STRATEGY RESEARCH PROJECT

The views expressed in this paper are those of the author and do not necessarily reflect the views of the Department of Defense or any of its agencies. This document may not be released for open publication until it has been cleared by the appropriate military service or government agency.

COMBATING INTERNATIONAL ORGANIZED CRIME: A PROPOSAL FOR EXPANDING OUR NATIONAL MILITARY STRATEGY AND AMENDING TITLE 10 OF THE UNITED STATES CODE

BY

COLONEL CHRISTOPHER M. MAHER
United States Army

DISTRIBUTION STATEMENT A:
Approved for Public Release.
Distribution is Unlimited.

USAWC CLASS OF 2001

U.S. ARMY WAR COLLEGE, CARLISLE BARRACKS, PA 17013-5050

20010605 207

USAWC STRATEGY RESEARCH PROJECT

COMBATING INTERNATIONAL ORGANIZED CRIME: A PROPOSAL FOR EXPANDING OUR NATIONAL MILITARY STRATEGY AND AMENDING TITLE 10 OF THE UNITED STATES CODE

by

Christopher M. Maher
Colonel, U.S. Army

Colonel Thomas McShane
Project Adviser

The views expressed in this academic policy paper are those of the author and do not necessarily reflect the official policy or position of the U.S. Government, the Department of Defense, or any of its agencies.

U.S. Army War College
Carlisle Barracks, Pennsylvania 17013

DISTRIBUTION STATEMENT A:
Approved for public release.
Distribution is unlimited.

ABSTRACT

AUTHOR: Christopher M. Maher

TITLE: Combating International Organized Crime: A Proposal for Expanding our National Military Strategy and Amending Title 10 of the United States Code.

FORMAT: Strategy Research Project

DATE: 10 April 2001 PAGES: 33 CLASSIFICATION: Unclassified

In the post-Cold War era, international or transnational organized crime presents the single most serious threat to American National Security. Notwithstanding this threat, unclassified national strategy documents are virtually silent as to the role of the United States military in protecting against this threat. Given the restrictions of the Posse Comitatus Act, codified at 10 United States Code § 1385, this is not surprising. This paper describes the nature of the post-cold war organized crime threat focusing on its military and paramilitary aspects. It notes that international criminal organizations resemble irregular forces.

The paper examines national strategy documents relating to the fight against organized crime and advocates expanding the National Military Strategy and the International Crime Control Strategy to define more exactly the role of the Armed Forces. Next, the paper examines the Posse Comitatus Act and the many limitations and exceptions to the Act as well as legal framework related to that threat. The paper highlights how U.S. law has steadily expanded the direct and indirect role of the armed forces in combating crime, especially drug trafficking.

After an ends-ways-means analysis this paper more specifically advocates:

1. Expanding the National Military Strategy to engage more directly the Department of Defense in the combating of international organized crime.

2. Assigning the United States Special Operations Command with a primary task of supporting the national effort to combat international organized crime.

3. Further amending Title 10 of the United States Code to authorize the direct, prescriptive participation of military forces in the combating of international organized crime, or in the alternative, repealing the Posse Comitatus Act.

The paper closes by observing that it is only a matter of time before the Armed Forces' role in combating international organized crime is expanded even further.

TABLE OF CONTENTS

ABSTRACT III

COMBATING INTERNATIONAL ORGANIZED CRIME: A PROPOSAL FOR EXPANDING OUR NATIONAL MILITARY STRATEGY AND AMENDING TITLE 10 OF THE UNITED STATES CODE 1

ORGANIZED INTERNATIONAL CRIME AND ITS MILITARY CHARACTER 1

THE LACK OF MILITARY STRATEGY TO COMBAT THE INTERNATIONAL ORGANIZED CRIME THREAT 3

THE LEGAL FRAMEWORK 5

THE POSSE COMITATUS ACT 5

EXCEPTIONS AND LIMITATIONS 7

THE DRUG INTERDICTION ACT 9

OTHER EXCEPTIONS, COURT DECISIONS, & RELATED STATUTES 10

ENDS -- WAYS -- MEANS ANALYSIS 12

CONCLUSION 15

ENDNOTES 17

BIBLIOGRAPHY 23

COMBATING INTERNATIONAL ORGANIZED CRIME: A PROPOSAL FOR EXPANDING OUR NATIONAL MILITARY STRATEGY AND AMENDING TITLE 10 OF THE UNITED STATES CODE

> "Today our security problems are those not of war but of peace: not of the military, that is, but of the police."[1] — Michael Howard

In the post-Cold War era, international or transnational organized crime presents the single most serious threat to American national security. Senator John Kerry and others characterize the suppression of international organized crime as the "new war."[2] Notwithstanding this threat, unclassified national strategy documents, to include the Interagency's most recent final draft,[3] are virtually silent as to the role of the United States military in protecting against this threat. Given the Posse Comitatus Statute[4] and its limitation upon the use of the armed forces to engage in law enforcement activities, this is not surprising. This paper describes the nature of the post-cold war organized crime threat focusing on its military and paramilitary aspects; examines national strategy documents and United States Statutes related to that threat; and after an ends-ways-means analysis advocates:

1. Expanding the National Military Strategy to engage more directly the Department of Defense in the combating of international organized crime.
2. Assigning the United States Special Operations Command with a primary task of supporting the national effort to combat international organized crime.
3. Further amending Title 10 of the United States Code to authorize the direct participation of military forces in the combating of international organized crime or the repeal of the Posse Comitatus Act.

This paper will also address a measure which should be taken to ensure that civil military relations remain balanced.

ORGANIZED INTERNATIONAL CRIME AND ITS MILITARY CHARACTER

The post-Cold War era has been marked by an increasing globalization which has resulted in great technological advances, increased trade, and, although spectacular in the United States, uneven economic prosperity. Unfortunately, globalization has also unleashed a "flood gate to more sinister elements."[5] Organized crime is certainly the most sinister of these elements threatening American national security and its three core objectives. Where state institutions are fragile as in the Republics of the former Soviet Union, the Balkans and much of Eastern Europe, in Sub-Saharan Africa, and South American countries like Columbia, organized crime threatens political and economic institutions on a grand scale. This adversely affects our efforts to promote rising democracies and human rights. Organized crime adversely affects

economic prosperity, hindering free trade and siphoning off capital from legitimate economic expansion.

In particular, in Russia, there are estimates that organized crime controls 50-85% of the banking industry, 60% of state enterprises, and 40% of private businesses.[6] Estimates suggest that of Russia's more than 8,000 criminal organizations over 200 operate at the international level with contacts in over 50 nations.[7] Russian organized crime not only indirectly threatens our economic prosperity and efforts to promote democracy, but also our direct security. In addition to having recruited many special operations, military intelligence and KGB specialists, Russian organized crime includes flourishing military crime."[8] Infantry small arms are sold in bulk. Military helicopters and fixed wing aircraft are sold to drug cartels. Naval officers have successfully stolen 4.3 kilograms of nuclear material including .85 kilograms of uranium 235.[9] And the Lieutenant General of Chemical Troops, Anatoly Kuntsevich has been charged with delivering 800 kilograms of chemical material and attempted to sell 5.5 tons of chemical material to a Mid-East buyer. In sum, in Russia and the former Soviet Republics there is a large contingent of embittered, desperate military and former military officers supporting and available to support organized crime.

