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Aaron Weiss

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When Terror Strikes, Who Should Respond?

AARON WEISS

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During the past decade, concerns about possible terrorist acts involving weapons of mass destruction (WMD) led Congress and the President to adopt a comprehensive counterterrorism plan focused on preventing a chemical, biological, or nuclear attack and enhancing domestic preparedness. The agency of choice for domestic consequence management has been the Department of Defense. Of the \$1.4 billion appropriated in the FY 2000 budget specifically for WMD response, over half went to DOD.[1] Overreliance on the military for domestic WMD protection, however, may diminish the military's warfighting capability and holds the potential for infringement of individual rights.

Presidential Decision Directive 39 (PDD-39), signed in 1995, and the Defense Against Weapons of Mass Destruction Act of 1996 are the cornerstones of the United States' WMD terrorism strategy. This strategy is divided into four elements: intelligence and warning; prevention and deterrence; crisis and consequence management; and acquisition of equipment and technology. While crisis management involves the criminal aspect of dealing with a WMD attack, consequence management (CM) involves treating victims of the attack, searching for survivors, ensuring the containment of victims who are infected or exposed, and cleaning up the attack area.

A number of agencies are involved in domestic preparedness. The National Security Council is the interagency consequence management coordinator; the Justice Department, through the FBI, handles crisis management and is responsible for preventing an attack; the Federal Emergency Management Agency (FEMA) is responsible for consequence management after an attack; and first-responders include local municipalities and state governments. But DOD has been assigned a disproportionate amount of domestic consequence management responsibilities. This is due to the national security threat of WMD terrorism and the historical reliance on the military to solve complex domestic issues. The assumptions that led to PDD-39 and the Federal Response Plan may no longer be applicable, however, as new information and analysis draw differing conclusions on the threat of WMD terrorism.

This article will discuss the Defense Department's role in domestic consequence management following a catastrophic terrorist attack. Catastrophic terrorism, weapons of mass destruction, and "superterrorism" all refer to the use of nuclear, chemical, or biological agents to bring about a major disaster with death tolls of ten thousand or higher.[2] The scope of this article will be limited to the discussion of superterrorism and not include other types of terrorism, such as conventional terrorism or small-scale chemical or biological weapons (CBW) terrorism. Pan Am 103, Khobar Towers, and the East African embassy bombings were incidents of conventional terrorism, for example, and the Aum Shinrikyo's sarin attack in Tokyo was an example of small-scale CBW terrorism. While the threat is no less serious, the low probability and unique political circumstances of an incident of nuclear terrorism exclude such weapons from this discussion.[3]

Bringing the Issue into Focus

Four events of the 1990s significantly sharpened the nation's perception of chemical-biological warfare and catastrophic terrorism. First, Saddam Hussein used his intermediate-range Scud missiles to demonstrate the paralyzing possibility of operating in a contaminated environment during the Persian Gulf War. Second, the World Trade Center bombing in 1993 demonstrated that foreign terrorists could not only operate on American soil, but could launch a chemical attack.[4] Third, the Oklahoma City bombing in 1995 proved that domestic terrorists could harm the nation. And fourth, the sarin gas attack in the Tokyo subway by the Aum Shinrikyo cult made chemical warfare a reality.

The United States responded to the threat of terrorism, particularly superterrorism, when President Clinton signed PDD-39 in June 1995, PDD-62 in May 1998, and the 1997 National Defense Authorization Act. The latter included the Defense Against Weapons of Mass Destruction Act of 1996, also known as the Nunn-Lugar-Domenici amendment.[5] The statute and presidential directives are the foundation of the nation's counterterrorism response and provide guidance to federal agencies.

Following the PDD-39 signing, other terrorist acts reinforced the belief that it is not a matter of *if*, but *when* terrorists will strike with weapons of mass destruction. As Senator Richard Lugar commented in 1995, "Americans have every reason to expect a nuclear, biological, or chemical attack before the decade is over." [6] The Centennial Park bombing at the 1996 Atlanta Olympics and conventional attacks on the Khobar Towers in Saudi Arabia and US embassies in Kenya and Tanzania demonstrated a willingness to attack Americans worldwide. Discovery of Saddam Hussein's WMD projects reinforced the American fear of a group capable of combining terrorism with a chemical or biological weapon.[7] In November 1995, rebels from the state of Chechnya placed a small, encased radiological device in a Moscow park, but did not detonate it. The device was supposedly placed there in order to prove to Russian officials that the Chechens possessed radiological agents and were willing to use them in order to secure the state's independence.[8] When a rare African bird virus was discovered in New York City in the summer of 1999, it took only a small stretch of the imagination to conclude that the outbreak could be the opening shot in a biological war. Whether the terrorists were international cults or individual nihilists such as the Unabomber, each act of terrorism was confirmation that the country was heading toward a day of reckoning--the use of weapons of mass destruction on American soil.

Additionally, political rhetoric concerning WMD attack was dramatized, exaggerated, and sensationalized in Hollywood films and popular literature. Examples included movies such as *The Rock*, *Executive Decision*, *Outbreak*, and *Twelve Monkeys*, novels such as Tom Clancy's *Executive Orders*, Richard Preston's *The Cobra Event* and *The Hot Zone*, and television episodes of the *X-Files*, *Millennium*, and *Chicago Hope*.

