

USAWC STRATEGY RESEARCH PROJECT

SAME MISSION, DIFFERENT ROLE:  
THE NATIONAL GUARD AND HOMELAND SECURITY

by

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## ABSTRACT

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Protecting the safety of our citizens and our country is a vital national interest. The terrorist attacks of September 11, 2001 brought into focus the threats posed by terrorists to our homeland itself. Since these tragic events, the United States has established the Department of Homeland Security and the Department of Defense has created a combatant command in NORTHCOM. Yet, the country continues on a transformational path to determine the best ways and means to protect the homeland. The National Guard is one organization that should be an integral component for homeland security. There is a historical framework that justifies and, in fact, promotes the extensive inclusion of the National Guard in homeland security. Further, the National Guard retains the constitutional authority to function in key capacities critical for effective homeland security efforts. This Strategy Research Project will delve into the historical and legal frameworks that facilitate and project the National Guard as an integral component of homeland security. Discussion will extend to potential roles and responsibilities of the National Guard and the impact of homeland security missions on current federal and state requirements. Ultimately, the purpose is to answer the question of: Should the National Guard be an integral component of homeland security and if so, to what extent?



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## SAME MISSION, DIFFERENT ROLE: THE NATIONAL GUARD AND HOMELAND SECURITY

Defending our Nation against its enemies is the first and fundamental commitment of the Federal Government<sup>1</sup>

—President George W. Bush

As the sun rose over the east coast of the United States on the morning of September 11, 2001, America slept peacefully. By noon, the nation was at war. Yet, this war is different. The terrorist attacks in New York, Washington D.C., and Pennsylvania, attacks on our very Homeland, threaten our vital national interest of Homeland Security. “Now, with the imminent threat from terrorists directly to the homeland and its citizenry, the homeland [itself] is a theater of war.”<sup>2</sup> The resulting actions have included the extensive deployment of the National Guard both overseas for the warfight and providing security here at home. The effect of this heavy reliance on the National Guard and the need to determine the future roles of the Guard is the subject of this paper. This paper will also briefly define and distinguish the differences between homeland security and homeland defense, trace the historical consequence and critical contribution of the National Guard in the realm of homeland security, outline statutory differences between the National Guard and active military, and ultimately discuss potential concepts and changes for employment of the National Guard.

Prior to September 11, 2001, the national strategic objective of protecting the homeland was not fully defined. For most of the 20<sup>th</sup> century, the Guard's role focused on the defeat of our enemies on far and distant shores. As such, the Department of Defense, with its associated military assets, was the lead federal agent designated to fight and win the nation's wars. The employment of these assets was the strategic concept to achieve the objective of protecting the homeland. After September 11, 2001, and the subsequent realization that terrorism will consist of both internal and external threats, the Department of Homeland Security and the Department of Defense each have primary roles in protecting the homeland. The delineation of responsibilities can be found in the definitions of homeland security and homeland defense.

*The National Strategy on Homeland Security* defines homeland security as: “. . . a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”<sup>3</sup> The Department of Defense defines homeland defense as: “. . . the protection of U.S. territory, domestic population and critical infrastructure against military attacks emanating from outside the United States.”<sup>4</sup> In the context of these definitions, the objectives or ends for the Department of Homeland Security are to prevent attacks within the U.S., reduce U.S.

vulnerability, and conduct consequence management. The objective for the Department of Defense is to protect the U.S. from outside threats. The difference in these definitions sets the parameters for the employment of military forces in protecting the homeland. This places the Department of Homeland Security as the lead federal agency for homeland security and the Department of Defense as the lead federal agency for homeland defense. Thus, the Department of Defense becomes a supporting agency for protecting the homeland within the United States. These distinctions strike to the very heart of federalism and provide the framework for significant National Guard involvement in homeland security.

