

NATIONAL SECURITY THREATS AT THE U.S.-MEXICO BORDER

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NATIONAL SECURITY THREATS AT THE U.S.-MEXICO BORDER

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ABSTRACT

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NATIONAL SECURITY THREATS AT THE U.S.-MEXICO BORDER

I. Introduction

While U.S.-Mexico border policies have been part of public debate for decades, the events of 9/11 invigorated the discussion, with many strongly held and opposing views. There are three principle components to this debate, astutely outlined by Mr. Tony Payan in 2006.ⁱ These are terrorism, transnational criminal organizations, and illegal immigration. Many argue that homeland security issues have co-opted the conflated debate, with the losers being immigrants and immigration policy. Recent developments in the nature and behavior of Drug Trafficking Organizations (DTOs) indicate otherwise. Special interest groups representing the humanitarian and economic aspects of immigration have distracted policy makers from focusing on the rising and more critical homeland security issues of an unsecured border and a weak Mexican Government, including several failed Mexican states concentrated at our border. As we have seen, immigration advocates will continue to downplay the security risks, while security advocates may exaggerate the risks and social ills posed by illegal immigration.ⁱⁱ In the end, neither security nor immigration is being addressed effectively, putting U.S. citizens at risk. All these issues must be addressed together in order to mitigate the real national security threats.

The War on Drugs was declared some 40 years ago by President Nixon. While it seems like a noble cause, it has had the same side effect as occurred during Prohibition, that is, the increased cash flow that enables the rise of extremely powerful trans-national criminal organizations. Fueled by proceeds from drug sales, these

organizations have risen to the point of threatening the stability of several nation-states, and currently represent a significant national security threat to the U.S.

With some \$1 trillion spent, the war on drugs has failed.ⁱⁱⁱ Failed because the U.S. lacks the political will to either stop the use of illegal drugs through draconian enforcement, to secure its borders, ports and airspace and/or to legalize drugs and improve treatment and demand-reduction efforts. Therefore drugs, illegal aliens and other contraband will continue to enter the U.S., as they always have. Nothing has slowed the flow of drugs into the U.S. because as soon as one hole is plugged, another is created.

Tom Barry sums it up in the Boston Review, “While there is little validity to complaints about the lack of federal funds for border security, the criticism about federal irresponsibility on border policy conveys an important truth. Since 9/11, the border has become a site of intensive national concern, not only surrounding immigration, but also drug wars and terrorism. In this context of increasing fear, the federal government has failed to assess the threats and address them coherently.”^{iv}

The violence manifest by massacres, mass graves, beheadings and torture in Mexico are well documented in the news and various government and institutional reports. The proximity of this violence to the U.S.-Mexico border, versus distant places like the Balkans and Iraq, has resulted in a great deal of alarm, especially by those living in border regions. There is significant evidence that this lawlessness, and the resources behind it, is now and will continue to spill over onto U.S. soil as DTOs attempt to increase their foothold in the U.S. Indeed, Mexican affiliated gangs are reported to be present in over 200 U.S. cities, as compared to 100 in 2005.

Prior to and in the immediate years following 9/11, illegal aliens, drugs and potential terrorists crossing the U.S.-Mexico border were often separate in the sense that interaction and control wasn't necessarily centralized by any one group. Since that time, DTOs have effectively monopolized all these activities and control all smuggling at the border. As a result of seeking to consolidate territory and influence, violence has escalated in Mexico. Added to the mix is a campaign against DTOs and corrupt officials that facilitate their activities, started by President Felipe Calderon when he took office in 2006. This crackdown has led to an increasingly bloody defiance resulting in over 30,000 murdered to date.

In addition, Department of Homeland Security (DHS) statistics show over 500,000 people were apprehended while illegally crossing the U.S.-Mexico border in 2009, down from over a million per year for most of the previous decade. By contrast, annual apprehensions at the U.S.-Canadian border average two to three percent of those apprehended at the U.S.-Mexico border. Most studies estimate over 10 million illegal immigrants reside in the U.S., with over half being from Mexico.^v These statistics give a clear indication that our borders aren't secure against illegal immigration, but also from DTOs, terrorists and weapons of mass destruction (WMDs).