Chemical and biological weapons were perceived to be as devastating as a nuclear weapon at a fraction of the cost and technical expertise. While nuclear weapons require expensive materials, sophisticated facilities, and highly skilled scientists, chemical and biological weapons seemed to require very little by comparison. Meanwhile, modern technology had vastly increased the lethality of chemical and biological weapons and made US urban centers vulnerable. The confluence of several trends in the middle of the 1990s heightened the potential threat of chemical or biological attack. First, the expertise needed to produce highly sophisticated chem-bio agents appeared to be rapidly proliferating. Second, the technology and materials needed to manufacture and deliver the agents was up for grabs in the global economy. Third, the will to use WMD appeared to be increasing among rogue states and terrorist organizations. And last, it appeared that some support for WMD terrorism was state-sponsored, providing various organizations with security, resources, and expertise. The joining factor of these trends was American military superiority. Rather than face the United States on the conventional battlefield, adversaries were seeking unconventional or "asymmetrical" alternatives.

The capacity to manufacture chemical and biological agents seemed attainable and the lower-level expertise necessary was thought to be increasingly available. One fear among US policymakers following the collapse of the Soviet Union was that of a Soviet "brain drain" to terrorist nations and groups. Examples of this concern were reports of Iranians trying to recruit former Soviet scientists,[9] and the head of South Africa's chem-bio program traveling to Libya.[10] Meanwhile, the number of doctorates in life sciences awarded to foreigners in the United States had increased by over 30 percent since 1970,[11] and the relatively open atmosphere at US academic institutions was considered a conduit of technical information.[12] Thus, the fall of the Soviet Union, the quest for alternative methods of warfare, and the availability of US education in the sciences had created tens of thousands of technicians capable of producing highly sophisticated chemical and biological agents.

The most important factor in the creation of an American chem-bio response was the changing nature of terrorism itself. As the 1995 Tokyo subway attack indicated, the United States was witnessing the emergence of a new type of terrorism that was not connected to specific political goals.[13] The trend appeared to be moving away from attacking specific human targets such as a nation's officials and more toward indiscriminate killing.[14] Fanatical ethnic and religious organizations were not constrained by the same considerations as terrorist groups with political goals. With no

need for legitimacy, the new breed of terrorist could easily cross the WMD line.[15] The emergence of terrorist groups with access to vast resources was another aspect of the changing face of terrorism. The Aum Shinrikyo cult and Osama bin Laden's organization were prominent examples. The Aum Shinrikyo operated a number of front companies, possessed assets in the hundreds of millions, purchased helicopters from Russia, trained pilots in the United States, and sought to procure weapons from Russia, Australia, Sri Lanka, Zaire, and North Korea.[16]

Though the United States abandoned and destroyed its biological program in 1972 following the ratification of the Biological Weapons Convention Treaty, the collapse of the Soviet Union revealed that the former USSR had remained engaged in chem-bio weapons production. According to a 1996 US General Accounting Office (GAO) report, "Upon its breakup in 1991, the Soviet Union bequeathed a vast array of weapons of mass destruction to Russia, Ukraine, Belarus, and Kazakhstan. This legacy included about 30,000 nuclear weapons, 2,500 strategic nuclear delivery systems, and at least 40,000 metric tons of chemical weapons." [17] More shocking to policymakers was the discovery nearly five years later that Russia's bio-weapons facilities were still in operation.[18] Equally troubling was the fact that China was also engaged in chem-bio weapons manufacture. China's willingness to export weapons cast a sobering realization about the proliferation of WMD capabilities.[19]

Further evidence of state-sponsored capabilities came from the Middle East. Weapons inspectors in Iraq reported a more mature chem-bio capability than expected, while the CIA revealed that Egypt and Syria also maintained their own chemical weapons programs.[20] Similarly, the number of other states pursuing clandestine programs to develop unconventional weapons capabilities turned out to be much larger than commonly believed. At the time of the 1996 GAO report, 28 countries either possessed, likely possessed, or had clear intent to possess weapons of mass destruction.[21]

Properly prepared and disseminated, one kilogram of anthrax could kill thousands. A 1993 study by the Office of Technological Assessment concluded that a single airplane delivering 100 kilograms of anthrax spores by aerosol on a clear, calm night over Washington, D.C., could kill between one and three million people.[22] Critics pointed to the dearth of consequence management programs and the lack of detection capabilities required for a coordinated response.[23] The situation was described in 1996 by Senator Sam Nunn as "one of the most urgent national security problems America faces." [24] In that atmosphere, a call to arms was made to utilize the resources and organization of the military to mitigate the domestic effects of the WMD threat to the nation.

What Good is the World's Best Military if You Can't Use It?