Military corruption and participation in organized crime is not unique to Russia. In Slovenia, Montenegro, Macedonia, Serbia, Croatia, and Bosnia, state governments and frequently their militaries are turning to organized crime to fund military operations.[10] In Columbia, paramilitary insurgents have been connected with drug trafficking and shifted their base of operations to those areas where drug revenues are greatest.[11] In the South China Sea, there is evidence that the Vietnamese government sanctions maritime piracy.[12]

In addition to the close nexus between contemporary international organized crime and state military forces and governments, organized crime by its very nature has a military character with a loose, sometimes hierarchal organization and frequently a code of conduct not unlike the American Soldier's Code of Conduct,[13] at least when it comes to cooperating with law enforcement authorities, the enemy of organized crime. Of special concern is the widely recognized trend that insurgents, weapons and drug traffickers, and ethnic paramilitary organizations tend to operate transnationally, frequently with bases in weak states, and often by establishing partnerships and alliances with one another.[14]

Given the military character of international organized crime, its ability to grow transnationally and globally in the face of traditional multinational law enforcement cooperation, and the extraordinary threat it presents to American national security, it would seem to make

sense for the United States to have a clearly announced strategy for using military forces to combat international organized crime, but we presently do not.

THE LACK OF MILITARY STRATEGY TO COMBAT THE INTERNATIONAL ORGANIZED CRIME THREAT

Our unclassified national strategy embodied in our national security and national military strategies as well as related presidential decision documents and Defense Department publications fail to provide a meaningful specific strategy on using our military power to combat international organized crime. There is no discussion of ends, ways, or means.

These documents each note that we live in a changed world. Globalization, technological expansion, and the information explosion "blur the dividing line between domestic and foreign policy and heighten the imperative for a single set of active U.S. efforts . . ." [15] These documents also recognize that international organized crime threatens United States interests. Our National Security Strategy lists as a threat to United States security criminal organizations and their activities to include "drug trafficking and other international crime, illicit arms trafficking, . . . trafficking in human beings, and physical attack or sabotage . . . [which] could originate from . . . criminal groups."[16] The November 2000 Interagency final draft of the National Security Strategy characterizes drug trafficking and organized crime as "persistent threats to our security in peacetime."[17] The draft endorses "the rule of law" as an American core value[18] but other than mentioning Plan Columbia in which our military is involved, the section on fighting international crime makes no mention of how the military should support the effort.[19]

Similarly, our National Military Strategy lists "international organized crime" as a transnational danger and highlights "the continued blurring of the distinction between terrorist groups, factions in ethnic conflict, insurgent movements, *international criminals, and* drug cartels [emphasis added]."[20] The Overview of the President's International Crime Control Strategy notes that "[I]nternational crime is not only a law enforcement problem, it is a formidable and increasing threat to national and international security."[21] In the narrower context of peace operations, Presidential Decision Directives 25 and 71 concerning reforming multinational peace operations and strengthening criminal justice systems in those operations, more directly address the threat of international crime in the context of peace operations[22].

While these national strategy documents recognize the international crime threat, they provide no strategy for the use of the military in combating international organized crime in other than peace operations. The National Security Strategy notes that "[t]he U.S. Military plays a crucial role in shaping the international security environment,"[23] but it provides no express role

for the military in combating international organized crime. While the Strategy's section on *Military Activities* section calls for selective engagement, encourages cooperation with foreign countries, and maintaining an overseas presence, all three of which are essential in combating international crime, the section includes no reference to organized crime.[24] Similarly, the following section on *International Law Enforcement Cooperation* also makes no reference to using the military,[25] nor does the section on *Drug Trafficking and Other International Crime* make any such reference.[26] The Strategy refers to *Plan Columbia,* which among other activities includes the use of Army Special Forces to assist in Columbia's counter-drug operations.[27] Other than perhaps calling for us to increase our capabilities to counter asymmetric threats[28] and noting that our military forces can provide "their unique operational and logistical capabilities to help civil initiatives to succeed,"[29] the National Military Strategy is absolutely silent as to how and when military capabilities should be used to combat international organized crime.

The President focused attention on the growing problem of International Organized Crime when he spoke to the United Nations in October1995. As a result the UN General Assembly issued a "Declaration of Crime and Public Security." Just days before the President issued this nations' first International Crime Control Strategy. Stripped of its superlatives, Directive 42 orders executive agencies, presumably including the Department of Defense, to "increase the priority and resources devoted to this effort," to improve internal coordination, to work with other governments, and to use "all legal means available to combat international crime."[30] Thus, it is a strategy of increased cooperation amongst United States executive agencies, and multilateral and bilateral cooperation amongst nations. It includes laudable goals calling for (1) extending our first line of defense beyond United States borders, (2) attacking smuggling, (3) denying safe havens, (4) countering financial crime, (5) preventing illegal exploitation of trade (6) responding to emerging threats (7) fostering international cooperation and (8) optimizing US effort.[31] To implement the Directive, the National Security Council has been "called upon Departments of Justice, State, and Treasury to develop and implement a comprehensive national strategy to attack international crime."[32] While no doubt the interagency process will include the Department of Defense, it is interesting that the Defense Department is not included in the call to develop a more comprehensive strategy.

For peace operations, Presidential Decision Directive 71 makes policy pronouncements concerning the role of military forces in law enforcement operations suggesting that there should be no military strategy for combating international organized crime. Military forces are cast in a supporting role providing a safe environment in which international and indigenous civilian

police can operate.[33] Military forces also can provide general logistical and communication support directly to civilian police.[34] The Directive notes that "[a]ctions related to criminal justice are primarily civilian in character: military forces are not police officers" and then lists a variety of reasons it is inappropriate to have military forces engaged in law enforcement tasks. On the other hand, the directive advises that military forces have no inherent law enforcement authority overseas and that United States armed forces do not normally have inherent law enforcement authority. They are not police officers and have not the appropriate training for law enforcement. It also notes that it sends the wrong message having military forces engaged in law enforcement.[35] But, the Directive notes that technical assistance in the form of "civil affairs, psychological operations, military intelligence, or military police" support is often critical to successful accomplishment of the civilian police mission.[36] Interestingly, the Directive calls for the use of other countries' constabulary forces during peace operations. This begs the question as to whether to combat international organized crime, the United States should organize some sort of constabulary force.

THE LEGAL FRAMEWORK

While the national strategy documents of the executive branch fail to define the role of the armed forces in combating international organized crime, the statutes passed by the legislative branch provide greater insight, but reflect the conflict between competing views as to the role of the armed forces in combating crime to include international organized crime. The Posse Comitatus Act, the many exceptions to the Act, and a brief examination of the way we have historically employed the military to enforce the laws are worth examining.

As a practical matter, the many exceptions to the act, its limited applicability within the United States, and its inapplicability outside the territorial limits of the United States serve chiefly to confuse, when as a matter of law, the military may be employed to combat international organized crime. A review of legislation reveals that the armed forces direct and indirect role in combating crime to include transnational crime continues to expand.

THE POSSE COMITATUS ACT

In 1878, as part of the Appropriation Act for the Army, Congress generally prohibited employing any part of the Army as a "posse comitatus or otherwise to execute the laws of the United States."[37] The term "posse comitatus" has its origin in English Common law and refers to the power of a constable to exercise the king's prerogative to call able-bodied men 15 and

older to maintain the peace and order or apprehend a felon.[38] Failure to join the constable's posse constituted contempt against the king and was punishable by fine and imprisonment.

