

EMPLOYMENT OF A DUAL STATUS COMMANDER
IN A MULTI-STATE DISASTER OPERATION

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fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE
Homeland Security Studies

by

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ABSTRACT

EMPLOYMENT OF A DUAL STATUS COMMANDER IN A MULTI-STATE DISASTER OPERATION, by Major Chad E. Thomson, 83 pages.

Several laws, doctrine, and agreements dictate how the National Guard and federal military integrate and function during DSCA operations. Since 2011, the federal government and the Council of Governors established a new customary command to overcome sovereignty concerns and other legal impediments to a domestic military unity of effort. The problem with the construct is during multi-state disasters where it propagates parallel commands among affected states without a singular organization to synchronize and prioritize efforts. Thus, the central research question is: How can laws be changed to support the use of a dual status commander during a multi-state national disaster? Analysis of the primary legal considerations as well as an in-depth review of military doctrine, concepts of operation, and after action reports provide insight into the challenges inherent in a large multi-state disaster. Coupled with a review of potential military organizational or doctrinal impediments or inefficiencies the study concludes current laws are not the major issue. With a historical perspective preserving the rights of states as delineated in the U.S. Constitution, the study concludes revisions or modifications are necessary to the Joint Action Plan and military organization to facilitate a greater national unity of effort within the military.

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TABLE OF CONTENTS

	Page
MASTER OF MILITARY ART AND SCIENCE THESIS APPROVAL PAGE	iii
ABSTRACT.....	iv
ACKNOWLEDGMENTS	v
TABLE OF CONTENTS.....	vi
ACRONYMS.....	viii
ILLUSTRATIONS	ix
TABLES	x
CHAPTER 1 INTRODUCTION AND OVERVIEW	1
The Research Question	4
Definitions	5
Scope.....	9
Limitations	10
Conclusion	10
CHAPTER 2 REVIEW OF LITERATURE	12
Introduction.....	12
Policy Framework	14
Homeland Security Presidential Directive 5.....	14
National Response Framework	15
Federal Laws Affecting the Military Response	17
Posse Comitatus Act	18
Insurrection Act	20
Immediate Response Authority.....	21
The Stafford Act	23
Policy Impacts to the Military Response	24
Current Doctrine and its Implementation.....	26
Dual Status Command	26
Conclusion	33
CHAPTER 3 RESEARCH METHODOLOGY	35
Introduction.....	35
Methodology	35

Conclusion	38
CHAPTER 4 ANALYSIS	39
Introduction.....	39
Organization.....	40
Organization Summary	53
Doctrine	56
Doctrine Summary	59
Conclusion	59
CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS	62
Introduction.....	62
Conclusions.....	62
Recommendations.....	66
Suggestions for Further Research	68
Conclusion	69
BIBLIOGRAPHY	71

ACRONYMS

CONOP	Concept of Operations
DCE	Defense Coordinating Elements
DCO	Defense Coordinating Officer
DOD	Department of Defense
DOTMLPF	Doctrine, Organization, Training, Materiel, Leadership, Personnel, Facilities
DSC	Dual Status Commander
DSCA	Defense Support to Civil Authorities
EMAC	Emergency Management Assistance Compacts
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
IRA	Immediate Response Authority
JCE	Joint Coordinating Element
JTF	Joint Task Force
NGB	National Guard Bureau
NRF	National Response Framework
PCA	Posse Comitatus Act
U.S.	United States
USC	United States Code
USNORTHCOM	United States Northern Command

ILLUSTRATIONS

	Page
Figure 1. RAND Corporation Dual Status Command Diagram.....	29
Figure 2. Government Accountability Office Dual Status Command for Single State Operations Diagram	30
Figure 3. Multi-State C2 for Hurricane Sandy	32
Figure 4. National Guard Bureau Command Relationships.....	42
Figure 5. Emergency Management Relationships.....	44
Figure 6. USNORTHCOM Dual Status Command Concept	45
Figure 7. Dual Status Command Structure.....	57