The Defense Against Weapons of Mass Destruction Act of 1996 (the Nunn-Lugar-Domenici amendment to the National Defense Authorization Act for Fiscal Year 1997) advocated the training of first-responders to deal with a WMD terrorist incident. In 1997, the Nunn-Lugar-Domenici Domestic Preparedness Program began training first-responders--firefighters, police, and emergency medical technicians--in 120 cities across in the country. As part of the program, the military specifically was tasked to "develop and maintain at least one domestic terrorism rapid response team composed of members of the armed forces . . . capable of aiding federal, state, and local officials in the detection, neutralization, containment, disassembly, and disposal of weapons of mass destruction containing chemical, biological, or related material." [25] The Secretary of Defense designated the Secretary of the Army to serve as Executive Agent for the coordination of this mission and to develop a Domestic Preparedness Plan.[26]

Chemical and biological warfare was naturally seen as a national security issue and, as defender of the nation's security, the military was seen as the appropriate tool to manage domestic consequence management responsibilities. Writing in *Foreign Affairs*, national security experts Ashton Carter, John Deutch, and Philip Zelikow suggested that the threat of WMD use by terrorists against the United States was "a national security problem that deserves the kind of attention the Defense Department devotes to threats of military nuclear attack or regional aggression." [27] Congress and the executive branch evidently agreed and chose to tap the experience, organization, resources, and mission-oriented nature of the military to play a significant role in domestic consequence management. The Defense Department seemed to be the only agency that had the program management skills and resources to set up an initial consequence management program.[28]

And why not? Historically, the military has been used to solve or spear-head responses to a number of complex social

issues. The military's organization, discipline, and mission-oriented culture have made it an attractive choice for policymakers, especially since the end of the Cold War. Furthermore, each of the services has special chemical warfare units that are specifically organized, equipped, and trained to respond to nuclear, biological, and chemical attacks. Seeing the military's obvious competence in the Gulf War, the government increasingly turned to the military to solve its problems. As a result, military forces have been diverted to civilian uses with an escalating commitment to formerly ancillary duties. In *Atlantic* magazine, author James Fallows summed up the perception of military competency: "I am beginning to think that the only way the national government can do anything worthwhile is to invent a security threat and turn the job over to the military." [29]

Even before the Cold War was over, Congress used the national security justification to involve the military in the "War on Drugs," a responsibility previously assigned exclusively to law enforcement. [30] The military also was used increasingly in domestic law enforcement, even extending to a regular military presence in high-crime areas of major metropolitan cities. [31] The military services were used for civilian law enforcement in 1992 when President Bush issued an Executive Order for the US Marines, Army, and the federalized California National Guard to restore order following the verdict of the Rodney King trial. [32] In 1994, Army support was provided to the Bureau of Alcohol, Tobacco, and Firearms during the siege and assault of David Koresh's Branch Davidian compound outside Waco, Texas. [33] The addition of border patrol operations in the American southwest [34] made it a *fait accompli* that the military had added the new mission of domestic law enforcement.

Additional non-combat domestic duties were added. In 1992, the US Army and Air Force assumed a domestic disaster relief mission when they responded to assist after Hurricane Andrew in south Florida [35] and after Hurricane Iniki in Hawaii a month later. [36] The Navy and Marines contributed to disaster relief by assisting in the Philippines following the eruption of Mt. Pinatubo in 1992 and again in 1994. [37] Although a legislative measure to use veterans' hospitals for the non-veteran poor was defeated, military medical assets were used to relieve hard-pressed urban hospitals. [38] With academically qualified servicemembers in both the enlisted ranks and the officer corps, scores of military units developed teaching relationships with local schools in an effort to stem declining education standards and student performance. [39] The military has even been called in to assist in environmental cleanup, [40] promote wildlife conservation, [41] rehabilitate public housing, rebuild bridges, and aid in other community projects. [42] Somewhat similarly, the Army and Army Reserve perform extended peacekeeping duties in Bosnia and Kosovo as auxiliary duties in a non-combat role. To meet the new domestic and non-combat missions, DOD has established a command and control element for a dedicated Joint Task Force for Civil Support (JTF-CS) resident in Joint Forces Command. [43]

Security at What Cost?

More than 85 years of experience in defending against biological and chemical weapons and 50 years of experience in nuclear defense made the DOD the most knowledgeable and resourceful organization available to deal with incidents involving such threats. PDD-39 made WMD consequence management a national priority and the Nunn-Lugar-Domenici amendment legally tasked DOD with providing assistance to agencies and responding to any terrorist attack. The challenge at hand was to design measures to adequately aid first-responders and to protect citizens without crossing the delicate line that separates providing sufficient assistance from a state of marshal law. [44]

The increasing role of the military in law enforcement, including the WMD consequence management role, is a historic change of policy. Since the passage of the Posse Comitatus Act in 1878, [45] the military had distanced itself from law enforcement activities and enforced a broad proscription against soldiers enforcing the law. Domestically deployed soldiers were told that "they could not and would not enforce the law--i.e., detain, arrest, or serve warrants or any other kind of process on civilians." [46] Exceptions to the Posse Comitatus Act include activities expressly authorized by the Constitution and the President's authority to use federal troops to quell domestic violence. [47] Upon receipt of a proper request from a state governor, the President can issue a proclamation that a breakdown in public order has occurred and is authorized to order the Secretary of Defense and Attorney General to quell the insurrection and restore public order. According to Army lawyer Thomas R. Lujan, "By the stroke of a pen within a single day, the underlying framework for the authorized use of military force within the United States can be completely changed." [48]

Following Congress's "declaration of war" on drugs some 20 years ago, military involvement in domestic law

enforcement has dramatically increased and has challenged the clear limits of a civilian-controlled Army at the operational level.[49] The Nunn-Lugar-Domenici amendment changed Title 10 of the US Code to allow the military to intervene in domestic affairs, even permitting the arrest of civilians in extraordinary circumstances. Congress has blurred the formerly clear lines delineated in the Posse Comitatus Act and made the exception to the act--presidential authority--not only more commonplace, but expected in response to domestic emergencies.

