

Statement by

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## **Introduction**

Chairman Shays, Congressman Kucinich, and Members of the Subcommittee: I appreciate the opportunity to meet with you on the critical subject of our nation's security.

President Bush best characterized the challenge we face and the profound responsibility we bear today when, on the eve of the standup of the new Department of Homeland Security, he said, "The world changed on September the 11th, 2001. We learned that a threat that gathers on the other side of the earth can strike our own cities and kill our own citizens. It's an important lesson; one we must never forget. Oceans no longer protect America from the dangers of this world. We're protected by daily vigilance at home. And we will be protected by resolute and decisive action against threats abroad."

When freedom needs defending, America turns to its military. All who wear this nation's uniform have chosen to serve in America's defense and in freedom's cause. They stand tall in times of conflict, and they stand ready in times of peace.

As we speak, our military is carrying out the President's orders to deter, attack and destroy terrorist organizations and those who harbor them.

Our military is America's first and most important line of defense against homeland attacks. That is why defense of our nation actually starts abroad, where our soldiers, sailors, airmen, and Marines are putting their lives on the line every day to make it more difficult for terrorists to plan or execute their attacks before they ever near our borders.

## **Legal Constraints on DoD Domestic Activities**

Military support to civilian law enforcement is carried out in strict compliance with the Constitution and U.S. laws and under the direction of the President and Secretary of Defense.

For example, the Posse Comitatus Act (PCA), Title 18 of the U.S. Code (USC), Section 1385, states:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."

Department of Defense (DoD) Directive 5525.5 extended the PCA to the U.S. Navy and U.S. Marine Corps. The PCA does not apply to the U.S. Coast Guard.

The PCA generally prohibits U.S. military personnel from interdicting vehicles, vessels and aircraft; conducting surveillance, searches, pursuit and seizures; or making arrests on behalf of civilian law enforcement authorities. Prohibiting direct military involvement in law enforcement is in keeping with long-standing U.S. law and policy limiting the military's role in domestic affairs.

However, Congress has enacted a number of exceptions to the PCA that allow the military, in certain situations, to assist civilian law enforcement agencies in enforcing the laws of the United States. They include:

- The Insurrection Act (Title 10 USC Sections 331-334). This act allows the President to use U.S. military personnel at the request of the State Legislature or Governor to suppress insurrections. It also

allows the President to use federal troops to enforce federal laws when rebellion against the authority of the United States makes it impracticable to enforce the laws of the U.S.

- Assistance in the case of crimes involving nuclear materials (Title 18 USC Section 831). This statute permits DoD personnel to assist the Justice Department in enforcing prohibitions regarding nuclear materials, when the Attorney General and the Secretary of Defense jointly determine that an "emergency situation" exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies.
- Emergency situations involving chemical or biological weapons of mass destruction (Title 10 USC Section 382). When the Attorney General and the Secretary of Defense jointly determine that an "emergency situation" exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies, DoD personnel may assist the Justice Department in enforcing prohibitions regarding biological or chemical weapons of mass destruction.

### **Military Assistance to Civil Authorities**

The U.S. military has a long and proud history of providing assistance to civil authorities. In so doing, DoD traditionally adheres to five premises when considering requests for support from civil authorities:

- That civil resources are applied first in meeting requirements of civil authorities;

- That DoD resources are provided only when response or recovery requirements are beyond the capabilities of civil authorities (as determined by the Department of Homeland Security or another Federal Agency for emergency response);
- That Specialized DoD capabilities requested for the support of civil authorities (e.g., airlift and airborne reconnaissance) are used efficiently;
- That DoD will be reimbursed in accordance with applicable laws; and
- Generally, military operations other than support to civil authorities will have priority over support to civil authorities, unless otherwise directed by the Secretary of Defense or the President.

Section 501 of Executive Order 12656 (Assignment of Emergency Preparedness Responsibilities) requires the Secretary of Defense to “[d]evelop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between the military, civil government, and the private sector.”

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, As Amended, Title 42 USC 5121, et seq., states that:

“During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act [42 U.S.C. 5170 et seq. or 5191 et seq.], the Governor of the State in which such incident occurred may request the President to direct the

Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determined practicable. Such emergency work may only be carried out for a period not to exceed 10 days.”

Finally, imminently serious conditions resulting from any civil emergency or attack may require immediate action by military commanders to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, local military commanders may take necessary action to respond to requests of civil authorities. Such action by local commanders is referred to as “immediate response” and is expressly authorized by DoD Directive 3025.1, “Military Support to Civil Authorities.”