In the United States, use of the United States Army or the militia to help enforce the law before 1878 was not unusual. The Army quelled insurrections, labor riots, racial disorders, stopped lynchings, and generally preserved domestic tranquility when resistance to governmental authority or criminal activity exceeded the capacity of local law enforcement authorities. In 1787, Federal troops were called out to put down Shay's rebellion and, in 1794, George Washington led federal soldiers and militia to quell the Whiskey Rebellion. In 1807, Congress declared the Army to be an enforcer of United States law. In 1846, Army troops suppressed anti-Catholic riots in Philadelphia and, in the west the troops were used extensively in the bloody Kansas territory. Troops were used to enforce the fugitive slave laws and, in 1859, United States Army Lieutenant Colonel Robert E. Lee led Marines to captured John Brown at Harper's Ferry. During the civil war, Federal troops suppressed riots against the draft in New York City and, where civil authority had collapsed in the field, commanders employed provost courts and military commissions to enforce civil law.

After the Civil War, United States troops occupied much of the south where they were called upon not only to suppress disturbances and riots exceeding the enforcement capacity of local sheriffs and police,[39] but also to protect the rights of freed slaves, to supervise voter registration, poling places, election ballot counts, election of delegates to constitutional conventions, and ratification of the 14th Amendment by Southern States.[40] The Military Reconstruction Act of Mar 2, 1867 expressly authorized the military trials of civilians[41] and from April 1865 to January 1869, over 1400 civilians were tried in military courts.[42]

And yet it was the Presidential election of the 1876 that gave rise to the Congressional impetus to pass the Posse Comitatus Act. In 1876, notwithstanding the employment of over 4,800 election supervisors and the deployment of over 11,000 Deputy Marshals, and United States Army troops to South Carolina, Louisiana, and Florida to prevent fraud and guard canvassers,[43] election fraud was rampant. Ultimately, with respect to the Presidential Election, a Republican controlled Congress disqualified the Democratic electors from these states and installed Republican electors. Rutherford B. Hayes was thus elected 19th President of the United States. To mollify Democrats who lost in Congress on a straight party vote, the Republicans agreed to withdraw the Union forces occupying the South and the Posse Comitatus Act passed the next year.

Of course, the disengagement of Federal Troops from local law enforcement resulted in a dramatic decline of the civil rights of the freed slaves. Without the presence of U.S troops,

American blacks in the south effectively lost the right to vote and a host of other fundamental human rights. Unlawful discrimination flourished in not just voting, but education, property ownership, marriage, and commerce. Ultimately, almost 80 years later, federalized troops were again called to guarantee the civil rights of the descendants of freed slaves in Little Rock, Arkansas[44] and later in Mississippi and Alabama. While it is often argued that the Posse Comitatus Act restored a more appropriate relationship between civil law enforcement authorities and our military establishment, an equally compelling argument could be made that realistically, only the presence of United States troops could have helped protect the rights of black Americans.

There are of course sound policy reasons for limiting the involvement of the armed forces in civilian law enforcement. Our Declaration of Independence complained of Great Britain's "large standing army quartered amongst the civilian population "being independent of and superior to the civil [authorities]."[45] Our founding fathers initially contemplated having no large standing army. By limiting military involvement in domestic civil law enforcement, there is less likelihood that citizens will have government interfering in their lives. Certainly, there is a training issue. Courts have frequently voiced approval of the limitations imposed by the Posse Comitatus Act noting that military personnel are not trained in the protection of a citizen's constitutional right. Moreover, on its face the Act discourages the use of the armed forces' overwhelming combat power against its citizens. From a military perspective, the Act prevents civilian officials at all almost all levels from calling for military assistance to engage in routine law enforcement. Thus, citing the Act, the armed forces can fend off requests for assistance citing the Act. Thus, the armed services' limited resources can be focused on their primary mission of deterrence and if deterrence fails, fighting and winning America's wars.[46]

Notwithstanding the sound policies behind the Act, there are numerous exceptions and limitations rendering the Act less meaningful and certainly confusing.

EXCEPTIONS AND LIMITATIONS

Today, the Posse Comitatus Act limits the activities of the Army or Air Force "except in cases and under circumstances expressly authorized by the Constitution or Act of Congress."[47] The Act is a criminal statute subjecting those who use the Army or Air Force to fine or imprisonment for now more than 2 years. While no one has been prosecuted under the Act, [48]violation of the posse comitatus act, serves as the basis for excluding evidence at trial.[49] There are, however, a host of statutory, executive, and judicial exceptions to the Act that make it difficult to apply.

While on its face the Act applies to only the Army and Air Force, not the Navy,[50] by administrative regulation, the Navy and Marine Corps are likewise restricted from engaging directly in law enforcement activity.[51] On the other hand, the Act does not apply to the Coast Guard, which is expressly authorized to engage in law enforcement activity over "the high seas and waters over which the United States has jurisdiction."[52] Moreover, the Coast Guard is authorized to assist, upon request, other governmental agencies in any activity for which the Coast Guard is "especially qualified[53] and this has been held to include law enforcement activity.[54] Similarly, the Posse Comitatus Act does not apply to the Army and Air National Guards when acting in a state capacity under Title 32, United States Code as opposed to federal capacity under Title 10, United States Code.[55]

Today, it is well settled that Posse Comitatus Act has no extra-territorial applicability.[56] While until 1948, the Army took the position that the Posse Comitatus Act applied overseas and refrained from overseas civilian law enforcement, after World War II, Federal Courts uniformly refused to apply the act to overt military law enforcement activities outside the territorial limits of the United States.[57] These cases all involved enforcing civilian law in an occupation setting and did not address application of the Act outside an occupation setting. Certainly, the Posse Comitatus Act did not prevent the Army's apprehension of Manual Noriega and his subsequent conviction and 40 year sentence for violating United States drug laws.[58] And Congress continues to expand the role of the Armed Forces in supporting civilian law enforcement.

The President of the United States is charged under the Constitution with enforcing the laws of the United States[59] and, thus, military forces can be used as a posse comitatus and engage in law enforcement at the express direction of the President.[60] Within months of the Posse Comitatus Act, President Hayes directed U.S Army troops to serve process and otherwise aid United States Marshals in the Arizona Territory.[61] At the request of a State governor or legislature the President can use "such of the militia . . . and . . . armed forces, as he considers necessary" to quell insurrections against state governments.[62] Moreover, a Presidential decision to call out U.S Armed Forces or the Guard to suppress an insurrection or civil disturbance is not subject to judicial review.[63] In his own discretion, the President can use the armed forces or militia to enforce the law whenever any "unlawful obstructions, combinations, or assemblages, or rebellion" make the ordinary law enforcement impracticable;[64] or where "any insurrection, domestic violence, unlawful combination, or conspiracy . . . [deprives a class of people their rights or obstructs the laws of the United States.]"[65]