Faced with complex social and public safety problems on one hand, and an energetic and capable military on the other, Congress and the President have increasingly turned to the military as a cost-effective and proficient solution. As a result, the armed forces have been diverted from their original purpose. Continued reliance on the active-duty military for ancillary missions, such as counter-drug operations and WMD consequence management, will almost certainly have the effect of degrading the nation's active military with regard to its *raison d'être*. Preoccupation with humanitarian and peacetime duties will leave the active-duty military unfit to engage a real military opponent. Each day spent preparing a metropolitan police force for consequence management is a day in which perishable warfighting skills are not maintained or improved.[50] Military analyst Harry Summers wrote that when militaries lose sight of their purpose, such as the Canadian military in the interwar period, catastrophe results:

Instead of using the peacetime interregnum to hone their military skills, senior military officers sought out civilian missions to justify their existence. When war came they were woefully unprepared. Instead of protecting their soldiers' lives, they led them to their deaths. In today's post-Cold War peacetime environment, this trap again looms large. . . . Some today within the US military are also searching for relevance, with doctrinal manuals giving touchy-feely prewar and postwar civil operations equal weight with warfighting. This is an insidious mistake.[51]

In addition to the degradation of warfighting capabilities, emphasis on domestic preparedness may have a negative effect on the military's ability to protect itself. Five years after the Gulf War, DOD still had not reached adequate levels of force protection against chemical and biological weapons, even as PDD-39 tasked it with new missions. A General Accounting Office study in 1996 reported that "some military units designated for early deployment . . . did not have sufficient quantities or the needed sizes of protective clothing, and chemical detector paper, and decontamination kits in some instances had passed their expiration date." [52] In the follow-up report two years later, GAO "found shortages in individual protective equipment, inadequate chemical and biological agent detection devices, inadequate command emphasis on chemical and biological capabilities, and deficiencies in medical personnel training and supplies." [53]

This Is Not Your Father's Chem-Bio Threat

In the mid-1990s the WMD threat to the United States appeared frightening, credible, and possible--it seemed only a matter of time until an attack became a reality. However, the perceptions of the chem-bio threat may have outpaced the facts. Recent studies at the RAND Corporation, the Chemical and Biological Arms Control Institute, and the Monterey Institute of International Studies (MIIS) have challenged some of the assumptions made in the last decade and have brought chem-bio terrorism into sharper focus. Their underlying theme: using chemical or biological agents is more difficult than previously thought and not very effective as a terrorist weapon. Therefore WMD counterterrorism policies, structures, and appropriations may be focused on the wrong threats and have minimal effect in deterring a chemical or biological attack or effectively responding if an attack actually occurs.

One main reason there have been so few examples of successful chem-bio terrorism is because of its technical complexity. Gaining access to specialized ingredients or virulent strains, as well as the knowledge required to handle them, is not as easy as once thought. For example, in addition to the difficulty of acquiring some of the microorganisms suitable for biological terrorism is the challenge of packaging the agent as a weapon in a way that it will survive the delivery process. The risk of contamination to the people handling the organisms is high, and the most lethal bacteria do not exist well outside the lab. Additionally, dispersing microbes and toxins over a wide area as an inhalable aerosol requires a delivery system that is technically unattainable for most terrorists. Dispersion is also highly dependent on, and easily disrupted by, environmental conditions. A low-tech terrorist could avoid environmental uncertainty by launching an attack in an enclosed space, such as the Aum Shinrikyo attack in the Tokyo subway, but such an attack would not generate mass casualties. An attack on an urban water system is also very difficult, because an incredibly large volume of chemical or biological agent would be needed to overcome the effects of dilution and

chlorine.

So far, the FBI has not obtained evidence that any terrorist organization has succeeded in building a device capable of delivering a mass-casualty attack. Aum Shinrikyo, for example, failed in ten known attempts in Japan to conduct biological attacks with either anthrax or butulinum toxin.[54] Despite the cult's vast resources (approximately \$1 billion) and access to trained scientists, it has been unable to overcome the technical hurdles associated with the acquisition, cultivation, and delivery of chem-bio weapons. The Director of Central Intelligence, George Tenet, recently testified that "the preparation and effective use of [biological weapons] by both potentially hostile states and by non-state actors, including terrorists, is harder than some popular literature seems to suggest." [55] In the United States, no mass-casualty attack with a chemical agent has ever occurred, and there has been only one successful small-scale incident of biological terrorism, when the Symbionese Liberation Army used cyanide-tipped bullets to assassinate a school superintendent in Oakland, California, in 1973.

The Center for Nonproliferation Studies in Monterey has attempted to bridge the gap between anecdotal and empirical knowledge. The center has compiled a database of 520 global chemical and biological incidents that occurred in the 20th century and has analyzed 263 cases that were terrorist (not criminal) cases. Their conclusion is contrary to conventional wisdom about the catastrophic nature of chem-bio terrorism. Actual attacks were few in number, small in scale, and generally produced fewer casualties than conventional bombs.