Finally, is the potential for terrorists and WMDs to enter the U.S. across the U.S.-Mexico border. As stated earlier, DTO's have secured control over the human smuggling trade in the last decade. Nested within human smuggling, is smuggling of persons from Countries of Interest or countries known to harbor or directly support terrorists. These apprehensions number in the hundreds each year.^{vi} With the significant progress in border security made by the DHS in the past 5 years, estimates

of “got aways” (those successfully entering the U.S. illegally) have improved from over 70 percent down to 10-30 percent of those apprehended or turned back. With the GAO reporting^{vii} only 129 miles of the 2,000 mile border being under operational control (fully secure), it seems odds are high that terrorists have or could have reached U.S. soil via overland routes from Mexico. While there are many methods for terrorists to find their way to U.S. soil, illegal entry is their preferred approach and the southwest border an attractive route.^{viii}

This paper attempts to identify which of these three phenomena represent a national security threat, and if so, how they threaten the U.S. Then we will look at solutions generally, with a more detailed analysis of border security and use of the National Guard (NG) in that role.

II. National Security Threats

National Security is an ambiguous term, so we must attempt to define it in the context of the potential threats discussed here. A good starting point may be Robert Rotberg’s definition which is the ability to “prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats to or attacks upon the national order and social structure; to prevent crime and any related dangers to domestic human security; and to enable citizens to resolve their differences with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion.”^{ix, x} Another applicable definition was proposed by Harold Brown, former U.S. Secretary of Defense, who states, “National security then is the ability to preserve the nation’s physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to preserve its nature, institution, and

governance from disruption from outside; and to control its borders."^{xi}

Key words in these definitions are “national” and “borders”. Using these terms, we can identify a national security threat in several ways. First would be a threat that impacts the entire nation or a significant portion of it, whether it be militarily, economically or otherwise. Second, it may only threaten a very small or localized portion of the country, but requires a national response due to the resources, diplomatic, military, financial, etc., required to address the threat. Hurricane Katrina was highly localized, but overwhelming to the states affected. Therefore a national and/or federal response was required. Finally, threats against international borders would be a federal responsibility, regardless of the States affected.

DTOs in Mexico represent a threat to U.S. national security in at least three ways. First, there is the immediate and direct threat of cross-border violence, kidnappings^{xii} and other criminal activity at a scale that overwhelms local and state law enforcement in terms of manpower and costs to the taxpayer. The fact that the threat to life and property comes from foreign soil in the form of cross-border incursions makes this a national security problem. If the DTOs continue their current trends, a tipping point will be reached where the DTOs overwhelm U.S. law enforcement and mobilization of greater force, to include armed forces, will be required. As indicated by the mobilization of the NG and calls by border state government and law enforcement officials for significantly greater participation, we can speculate that we may be close to or past that tipping point.

Second, and probably more serious, is the risk of compromising our law enforcement systems in the same way that has happened in Mexico and in this country

during Prohibition. Vast amounts of cash are used to coopt individuals and entire law enforcement structures to such an extent that it requires great national effort to reduce and manage. This is probably the most serious aspect of the narco-insurgency and has been described by Robert J. Bunker as a virus that spreads through society.^{xiii}

Organized crime becomes a national security threat when they are able to secure cooperation from civil authorities in numbers sufficient to operate and expand their nefarious enterprise with reasonable freedom and security. This process has also been called the Political-Criminal Nexus (PCN).^{xiv} The PCN represents a national and trans-national security threat because it threatens “the political, economic, social infrastructure of a system”.^{xv}

While a PCN may exist at the local, state, national and international levels, DTOs have matured to the point of being a significant national security threat to Mexico, requiring significant mobilization of armed forces, themselves often part of the PCN. DTOs typically secure this cooperation by identifying at risk politicians and law enforcement authorities and then using varying combinations of bribery and/or coercion and threats of violence.

The DTO PCN has already manifest itself within U.S. border agencies. Almost 80 U.S. law enforcement agents have been convicted of collaborating with DTOs in the past 5 years, with hundreds more under investigation.^{xvi}

Finally, there is some risk that Mexico will become a failed state or a narco-state. There are unquestionably tumultuous times ahead as this narco-insurgency unfolds. During Calderon's government, criminal gangs have killed 915 municipal police officers, 698 state police and 463 federal agents.^{xvii} Many competent experts have speculated

about the fate of Mexico in the short term, with many likely scenarios proffered.^{xviii},^{xix}

Without speculation, we can say with great certainty that several northern Mexico states have failed and many lawless regions exist which are no longer controlled by viable government authority.