THE DRUG INTERDICTION ACT

In addition, beginning with the 1982 Department of Defense Authorization Act,[66] Congress began to expressly authorize military involvement with the war on drugs, almost exclusively a civilian law enforcement activity. Under the Defense Drug Interdiction Act, the Department of Defense role was greatly expanded. The Secretary of Defense is expressly authorized "in accordance with other applicable law, to provide to . . . civilian law enforcement officials any information collected during . . . normal military training or operations that may be relevant to a violation of any Federal or State law.[67] Amended in 1988, the section now requires that "[t]he needs of civilian law enforcement officials for information shall to the maximum extent practicable, be taken into account in the planning and execution of military training or operations."[68] The Drug Interdiction Act likewise authorizes the Department of Defense to make available its "equipment, base facility, or research facility" to civilian law enforcement[69] and to provide training in the operation of that equipment and "expert advice."[70] Likewise amended in 1988, this section now authorizes the providing of spare parts and supplies[71] and, in 1996, the providing of equipment and facilities to prepare for or respond to chemical or biological emergencies.[72]

The Act also authorizes Defense Department personnel to maintain equipment for local civilian law enforcement officials including equipment provided under the Act.[73] Also, the Act authorized the Secretary of Defense to provide military personnel upon request to operate equipment under a variety of circumstances including detection and monitoring of air and sea traffic anywhere and surface traffic outside the geographic boundary of the United States and up to 25 miles inside the United States if the detection occurs initially outside the United States; [74] aerial reconnaissance;[75] interception of vessels or aircraft detected outside the United States to direct them to a location designated by civilian officials;[76] operation of equipment to facilitate communications in connection with enforcing the Controlled Substances Act,[77] the Controlled Substances Import and Export Act,[78] import and export law as it relates to the movement of merchandise across United States Borders; The Maritime Drug Law Enforcement Act;[79]and any law, foreign or domestic, prohibiting terrorist activities.[80]

Subject to the approval of the Department of Justice and, if outside the United States, the Department of State, the Defense Department may transport civilian law enforcement personnel,[81] may operate a base for civilian law enforcement personnel,[82] and may transport suspected terrorists from foreign countries to the United States for trial.

In addition to the limits in using personnel in Section 374, the Drug Interdiction Act limited Department of Defense participation in drug interdiction efforts in principally three ways. First, the Act required the Secretary of Defense to issue regulations so as not to permit the direct participation of Armed Forces personnel "in a search, seizure, arrest, or other similar activity unless participation . . . is otherwise authorized by law."[83] Second, the providing of any such support can not "adversely affect the military preparedness of the United States."[84] Third, the civilian law enforcement agency can be required to make reimbursement[85] unless the support is provided in the "normal course" of military activities,[86] or the support results in a "substantially equivalent" military training or operational benefit.[87]

OTHER EXCEPTIONS, COURT DECISIONS, & RELATED STATUTES.

There are other statutory exceptions to the Posse Comitatus Act. Upon request, the Army, Navy, and Air Force are authorized to investigate presidential and presidential staff assassinations, assaults and kidnapping notwithstanding statutes to the contrary.[88] In an emergency, the Attorney General may also request Defense Department assistance notwithstanding the posse comitatus restrictions in cases of prohibited transactions involving nuclear material[89] or in emergency situations involving chemical or biological weapons of mass destruction.[90] For situations involving chemical or biological weapons, unless necessary for the immediate protection of human life and civilian officials are incapable of taking action, the statute requires regulations prohibiting armed forces personnel from making an arrest or directly participating in a search or seizure of evidence or directly participating in the collection of intelligence for law enforcement purposes.[91]

Since 1989, the Department of Defense has been designated "the single lead agency for the of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States." [92] This responsibility is executed in support of domestic and foreign, civilian law enforcement agencies.[93] In this regard, Congress directed the Defense Department, in consultation with the Director of National drug Control Policy to integrate into an effective communications network the command, control, communications, and technical intelligence assets dedicated . . .to drug interdiction in the United States.[94] And the same act requires that to the maximum extent practicable, the armed forces conduct training exercises in drug interdiction areas.[95]

The Secretary of Defense is a member of the National Security Council Committee on Nonproliferation. The Committee reviews and coordinates programs and policies concerning

matters relating to international organized crime. The Committee also makes recommendations "to ensure appropriate cooperation on . . .promoting domestic and international law enforcement efforts against proliferation-related efforts . . . [and] . . . countering the involvement of organized crime groups in proliferation-related activities."[96]

A detailed analysis of case law is beyond the scope of this paper, but absent express statutory authorization, federal courts have generally decided that the direct active involvement of military personnel in law enforcement violates the Posse Comitatus Act.[97] In deciding whether assistance is direct or indirect, courts now employ a three part test.[98] First, military involvement must not subject civilians to "regulatory, prescriptive, or compulsory military power."[99] Second, military participation must not "amount to direct active involvement of the military in the execution the of the laws."[100] Third, the use of the military must not "pervade" the activities of civilian law enforcement officials.[101] If any of these tests are met, the involvement is direct.

So, prohibited activities include arrest, seizure of evidence, searches of persons, places or things, pursuit of escaped civilian prisoners,[102] and the like. Maintenance of checkpoints or roadblocks off-post restricting civilian movement likewise violates the Act.[103] On the other hand, military personnel are authorized to apprehend civilians and enforce the law on military reservations.[104] Likewise, where there is an independent military purpose to a criminal investigation, there is no violation of the Act.[105]

Conversely, passive activities in support of civilian law enforcement authorities, many of which are now authorized by statute, have been found not to violate the Act. Also, armed forces criminal investigators may coordinate with civil law enforcement officials and may subsequently testify at civilian trials.[106] Military personnel may serve as undercover informants.[107]

Taken as a whole, the Posse Comitatus Act with its exceptions and limitations attempt to strike a balance so as to remove the armed forces from routine law enforcement. In piece meal fashion, however, the United States Code assigns responsibility to the armed forces to participate significantly in civilian law enforcement. In large measure, the armed services have an indirect or supporting role in civilian law enforcement. In so far as drug interdiction is concerned, the armed forces have a central role.

In summary, for crimes directly related to our vital interests--trafficking drugs, employing chemical and biological weapons of mass destruction, engaging in prohibited transactions with nuclear materials, assassinating the President, or engaging in an insurrection or terrorism—the armed forces may be employed in a more direct role. These are special crimes, which have in

the past, or are likely in the future, to exceed the law enforcement capacity of civilian authorities. Senator Kerry's New War, the war against organized international crime arguably exceeds the capacity of civilian authorities throughout the world. International organized crime is likewise threatening the vital interests of the United States. With respect to such crime, it's time that we allow the direct prescriptive involvement of the armed forces. We enjoy civilian control of the military—that same civilian supervision of the military can make the policy decisions as to when it is appropriate to deploy the military not only in support of security and stability operations, but also operations against international organized crime.

Abolishing the Posse Comitatus Act has a certain amount of appeal. Congress and practice have whittled away at the breadth of the original Act. The many exceptions and limitations are a source of confusion. As a practical matter, given the present state of civil military relations, too many citizens would view the elimination of the Posse Comitatus Act as affording the government the opportunity to intrude into their lives. Despite the appeal of eliminating a restriction that has been the source of much litigation, it is doubtful that the Posse Comitatus Act will be repealed. Besides, the armed forces could be effectively employed in the fight against organized crime by expanding Title 10 so as to permit the use of the armed forces to combat international organized crime.

Title 10 can be amended so as to authorize direct Presidential approval of such operations. An additional section to Title 10 could be added authorizing the President to direct the use of the armed forces to apprehend those engaged in specific international organized crime operations. The President could direct the use of specific units or could approve specific operations. Where practicable the armed forces should be employed in conjunction with civilian law enforcement authority. In the alternative, concurrence of the State Department and Justice Department could be required to authorize the employment of the armed forces against international organized crime.