The 71 actual attacks using chemical and biological weapons, accounting for 27 percent of the global chemical and biological incidents in the last century, produced 123 fatalities and 3,744 injuries.[56] Of these, there was only one American fatality and 784 nonfatal US injuries, of which 751 were associated with a single incident of deliberate food poisoning by the Rajneeshee cult in Oregon in 1984.[57] Historically, traditional terrorists have eschewed chemical or biological weapons for several reasons, including unfamiliarity with the relevant technologies, the hazards and unpredictability of toxic agents, moral constraints, concern that indiscriminate casualties could alienate current or future supporters, and fear that a mass-casualty attack could bring down the full repressive power of the affected government.[58] As Brian Jenkins of RAND has noted, "Terrorists find it unnecessary to kill many as long as killing a few suffices for their purposes." [59]

In contrast, individuals and nontraditional groups that have sought to acquire chemical weapons or biological agents tend to be motivated by a fanatical religious, supremacist, or anti-government ideology, and often have a paranoid, conspiratorial worldview. Because the acquisition and use of such weapons requires several well-trained members, individuals pose a unique but minor risk. Even with ideological groups, however, the use of chem-bio agents is often too much for some members to stomach and consequently their plans are sometimes compromised.[60] The MIIS study provides evidence that despite political rhetoric or public perceptions to the contrary, a massive terrorist attack with chemical or biological weapons is not necessarily inevitable. While terrorists wish to convince citizens that they are capable of striking anywhere at any time, the studies conclude that terrorism involves predictable behavior and that the vast majority of terrorist organizations can be identified in advance.

As mentioned previously, another fear of WMD proliferation was through Soviet "brain drain." Yet there has been no open-source evidence indicating that WMD materials or knowledge has reached terrorist hands from the breakup of the former Soviet Union.[61] Though the potential proliferation of weapons and expertise has to be taken seriously, several factors mitigate the danger of chem-bio defectors. First, most chemical and biological scientists who departed the Soviet Union have emigrated to the United States, Britain, Israel, and Germany for commercial jobs. Second, there is no evidence to suggest that scientists have alternately gone to Libya, Syria, North Korea, or Iraq to sell their weapons expertise. Third, some confidence can be gained from the professionalism and ingrained security culture of the scientists. Last, many scientists have family and cultural ties that make living in Pyongyang, Damascus, or Tripoli less appealing than remaining in Russia. And even where isolated incidents have occurred, the individuals have been in contact with state officials, not terrorist organizations.

Even though state sponsorship would greatly reduce the technical hurdles terrorists might face in delivering a WMD attack, a number of factors reduce the likelihood of that happening. No evidence of a state-sponsored chemical or biological attack on the American homeland exists. State sponsorship of chem-bio weapons has been extremely rare and confined to highly trained, disciplined special operations units rather than terrorist cells. Rogue states fear potential

retaliation upon discovery. Risking retaliation and global condemnation would make even the most marginalized nation reluctant to cross the threshold from conventional explosives to weapons of mass destruction.

Divesting the Active-Duty Military of Domestic Consequence Management

Just as serious analysis of the threat has come under scrutiny, so has consequence management. Rather than having an on-call federal agency flying in at a moment's notice, the first-responders to a WMD catastrophe will be local firefighters, hazardous materials (HAZMAT) teams, police, and emergency medical personnel. Local agencies will contain the scene, provide first aid, begin the investigation, and maintain order. As broader understanding of the chem-bio threat increases, the need for federal involvement--notably the involvement of the active-duty US military--should decrease. Training, expertise, and equipment will still be needed, but state and federal civilian agencies can provide this.

Federal efforts to combat terrorism are organized along a lead agency concept. The Department of Justice, through the Federal Bureau of Investigation, is responsible for crisis management of domestic terrorist incidents. State governments have primary responsibility for consequence management in cases of domestic disasters, including major terrorist attacks; the federal government, under FEMA, can respond to state and local requests for support under the Federal Response Plan. This plan outlines the roles, responsibilities, and emergency support functions of various federal agencies, including DOD, for consequence management.

There are numerous local, state, and federal organizations that can perform consequence management. For example, the General Accounting Office reports that over 600 local and state HAZMAT teams exist in the United States to assess and act on accidents involving highly toxic chemicals and other hazardous materials.[62] In addition, numerous federal organizations provide advice, technical experts, and equipment to local incident commanders. Air Force Colonel Robert P. Kadlec, M.D., a professor at the National War College who also served as the Senior Assistant for Counterproliferation in the Office of the Secretary of Defense, points to "the increased role of nontraditional agencies in national security issues. The threat of CBW has required a coordinated response across the federal spectrum and caused agencies heretofore unconcerned with national security issues, such as the Department of Agriculture, to snap to attention." [63]

As noted earlier, directing the federal consequence management effort is the National Security Council (NSC), which is the overall interagency coordinator for US policy on combating terrorism and federal efforts to respond to terrorist incidents. Under the NSC, the National Coordinator for Security, Critical Infrastructure, and Counterterrorism integrates the government's policies on unconventional threats to the United States. The Department of Justice has responsibility for crisis management in a WMD event. Its Hazardous Materials Response Unit (HMRU) provides laboratory, scientific, and technical assistance to FBI investigations. The FBI also provides training, acts as an advisory group to local agencies, and plans to have HMRU teams in 15 of its 56 field offices. On the scene of the attack, the Federal Emergency Management Agency acts in support of the FBI until the Attorney General transfers the lead to FEMA. Though state and local officials bear primary responsibility for consequence management, FEMA is in charge of the federal aspects of consequence management on the scene.