Robert J. Bunker posits, “The worst case scenario is DTOs (or Cartels) creating “zones of impunity” which provide them with the ability to engage in their activities without governmental hindrance. These organizations simply seek to make money via illicit means and have no desire to be involved in politics or governance. Corruption is utilized, along with violence, to obtain freedom of action for their criminal activities.

The Calderon administration has stated that this level accurately reflects the security threat facing Mexico. The Mexican cartels are said to represent the forces of organized crime and nothing more, even though some hundreds of “zones of impunity” are recognized to exist and the deployment of military forces to maintain civil order in some of the cities in Mexico continues. The DEA and FBI are heavily involved in suppressing the various Mexican cartels in the United States (e.g. Operation Deliverance, Operation Xcellerator, Project Coronado) and insuring that the corruption coming over the border does not deeply penetrate our public law enforcement agencies (e.g. FBI--led Border Corruption Task Forces are expanding). These and other U.S. Federal Law Enforcement Agencies are also active in Mexico and Central America in responding to Mexican drug trafficking organization activities.”^{xx}

All sides of the illegal immigration issue point to any number of social ills of illegal immigration. On one hand there are humanitarian concerns for the immigrant of the dangers of the migration itself, vulnerability to crime, sub-standard pay, poor working

conditions and escaping deplorable conditions in their homelands. On the other hand, there are the societal concerns such as the cost of medical care and social services, integration, bilingual societies and jobs, along with assertions that the illegal population has higher crime rates^{xxi} and may harbor terrorists and criminals. Clearly the problems are complex and so are the solutions.

Several factors contribute to migration pressure from Latin America. There are enhanced “push” factors of overpopulation, civil unrest, unemployment, poverty and violence. Then there are the “pull” factors in the U.S. of employment, family relationships and public services.^{xxii}

Seasonal migration of Mexicans has been a part of U.S. agriculture practice for decades. While seasonal agricultural workers are now a minority of the illegal immigrant phenomena, the economic illegal immigrant working at the local cabinet shop or washing dishes at a restaurant and the diaspora communities they live in, do not represent a National Security threat. Most studies show that immigration provides net benefits to the United States, including providing flexible workers to labor-scarce economic sectors, lowering the prices of domestically produced labor-intensive goods and services, and contributing to entitlement programs such as Social Security.^{xxiii} The illegality of these human flows, however, has its costs. It depresses local wages and puts pressure on local health and education services, and it can undermine labor rights.

In terms of security, the presence of millions of unauthorized workers in the United States may give unsavory elements a place to hide among a larger population forced to live underground. Illicit profits can be hidden in the flow of honestly earned money going back to Mexico, complicating efforts against money laundering.

Illegal immigration can be characterized as a significant socio-economic concern, along with being a flagrant violation of our national principles embodied in the rule of law. However, given the long tradition of illegal immigration between Mexico and the U.S. with collaboration on both sides of the border, it cannot not by itself be considered a national security threat. Nevertheless, it should be addressed concurrently with border security. Securing the border will facilitate the resolution of this conflict by ensuring everyone entering the U.S. has appropriate legal status.

Terrorism, specifically from radical Islam, is an ongoing threat to the security of the U.S., with Al Qaeda at the forefront of the threat. Unsecured borders, coastlines and ports specifically facilitate their plans and operations. Greater security in these areas can impede their plans and operations as a critical component in the concept of layered defense.

President Obama has stated that a terrorist attack using a WMD is our nation's greatest threat. Terrorists have stated their intent to procure and use WMDs on U.S. targets. At the same time, there are nuclear armed states with either fragile nuclear security measures or outright hostility towards the U.S. While this is a battle that must be fought on many fronts, U.S.-Mexico border security is a glaring weakness in the fight.

Possibly the most troubling aspect of an unsecured border is the relative ease of smuggling contraband. Scores of tunnels have been found including at least one complete with a rail system and lighting.^{xxiv} This tunnel also happened to have 16 tons of marijuana stored at one end with another ten tons apprehended as it left the warehouse in a truck.^{xxv} Certainly a nuclear device, radioactive material of sufficient

quantity to make a dirty bomb, conventional explosives or conventional weapons could navigate through the Mexican smuggling system into the U.S.

