policy is its effect on U.S.-Mexico relations. The relationship between the U.S. and Mexico is complex but important. Economically, U.S. trade with Mexico has more than doubled from 1990 to 1996. U.S. exports account for three quarters of all Mexican imports.⁶⁰ Demographically, 26% of the U.S. population along the Southwest Border is Hispanic with cultural ties to

Mexico.⁶¹ Diplomatically, resolving mutual issues such as illegal immigration, illegal drugs, and illegal firearms distribution are better resolved in an atmosphere of trust and confidence. It is certainly in the best interest of the U.S. to foster and protect a positive relationship.

However, the military's past participation in the Southwest Border region could lead Mexicans to perceive U.S. military border actions as oppressive. This becomes more evident in statistics that reveal that military supported DLEA interdiction efforts have had very little effect on the flow of illegal drugs into the U.S. This ineffectiveness leads many Mexicans to question the U.S. government's actual political motives.⁶² Are U.S. motives to stop illegal activities at the border? Or, as many Mexicans believe, are they a continuation of oppressive actions toward those of Hispanic origin? Some will argue that if the motive is to stop criminal activity along the border, then why is the U.S. the largest illegal arms exporter to Mexico?⁶³

The Mexican sensitivity to these border deployments becomes evident in light of U.S. border militarization dating back to the Mexican War. In the previous discussion on Southwest Border history, it is clear why the Mexicans regard U.S. military employments along the border with a certain amount of concern. In a recent Latin American regional study seminar, the Mexican International Fellow to the Army War College perceives the

greatest threat to Mexican sovereignty as the U.S. These perceptions are institutionalized at the Museum of Foreign Intervention in Mexico City. This museum purports to document numerous U.S. infringements on Mexican.⁶⁴ Given these deep-seated feelings, it is perhaps understandable why the deployment of U.S. military forces along the border creates adverse reactions from the Mexican government and the Mexican people.

To be acceptable to the military the cost of military action must be worth the benefit. In other words, outcomes, whether intended or not, must counterbalance the overall results of the policy. The first reported unfavorable incident of direct military action came on 13 December 1989, when a joint Marine-Border Patrol counterdrug patrol engaged suspected narcotraffickers at the Tucson-Nogales, Arizona, border region.⁶⁵ This confrontation lead to 300 acres of federal forest land being burned, ignited by a military flare. The Hernandez incident demonstrates another outcome which is much more undesirable and tragic. The significant increase in drug and alien smuggling in the Southwest Border region is reason to conclude that such outcomes are probable. More significant for military counterdrug patrols is that the most violent acts normally occur outside Ports of Entry (POE) along the vast and remote border areas.⁶⁶ Accepting such consequences may not be in the military's best interest, especially when the flow of drugs across the Southwest

Border remains relatively stable.⁶⁷

Next, consider adequacy of the policy: The policy should be broad enough in scope and concept to accomplish the assigned task.

The concept of "support" is the key to understanding the military's role in the counterdrug effort. By law, the military responds to DLEAs' written requests for only those missions with a drug nexus. Once approved, military forces assume a support role.

Forces performing surveillance and recon, which are the primary missions given to units deployed on the border, become part of the drug interdiction process, a process involving a series of activities- surveillance, identification, pursuit, and apprehension. Legal and regulatory requirements prevent military forces from participating in either pursuit or apprehension. Yet, by definition, successful interdiction results in some type illegal drug seizure. This process has not provided the desired results. DOD statistics indicate a less than ten percent pursuit rate from DLEA of detections made by DOD assets. More alarming, of those detected, less than one percent are apprehended.⁶⁸ One conclusion from these statistics is that the military's efforts, at least in the Southwest Border region, have minimal impact on drug seizures.

Even if interdiction rates improve, the fact remains that

military units patrolling remote areas contribute little to the overall counterdrug effort. The vast majority of illegal drugs entering the U.S. do not transit these remote border areas. DEA assesses the most substantial threat in narcotrafficking as containerized commercial cargo.⁶⁹ Estimates indicate that eighty-five percent of the illegal drugs entering the U.S. travel via legitimate means. In other words, they enter in commercial containers through the 38 Ports of Entry along the Southwest Border.⁷⁰ But military interdiction at these high traffic areas would necessarily put soldiers in direct contact with large numbers of civilians, while acting in a "law enforcement" role.