The Department of Energy maintains the Radiological Assistance Program, which provides 24-hour access to personnel and equipment for radiological emergencies. The department's Nuclear Emergency Search Teams consist of engineers, scientists, and other technical specialists. These specially trained teams are deployable within four hours with equipment to assist the FBI in handling nuclear or radiological threats. The Environmental Protection Agency (EPA) also prepares and responds to emergencies involving radiological substances. The EPA has approximately 270 on-scene coordinators available across the United States, two Environmental Response Teams, ten Superfund Technical Assessment and Response Teams, and 12 environmental labs--all supported by the EPA's National Enforcement Investigation Center. The Department of Transportation holds the responsibility for protecting airports and responding to terrorist attacks on transportation hubs. Within the Department of Transportation, the US Coast Guard is the lead agency on incidents that occur in coastal waters. The Coast Guard has three National Strike Force teams that are equipped to handle major oil and chemical spills, but can also handle terrorist events such as HAZMAT emergencies.

The Department of Health and Human Services is available for on-scene support with its Metropolitan Medical Strike Team. The Centers for Disease Control is the federal agency responsible for protecting the public health of the country through prevention and control of diseases and other public health emergencies. The US Treasury Department utilizes the Bureau of Alcohol, Tobacco, and Firearms (ATF) as the lead agency in investigating armed violent crime, arson, explosions, and large car bombs. The ATF has four National Response Teams that can arrive within 24 hours to major bombing and arson sites.

If, in addition to this extensive civil structure, the government continues to rely on the military services for WMD consequence management, then greater reliance could be placed on the military's reserve components. The Nunn-Lugar-Domenici legislation required DOD to develop a mobilization plan to integrate National Guard and Reserve forces in consequence management. According to the plan issued in January 1998, the Army National Guard and US Army Reserve must be ready "to train local authorities in chemical and biological weapons detection, defense, and decontamination; assist in casualty treatment and evacuation; quarantine, if necessary, affected areas and people; and assist in restoration of infrastructure and service."^[64]

The Army Reserve has a disaster recovery mission and is responsible to its local citizenry. It also has 63 percent of the chemical units in the US Army, including 100 chemical reconnaissance and decontamination elements stationed across the United States that can perform basic detection and decontamination operations.^[65] The Army Reserve also has eight battalion and three brigade headquarters, 26 chemical companies capable of providing decontamination support to military units or municipalities, two chemical reconnaissance companies, the only deployable biological detection company, and individual expertise that can be deployed as needed.

The Army National Guard, operating in its traditional civilian assistance role, can be a unique and invaluable asset in a WMD emergency. Local understanding of the community combined with training with other federal response teams makes the Guard a front-line defender in WMD consequence management. National Guard units are located in cities and towns across each state and are the governor's primary military asset; each governor commands them until federalized by executive order. The National Guard would be essential in maintaining order following a chemical or biological weapons attack and has taken on an increasing consequence management role following the Nunn-Lugar-Domenici legislation. Twenty-seven National Guard Rapid Assessment and Initial Detection teams have been created to assist local and state authorities in assessing the situation surrounding a WMD attack. These units are located across the country and, according to the DOD plan, may eventually increase to at least one team per state.^[66]

Finally, states and local municipalities have begun meeting the consequence management requirement with their own internal resources due to their increased understanding of terrorist capabilities. In a 1999 General Accounting Office report, many state officials indicated that they maintained a reliable consequence management capability and "that their own experienced technicians can not only perform sufficient detection and identification to begin to handle the situation, but also work in the stressful, dangerous environment."^[67] States discounted the use of federal assets in some areas because they would not arrive in time to be effective, especially since the federal and military units do not operate routinely with existing state programs. Also, state officials "dismiss the idea of fully relying on federal assets because of concerns about their availability and responsiveness if the state ever needed them."^[68] For example, the WMD consequence management effort in the City of Los Angeles is, by design, a self-contained response entity. It is deliberately devoid of federal agencies and resources due to a perception that a federal response will usurp local control without guaranteeing a timely response.^[69]

Conclusion

During the middle of the last decade, the nation appeared to be on the brink of a superterrorism emergency, and the military was the only agency thought to be capable of an immediate response. The sense was that "an incident will happen: WMD will be used against Americans in their own country."^[70] The United States seemed vulnerable to terrorists with access to technology, materials, and expertise. The US military's organization, discipline, and mission-oriented culture made it an easy choice for policymakers who wanted immediate action to counter the threat of chemical or biological warfare.

The nation and the military have responded. More than 40 federal and 600 local agencies now stand ready to react to a

domestic WMD attack--or to an overseas attack if necessary.[71] First-responder training is being conducted in local municipalities, by state WMD units, and across the nation. As the United States continues to prepare and train for a superterrorist attack, the seeming crisis that required immediate military involvement is waning. The abating emergency, changing in part due to more fully developed views of terrorists and their capabilities, marks an appropriate time to wean the active-duty military from WMD consequence management, and to turn those responsibilities over to civilian agencies and the National Guard and Reserve forces.