In this argument, there is an interesting phenomena. Of the few known terrorists apprehended at the border prior to 2005, none were known to have been assisted by a DTO.^{xxvi} Since then, no official agency has reported a known terrorists crossing or attempting to cross the U.S.-Mexico border. Some speculate that DTOs, with their extensive intelligence and counter-intelligence networks, are preventing terrorists from entering the U.S. from Mexico. The motive cited is that DTOs don't want to risk backlash against their drug trade because they aided and abetted a terrorist. While this may be comforting to some, we know that DTOs are after money and that OTMs from Countries of Interest pay as much as \$50,000 to cross the border. These are not organizations we should rely on or partner with for our National Security.

Furthermore, if significant progress were made in defeating the DTOs, we could anticipate a period of chaos and desperation on the part of the remaining criminal elements. This desperation may lead them to desperate acts, such as aiding terrorists and WMDs in crossing the border.

Good border security may not stop terrorists from entering this country, but would close a large gap in our strategy and eliminate an option for terrorists. Of all the border issues, terrorism is the most imminent and serious, requiring comparable resources and attention used to prevent terrorists from entering the U.S. at other entry points. Given that only two percent of shipping containers entering the U.S. are inspected, it seems there may be lower risk methods of smuggling a WMD into the country, nevertheless, the U.S.-Mexico border is still a gap in security.^{xxvii}

A border checkpoint may be the last opportunity for a law enforcement officer to intercept their entry. Delaying capture until they are well beyond the border raises issues of controversy, such as racial profiling and privacy violations of legal residents. Imagine if we used the same approach at our international airports, allowing everyone to enter and disperse, then pursuing them days later to check passports and conduct customs inspections. This is the reality of our border security today.

III. Proposed Solutions

With proceeds from drug sales in the U.S. and Europe, drug cartels have wielded extraordinary and violent influence in Latin America for decades. Given this, the greater threat from drug cartels is their growth into transnational armed groups with the funding, weapons, organization and sophistication to operate globally, destabilizing many weaker nation-states. Their power is clearly manifest in Mexican affairs, where there is no clear evidence that President Calderon is winning. Given its geographic and social proximity, an ever weakening Mexico is probably a higher national security priority than rescuing any other non-nuclear weak or failing state in the world, and should garner our highest attention and resources. U.S. leaders should seriously consider expanding existing programs and establishing new ones, both domestically and in cooperation with the Mexican government, to defeat this defiance.^{xxviii} Strategies such as civil–military assistance, judicial reform, immigration reform and cultural programs to address corruption should be considered with great urgency.^{xxix}

Part of the challenge is the comingling of non-violent illegal immigrants, crossing for economic opportunity, with members of armed groups. Therefore, immigration reform

needs to be addressed concurrently with securing the border and other solutions in order to relieve the pressure in terms of sheer numbers of attempts to cross illegally.

With little ability to operate in Mexico and other Latin American countries, the U.S. must treat the protection of the country as defensive in nature. While there is some cooperation between U.S.-Latin American law enforcement, intelligence and military forces, there has been no significant request for assistance other than financial. Therefore, our actions to date have been mainly restricted to defending our border areas, and interdicting drugs, cash and criminals at the border or within the U.S.

EW have asserted that illegal aliens don't represent a national security threat except for the minority involved in terrorism. Drugs and addiction don't represent a national security threat. The money generated from drugs do represent a national security threat. This money has fueled the expansion and empowerment of DTOs into world class trans-national criminal organizations rivaling and, in fact, threatening some nation-states.

While organized crime probably can't be eliminated, it can be managed. Currently, Mexico lacks the political will and culture to contain organized crime. The vast amounts of cash and threats of violence have permeated all levels of Mexican government and society. In stating this fact, we have identified the DTO center of gravity, cash. While no agency has a firm grasp on how much money is transferred to DTOs from the U.S. each year, estimates range from \$20 to 35 billion.^{xxx} Of this, about half comes from marijuana and the rest from other drug sales and illegal activities.