Looking at JTF 6's operations in the Southwest Border region there seems to be divergent results. Without argument, DLEA depend heavily on military assistance⁷¹. In FY96 DOD translated more than 12,000 pages of documents, trained 4,000 law enforcement officers, constructed or improved 23 miles of roads and eight miles of border fence, and upgraded six law enforcement facilities at a total saving of \$5.4 million to law enforcement agencies.⁷² Without this assistance, DLEA efforts to stop illegal drug trafficking would be severely reduced. On the other hand, the contributions of military patrols are pale in comparison to these other missions and there is little evidence to support their real value to DLEA.

The value counterdrug military missions have to unit wartime

proficiency is also questionable. "In a report on military counterdrug surveillance, the GAO indicated that the differences between the tactics and equipment of drug traffickers and those of a potential enemy's combat forces are so great that the training value of counterdrug operations was often marginal"⁷³ Many commanders believe these missions detract from their war-fighting capability.⁷⁴ Thus the ground reconnaissance and surveillance policy employs military units in areas which have little payoff value to DLEA in terms of support or productivity, and provides little training value to the unit.

Third consider feasibility: Given limited DOD resources, can this policy serve the goal of reducing the supply of illegal drugs? Is this policy feasible in terms of available resources for the assigned mission? In this case, is it feasible for military surveillance and roving patrols stationed along the Southwest Border to reduce the northward flow of illegal drugs?

In FY96 JTF 6 reported training a total of 1525 military personnel.⁷⁵ These numbers should alarm anyone who believes military patrols have an impact on reducing the illegal drug trafficking along the Southwest Border. Given the vastness of this 2000 mile border, 1525 personnel will provide limited coverage for a relatively short period of time. Even if all the patrols were mobile, which most are not, the task would still be overwhelming. It appears as if this token effort is more for

appearance than actual productivity.

Given more forces, these military patrols could significantly hamper illegal drug flow into the U.S. However, the feasibility of increased resources is unlikely. Global commitments continue to overextend U.S. military units. Since the end of the Cold War, Army personnel reductions have topped 36%, budget reductions are at 26%, and PERSTEMPO has increased 300%.⁷⁶ Marine Forces, who comprise the other counterdrug ground force component, have encountered similar circumstances. A recent Congressional report cited a severe shortage of infantry personnel, which prevents infantry units from training at peak proficiency. These are the same units the military deploys to the Southwest Border for counterdrug patrol missions. Furthermore, units are required to postpone scheduled training due to low intensity missions, such as counterdrugs.⁷⁷ Given these resource reductions and global commitments, is it feasible for military forces to continue their support of counterdrug patrol missions? The logical conclusion is that there are better and more vital missions for these forces.

CONCLUSION

"Five years and billions of dollars later, the results of the military's effort have been ambiguous. The DOD counterdrug

budget for FY 93 exceeded 1.1 billion yet there is little empirical evidence to suggest that the armed services' involvement in the war on drugs has reduced the availability of illegal drugs in the US⁷⁸ Although dated, this observation expresses the feelings of many who see little progress in the "War on Drugs" and who would recommend the counterdrug effort be without DOD involvement. This argument is mistaken, however, because with respect to the counterdrug supply strategy, DOD's contributions cannot be underestimated. The western Caribbean air and sea campaign has blocked the free flow of cocaine into Florida and the Southwest.⁷⁹ Federal and state DLEAs in conjunction with the military, continue this model program with great success. And many of the indirect support missions conducted along the Southwest Border make significant contributions to the overall national goal of reducing the flow of illegal drugs into the United States. DOD efforts are very successful in many areas and should be continued unless and until DLEA can be adequately funded to accomplish these tasks.

However, one must conclude that the policy of employing armed military patrols along the Southwest Border is flawed and must be rescinded. This policy is unacceptable because it violates the original intent of Posse Comitatus, upsets the delicate diplomatic balance between Mexico and the U.S., and adversely affects the military. The policy also does not

accomplish significant tactical objectives and contributes little to overall national goals. Accordingly, the resources dedicated to this policy produce little payoff and should be shifted to other more productive and less risky missions.

Today the military finds itself reviewing the policy of employing armed military units along the Southwest Border as part of the national counterdrug effort. The Hernandez incident, while tragic, has rightly forced the national leadership to examine the appropriateness of a policy which is likely to repeat such a tragedy. Unfortunately, rather than recognizing the flaws of this policy and eliminating it as a course of action, Secretary Cohen simply has ordered that all counterdrug patrols be unarmed.⁸⁰ This is certainly a bridge too far. A far better policy would be for Secretary Cohen to "just say no" to military counterdrug ground patrols along the Southwest Border.⁸¹

ANNEX A: CENTER OF GRAVITY

Center of gravity(CG) is a term used mostly in military circles, primarily for developing plans to counter enemy forces. Countering a threat such as drug abuse requires identification of the center of gravity. Clausewitz called the center of gravity "the hub of power and movement on which everything depends."⁸² Current Army doctrine describes the center of gravity as "that characteristic, capability, or location from which enemy . . . forces derive their freedom of action, physical strength, or will to fight."⁸³ There is, however, disagreement about whether the center of gravity is limited to a single component. Often it seems that multiple centers of gravity feed enemy forces, and this is the case regarding transnational drug cartels.