The National Guard, a military organization that formally traces its roots to the Massachusetts Bay Colony of 1636, is uniquely positioned to play a key role in homeland security. As the first colonists arrived in the New World, they brought their military experiences and traditions of homeland security with them. To protect themselves from hostile natives, these experiences, typically reflective of the traditions gained from England, led the colonists to establish local militias and build wooden forts. On December 13, 1636, the Massachusetts Bay Colony, one of the more prosperous colonies, formally established and organized fifteen separate militia companies into three regional regiments. This day is now recognized as the birthday of the National Guard. Over the subsequent years, other colonies followed suit and established their own militias. These militias were not standing armies, but rather individuals that banded together, provided their own arms and uniforms, chose their own leaders and conducted minimal collective training to protect and defend their settlements, properties and families. The main efforts were to protect their "small" homeland, the foundation of homeland security.

Fighting the Indians throughout the remainder of the 17<sup>th</sup> century and the first half the 18<sup>th</sup> century, the militia foundation remained essentially the same. This changed during the French and Indian War (1754-1763) when militia volunteers raised separate regiments to join with the British in repelling the aggression. As the Revolutionary War approached, it is important to note that for nearly 150 years (1636-1775), the mission of the militia was to provide homeland security, first by settlement and then by region.

The Revolutionary War began on April 18, 1775 with an engagement between Massachusetts militia and British forces at Concord and Lexington. Within two months, "... the Second Continental Congress acted on June 14, 1775 – three days before Bunker Hill – to create the Continental Army, America's first standing force of Regulars."<sup>5</sup> Recognizing the importance and relevance of the militia, the Congress validated the militia organization and



“produced a dual military system”<sup>6</sup> still in existence today. This became the first national acknowledgment of the importance of the militia to homeland security.

Throughout the Revolutionary War, both in the North and South, the Continental Army would enlist the support of the militia and citizen-soldiers. The Continental Army was not large enough to secure all of the territory, so the militia handled emergencies in their region. Southern militia was used for specific southern campaigns to augment the Army and provide key information and knowledge of their region. On July 4, 1776, with the signing of the Declaration of Independence, the British officially became an enemy occupying the American homeland. As a result, through the Revolutionary War, the regular or active duty military was established; the militia and citizen-soldier was recognized as important, relevant and critical to homeland security; and the integrated use of both forces for protection of the homeland became an established practice.

Also during the Revolutionary War, the Continental Congress began the process of establishing a new, national government. The Articles of Confederation, ratified in 1781, served as the basis for the National Government recognition of the militia’s role. Article 6 stated:

. . . but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.<sup>7</sup>

This was the beginning of the debate between the Federalists and the Republicans (or Anti-Federalists) that raged until the Constitution and Bill of Rights are written and ratified. The Federalists, like the British, believed in a strong central government with a large, powerful, regular military under its control. The Republican faction, with their traditional fear of a large standing army, believed in a more limited central government with greater State rights and control. Article 6 was philosophically closer to the Republicans. It provided for a militia responsive to the State, but available for national or common defense. Both responsibilities associate the militia as the key element in homeland security. As with most significant issues, when the defense section of the Constitution was finally agreed to, the framers of the Constitution reached a compromise. Article I, Section 8 of the Constitution reads:

The Congress shall have the power to . . . provide for the common defense . . . ; To raise and support armies . . . ; To provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; [and] To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of officers, and the authority of training the militia according to the discipline provided by Congress;<sup>8</sup>

Further, Article II, Section 2 reads:

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States.<sup>9</sup>

These Articles attempt to strike a balance between federal and state government and between the executive and legislative branches of the federal government. "The Constitution chartered the militia as an institution to "execute the Laws of the Union, suppress Insurrections, and repel Invasions" and all but explicitly identified the militia as an organization based on State's rights."<sup>10</sup> This further highlights that the militia is integral to homeland defense.

In 1792, two legislative acts intended to implement the militia clauses passed Congress, the Uniform Militia Act and the Calling Forth Act. The Uniform Militia Act, intended to provide for a common, uniform militia, was instead an ineffective gesture that "had the weight not of law, but of a recommendation to the states."<sup>11</sup> The slight guidance the Act provided was the extent of central government direction given to the militia for the next 111 years.