ENDS -- WAYS -- MEANS ANALYSIS

In the modern era, organized crime has no doubt always existed and with the continued trend toward transnational globalization, international organized crime will continue to exist for the foreseeable future and at least through 2010. While eliminating all crime is a platonic end-state, a more achievable end-state should be reduced and contained international crime organizations. More specifically, international organized crime should be reduced so that it no longer threatens the stability of emerging democracies in Africa, the Americas, Eastern Europe, and the former Soviet States. Most important, international organized crime must also be reduced

so that it cannot strike at any of our vital interests. We must not allow organized crime elements to strike at or facilitate an adversary's ability to strike at our critical infrastructure, to engage in acts of terrorism, or to employ weapons of mass destructions against United States citizens.

Looking at our current International Crime Control Strategy it's difficult to find fault with its declaration that international crime presents a threat to global security or its call for mobilizing all of the Federal Government to fight organize crime. It's reliance on our Justice Department and Treasury Departments, both principal law enforcement Departments, is well founded. The strategy is perhaps a little legalistic, but implementation of the strategy will require an aggressive, long-term diplomatic program. As a broad statement of policy, the Strategy is perhaps satisfactory but emphasis and cooperation with a list of disparate goals is hardly a strategy.

To begin with international conventions and model statutes will have to be established. Laws between states will have to be harmonized. Extradition must become universal. As Senator Kerry suggests, asset seizure and forfeiture statutes must likewise become universal. Banking secrecy laws must be modified so as to make money laundering more difficult. A convention like the Rome Statute, which addresses International War Crimes, most often committed in an organized crime- like setting, is a start, but the enforcement of criminal law goes to the heart of national sovereignty. The United States has endorsed the Rome Statute, albeit with significant reservation. For failed or failing states, international legal norms must allow transnational law enforcement, an extreme example of which is the United States' intervention in Panama to seize and ultimately apprehend President Manuel Noriega.[108] Where states have not or are not failing, more liberal, expedited mutual law enforcement assistance and extradition must become the norm. Only in extreme cases, should the United States infringe upon the sovereignty of healthy nation states by abducting organized crime suspects within the territorial limits of another healthy state.

While the improvement of criminal laws and conventions in this arena is important, by itself improved laws or conventions will do little unless: (a) law enforcement is improved, (b) sanctuaries or bases of operation for organized crime are eliminated or isolated, (c) new methods to disrupt organized crime are employed. The key to combating successfully international organized crime is greater direct action against organized crime. Rather than defend at our porous borders and work within the United States, our focus should expand overseas. This is where employment of Military Forces could pay rich dividends.

There are several options, none of which are mutually exclusive:

1. Maintain the status quo and continue to provide civilian law enforcement with logistical, technical, and indirect support and direct support for special crimes.

2. Create a new separate constabulary force designed to combat international crime.

3. Adapt below and above the line Special Operations Forces to fight international organized crime.

4. Use conventional forces to engage more directly in international law enforcement against organized crime especially when they can compliment civilian law enforcement just as State Governors use the State National Guards to assist in civilian law enforcement under special circumstances.

5. Focusing military intelligence collection efforts on international organized crime.

To some extent, we engage publicly and, no doubt covertly in some of the activities related to these options. In the open, Joint Task Force 6 has patrolled the Texas-Mexican border, the Air Force searches for planes transporting drugs, and Special Forces units operating under the auspices of Plan Columbia are engaging in a form of foreign internal defense to help the Columbians with their drug problem. National intelligence assets are focused on terrorists and weapons of mass destruction.

Given the enormity of international organized crime and its multimillion if not multibillion-dollar impact on our economy, its threat to the developing world and former communist countries, and its potential connection with weapons proliferation, maintaining the status quo is unsatisfactory. International organized crime will continue to grow. Ignoring the problem is not a solution. Improvements in civilian law enforcement cooperation and greater effort in this country's "war on drugs" have not to date resulted in any consensus that we are winning that war. Moreover, it is simply not likely that Congress will invest large sums to expand federal, state, or local law enforcement. This year the Federal Bureau of Investigations budget was reduced.

Similarly, creation of a new transnational or national constabulary to fight international organized crime would require the appropriation of monies that simply are not likely to be appropriated. No one has called for the creation of transnational bureau of investigation. Notwithstanding record budget surpluses, there is no general clamoring for the expenditure of more monies for fighting international organized crime. Not only that, but the resourcing of this effort through the use of military forces must surely be less expensive than expanding our civilian law enforcement agencies to operate overseas.

The combating of international organized crime has the character of an unconventional war. International organized criminals, like insurgents, are not readily identifiable. Special operations elements, especially Special Forces Groups, are designed to promote foreign internal defense. An organized insurgency is one form of organized crime. Expanding special

operations doctrine and perhaps force structure to fight organized crime makes sense. Other elements like the Special Operation Aviation Regiment and the Delta Force are well suited to seize international terrorists, who are by definition criminals. In Somalia, these forces were reportedly employed to capture the leaders of the Habr Gidr clan then regarded as an organized renegade criminal group thwarting peace and stability.[109] Their mission certainly could include the detention of international organized criminals for delivery to civilian authorities. Thus, it's appropriate to assign to the United States Special Operations Command with the support of national and service intelligence and security and in coordination with civilian agencies the task of supporting our International Crime Control Strategy.

At first blush, this proposal is just one more request for the Armed Services to do more with less or the same structure and resources. The short answer to this is that this proposal involves changing the focus of the United States Special Operations Command. In all probability, the force structure of that command should be expanded. Not only Special Forces Groups and Civil Affairs, but also perhaps special military police elements should be added to the structure in much the same way that the Italians have the Carabinieri or the French have the Gendarmerie. While military forces will always have the primary mission of fighting America's wars, where the likelihood of fighting a conventional war is remote, we should be able to preserve military funding and force structure by making our forces multifunctional so that it can better help fight America's new war against international organized crime.

CONCLUSION

Globalization is rapidly changing the world in which we live. While we have enjoyed unprecedented growth in the United States, much of the world has seen an explosion in international crime. From Russia to Africa to the Americas, organized crime has taken hold and presents a real threat to American national security. Interestingly, this threat has paramilitary aspects. From the nature of international criminal organizations, to the weapons they use, to the former Soviet and Eastern block military officials that they employ, to their split base operations, international criminal organizations often resemble an irregular force.

Notwithstanding this paramilitary character and organized crime's connections with terrorists and weapons of mass destruction, our national and national military strategy documents hardly address the role of the United States armed forces in addressing the threat. These documents acknowledge the grave threat that international organized crime presents, but there is no strategy as to whether or how to employ the material. At the very least, the National Security Strategy and Presidential Decision Directive 42, The International Crime Control

Strategy, should be amended to expand the Armed Forces role in combating international organized crime.

Likewise, Title 10 should be amended to authorize the direct, prescriptive involvement in the armed forces in combating international organized crime. In the alternative, the Posse Comitatus Act should be abolished. Service regulations could protect local military officials from being inundated with requests from local civilian law enforcement officials. While there will always be a tendency to insert civilian law enforcement officials between the military and civilians, requiring the concurrence of the State and Justice Departments will serve as an important check to preserve an appropriate balance in civil military relations.