The sense of immediacy that drove the need for a chem-bio response structure has been reduced, and while the threat remains, the probability of attack is not what it once seemed. Weighing the concerns of military effectiveness, national security, overall public safety, and the nature of the WMD threat, the use of active-duty military personnel to prepare for WMD consequence management is a poor allocation of national resources. The primary reason for having a military is to fight and win the nation's wars. While it can be argued that a WMD attack on American soil and citizens would be an act of war, the diversion of military assets to consequence management is not the answer. Conversely, increasing the consequence management mission by active-duty military may actually increase the threat to the United States by decreasing the military's ability to perform its primary role. Potential terrorists, correctly ascertaining that a WMD attack would redirect large numbers of active-duty forces to consequence management, might be able to divert US combat power and resolve away from their respective region of the world.

Even more troubling is the provision in the Nunn-Lugar-Domenici legislation that basically repeals the Posse Comitatus Act in times of national emergency. The precedent to disregard "a law generally considered a great bulwark in our democratic society"[72] and add domestic roles to the active-duty military suggests a disturbing trend toward infringement of individual rights that makes Charles Dunlap's 1992 *Parameters* article, "The Origins of the American Military Coup of 2012,"[73] seem eerily prophetic. During debate of Nunn-Lugar-Domenici, Representative Bob Barr stated, "The potential for abuse is frightening, especially when you consider the egregious abuses of federal power that led to the Waco tragedy." [74] In the end, the local citizenry--supplemented with good planning, training, and equipment--will be the most capable responders to confront, contain, and counter a WMD attack.

NOTES

1. US General Accounting Office, *Combating Terrorism: Observations on Federal Spending to Combat Terrorism*, GAO/T-NSIAD/GGD-99-107 (Washington: GAO, March 1999).
2. Ehud Sprinzak, "The Great Superterrorism Scare," *Foreign Policy*, No. 112 (Fall 1998), p. 116.
3. For the purpose of this article, WMD refers only to biological or chemical weapons.
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6. Senator Richard Lugar, quoted in William C. Mann, "Terrorists with Doomsday Weapons a Growing Threat, Experts Warn," *The Atlanta Constitution*, 1 November 1995, p. A6.
7. Barbara Crossette, "Iraq Gives UN Fuller Details on its Germ Warfare Program," *The New York Times*, 23 August 1995, p. A1; Laurie Mylorie and James Ring Adams, "Saddam's Germs," *The American Spectator*, November 1995, pp. 60-62.
8. Glenn Guenther, "Analysis of the Nunn-Lugar-Domenici Amendment," master's thesis (Monterey, Calif.: Naval Postgraduate School, 1998), p. 17.

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12. Barbara Crossette, "Expert Says Iraq Got Bomb Data from U.S.," *The New York Times*, 23 March 2000, p. A4.
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16. David E. Kaplan, "Aum Shinrikyo," (1995), in *Toxic Terror: Assessing Terrorist Use of Chemical and Biological Weapons*, ed. Jonathon B. Tucker (Cambridge, Mass.: MIT Press, 2000).
17. US General Accounting Office, *Weapons of Mass Destruction: Status of the Cooperative Threat Reduction Program*, GAO/NSIAD 96-222 (Washington: GAO, September 1996), p. 1.
18. Bill Gertz, "China, Russia Still Producing Biological Weapons," *Washington Times*, 8 August 1996, p. A6; and Gertz, "16 Biological Sites Identified in the ex-Soviet Union," *Washington Times*, 3 March 1992, p. A3.
19. Judith Miller, "Evidence Grows on Biological Weapons," *The New York Times Magazine*, 3 January 1993, p. 33.
20. Tony Capaccio, "CIA: Iran Still Holding Limited Stocks of Biological Weapons," *Defense Week*, 5 August 1996, p. 1; Barbara Starr, "Egypt and Syria are BW Capable," *Jane's Defence Weekly*, 21 August 1996, p. 15; Seth W. Carus, *The Poor Man's Atomic Bomb? Biological Weapons in the Middle East* (Washington: Washington Institute of Near East Policy, 1991), p. 60.
21. US Congress, Congressional Research Service, *Nuclear, Biological and Chemical Weapon Proliferation: Potential Military Countermeasures*, Report No. 94-528S (Washington: GPO, 1994), p. 3.
22. US Congress, Office of Technology Assessment, *Proliferation of Weapons of Mass Destruction: Assessing the Risks* (Washington: GPO, 1993), p. 54.
23. Richard K. Betts, "The New Threat of Mass Destruction," *Foreign Affairs*, 77 (January/February 1998); Ashton Carter, John Deutch, and Philip Zelikow, "Catastrophic Terrorism: Tackling the New Danger," *Foreign Affairs*, 77 (November/December 1998); Laqueur, "Postmodern Terrorism."
24. *Congressional Record*, 26 June 1996. Senator Nunn gave this testimony on the Senate floor during the debate of the Nunn-Lugar-Domenici Amendment.
25. US Congress, *National Defense Authorization Act for Fiscal Year 1997, Title XIV: Defense Against Weapons of Mass Destruction, Subtitle A: Domestic Preparedness* (Washington: GPO, 1996). Also known as Nunn-Lugar II. In October 2000, this responsibility was transferred to the Justice Department (FBI).
26. DOD Directive 3025.15 designates the Department of the Army as executive agent for consequence management planning and implementation with responsibility to task service components and commit assets.
27. Carter, Deutch, and Zelikow, p. 81.
28. Major Adrian T. Bogart III, personal interview with Chief Resource Management Officer, Consequence Management Program Integration Office, US Department of Defense, 4 May 2000.