Examples of military support to civil authorities over the course of the last year include but are not limited to:

- Some 1,600 Title 10 status National Guard troops who were detailed to the southern and northern borders to assist the Immigration and Naturalization Service, Border Patrol, and Customs Service to carry out their missions in a heightened post-9/11 security posture until they could hire on and train new personnel; and

- Technical and acquisition expertise from the Army's Communications-Electronics Command (CECOM) to assist the Metropolitan New York Transit Authority in solving its multi-billion dollar requirement for security upgrades to New York City tunnels.

Although the vast majority of requests for assistance have been supported by DoD, a few have not. Those few not supported did not pass muster with the five premises. In each case, Federal, State, or local authorities:

- Did not fully explore amply available civilian resources; and
- Were not looking for capabilities or resources unique to DoD.

As DoD considers any and all of the demands for assistance, it is mindful of one critical caveat that appears throughout the body of statutory law authorizing military support to civil authorities: the military may provide support to civil authorities if the provision of such support will not adversely affect the military preparedness of the United States. While the military can and should provide appropriate support to civil authorities, the military's primary responsibility is to fight and be prepared to fight our nation's wars.

### **Transforming the Armed Forces**

Americans can rightfully take pride in the courage and achievements of the men and women in uniform. Looking over the last year and a half since the terrorist attacks of September the 11<sup>th</sup>, DoD has accomplished much – the liberation of Afghanistan and Iraq, the disruption of terrorist networks around the world, the direct defense of our nation. But U.S. forces will face even greater challenges ahead. U.S. military actions to date represent only the beginning of a

long, dangerous, and global war against international terrorism. And even as U.S. forces fight the war on terrorism, other challenges loom on the horizon.

The attacks of September the 11<sup>th</sup> showed that the United States is in a new and dangerous period. The historical insularity of the United States has given way to an era of new vulnerabilities. Current and future enemies will seek to strike the United States and U.S. forces in novel and surprising ways. As a result, the United States faces a new imperative: It must both win the present war against terrorism and prepare now for future wars notably different from those of the past century and even from the current conflict. Some believe that, with the U.S. in the midst of a difficult and dangerous war on terrorism, now is not the time to transform our Armed Forces. The opposite is true. Now is precisely the time to make changes. The attacks on September the 11<sup>th</sup> lent urgency to this endeavor.

Transforming the U.S. Armed Forces is necessary because the challenges presented by this new century are vastly different from those of the last century. During the Cold War, America faced a relatively stable and predictable threat. The challenges of the 21<sup>st</sup> century are much less predictable. Who would have imagined that terrorists would hijack commercial airliners, turn them into missiles, and use them to strike the Pentagon and the World Trade Center Towers? But it happened. As adversaries gain access to weapons of increasing range and power, future surprise attacks could grow vastly more deadly than those on September the 11<sup>th</sup>. Our challenge in this new century is to prepare to defend our nation against the unknown, the uncertain, and the unexpected. To win the war on terror and to prepare for future threats, we must transform the U.S. military to become more lethal, agile, and prepared for surprise.

Well before September the 11<sup>th</sup>, senior civilian and military leaders of the Department were in the process of determining new approaches to deterring and defeating adversaries. With the 2001 Quadrennial Defense Review, senior leaders took a long, hard look at the emerging security environment and came to the conclusion that a new approach to defense was needed.

Much has been accomplished in fashioning such an approach. In the past year and a half, the Department of Defense has:

- Adopted a new defense strategy;
- Reorganized the Office of the Secretary of Defense to provide better focus and unity of effort for homeland defense, support to civil authorities, emergency preparedness and domestic crisis management;
- Fashioned a new Unified Command Plan to enhance homeland defense and accelerate transformation;
- Reorganized and revitalized the missile defense research and development program, free of the constraints of the Anti-Ballistic Missile Treaty; and
- Adopted a new approach to strategic deterrence through the Nuclear Posture Review that increases our security while reducing the number of strategic nuclear weapons.