Cash is transferred to Mexico in a variety of ways. It may be smuggled in bulk, in goods such as vehicles and weapons purchased in the U.S. and then sold in Latin

America, illicit banking transfers, gift cards and even remittances to individual families. Herein lies a tool to defeat the DTOs, which can be implemented on the U.S. side of the border. We should be even more zealous in efforts to interdict cash and money laundering goods going south as we are in intercepting drugs coming north. An army of accountants perusing financial statements may have more impact than a surge of National Guardsmen deployed to the border.

Shannon O'Neil makes the case, "Even more important than guns, although less discussed, is money. Estimates of illicit profits range widely, but most believe some \$15 billion to \$25 billion heads across the U.S. border into the hands of Mexico's drug cartels each year. This money buys guns, people, and power. Compiled from thousands of retail drug sales in hundreds of U.S. cities, much of this money is wired, carried, or transported to the U.S.-Mexican border and then simply driven south in bulk. Mexican criminal organizations then launder the funds by using seemingly legal business fronts, such as used-car lots, import-export businesses, or foreign exchange houses. Laundered money not used to fund criminal operations or pay off officials in Mexico is often sent back to the United States and saved in U.S. bank accounts.

"Targeting illicit funds is one of the most effective ways of dealing with drug trafficking. (Incarcerating individuals only briefly disrupts criminal operations, since people are swiftly replaced.) Washington has begun working with Mexican authorities to stop the flow of illicit funds. There have been some successes, such as the passage of an asset-forfeiture law in Mexico, the addition of Mexican cartels to the U.S. drug kingpin list, and the strengthening of Mexico's financial intelligence unit. The United States should continue and deepen this bilateral cooperation, further developing

financial tools and infrastructure to increase the information and intelligence sharing needed to dismantle money-laundering schemes. At home, the United States should work to replicate the successes of the interagency Foreign Terrorist Asset Tracking Center, which was ramped up after 9/11 to thwart terrorist financing, by creating a similar structure to go after drug-related money.

“Law enforcement, however, is not enough. The supply of drugs follows demand. The United States needs to shift the emphasis of its drug policy toward demand reduction. Studies show that a dollar spent on reducing demand in the United States is vastly more effective than a dollar spent on eradication and interdiction abroad and that money designated for the treatment of addicts is five times as effective as that spent on conventional law enforcement. The United States needs to expand its drug-treatment and drug-education programs and other measures to rehabilitate addicts and lessen drugs' allure for those not yet hooked. Reduced demand would lower the drug profits that corrupt officials, buy guns, and threaten Mexico's democracy.”^{xxxix}

Along with this argument, are the merits of legalizing marijuana. While it is not within the scope of this paper to argue the social aspects of alcohol, tobacco, marijuana and other mind and mood altering substances, from a purely financial standpoint, we could reduce DTO funding by 50 percent in legalizing marijuana. If we could then reduce proceeds another half by aggressively pursuing the cash from other illegal activities, DTO power to purchase influence and protection at a scale large enough to be a national and global security threat would be broken.

Given the solutions proposed above, how does border security contribute to accomplishing these objectives? In the same sense that missile defense represents the

last ditch effort at protecting the nation from missile attack, the border represents what would ideally be the final line of defense in a layered effort. Once the missiles reach their target, we have failed to protect the country and can only react to the consequences. Once a terrorist has successfully entered the country and disappeared into the population, we have lost the initiative and are merely reacting.

Against the threats identified and in support of the proposed solutions, a secure border accomplishes several functions in a security strategy. It would impede the flow of drugs (supply side), although history shows this would be a temporary effect if not incorporated with other counter-supply efforts. To a lesser degree it could impede the flow of cash to the south, although DTOs are conducting more business electronically. Most importantly, it reduces the risk of terrorists and WMD materiel entering the U.S. A secure border may also impede cross-border kidnappings, violence, human trafficking and other criminal activities that benefit DTOs. As beneficial side effect, it would play a large role in getting a handle on immigration reform.

Borders are established by various laws and treaties as a means to establish a jurisdictional boundary between two or more legally recognized entities, whether they be individuals, cities, counties, states or nations. The key term in this is “jurisdiction” and is a basic concept in the application of the Rule of Law. Where these boundaries are poorly defined or contested there is generally conflict, often violent in nature. Sovereigns that cannot control and defend their borders are weakened. It represents a physical opportunity to vet all persons and goods. While money can be transferred electronically, goods and people must physically cross the border.