The consensus among present leadership is that there are two counterdrug centers of gravity. Current policy describes balancing the approach to the drug threat by reducing demand and supply.⁸⁴

Recently, the supply reduction strategy has become an issue of national debate. The goals of this strategy are to create a physical shortage of illegal drugs which will theoretically increase the price and force consumption down. Some argue this strategy will not work. For example, annual cocaine production is estimated at approximately 700 metric tons. Estimates are

that half, or 300 metric tons, are interdicted or diverted from U.S. shores. Unfortunately, this is not a complete success story. In excess of 300 metric tons completes its journey to American cities. This is more than enough to satisfy the U.S. demand and keep prices level⁸⁵. In fact, findings suggest that the number of drug users has remained relatively constant while prices have actually decreased.⁸⁶ A RAND corporation counterdrug analysis demonstrated little relationship between supply reduction and price fluctuation. Their analysis reveals that the largest portion of the street price is added after the drug enters the U.S. A fifty percent reduction in supply thus translates to only a three percent increase in street price. Their conclusion is that "Even an overwhelming successful U.S. [supply reduction] strategy would thus contribute little to the ultimate aim of U.S. policy of raising cocaine prices and reducing consumption."⁸⁷ A GAO official testifying before Congress comes to the same conclusion: "Interdiction has made no significant contribution to the national goal of reducing supplies."⁸⁸

The stated policy of a balance approach between supply and demand reduction is not evident in the allocation of monies. Since 1991, demand reduction has never exceeded eleven percent of the overall counterdrug budget. One must recognize the synergistic effect between supply and demand strategies.

However, current policies which clearly favor supply reduction appear to focus on the near term rather than the longer, potentially more successful, long term approach of demand reduction.⁸⁹ Drug education, treatment, rehabilitation, and community action programs are demand initiatives which are proven successes at community level.⁹⁰

Many of the drug producing countries experience the drug problem not only socially but also economically and politically.

They blame the U.S. drug appetite for their domestic problems. In 1989, Columbian President Barco stated publicly that, "those of you who depend on [drugs] have created the largest, most vicious criminal enterprise in the world."⁹¹ Perhaps Americans need to determine the CG in order to revise their strategies to focus on an achievable, decisive goal.

There are two candidates which may be considered as possible centers of gravity. The first is profit. People join the illegal drug enterprise to make money. From the Andean farmers who raise the coca plants to feed their families to the drug cartel kingpins, money is the motive. Remove the profit and the business doesn't seem as lucrative considering the possible legal risks. This seems to be a particularly vulnerable area for the drug cartels " ...because the same volume of business that insulates them from damage due to large cocaine seizures requires that they take considerable risk with their cash."⁹² Perhaps,

controlling the international money-laundering business would be more effective than supply reduction. Certainly, one could argue that it is more politically acceptable, both domestically and abroad.

The second possible candidate as a center of gravity is the social acceptance of drugs by the American people. "Will" is certainly a possible center of gravity in many military operations and should not be discounted in the counterdrug war. In the early 1900s, the abuse of opium had gained national attention, so Congress responded with the Harrison Act. This was the first law prohibiting the sale of illegal drugs. However, some argue that this Act had very little effect on illegal drug abuse. Indeed, the U.S. Department of Justice claimed that "When the Harrison Act became law in 1914 the use of opium had largely died out."⁹³ But if the law had little effect, what stopped the illegal drug abuse? By some accounts success is attributed to a change in societal norms. Many people associated the abuse of drugs with the increase in U.S. Chinese criminal activity. The association of illegal drug abuse with unacceptable social behavior became the catalyst for public outcries against illegal abuse. In other words, the American people deemed illegal drug abuse an intolerable action. Thus, opium addiction ceased to be a societal problem. Today, there are numerous examples of local communities rebounding from the

ills of drug abuse because of their unwillingness to tolerate that type of drug environment.⁹⁴

Creating a successful counterdrug strategy is dependent upon first identifying the true center of gravity of the drug "enemy." This has not yet been accomplished. Because it hasn't, many or even all of the actions currently being undertaken in the "war on drugs" may be misdirected, ineffective, or even counter productive.

Word Count: 8,835

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