Lastly, this proposal is not only feasible and practical, but I submit that it is only a matter of time before the role of the Armed Forces in combating international organized crime in expanded. Since the Drug Interdiction Act, that role has continued to expand. The United States Commission on National Security/21st Century predicts that with the proliferation of conventional weapons and weapons of mass destruction, the United States homeland faces attack.[110] There is a high likelihood that any such attack will be connected with international organized crime. Sooner or later the Armed Forces will invariably be used more directly in the fight against international organized crime. The real issue is whether the armed forces will more directly join the fight before or after such a catastrophic event.

WORD COUNT = 6,625

ENDNOTES

[1] Michael Howard, *Land of War, Land of Peace*, WILSON QUARTERLY 21, no. 1, Winter 1997, at 35.

[2] John Kerry, THE NEW WAR: THE WEB OF CRIME THAT THREATENS AMERICA'S SECURITY, New York, NY: Simon & Schuster, 1997.

[3] Interagency, *National Security Strategy--Interagency Final Draft*,Washington, D.C.: The White House, Nov. 28, 2000.

[4] 18 U.S.C. § 1385 (2000).

[5] Paul J. Smith, *Transnational Security: Threats and State Survival*, PARAMETERS 30, no. 3, Autumn 2000, at 77.

[6] Graham H. Turbiville, *Operations Other Than War: Organized Crime Dimension*, MILITARY REVIEW 74, no. 1, Jan 94, at 47.

[7] *Id.*

[8] Graham H. Turbiville, *Weapons Proliferation and Organized Crime: Russian Military Dimension* in AIR POWER JOURNAL 10, Special Edition 1996, at 17-24.

[9] *Id.* at 22.

[10] Turbiville, *supra* note 7, at 44.

[11] *Id.* at 37.

[12] Smith, supra note 6, at 88.

[13] Exec. Order No. 10,631, 20 Fed. Reg. 6057 (1955) as amended by Exec. Order No. 12017, 42 Fed. Reg. 57961 (1977).

[14] *See Generally* Ray Godson and Phil Williams, *Strengthening Cooperation Against Transnational Crime* in SURVIVAL 40, no. 3, Autumn 98, at 66-79.

[15] Interagency, supra note 3, at 1.

[16] William J. Clinton, *A National Security Strategy for a New Century*,Washington, D.C.:The White House, Dec 1999,at 2.

[17] Interagency, *supra* note 3, at 3.

[18] *Id.* at 4.

[19] *Id.* at 24-26.

[20] Gen. John M. Shalikashvili, *National Military Strategy of the United States of America--Shape, Respond, Prepare Now: A Military Strategy for a New Era,* Washington, D.C., 1997, at 9.

[21] Presidential Decision Directive 42: International Crime Control Strategy, Washington, D.C.: The White House, Oct. 21, 1995.

[22] *See* Presidential Decision Directive 25: Reforming Multilateral Peace Operations, Washington, D.C.: The White House, May 1994, and Presidential Decision Directive 71: Strengthening Criminal Justice Systems in Support of Peace Operations, Washington, D.C.: The White House, Feb. 2000.

[23] Clinton, *supra* note 17 at 11.

[24] *Id.*

[25] *Id.* at 13.

[26] *Id.* at 15.

[27] *Id.* at 40.

[28] Shalikashvili, *supra* note 21 at 9.

[29] *Id.* at 13.

[30] Presidential Decision Directive 42, *supra* note 22 at Background Section.

[31] *Id.* at Goals and Objectives Section.

[32] *Id.* at Background Section.

[33] Presidential Decision Directive 71, *supra* note 23 at General Policy Guidance Section.

[34] *Id.*

[35] *Id.*

[36] *Id.* at Improving Activities at the Operational Level Section.

[37] Act of June 18, 1878, Ch. 263. Sec. 15, 20 Stat. 152 (1878)(codified as amended at 18 U.S.C. § 1385 (2000). The entire section reads:

> CHAP. 263 - An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes.

> SEC. 15. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section And any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment.

[38] William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND--A FACSIMILE OF THE FIRST EDITION OF 1765-69, (Chicago & London: The University of Chicago Press, 1979) Vol. I, 343; Vol. IV 122-23.

[39] The racially motiviated New Orleans Mechanics Riot of 1866 and the Memphis Riots of 1867 were quelled by Federal Troops and resulted in the passage of the Ku Klux Clan Act.

[40] Edward Corwin, THE PRESIDENT: OFFICE AND POWERS 1787-1957: HISTORY AND ANALYSIS OF PRACTICE AND OPINION, (New York: New York University Press, 1957), 135.

[41] Act of March 2, 1867, Ch. 6, 15 Stat. 2 (1867).

[42] Mark E. Neely Jr, THE FATE OF LIBERTY: ABRAHAM LINCOLN AND CIVIL LIBERTIES, (New York: Oxford University Press, 1991) at 176-7.

[43] 7 CONG. REC. 3586 (1878).

[44] Executive Order No. 10,730, 22 Fed. Reg. 7268 (1957) " (Assistance for removal of obstruction of justice within Arkansas", Sept. 24, 1957).

[45] Declaration of Independence para. 16-17 (U.S 1976).

[46] Clinton, *supra* note 17 at 11.

[47] 18 U.S.C. § 1385 (2000).

[48] Roger B. Hohnsbeen, *Fourth Amendment and Posse Comitatus Act Restrictions on Military Involvement in Civilian Law Enforcement*, 54 GEO. WASH. L. REV. 404, 408 (1986).

[49] Bissonet v. Haig, 776 F.2d. 1384 (8th Cir. 1985).

[50] United States. v. Roberts, 779 F.2d 565, (9th Cir. 1986) *cert. denied*, 479 U.S. 839, 93 L.Ed. 2d 84, 107 S.Ct. 142 (1986).

[51] Navy Instruction 5820.7, May 15, 1975, 32 C.F.R. 213 (1989). *See, United States v. Yunis*, 288 U.S. App. D.C. 129, 924 F.2d. 1086 (D.C. Cir. 1991).

[52] 14 U.S.C. § 89 (2000).

[53] 14 U.S.C. § 141 (2000).

[54] United States v. Warren, 578 F.2d 1058 (5th Cir. 1978).

[55] United States. v. Hutchings, 127 F.3d 1255 (10th Cir. 1997);Gilbert v. United States, 165 F. 3d. 470 (6th Cir. 1999).

[56] United States v. Yunis, 288 U.S. App. D.C. 129, 924 F.2d. 1086 (D.C. Cir. 1991).

[57] Chandler v. United States, 171 F.2d. 921 (1948); D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951), *cert. denied,* 343 U.S. 935 (1952).

[58] United States v. Noriega, 746 F. Supp. 1506 (S.D. Fla. 1990), *aff'd,* 117 F.3d 1206 (11th Cir. 1997) *cert denied*, 523 U.S. 1060 (1998).

[59] U.S.CONST. art. II, § 3, cl. 3.

[60] 16 Op. Att'y. Gen. 162 (1878)(Employment of the Military as a Posse).

[61] 17 Op. Att'y. Gen. 333 (1882)(Suppression of Lawlessness in Arizona).

[62] 10 U.S.C. § 331 (2000).

