Enhancing Security- Projecting Civil Authority into America’s Uncontrolled Spaces

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AGENDA

• Discussion of topic selection- Ungoverned Spaces.
• Define and Compare Ungoverned Spaces
• Chapter 1 Introduction
• Chapter 2 Literature Review
• Chapter 3 Research Methodology
• Chapter 4 Analysis
• Chapter 5 Conclusions and Recommendations
Why Ungoverned Spaces?

• Author saw Parallels between U.S. ungoverned spaces and other countries.
• Lack of Unified Response to Policing due to multiple Federal Agencies/ Different Missions/Parallel command structures.
• Multiple large scale LE siege incidents have taken place in ungoverned spaces.
• They are a Public Safety concern and National Security Threat.
What are Ungoverned Spaces?

• Ungoverned Spaces. An area where the state is absent, unable, or unwilling to perform its functions. This does not imply the complete absence of power structures but can be characterized by the lack of penetration into the general society. Ungoverned spaces can be areas of the states where they poorly control their land, maritime borders or airspace. They may be otherwise viable states where the central government’s authority does not extend. They are areas where “otherwise healthy states have lost control over some of its geographic or functional space within their territories.”

• (Rabasa 2008) RAND Corporation researcher for Project Air Force
Chapter 1: Introduction

- Why can’t we all work together?
- The 10th Amendment to the United States Constitution. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. This is the amendment in the U.S. Constitution that reserves police powers to the states.*
- 18,760 separate LE agencies/ 60 separate Federal LE agencies
- Fractured Jurisdictions/ Gaps in LE services
- Multiple agencies operating in the same geographic area with different missions. Primacy of Jurisdictions.
- Indian Lands – individual sovereign nations
- National Forests
- National Parks
- U.S. southern and Northern Borders
Indian Reservations in the Continental United States

Data Sources:
This map was compiled from unknown sources by the Bureau of Indian Affairs (BIA) at 1:2,000,000 scale.

Map Information:
Lambert Azimuthal Equal Area ; Scale 1:5845860
The numbers on the map represent the locations of Indian reservations. Please reference these numbers with the accompanying sheets entitled "Indian Reservations- BIA/CAST 5/96".
Chapter 2: Literature Review

• “preventing and deterring attacks by identifying and interdicting threats, denying hostile actors the ability to operate within our borders.”
• The existence of ungoverned spaces within the United States hinders the ability of the United States Government from accomplishing that goal.
• The NSS further recognizes the link between domestic and transnational security and that one of the key objectives of the 2010 National Security Strategy is to deny safe havens and strengthen At-risk States (referring to foreign countries).
• The ability of the United States to project civil authority into its own ungoverned spaces is not a well-researched or written topic.
• There are no scholarly articles, or material that directly addresses ungoverned spaces within the United States, there is numerous material that address international ungoverned spaces that can be applied in theory and principle to this thesis.
• Author used a large volume of scholarly material, legal opinions, government publications, and legitimate media articles available to address the topic of the use of the military in a Defense Support to Civil Authorities capacity and the limits of their use under the Posse Comitatus Act.

• Author used previously written MMAS theses in related subject matters that were useful, but none focused on addressing the problem of ungoverned spaces and the National Security Strategy’s Homeland Security goals within the United States.
Chapter 3: Research Methodology

• The research methodology used in this thesis reviews documents from a wide variety of government reports, academic works, media accounts, and historical documents.
• Historical review of past research and legal case reviews on the use of the U.S. Military to assist and work with civil authorities.
• Some information on the use of the military in ungoverned spaces within the United States is not as prevalent, but other research that has been done on ungoverned spaces in other countries by U.S. forces was used for the analysis.
• The author’s intent is to keep the examination of this topic at the federal level of law enforcement; any lower level examination is beyond the scope of this thesis.
• Author focused on the U.S. Northern/Southern borders, National Parks, National Forests and Indian Lands. BLM lands and Wild Life refuges were not included.
Research Questions