Considered alone, securing the border as a sole defense against transnational criminal organizations probably isn't essential to National Security. Drug cartels already have many members within the U.S. with a large pool to recruit from. Furthermore, criminals will continue to cross the border legally in legitimate disguise. Cartels have also shown an ingenious ability to develop new transportation methods over time. Securing the border may disrupt the flow of drugs and power structures of drug cartels for a time, but as long as they are free to operate with impunity in so many countries throughout the world, new routes and methods will be developed quickly.

An internet search results in any number of videos and photos portraying people breaching the border fence with speed and impunity. A recent article and video posted on Fox News showed two women climbing a section of new fence at the U.S.-Mexico border.^{xxxii} The article posits differing viewpoints on the need for a fence, using the rapid breach shown in the video as evidence supporting views both for and against a fence at the border. The article explores the strategic viability of fences, obstacles and other technologies used to deter illegal crossings at the Southwest border and discusses the tactical application of these technologies.

Army Field Manual (FM) 90-7, Combined Obstacle Integration states "History shows that obstacles rarely have a significant effect on the enemy if units do not integrate them with friendly fires."^{xxxiii} To put this statement into the context of the border fence, the "obstacle" is the fence, the "unit" is U.S. Law Enforcement, "deadly force" is replaced with arrest or detainment authority and finally the "enemy" is any unauthorized individual or group attempting to cross the border outside of established border crossings. The essence of this concept is that obstacles can be reduced or

breached, as in the case of the fence climbers, given enough time and resources. Given enough time, resources and the will to do so, even the vehicle obstacles could be breached faster than U.S. Law Enforcement could respond. So the more critical component of border security is overwatch, and this requires manpower in significantly greater numbers. A fence is only a small part of the solution, and probably isn't required along all stretches of the border. Effective use of UAVs and balloon mounted cameras may be part of the solution, but in the numbers required to be effective, would be significantly more expensive in the short term than manpower. Even with observation of the entire border 100 percent of the time, law enforcement must still be able to respond in time to intercept the incursion. Therefore, manpower distributed along the border, close enough and in sufficient numbers to effectively respond to any location within their sector within minutes or even seconds is the most effective solution. Not only can they watch their sector, they can also respond. Once the border is secured for a time, trends show manpower can gradually be reduced as illegal crossing attempts will drop off due to the high odds of capture.

Having said all this, there is really no more national security threat at the U.S.-Mexico border than there is on any of our coastlines, ports and borders. Without better coastal and port security, sealing the Southwest border will only divert drugs, terrorists or WMDs elsewhere.

IV. National Guard Roles

In recognition of growing concern, especially in border states, a 2010 report by the House Immigration Reform Caucus outlines several recommendations to significantly improve border security. Among these is the call for 25,000 NG troops funded by an

annual expenditure of \$3 billion for border security operations. Another is to extend detention powers to NG troops guarding the border.^{xxxiv} Governor Perry of Texas has asked President Obama in four different letters to deploy 1,000 NG troops to the Texas border.^{xxxv} A 2002 report from the Brookings Institution also calls for an expanded role for the military, and specifically the NG, in homeland defense.^{xxxvi} In 2010, the Quadrennial Defense Review Independent Panel as well as a Council on Foreign Relations report also calls for a portion of the NG to be dedicated to and resourced for homeland security missions.^{xxxvii , xxxviii}

By using Customs and Border Patrol (CBP) objectives to observe 100 percent of the border and respond across three shifts to any point along 2,000 miles of border within about a minute, depending on terrain, we can estimate that the recommendation for 25,000 National Guardsmen working with CBP and Immigration and Customs Enforcement (ICE) officers is reasonable to establish full operational control of the border.