The Calling Forth Act, on the other hand, had weight and much more significance. It delegated, to the President, the authority to "call forth" as much militia as deemed necessary to repel invasions, suppress insurrections and execute the laws. While no restrictions were placed on the President regarding his authority for repelling invasions, Congress recognized the unique nature of suppressing insurrections and executing the laws. Therefore, for the President to "call forth" the militia, Congress required that a federal judge must assert that civil authority is exhausted and given that, the President must proclaim or order dispersal and give the people the opportunity to disperse. Only if they fail to disperse can the President call forth the militia. Overall, the two 1792 Acts reiterate the predisposition at the national level to maintain a small regular, standing military and rely on the muster of the militia for the common defense and particularly the security of the homeland. It should also be noted that the requirements established by the Calling Forth Act set the initial framework used today when the President wants to provide a response within the borders. In 1792, a federal judge would assert that civil authority is exhausted. Today, the state must specify that their capabilities are overwhelmed and request federal national support.

The 19<sup>th</sup> century saw the enrolled militia contribute significantly in the War of 1812 and then slide into neglect. When the Mexican War erupted, the nation relied not on the enrolled militia from the states, but on volunteers. Though these volunteers tended to come from the ranks of the enrolled militia, there was not a calling forth of the militia. As the Civil War approached, the enrolled militia began to assume a prominent role in the initial stand-up of

forces for both the North and South. However, it soon became evident that the large manpower requirements for both sides could not be provided solely by the militia and conscription and volunteers would make up the bulk of the forces. The militia again faded to the background.

In 1898, the President called for the states to raise volunteers from existing militia organizations to fight overseas in the Spanish-American War. Since the legality of the militia, enrolled or voluntary, fighting overseas had not been determined, the militia members had to specifically volunteer for foreign duty. Fighting admirably in Cuba, Puerto Rico and the Philippines, this employment of the militia provides the first historical example of organized militia providing forces to fight and win the nation's wars overseas. It sets the stage for a significant evolution of the militia.

"The Militia Act of 1903 [normally referred to as the "Dick Act"] . . . repealed the antiquated Militia Act of 1792 and converted the volunteer militia into the National Guard."<sup>12</sup> Congressman Charles W.F. Dick, a veteran and member of the Ohio militia, sponsored the legislation that provided increased federal funding to the militia in exchange for compliance with federal standards for training and organization. It established an organized militia (National Guard) and a Reserve Militia (available males not organized). Further, the Guard could be called forth for up to nine months, but only within the borders of the United States. Though exceedingly significant in the formal establishment of the Guard, the Dick Act did little to define the roles and missions of the Guard. In 1908, now-Senator Dick sponsored the Militia Act of 1908 that eliminated the 1903 restriction on overseas deployment and length of call-up.<sup>13</sup> This became the first formal designation of the National Guard as a force to be used for more than homeland security. The combination of these Acts set the stage for future legislation that would firmly entrench the National Guard as a key component of homeland security and as a force to include in the warfight.

It was not until the National Defense Act of 1916 that a definitive framework was legislated for the National Guard. This sweeping legislation not only reorganized the regular Army, but established the National Guard as the principle trained reserve. Congress ensured that Guard soldiers and units could serve overseas by adopting a process that drafted individual Guardsmen into the Regular Army and then assigned them to their respective, organized State unit. Each Guardsman was also required to swear an oath to the Constitution and the President. With the 1933 amendment to the National Defense Act, Congress formally constituted the National Guard as a reserve component of the United States and eliminated the need to call-up or draft individuals. This is the signature Act that removes the focus of the

National Guard from homeland security and places it on the Guard as the major combat reserve of the United States Army.

The National Guard served with distinction through the ensuing wars, including both world wars, the Korean War and both Gulf wars. The legislation of the early 20<sup>th</sup> century firmly entrenched the Guard as integral in providing for the common defense, especially in fighting and winning the nation's wars on foreign soil.