• 1) The first secondary research question is to define what an ungoverned space is.
• 2) secondary research question is to look at the organizational layout of law enforcement agencies and jurisdictional restrictions.
• The effects of geography, logistics and intelligence gaps have on the ability of law enforcement operations to project civil authority into ungoverned spaces. Although state and local jurisdictions are drawn and defined by state boundaries as defined by state laws, Indian lands, national forests and parks are not.
• 2a) sub topic to the second question is to examine what are the roles of federal authorities in projecting civil authority into such ungoverned spaces as National Forests, the national borders and Indian lands? State and local authorities have no legal jurisdiction to enforce local laws or ordinances within federal or Indian lands.
• 2b) final sub-topic to secondary question two is the examination of the Posse Comitatus Act and recent Bush era legal decisions that have defined the authority for the use of military force to combat terrorist activities within the United States.
Research Question

- 3) The final secondary question identifies gaps in the ability of law enforcement to project civil authority into ungoverned spaces.
- The gap in the National Security Strategy to “prevent and deter attacks by interdicting threats, denying hostile actors the ability to operate within our borders and protect the nation’s critical infrastructure” lies in the ability of law enforcement to project civil authority into ungoverned areas in the United States.
- 3a) Limitations of the National Guard and Reserves in the ability to fill these gaps within the United States. Recent legal decisions as a result of 9/11 World Trade Center bombings and Hurricane Katrina have expanded the use of the US Military as a police force inside of the US. So under these current guidelines would it be a far stretch to see the President utilizing the US military to interdict, apprehend, and prosecute foreign terrorists conducting terrorist operations against US Persons (USPERs) inside the US?
- 3b) What about a Beslan or Mumbai type scenario? where local, state and federal authorities are faced with multiple complex wicked tactical problems in separate jurisdictions or large geographic locations with the need for armored vehicles, rotary wing support and large numbers of personnel to secure the locations?
- 3c) What happens in another Waco scenario when civil federal authorities do not have enough personnel, the proper equipment or logistical support to sustain a 51 day siege operation or longer? Can the military do more than just provide equipment to support federal authorities’ efforts?
Chapter 4: Analysis

• The separation of police powers within the United States set forth in the US Constitution’s 10th Amendment has created fragmented levels of legal jurisdictions.

• The vast research on ungoverned spaces by the USG and by the DoD focuses on the projection of power beyond US borders into other countries.

• The DoD and the USG both recognize ungoverned spaces as posing threats to national security and creating potential safe havens for criminal organizations, terrorists and illicit activities in other countries.

• Ungoverned areas present an attractive location for Transnational Criminal Organizations (TCOs) to use local gangs to exert control through intimidation or corruption, unaffected by law enforcement.

• Ungoverned territories share similar characteristics across all of the foreign countries the USG studied.

• Rabasa’s description of ungoverned territories applies to the United States, as the US has thousands of miles of border with Mexico and Canada policed by a patchwork of federal, state, local, and Tribal authorities.
Number of Federal LEOs available to police federal lands, the National Park Service, National Forest Service, BIA, and the CBP are drastically understaffed.

The United States Military is being used to supplement the U.S. effort to secure our nations’ borders and ensure homeland defense. Joint Task Force North (JTF-N) counterdrug operations in Title 32 status.

The policing of Indian lands pose special considerations for law enforcement and Homeland Security.

Indian lands can present other unique law enforcement problems where they are located on national borders such as the Akwesasne (Mowhawk) tribal lands straddling the U.S. and Canadian borders in New York and the Tohono O’odham Indian reservation in Arizona on the Mexican border. Corruption, DTO sanctuary.

In the aftermath of the devastating 9/11 attacks President George W. Bush sought out a legal opinion to use the military within the U.S. to prevent or deter terrorist activity. DOJ said he could.