Transformation lies at the heart of this new approach to defense. The development of the transformational capabilities and forces will be given strategic focus by the principal challenges and opportunities under the new strategy. The

Department has distilled these into six operational goals. In developing future capabilities, U.S. forces must:

- Above all, protect critical bases of operations (most importantly, the U.S. homeland) and defeat weapons of mass destruction and their means of delivery;
- Project and sustain power in distant anti-access and area-denial environments;
- Deny enemies sanctuary by developing capabilities for persistent surveillance, tracking, and rapid engagement;
- Leverage information technology and innovative network-centric concepts to link up joint forces;
- Protect information systems from attack; and
- Maintain unhindered access to space and protect U.S. space capabilities from enemy attack.

### **Homeland Defense Force Structure**

Since my confirmation as the Assistant Secretary of Defense for Homeland Defense in February, I have given significant focus to two of the Department's transformational goals - protecting critical bases of operations and defeating weapons of mass destruction. I have considered how we can meet this goal and the corresponding implications this poses for the military's future force structure. The Department's approach is to first define the capabilities required to effectively engage the evolving challenges of the security environment and then, from these

capabilities, define the forces, force structures, and equipment necessary to realize these capabilities. While I continue this process of consideration and definition, some of the capabilities under examination include:

- An enhanced version of our current capability to defeat and respond to multiple, simultaneous attacks by terrorists employing weapons of mass destruction;
- A maritime defense-in-depth that would engage and defeat terrorists possessing weapons of mass destruction before they approach our nation's shores. To achieve this capability we may come to rely more heavily on the forces of the Naval Reserve;
- A more robust homeland defense capability resulting from a reorientation of the National Guard. The National Guard needs to remain a balanced force – capable of participating in the defeat of our nation's enemies at home and abroad – but an increased role for the National Guard in homeland defense missions is likely;
- An advanced capability, utilizing emerging WMD remote sensing technology, to deal with asymmetric terrorist threats, such as chemical, biological, radiological, and nuclear weapons; and
- A sustainable quick reaction force to protect critical infrastructure. During Operation Iraqi Freedom, DoD stood up quick reaction forces that could rapidly deal with threats to our nation's critical infrastructure. We are carefully reviewing the lessons learned from that activity to determine the proper number of units and personnel, the proper mix of Active Component and Reserve Component personnel, and optimal equipment for an improved capability in the

future. In considering this future DoD capability, we must primarily focus upon the need to defend the critical infrastructure of the Defense Department as directed by the President, and the Defense Industrial Base.

## **Total Force**

The Department of Defense uses the Total Force concept where the right tools are used for the right jobs. The Total Force – Active, Reserve, and Guard – is even now engaged in activities at home and abroad that promote the security and interests of our nation.

Because the Reserve Components now comprise almost 50% of the Total Force, they are a key part of America's Total Force defense and an essential partner in military operations ranging from defense of our nation at home to the full spectrum of military operations around the world.

When we were attacked on September 11th, more than 100,000 reservists and National Guard members sprang into action - Army, Navy, Air Force, Marines, and Coast Guard. Since then, they have helped defend our homeland, drive the Taliban from power, shut down the terrorist training camps in Afghanistan, and liberate the Afghan and Iraqi peoples.

Primarily, as described in Title 10 USC Section 10102, the purpose of the Reserve Components is:

“[T]o provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of

the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.”

The National Guard is particularly well-suited to perform selected homeland defense missions, such as the Air National Guard’s important role in continental air defense. However, the National Guard is combat ready to conduct overseas military operations and is relied upon by combatant commanders as part of our nation’s strategic reserve.

In the past, the National Guard was dual-tasked. In wartime, the nation has expected the Guard to fulfill its mission overseas; in peacetime, the nation has expected the Guard to be available for domestic emergencies. The terrorist attacks of September the 11<sup>th</sup> now have taught us that the National Guard may be called upon to do both at the same time, not by accident but because our nation’s enemies may attack us in both places at once.

The 2001 Quadrennial Defense Review directed a comprehensive review of the Active and Reserve mix, organization, priority missions, and associated resources. This review, which has been completed, will help determine the future utilization priorities of the Reserve Components in support of the new defense strategy at home and abroad. As the Department reviews how best to deal with the challenge of the new security environment, it is mindful of the need to properly balance the application of the Total Force to: defend the homeland, contribute to the global war on terrorism, meet military commitments abroad, and, if necessary, participate in a major theater war.

## **Conclusion**

America's men and women in uniform continue to stand tall in their service to our nation's defense and freedom's cause. Their dedicated service gives truth daily to the President's commitment to America's people on the advent of Operation Enduring Freedom, October 7, 2001: "We will not waver; we will not tire; we will not falter; and we will not fail."

Thank you, Mr. Chairman.