The NG may be mobilized by three legal mechanisms. First is mobilization by the President of the U.S. under Title 10, U.S.C authority. In this capacity they are federalized and cannot be used for border security due to the Posse Comitatus Act (PCA), which prohibits federal troops from enforcing civilian laws. The second is Title 32, U.S.C. authority. In this status, they are funded by the federal government, but act under the direction of the respective State Governors. This is the status under which the NG operates in support of border security and ongoing counter-drug operations under 32 USC Part 112. While operating under Title 32 authority, National Guardsmen are not subject to the PCA, but are prohibited by regulation from participating directly in

the arrest or search of a suspect. Finally, the respective State Governors may mobilize the NG using state funding and under command of the Governor, again, not subject to the PCA. This is the status used to respond to state emergencies. It should be noted that none of these laws prevent the U.S. Congress from enacting legislation to allow the military to be used for border security in any capacity.^{xxxix}

Other legal restrictions prevent the use of Title 10 and 32 status military and military assets to collect intelligence on U.S. citizens. They can, however, assist law enforcement in this capacity and have been doing so under the National Guard's counter-drug program as well as the two NG mobilizations ordered by Presidents Bush and Obama in support of border security. Furthermore, as Title 32 status, they don't have authority to enforce Federal Laws. They have, in some cases, been able to act under direct supervision of Federal Agents.^{xi}

For decades, border security has been considered a federal law enforcement function, currently and predominantly the responsibility of the DHS. U.S. National Security strategy has been offensively oriented for so long that, shifting to a paradigm of defensive border operations as a military function will probably not happen. Nevertheless, during the first century of U.S. history, border and homeland security was often a military function. While there have been some armed incursions from the south recently, the incidence and level of violence hasn't reached the point where full out military style defenses and response is warranted. In that case, the military is fully trained and prepared to respond. In the meantime, given our current laws and procedures for handling illegal activity at the border, security should remain a law enforcement function.

With this in mind, permanently introducing another agency (National Guard) into border security operations will add complexity and bureaucracy to an already complicated system. Unless the NG can realize the long term training benefits outlined below, use of the NG for border security should be a short term fix until the DHS is funded to the levels required to hire the required number of agents.

As the U.S. military faces the challenge of armed conflict in the 21st century, several studies call for new capabilities for these forces in dealing with armed groups.^{xli} Also, much has been written about the need for the military to expand its professional education in Counter-Insurgency or COIN. U.S. Soldiers have now been heavily involved in these types of operations since the first Soldiers crossed the Sava River into Bosnia-Herzegovina in 1995 as part of IFOR. U.S. Soldiers and leaders, both active and reserve, returning from Iraq and Afghanistan, are at a peak in terms of experience in COIN.

One distinct weakness has been in teams assigned to mentor and train Iraqi and Afghan police. Often with little or no law enforcement experience, these teams have been assigned to professionalize the indigenous forces. While they have done much to encourage ethical behavior, rule of law concepts, and train logistical, management and leadership skills, they generally lack requisite knowledge of civilian law enforcement. With the right mix of missions and authorities, border security operations present an excellent opportunity to develop and maintain these skills in real world situations, the same way the highly touted British Army developed COIN and Peacekeeping skills in North Ireland.

A CBP agent undergoes at least 6 months of “classroom” training followed by 18 months or more of on-the-job training before being fully certified as an agent. This is in contrast to a Guardsman experience, where during the past two border mobilizations, the typical Guardsman has been assigned to border duties from as little as two weeks up to a year. The short length of the tour has necessitated very limited duties of observing and reporting. This kind of duty has been somewhat demoralizing to the common Guardsman. A highly motivated group generally, being essentially sidelined while Border Patrol agents get all the “action” is not the natural state of a Soldier. Leaders have learned to mitigate this disappointment by accurately communicating and managing expectations. Nevertheless, they want to do more.

One proposal is to use Guardsmen trained as Military Police as a way to circumvent some of the training requirements. While MPs are certainly better trained in terms of escalation of force and arrest procedures, there is still a vast amount of training in Federal Law required to properly deal with the typical scenarios encountered by CBP agents.

Another challenge of the short tour model currently used is security processing requirements. During Operation Jump Start, there were several instances of Guardsman being compromised by the DTOs. The Border Patrol was much more stringent during the second mobilization, requiring background checks equivalent to a Secret and even Top Secret levels. Each troop was also screened for tattoos indicating gang affiliation. Finally, volunteers who lived within 70 miles of the border were disqualified to reduce the risk of coercion, DTO cooperation through family affiliations

and to protect family members. In Texas, over thirty percent of initial volunteers were disqualified due to these criteria.