National security gap that needs to be addressed: the issue of a national tactical response unit for large-scale terrorist attacks, domestic terrorist compound sieges and wicked tactical responses. FBI HRT/Part time Federal tactical teams
Chapter 5: Conclusions

- The resolution of this national security problem rests not with each state law enforcement agency but with the federal government.
- Governmental researchers that defined ungoverned spaces or territories as they applied to foreign countries. All of this research is *out ward looking*, none focusing on the vast spaces *within* the United States that seemed obviously similar in description and definition.
- Numerous studies by the GAO, reports by the Congressional Research Service and other governmental agencies have identified specifically the southern and northern borders of the United States as porous, a threat of exploitation by DTOs and terrorists.
- The creation of the U.S. Department of Homeland Security and the increase in manpower of the U.S. Customs Border Protection increases the security of our borders.
- USG recognizes additional CBP agents are not enough to stem the threat and has augmented them with U.S. Military forces in a supporting role.
- Other countries have created Para military law enforcement agencies in response to the need for a law enforcement entity that can operate in this environment such as the Carabinieri in Italy and the Guardia Civil in Spain.
Recommendations

• 1. The creation of a full time paramilitary police force trained, and maintained in sufficient size and strength to police our nations ungoverned spaces, established as a full time National Guard unit. Established under Title 32 control of the state’s governors, operational funds provided by Department of Homeland Security funds directly to the state.

• 2. The USNORTHCOM is a combatant command (COCOM) Headquartered at Peterson Air Force Base, CO responsible for the command and control of the Department of Defense’s (DoD’s) homeland defense efforts and to coordinate military support to civil authorities. Commanded Gen. Charles Jacoby, Jr.

• 3. The structure of USNORTHCOM and its interagency relationships through the Joint Interagency Coordinating Group (JIACG) would promote coordination and direct lines of communication with more than 60 federal and non-federal agencies.

• 4. This full time unit would be a part of Joint Task Force North (JTF-N) under the direction of USNORTHCOM. (would expand BG Stammer’s AOR)

• Use of the National Guard as a paramilitary police force. Historical and current legal precedents allows the use of Title 32 National Guard troops to be legally deployed in this manner.
# Military Duty Status

<table>
<thead>
<tr>
<th>Who is in command of what</th>
<th>State active duty</th>
<th>Title 32</th>
<th>Reserve</th>
<th>Title 10 active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor in charge of state militia, NG</td>
<td>Governor in charge of state militia, NG</td>
<td>Secretary of the service of concern</td>
<td>President in charge of active duty forces</td>
<td></td>
</tr>
<tr>
<td>Where</td>
<td>In accordance with state law</td>
<td>In accordance with state law</td>
<td>Worldwide once mobilized</td>
<td>Worldwide</td>
</tr>
<tr>
<td>Funding</td>
<td>State</td>
<td>Federal</td>
<td>Federal</td>
<td>Federal</td>
</tr>
<tr>
<td>Mission types</td>
<td>IAW state law (riot control, participate in most law enforcement for emergencies)</td>
<td>Training and other federally authorized missions (participate in most law enforcement for emergencies IAW state law)</td>
<td>As assigned after mobilization to Title 10 (significant law enforcement restrictions)</td>
<td>As federally assigned. (significant law enforcement restrictions)</td>
</tr>
<tr>
<td>Discipline</td>
<td>State military code</td>
<td>State military code</td>
<td>UCMJ</td>
<td>UCMJ</td>
</tr>
<tr>
<td>Support law enforcement</td>
<td>Yes, according to state laws</td>
<td>Yes, according to state laws</td>
<td>Limited support to law enforcement</td>
<td>Limited support to law enforcement</td>
</tr>
</tbody>
</table>
Homeland Defense, or Homeland Security?

BG Stammer made a point in class about the splitting of hairs by DoD on HLD and HLS LE issues.

Referring to incursions of U.S. Border by DTOs, Ultra-lights and inability to shoot them down.

Bush Legal Decision – current national security situation is a continuation of War, and the use of military on U.S. Soil is a HLD function within the scope of the law.