To this point, this paper has focused on the militia and Guard serving in its national or federal role. Originally, however, it was responsive to settlements and colonies as a protective force. The militia put down insurrections, secured State property, and enforced State laws. From the Whiskey Rebellion of 1794 to the civil disturbances of the 1960's and to its recent role of guarding critical infrastructure in the 2000's, the State role of the Guard has expanded throughout the years. In the last 50 years, the use of the Guard to quell riots, protect key facilities and infrastructure, secure/protect key events and sites, provide disaster relief and consequence management, conduct search and rescue and provide community support has risen dramatically. Without a doubt, first the militia and now the National Guard has historically proven itself to be absolutely critical to homeland security.

As such, in its collective wisdom throughout the years, Congress has adopted other legislation that has both direct and indirect bearings on the roles of the National Guard and the regular, active duty military in homeland security and homeland defense. The first and most distinctive occurs as a result of The Posse Comitatus Act of 1878. Written directly as a result of the U.S. Army occupation of the South following the Civil War<sup>14</sup> and the exercise of civil authority by the Army on the western frontier, the act 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 Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."<sup>15</sup>

This act virtually precludes the use of regular, active military personnel in law enforcement roles, including "prohibition from interdicting vehicles, vessels and aircraft; conducting surveillance, searches, pursuit and seizures, or making arrests on behalf of civilian law enforcement authorities".<sup>16</sup> Congress has passed a number of exceptions including The Insurrection Act, the Stafford Act, counter-drug assistance, and assistance in crimes and/or emergency situations involving weapons of mass destruction.<sup>17</sup> It is important to note that each of these exceptions state that the regular, active military (i.e. Department of Defense) supports a lead federal or state agency and does not violate state sovereignty. Since Homeland Security is focused on prevention within the United States, Posse Comitatus applies. The Department of

Defense, with its large federal military contingent, cannot and should not be the lead agency for Homeland Security.

Enacted August 10, 1956, Title 10 and Title 32 of the United States Code establish key differences between the regular, active duty Armed Forces and the National Guard, especially as it relates to the distinction of federal and state duty. Recognizing the intrinsic value of employing the National Guard in times other than federalized service, Congress enacted legislation that establishes military duty statuses that allow for employment of forces within the several States and Territories without violation of State sovereignty. Title 32, Section 501 of the United States Code states that “[t]he training of the National Guard shall be conducted by the several States and Territories . . .”<sup>18</sup> Federally funded and organized, the National Guard is controlled by the Governor of the State or Territory until such time as “. . . Congress determines more units and organizations are needed for the national security than are in the regular components of the ground and air forces, [then] the Army National Guard of the United States and the Air National Guard of the United States . . . shall be ordered to active Federal duty and retained for as long as needed.”<sup>19</sup> As a result, until federalized by the President, the National Guard of the several States and Territories trains and functions at the direction of the Governor.

The combination of the Posse Comitatus Act and Title 10 and Title 32 United States Code establishes the conditions in which both active duty military and National Guard forces can be employed for homeland security.

Title 10 USC applies to all regular, active duty military forces and National Guard units and/or personnel mobilized by the Secretary of Defense as a result of presidential call-up or to perform duties overseas. This status is a federalized one. As such, active duty military and National Guard units and personnel fall under the Posse Comitatus Act. This federal status would preclude the use of either for homeland security missions that require direct law enforcement actions.

Title 32 USC applies to National Guard units and/or personnel both in a peacetime training environment and, more importantly, when called to active duty in a federally funded status but under the command and control of the state governor. By leaving the National Guard under the command and control of the governor, Congress adroitly sidesteps the Posse Comitatus Act and provides a mechanism for the employment and involvement of military forces in the United States. “As agents of their State, they are not subject to the provisions of the federal Posse Comitatus statute, and can be granted police powers.”<sup>20</sup> This is one significant impetus for the National Guard to be integrally involved in homeland security. Recent expansion of Title 32 United States Code allows for National Guard officers to command and

control Title 10 federalized forces. This allows an uninterrupted chain of command from the governor and leaves the regular, active military in a support role. The expansion does not allow federalized forces to have law enforcement powers.