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42. Helen Dewar, "Nunn Urges Military Shift: Forces Would Aid Domestic Programs," *The Washington Post*, 24 June 1992, p. A17; and Philip A. Brehm and Wilbur E. Gray, *Alternative Missions for the Army* (Carlisle, Pa.: US Army War College, Strategic Studies Institute, 17 July 1992).
43. Statement of General Joseph Ralston, Vice Chairman of the Joint Chiefs of Staff before the 106th Congress, Committee on Armed Services, US Senate, 9 March 1999.
44. Guenther, p. 57
45. Posse Comitatus Act, section 1385, title 18, US Code, as amended, provides the following: "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both."
46. US Department of the Army, "Domestic Disaster Assistance, A Primer for Attorneys," Judge Advocate General's School, Center for Law and Military Operations, Charlottesville, Va.
47. Under 42 U.S.C. 5170b, reference (f), "The President may authorize the Secretary of Defense to use DOD resources for performing . . . emergency work that may ultimately qualify for assistance which is essential for the preservation of life and property." Also, DOD emergency work cannot exceed ten days without specific authorizing action.
48. Thomas R. Lujan, "Legal Aspects of Domestic Employment of the Army," *Parameters*, 27 (Autumn 1997), 90.

49. See 10 U.S.C. Sections 371-378, codifying judicially created exceptions to the Posse Comitatus Act.
50. Barton Gellman writes in "Strategy for the 90s: Reduce Size and Preserve Strength," *The Washington Post*, 9 December 1991, p. A10: In "interview after interview across the services, senior leaders and noncommissioned officers stressed that they cannot be ready to fight without frequent rehearsals of perishable skills."
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52. US General Accounting Office, *Chemical and Biological Defense: Emphasis Remains Insufficient to Resolve Continuing Problems*, GAO/NSIAD 96-103 (Washington: GAO, 29 March 1996).
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56. During the Tokyo subway gas attack, 4,500 of the 5,000 "injuries" were thought to be psychosomatic.
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58. Jonathan B. Tucker and Amy Sands, "An Unlikely Threat," *The Bulletin of Atomic Scientists*, 55 (July/August 1999), 18.
59. Brian Michael Jenkins, *The Likelihood of Nuclear Terrorism* (Santa Monica, Calif.: RAND, P-7119, July 1985), p. 6.
60. In 1972, an eco-terrorist group called R.I.S.E. was thwarted in its plan to wipe out residents around Chicago with a disease pathogen. Other group members, in disagreement with the apocalyptic plan, informed the FBI.
61. John Parachini, "Combating Terrorism: Assessing the Threat," testimony before the US House Subcommittee on National Security, Veterans Affairs, and International Relations, 20 October 1999.
62. US General Accounting Office, *Combating Terrorism: Use of National Guard Response Teams Is Unclear*, GAO/NSIAD 99-110 (Washington: GAO, May 1999), p. 2.
63. Colonel Robert P Kadlec, M.D., USAF, interview with author on 26 April 2000.
64. US Department of Defense, *The Department of Defense Plan for Integrating National Guard and Reserve Components Support for Response to Attacks Using Weapons of Mass Destruction* (Washington: GPO, 1998).
65. US General Accounting Office, *Combating Terrorism: Use of National Guard Response Teams Is Unclear*, p. 14.
66. In 1999, Congress expanded from 10 to 27 the number of Civil Support Teams (CST) of National Guardsmen to deal with nuclear, chemical, biological, or other terrorist incidents. The Rapid Assessment and Initial Detection (RAID) team name was changed in March 2000 as a result of this legislation, but most contemporary literature still refers to them as RAID teams. For the purposes of clarity and consistency, this article refers to the National Guard units as RAID teams.
67. US General Accounting Office, *Combating Terrorism: Use of National Guard Response Team Is Unclear*, p. 9

68. Ibid., p. 10.

69. Kadlec interview, 26 April 2000.

70. Chris Seiple, "Consequence Management: Domestic Response to Weapons of Mass Destruction," *Parameters*, 27 (Autumn 1997), 133.

71. The US State Department is the lead agency for managing and coordinating counterterrorism policy and operations abroad.

72. Lujan, p. 84.

73. Charles J. Dunlap, Jr., "The Origins of the American Military Coup of 2012," *Parameters*, 22 (Winter 1992-93), 2-20. In his article, Dunlap writes from the future to explain how the military lost its fighting capability at the expense of domestic missions as well as its ties to Constitutional government.

74. Pat Towell and Karen Foerstel, "Anti-Terrorist Additions," *Congressional Quarterly*, 20 July 1997, p. 2062.

Captain Aaron Weiss, USMC, is a contingency analyst in the Programs and Resources Department, Headquarters, US Marine Corps, Washington, D.C. Previous assignments were as the air traffic control officer-in-charge with a Marine Expeditionary Unit; an air defense officer in Cherry Point, North Carolina; and a student at the Naval Postgraduate School in Monterey, California. In addition to his M.S. from the Naval Postgraduate School, Captain Weiss recently graduated with an M.A. from Georgetown University's National Security Studies Program. His previous publications include a Chase Essay Contest honorable mention in the *Marine Corps Gazette* (1997).

Reviewed 15 August 2001. Please send comments or corrections to carl_Parameters@conus.army.mil