[63] Monarch Ins. Co. v. District of Columbia, 353 F.Supp. 1249 (D.D.C. 1973), *aff'd without opinion*, 162 US App DC 97, 497 F.2d. 684 (1974), *cert. denied*, 419 U.S. 1021 (1974). (Use of DC National Guard to halt May Day riots interfering with the operation of the Federal Government.)

[64] 10 U.S.C.§ 332 (2000).

[65] 10 U.S.C. § 333 (2000).

[66] Pub. L. No. 97-86, Title IX, § 905 (a)(1), 95 Stat. 1115 (1981)(codified at amended at 10 U.S.C. § 371 (2000)).

[67] *Id.*

[68] 10 U.S.C. § 371(b) (2000).

[69] 10 U.S.C. § 372 (2000).

[70] 10 U.S.C. § 373 (2000).

[71] Pub L. No. 100-456, Title IX, § 1104(a), 102 Stat. 2043 (1988)(codifed as amended at 10 U.S.C. § 373).

[72] Pub L. No. 104-106, Title III, § 378, 110 Stat. 284 (1996).

[73] Pub. L. No. 97-86, Title IX, § 905 (a)(1), 95 Stat. 1115 (1981) (codified as amended at 10 U.S.C. § 374(a) (2000)).

[74] 10 U.S.C. § 374(b)(2)(A &B)(2000).

[75] 10 U.S.C. § 374 (b)(2)(C) (2000).

[76] 10 U.S.C. § 374(b)(2)(D) (2000).

[77] 21 U.S.C. § 801 *et seq.* (2000).

[78] 21 U.S.C. § 951 *et seq.* (2000).

[79] 46 U.S.C. app. § 1901 *et seq.* (2000).

[80] 10 U.S.C. § 374 (b)(2)(E) (2000).

[81] 10 U.S.C. § 374 (b)(2)(F)(i) (2000).

[82] 10 U.S.C. § 374 (b)(2)(F)(ii) (2000).

[83] 10 U.S.C. § 375 (2000).

[84] 10 U.S.C. § 376 (2000).

[85] 10 U.S.C. § 377(a) (2000).

[86] 10 U.S.C. § 377(b)(1) (2000).

[87] 10 U.S.C. § 377(b)(2) (2000).

[88] 18 U.S.C. § 1751 (2000).

[89] 18 U.S.C. § 831 (2000).

[90] 10 U.S.C § 382 (2000).

[91] 10 U.S.C. § 382 (2000)

[92] 10 U.S.C. § 124(a)(1) (2000).

[93] 10 U.S.C. § 124(a)(2) (2000).

[94] Pub. L. 101-189, Div A, Title XII, §1204, 103 Stat. 1564. (1989).

[95] Pub. L. 101-189, Div A, Title XII, §1206, 103 Stat. 1564. (1989).

[96] 50 U.S.C. § 2352 (2000).

[97] United States v. Kahn, 35 F.3d 426 (9th Cir. 1994); United States v Yunis, 681 F. Supp. 891 (D.D.C. 1988), *aff'd,* 924 F.2d 1086 (D.C. Cir. 1991); *See Also* U.S. v. Red Feather, 392 F. Supp. 916 (D. S.D. 1975).

[98] United States v. Kahn, 35 F.3d 426, 431 (9th Cir. 1994). *See also,* United States v. Hitchcock, 103 F. Supp. 2d 1226 (D. Haw.1999).

[99] *Id. See also,* United States v. McArthur, 419 F. Supp. 186 (D. N.D. 1975), *aff'd* 541 F.2d 1275 (8th Cir. 1976) *cert. denied,* 430 U.S. 970, 52 L..Ed. 362, 97 S.Ct. 1654 (1977).

[100] *Id.*

[101] United States v. Yunis, 288 U.S. App. D.C. 129, 924 F.2d. 1086 (D.C. Cir. 1991).

[102] Wrynn v. United States, 200 F. Supp. 457 (E.D. NY 1961).

[103] Bissonette v. Haig, 776 F.2d 1384 (8th Cir. 1985).

[104] United States. v. Banks, 539 F.2d 14 (9th Cir. 1976) *cert. denied*, 429 U.S. 1024, 50 L.Ed. 2d 626, 97 S.Ct. 644 (1976).

[105] United States v. Chon, 210 F.3d 990 (9th Cir. 2000); United States v. Brown, 9 M.J. 666 (N.C.M.R. 1980).

[106] State v. Maxwell, 174 W. Va. 632, 328 S.E. 2d. 506 (1985).

[107] People v. Wells, 175 Cal. App. 3d. 876, 221 Cal. Rep. 273 (4th Dist. 1985).

[108] United States v. Noriega, 746 F. Supp. 1506 (S.D. Fla. 1990), *aff'd,* 117 F.3d 1206 (11th Cir. 1997).

[109] *See Generally*, Bowden, Mark, BLACK HAWK DOWN: A STORY OF MODERN WAR, New York: Atlantic Monthly Press, 1999.

[110] U.S. Commission on National Security, Roadmap for National Security: Imperative for Change, The Phase III Report of the U.S. Commission on National Security. (Washington, D.C.: Feb 15, 2001) at viii.

BIBLIOGRAPHY

Books

Blackstone William, COMMENTARIES ON THE LAWS OF ENGLAND--A FACSIMILE OF THE FIRST EDITION OF 1765-69, (Chicago & London: The University of Chicago Press, 1979) Vol. I, 343; Vol. IV 122-23.

Bowden, Mark, BLACK HAWK DOWN: A STORY OF MODERN WAR, (New York: Atlantic Monthly Press, 1999).

Corwin, Edward, THE PRESIDENT: OFFICE AND POWERS 1787-1957: HISTORY AND ANALYSIS OF PRACTICE AND OPINION, (New York: New York University Press, 1957).

Kerry, John, THE NEW WAR: THE WEB OF CRIME THAT THREATENS AMERICA'S SECURITY, (New York, NY: Simon & Schuster, 1997).

Neely, Mark E. Jr., THE FATE OF LIBERTY: ABRAHAM LINCOLN AND CIVIL LIBERTIES, (New York: Oxford University Press, 1991).

Periodical and Law Review Articles

Beres, Louis R., *The Legal Meaning of Terrorism for the Military Commander*, 11 CONN. J. INT'L L 1 (1995).

Blumenson, Eric, and Nilsen, Eva, *Policing for Profit: The Drug Wars Hidden Economic Agenda*, 65 U. CHI. L. REV. 35 (1998).

Bryant, Leroy C., *The Posse Comitatus Act, The Military, and Drug Interdiction: Just How Far Can We Go?*, THE ARMY LAWYER, Dec 1990, 3.

Donesa, Christopher A., *Protecting National Interests: The Legal Status of Extraterritorial Crimes*, 41 DUKE L. J. 867 (1992).

Dunlap, Jr., Charles J., *Welcome to the Junta: The Erosion of Civilian Control of the U.S. Military*, 29 WAKE FOREST L. REV. 341 (1994).

Furman, H.W.C., *Restrictions Upon the Use of the Army Imposed by the Posse Comitatus Act,* 7 MIL. L. REV. 85 (1960).

Godson, Ray and Phil Williams, "Strengthening Cooperation Against Transnational Crime" in Survival 40, no. 3 (Autumn 98): 66-79.

Hasday, Jill E., *Civil War as a Paradigm: Reestablishing the Rule of Law at the End of the Cold War,* 5 KAN. J. L. & PUB. POL'Y 129 (1996).