National Guard units and personnel have one additional duty status aptly called State Active Duty. In this status, National Guard units and/or personnel are called to duty by the governor of the state or territory in accordance with the laws of that state or territory. Funded fully by the state or territory, this duty status provides the governor with military forces to use within the state boundaries for tasks including law enforcement, security, and consequence management. Governors have used the Guard many times to protect critical state infrastructure, provide security at high profile events and in response to national disasters from hurricanes to wild fires. The Guard experiences with consequence management and recovery as well as protection of critical assets link directly with key tenets of homeland security.

As shown above, the Department of Defense and specifically its active military forces are virtually prohibited by Posse Comitatus from performing in a law enforcement role within the United States. The National Guard, through Title 32 and State Active Duty, does not have that restriction. Yet, there are impediments to National Guard participation in homeland security. Prior to the early 1990's, federalization of National Guard units typically centered on major conflicts, one notable exception being the Vietnam War. Participation in World War II, the Korean War and the first Gulf War was offset by long periods of state control. Since the first Gulf War, the Guard has functioned at a heightened level of federal operations including deployments to Bosnia, Macedonia, Kosovo, the Sinai, and many other countries throughout the world. Even today, the primary mission of the National Guard is to provide the strategic reserve for the active forces. But, after September 11, 2001, both state and federal missions have significantly increased. These included federal missions from Operations Enduring Freedom, Iraqi Freedom and increased responsibility for Bosnia and Kosovo to State and Title 32 missions focused on Operation Noble Eagle, airport security, and critical infrastructure protection. The large numbers of units and personnel activated for Operations Iraqi Freedom and Enduring Freedom demonstrated the necessity to have the National Guard as a key component of the warfight. Similarly, the reliance on the National Guard for Operation Noble Eagle, airport security and critical infrastructure protection validated the Guard as critical for homeland security missions.

From its inception in 1636 to today, the National Guard has protected the homeland, both at home and abroad. In the present turmoil, the ability of the nation to successfully protect the homeland has been questioned. As military forces seek to accomplish enduring victory

overseas, the homeland security threat remains prevalent. The Guard provides an organization whose forces can be legally deployed within the United States for homeland security. Yet, the Guard is critical to the successful accomplishment of homeland defense missions by fighting and winning the nation's wars overseas. But, the Guard is not configured, nor has the intent been, to maintain National Guard units in an almost constant state of deployment. As such, the Guard will soon reach a culmination point whereas deployments supporting both the overseas warfight and homeland security operations will cause an unrecoverable degradation in the force.

Most Guardsmen balance at least three priorities; family, civilian work, and the Guard. When National Guard demands far outweigh the other two priorities, both families and employers exert pressure that typically results in the Guardsman leaving the organization. Therefore, significant efforts at a multitude of levels must be undertaken to withstand this assault. Each State and Territory, Congress and the Department of Defense must fully comprehend the approaching issues and make decisions and policy now to positively influence the trend. The strategic quandary is how to best protect the homeland. Once strategic decision is to what extent the National Guard is used for homeland security.

There are many options that can be considered for employment of the National Guard for homeland security. The following discussion will suggest five different options that range from maintaining the status quo to placing the entire National Guard within the Department of Homeland Security.

The first option is to maintain the current policy and role of the National Guard. Thus, first priority is clearly assigned to the overseas warfight with secondary focus on homeland security. This option, as briefly opined above, entails the risk of a continued reduction in retention rates in the National Guard and ultimately jeopardizing the ability of the Guard to provide trained and ready forces for either the warfight or homeland security. Multiple deployments supporting the warfight, homeland security requirements both federal and state, and state consequence management (disaster/emergency relief) are beginning to overtax the organization. Though the Department of Defense and the National Guard Bureau are attempting to establish a deployment life cycle or rotational plan that would only deploy a Guard unit once every five to six years, this cycle only relates to the warfight. Unfortunately, the size of the current regular, active duty military and recent experience shows that the same type of units are federalized over and over again for the warfight. This does not bode well for the ability to maintain a set piece deployment life cycle. Further, it does not account for homeland security requirements or state deployments for disaster relief or security operations.