In order for the NG to fully realize the training benefits of border security, a tour would need to be a minimum of three years. This is the typical tour length of Guardsmen working in the Counter-drug Program, with many Guardsmen spending their entire career in the program. Unless the NG can be integrated into a permanent mission and secure longer, stabilized tours, the NG should, again, only be used as a short term fix for border security. Current, short term mobilizations only allow for limited training and therefore usefulness in the mission and training benefit to Soldiers.

A robust full time cadre could be assigned as liaison between incoming rotations of NG Soldiers and the CBP, rotational assignments of officers and NCOs. These assignments would include joint assignments with the CBP and Immigration and Customs Enforcement (ICE).

Providing support to LEAs in support of border security can benefit the military in maintaining and enhancing its competence in a number of ways, and particularly in COIN operations, where the Army currently has a high state of ability and experience that should be retained. These include: Intelligence gathering and analysis, cultural awareness, evidence handling and law enforcement procedures, UAV operations, night vision devices, use of interpreters, civil-military and NGO relations, command and control, small unit maneuver and tactics, foreign language skills, vehicle and personnel searches, rules of engagement, escalation of force, vehicle training, logistics, transportation and maintenance to name a few.

Finally, in anticipation of a worst case scenario where the situation in Mexico deteriorates and spills over into the U.S. or involves a U.S. intervention, the military should begin now to work closely with the DHS and the Mexican Government to learn the actors, terrain, tactics, techniques and procedures of border security. In order to be prepared for a potential counter-insurgency, we should look to conduct joint training exercises with the Mexican Army, who should be one of our closest military allies. A permanent full-time NG force assigned to border security would provide a competent core group that could quickly train a larger military force if required.

CONCLUSION

Currently, there is a double standard for entrance into this country. As a nation of laws, it is inconsistent that we fully vet those flying into the country at customs entry control points at our airports, but we turn a blind eye to those walking across the border. From a purely tactical standpoint, this doesn't make any sense. We need to secure the border and then implement a system of documentation and vetting for those desiring entry to the country. Securing the border is not a human rights issue. There are legal systems designed to accommodate those wishing to become U.S. citizens, to become permanent residents or come here to work. No country in the world considers it the right of a foreigner to enter their country without due process. Whether illegal immigrants have hostile intent or not is irrelevant. Even if drug cartels are defeated, armed groups will still be trying to target and thwart our defenses. The border will still be a vulnerability.

We can be humane to Mexican immigrants and protect our borders at the same time. Texas Governor Rick Perry has said, “There can be no homeland security without border security, and there can be no higher priority than protecting our citizens”.^{xlii} To believe otherwise is to rely on hope as a defensive strategy, hope that our enemies will overlook this glaring weakness in our defenses, hope that a government in constant crisis and corruption can and will protect our flank, hope that DTOs won’t sell out to terrorists seeking safe passage for themselves and their equipment and hope that organizations that can transport tons of drugs won’t transport WMDs.

The tenuous situation in Mexico, just across our border, is more of a clear and present danger to our national security and other interests than Afghanistan and other weak and failed non-nuclear states around the world. Hispanics are our largest minority and certainly our Mexican population has a vested interest in the future of Mexico and our relationship with it. Therefore it is to our benefit, both long and short term, to allocate a significant portion of our resources to not only secure our border, but to address the underlying causes of the situation.

The obstacle to effectively resolving any of these concerns is comingling of the issues, rhetoric and reality of huge numbers of non-violent illegal immigrants, crossing for economic opportunity, with armed groups. All groups use the same routes and similar smuggling methods. Analogous to counter-insurgency doctrine, we must isolate nefarious actors from the benign population. This must be done both in public debate and in deed. The best opportunity to secure our country against terrorists and their weapons is vetting every individual and every shipment through checkpoints, just as we

do at our international airports. We cannot route people and contraband to checkpoints without border security.

As stated previously, the most important function of a sovereign government is the security of its citizens. Due to the rise of non-state armed groups in the form of terrorists and transnational criminal organizations, policy makers must formulate and resource viable border security policy and immigration reform, while implementing long term strategies in cooperation with the Mexican Government to strengthen Rule of Law and prevent further weakening of legitimate institutions in Mexico.

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