Hammond, Matthew C., *The Posse Comitatus Act: A Principal in Need of Renewal*, 75 WASH. U. L. Q. 953 (1997).

Hohnsbeen, Roger B., *Fourth Amendment and Posse Comitatus Act Restrictions on Military Involvement in Civilian Law Enforcement*, 54 GEO. WASH. L. REV. 404, 408 (1986).

Howard, Michael, "Land of War, Land of Peace" in *Wilson Quarterly* 21, no. 1 (Winter 1997): 30-36.

Jatar-Hausman, Ana Julia, "What Cuba Can Teach Russia" in *Foreign Policy* 113 Winter (1998-99): 87-103.

Kash, Douglas, *The Capture of Manuel Antonia Noriega: A Legal Analysis,* 4 TOURO. J. TRANSNAT'L L. 251 (1993).

Ross, Russel R., "Tracking the Global Crime Threat" in *Issues in Global Crime*, (Washington, D.C.: Department of State, May 1998), 8-13.

Smith, Paul J, "Transnational Security: Threats and State Survival," in *Parameters* 30, no. 3 (Autumn 2000): 77-91.

Snyder, Susan, "Combating Transnational Crime" in *Issues in Global Crime*, (Washington, D.C.: Department of State, May 1998), 5-7.

Turbiville, Graham H., "Operations Other Than War: Organized Crime Dimension," in *Military Review* 74, no. 1(Jan 94): 35-47.

Turbiville, Graham H., "Weapons Proliferation and Organized Crime: Russian Military Dimension" in *Air Power Journal* 10, Special Edition(1996) 17-24.

United States Constitution

U.S. CONST. art. II, § 3, cl. 3.

Declaration of Independence

THE DECLARATION OF INDEPENDENCE para. 16 & 17 (U.S. 1776).

Executive Documents

Clinton, William J., *A National Security Strategy for a New Century* (Washington, D.C.: The White House, Dec 1999).

Employment of the Military as a Posse, Oct. 10, 1878, 16 Op. Att'y. Gen. 162 (1878).

Exec. Order No. 10,631, 20 Fed. Reg. 6057 (1955).

Exec. Order No. 10,730, 22 Fed. Reg. 7268 (1957).

Exec. Order No. 12,017, 42 Fed. Reg. 57,961 (1977).

Interagency Final Draft, *National Security Strategy--Interagency Final Draft,*(Washington, D.C.: The White House, Nov. 28, 2000).

Navy Instruction 5820.7, May 15, 1975, 32 C.F.R. 213 (1989).

Presidential Decision Directive 25: Reforming Multilateral Peace Operations. (Washington, D.C.: The White House, May 1994).

Presidential Decision Directive 42: International Crime Control Strategy. (Washington, D.C.: The White House, Oct. 21, 1995).

Presidential Decision Directive 71: Strengthening Criminal Justice Systems in Support of Peace Operations (Washington, D.C.: The White House, Feb. 2000).

President's Power to Use Federal Troops to Suppress Resistance to the Enforcement of Federal Court Orders—Little Rock Arkansas, Nov. 7, 1957, 41 Op. Att'y Gen. 313 (1957).

Shalikashvili, Gen. John M., *National Military Strategy of the United States of America--Shape, Respond, Prepare Now: A Military Strategy for a New Era* (Washington, D.C., 1997).

Suppression of Lawlessness in Arizona, Apr. 15, 1882, 17 Op. Att'y. Gen. 333 (1882).

U.S. Commission on National Security, *Roadmap for National Security: Imperative for Change, The Phase III Report of the U.S. Commission on National Security.* (Washington, D.C.: Feb 15, 2001).

Statutes

10 U.S.C. § 124(a)(1)-(2) (2000).

10 U.S.C. § 331-33 (2000).

10 U.S.C. § 371-78 (2000).

10 U.S.C. § 382 (2000).

14 U.S.C. § 89 (2000).

14 U.S.C. § 141 (2000).

18 U.S.C. § 831 (2000).

18 U.S.C. § 1385 (2000).

18 U.S.C. § 1751 (2000).

21 U.S.C. § 801 *et seq.* (2000).

21 U.S.C. § 951 *et seq.* (2000).

46 U.S.C. app. § 1901 *et seq.* (2000).

50 U.S.C. § 2352 (2000).

Public Laws

Act of March 2,1867, Ch. 6, 15 Stat. 2 (1867).

Act of June 18, 1878, Ch. 263, 20 Stat. 152 (1878).

Pub. L. No. 97-86, Title IX, § 905 (a)(1), 95 Stat. 1115 (1981).

Pub. L. No. 100-456, Title IX, § 1104(a), 102 Stat. 2043 (1988).

Pub. L. No. 101-189, Div A, Title XII, §1204, 103 Stat. 1564. (1989).

Pub. L. No. 101-189, Div A, Title XII, §1206, 103 Stat. 1564. (1989).

Congressional Proceedings

7 CONG. REC. 3580-3586 (1878).

Cases

Bissonette v. Haig, 776 F.2d 1384 (8th Cir. 1985).

Chandler v. United States, 171 F.2d. 921 (1948).

Gilbert v. United States, 165 F. 3d. 470 (6th Cir. 1999).

D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951), *cert. denied,* 343 U.S. 935 (1952).

Monarch Ins. Co. v. District of Columbia, 353 F.Supp. 1249 (D.D.C. 1973), *aff'd without opinion*, 162 US App DC 97, 497 F.2d. 684 (1974), *cert. denied*, 419 U.S. 1021 (1974).

People v. Wells, 175 Cal. App. 3d. 876, 221 Cal. Rep. 273 (4th Dist. 1985).

State v. Maxwell, 174 W. Va. 632, 328 S.E. 2d. 506 (1985).

United States v. Brown, 9 M.J. 666 (N.C.M.R. 1980).

United States. v. Banks, 539 F.2d 14 (9th Cir. 1976) *cert. denied*, 429 U.S. 1024, 50 L.Ed. 2d 626, 97 S.Ct. 644 (1976).

United States v. Chon, 210 F.3d 990 (9th Cir. 2000).

United States v. Hitchcock, 103 F. Supp. 2d 1226 (D. Haw.1999).

United States. v. Hutchings, 127 F.3d 1255 (10th Cir. 1997).

United States v. Kahn, 35 F.3d 426 (9th Cir. 1994).

United States v. McArthur, 419 F. Supp. 186 (D. N.D. 1975), *aff'd* 541 F.2d 1275 (8th Cir. 1976) *cert. denied,* 430 U.S. 970, 52 L.Ed. 362, 97 S.Ct. 1654 (1977).

United States v. Noriega, 746 F. Supp. 1506 (S.D. Fla. 1990), *aff'd,* 117 F.3d 1206 (11th Cir. 1997).

United States v. Red Feather, 392 F. Supp. 916 (D. S.D. 1975).

United States. v. Roberts, 779 F.2d 565, (9th Cir. 1986) *cert. denied*, 479 U.S. 839, 93 L.Ed. 2d 84, 107 S.Ct. 142 (1986).

United States v. Warren, 578 F.2d 1058 (5th Cir. 1978).

United States v Yunis, 288 U.S. App. D.C. 129, 924 F.2d 1086 (D.C. Cir. 1991).

Wrynn v. United States, 200 F. Supp. 457 (E.D. NY 1961).