A second option is to dedicate the National Guard entirely to the Department of Homeland Security. Though this option provides a trained, community based, responsive organization to homeland security, history has proven the Guard needs to be intrinsically involved in warfight operations and is critical for success. Operations Iraqi Freedom and Enduring Freedom are the latest demonstration that the United States could not successfully prosecute a “swiftly defeat” and “enduring victory” without significant federalization of the National Guard. This option would remove those units, or means, from the warfight and require replacement of lost capabilities with more active forces, increased risk, or both. As shown above, the National Guard has been and continues to be critical to the warfight. The cost of adding sufficient active duty forces or expanding the Army Reserve to replace National Guard capabilities would be prohibitive unless the Department of Homeland Security became the financier for the National Guard. The risk of not replacing the capabilities is unacceptable.

Third, the Department of Defense and the National Guard Bureau can establish specific National Guard force structure for homeland security missions. This can be accomplished in several ways. First, this force can be additional to the current force structure. This has the benefit of leaving the current force to continue the focus on the warfight mission while allocating units with specific skill sets to homeland security. Additionally, the States and Territories would have a trained, ready force that provides quick local response under the command and control of the respective governors. The significant cost factor associated with the additional personnel, equipment, training, etc makes this an unlikely choice.

If no additional force structure is authorized, any National Guard forces allocated solely for homeland security responsibilities erodes the only real combat reserve of the nation. These forces would come from existing Guard force structure and in some cases be of a type that is also essential for the warfight. Skillful rebalancing between the regular, active forces and the National Guard would be essential. However, as discussed above, replacing significant Guard force structure with active or reserve structure would incur significant cost increases associated with growth in manning, equipment, retirement funding, etc.

A fourth option is to leave the National Guard force structure intact (pending the re-balance of forces currently being investigated), but change the training and deployment priorities of select units. For these select units, their first training and deployment priority is to homeland security missions. Military police, medical, transportation, engineer and communications units would then be trained and immediately ready to perform security, infrastructure protection, consequence management, and other key homeland security missions. With their secondary mission being the warfight, these type units may require more



funding, mobilization training and longer lead times if federalized. The billpayer for homeland security should be the Department of Homeland Security, while the Department of Defense pays for the warfight. If simultaneous requirements should arise (i.e. terrorist incident in the United States while still fighting in Operations Iraqi Freedom), the priority for these units is homeland security, effectively removing them from the warfight. As with other options, this may require additional active, reserve or Guard force structure, with the associated costs, to minimize the risk. The benefits to this option are well-trained, state and community based, responsive organizations that know their priorities and are therefore better able to perform the homeland security missions than they would under current policy.

Lastly, consider an option that incorporates the specific dedication of some National Guard units to homeland security, the adjustment of priorities for others, and the remainder of units dedicated to the warfight. This option has a number of benefits and downfalls. The benefits include a homeland security military force responsive to the Department of Homeland Security and a National Guard force that is a uniquely capable, dual-mission organization with prioritized responsibilities to perform both homeland security and warfight missions. This leads to trained, state and community based organizations for homeland security and ready, deployable forces for the warfight. This concept also provides the basis for stabilizing deployment life cycles for the Guard. Units and individuals that have deployed for both homeland security and warfight operations would be less likely to face both types of deployments in the future. The costs to add force structure to replace the dedicated homeland security Guard units or the costs to retrain and rebalance the skill sets in the current force structure are the major downfall.

For the Guard to perform both its federal and state missions, some sense of reality must drive the decisions on the role of the Guard, how often deployments are made and what level of readiness must be maintained. Because the National Guard is comprised of citizen-soldiers and draws from virtually every community across the land, the Guard incorporates a unique blend of geographic dispersion and community awareness. Soldiers and airmen in the National Guard are mechanics, doctors, firemen, lawyers, clerks, elected officials, etc. They represent the spectrum of our society and provide the vital link between the state (community) and the military. These individuals, with their civilian-military skill sets, their links to the community, and their dispersion throughout the land are the most significant reason for the National Guard to have a more specific and prominent role in homeland security.

Protecting the homeland is a vital national interest. To achieve this national objective, both the Department of Defense and the Department of Homeland Security have critical roles.

Historically and legislatively, the National Guard has been instrumental in protecting the homeland, whether in a homeland defense role fighting wars overseas or in a homeland security role protecting from within. The strategic concept of increasing the role of the National Guard in homeland security recognizes the unique nature of the Guard and capitalizes on the strengths of the organization. Yet, the Department of Defense is at a crossroads regarding the degree of its support of the National Guard as an integral component of homeland security. Tasked with homeland defense and fighting and winning our nation's wars, the department must balance its needs and requirements with those of homeland security. In the end, recognizing both internal and external threats to our national interest, the Department of Defense must support the Guard in a homeland security role.

Therefore, it is the recommendation of this paper that the strategic decision be one that increases the role of the National Guard in homeland security to include the dedication of specific Guard units to homeland security and an adjustment in training and deployment priorities for others. The Guard units dedicated to homeland security should be additional force structure to allow for the adequate and proper mix of forces for the warfight. This increased cost of additional force structure may well be offset by the retention of Guardsmen through better understanding and predictability of roles, responsibilities and deployments.

The National Guard, preceded by the militia, is and has been a foundation for protecting the homeland. Though the environment has changed, becoming more pervasive and threatening, the Guard provides the capability to meet the upcoming challenges.

WORD COUNT = 5330

## ENDNOTES

<sup>1</sup> George W. Bush, *National Security Strategy of the United States* (Washington, D.C.: The White House, September 2002), Introduction.

<sup>2</sup> Jack Spencer and Larry M. Wortzel PhD, "The Role of the National Guard in Homeland Security," April 2002; available from <<http://www.heritage.org/Research/HomelandDefense/BG1532.cfm>>; Internet; accessed 25 September 2004.

<sup>3</sup> George W. Bush, *National Strategy for Homeland Security* (Washington, D.C.: The White House, July 2002), 2.

<sup>4</sup> United States Northern Command, "Homeland Defense Fact sheet;" available at <<http://www.northcom.mil/index.cfm?fuseaction=s.homeland>>; Internet; accessed 26 September 2004.

<sup>5</sup> Michael D. Doubler, *Civilian in Peace, Soldier in War: The Army National Guard 1636-2000* (Lawrence, KS: University of Kansas Press, 2003), 47.

<sup>6</sup> Ibid., 48.

<sup>7</sup> John Stuart Mill, *American State Papers [Declaration of Independence, Articles of Confederation and the Constitution] The Federalist, by Alexander Hamilton, James Madison [and] John Jay. On liberty, Representative government [and] utilitarianism* (Chicago: Encyclopedia Britannica, 1955), 6.

<sup>8</sup> Ibid., 13.

<sup>9</sup> Ibid., 15.

<sup>10</sup> Doubler, 74.

<sup>11</sup> John K. Mahon, *The American Militia, Decade of Decision 1789-1800* (Gainesville, FL: University of Florida Press, 1960), 20.

<sup>12</sup> Doubler, 144.

<sup>13</sup> Although the 1908 Act permitted overseas deployment of the National Guard, a 1912 opinion of the Judge Advocate stated there was no legal basis for deploying the Guard outside the borders of the continental United States.

<sup>14</sup> Department of Justice, "The Posse Comitatus Act of 1878;" available from <[http://dojgov.net/posse\\_comitatus\\_act.htm](http://dojgov.net/posse_comitatus_act.htm)>; Internet; accessed 26 September 2004.

<sup>15</sup> *Title 18, Crimes and Criminal Procedure, United States Code*, Section 1385, Use of Army & Air Force as Posse (1994).

<sup>16</sup> United States Northern Command "Posse Comitatus Fact Sheet;" available from <<http://www.northcom.mil/index.cfm?fuseaction=news.factsheets&factsheets=5>>; Internet; accessed 11 October 2004.

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

<sup>18</sup> *Title 32, National Guard, United States Code*, Section 501, Training Generally (1994).

<sup>19</sup> Ibid, Section 102, General Policy, 1510.

<sup>20</sup> Bernard Rostker, *The National Guard and Homeland Security, CT-192, Congressional Testimony to U.S. Senate Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information* (RAND Corporation, 13 December 2001).

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