TABLES

	Page
Table 1. Previous Unplanned Dual Status Commander.....	31

CHAPTER 1

INTRODUCTION AND OVERVIEW

There is also no consensus in the United States today on what single C2 structure should be chosen, as state governors and federal officials have different perspectives on the importance of state sovereignty and, therefore, state control.¹

— Lynn E. Davis et al.,
Hurricane Katrina: Lessons for Army Planning And Operations

Following the aftermath of Hurricane Katrina the overall government disaster response received criticism due to perceived failures to respond expeditiously and effectively.² The government's response to Hurricanes Katrina and Sandy have exposed several flaws in the nation's ability to affectively respond to disasters and implement unity of effort. Even though hurricanes have relatively predictable paths, emergency responses were slow, disjointed, and demonstrated interagency conflicts. The Department of Defense's (DOD) role during these events and a number of other Defense Support to Civil Authorities (DSCA) operations are included in the criticism that efforts were not unified or as effective as they should have been.³ These purported failures are evident between the interaction and unity of action between DOD active duty forces and respective state National Guard forces.

It is likely that DOD will be called upon more frequently to support stabilization and recovery efforts in the future. Worldwide climate change is likely to fuel more

¹ Lynn E. Davis et al., *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: The RAND Corporation, 2007), 61-62.

² Ibid., 19.

³ Ibid., xii.

extreme and erratic weather while there is a constant threat of a major earthquake such as the Japanese earthquake in 2011 and the Indian Ocean earthquake in 2004.⁴ Major environmental disasters such as hurricanes, earthquakes, and tsunamis all have the potential to quickly and almost universally exceed any state's organic capability to effectively respond. Once overwhelmed, states will undoubtedly request federal assistance in order to preserve life and limit the long term damage to property. Because of this likelihood, issues with command and control of military forces must be resolved before they are needed.

Failure to have established guidance and agreements in place prior to a disaster will lead to unnecessary suffering and potentially higher loss of life. This thesis aims to discover and analyze the underlying problems associated with the joint DOD and National Guard response to national disasters. It is focused primarily on the interaction and integration of the DOD with the supported state's National Guard force and how the two independent organizations can work in tandem to best support civil authorities. Independently, each organization has limitations and restrictions that prevent a full range of operations from being implemented. Combined, however, the two organizations can complement one another and provide comprehensive assistance and capability to the supported state and to the Federal Emergency Management Agency (FEMA) Federal Coordinating Officer (FCO).

This thesis will address the complexity and importance of unity of effort between Active Component and National Guard forces during disaster operations. Current laws,

⁴ The Department of Defense, *Quadrennial Defense Review 2014* (Washington, DC: Department of Defense, 2014), vi.

policies, precedent, and past interactions have complicated the command and control construct to the detriment of the civil population and overall United States (U.S.) Government response. The research will focus on constraints and limitations between the two similar but different forces and provide a recommended solution for unified effort during major disaster DSCA operations.

To fully grasp the difference between Active Component and National Guard forces one must first know and understand a series of complex laws that date back to the founding of the United States. These laws and subsequent Presidential Policy Directives and Department of Defense Instructions identify specific restrictions and limitations for how military forces are allowed to operate within the U.S. and its territories. This thesis will analyze each of these laws, policies, and regulations to determine the underlying effects, positive or negative, that they have on the military's ability to respond and effectively operate as a unified force.

Since the DOD has identified Defense to Civil Authorities as a primary mission and duty for all forces it is imperative a comprehensive solution be enacted.⁵ Current laws are the most restrictive aspect of DSCA operations and limit the ability of the military to provide a completely unified force to best support during a disaster. Further analysis into the problem of integrating federal and state forces will focus on various laws and policies that restrict the military from exercising the breadth of its resources.

⁵ The Department of Defense, *Sustaining U.S. Global Leadership: Priorities for 21st Century Defense* (Washington, DC: Department of Defense, 2012), 5.

The Research Question

This thesis will answer the following: How can laws be changed to support the use of a dual status commander during a multi-state national disaster? Current military doctrine professes a dual status commander is the preferred command structure to be utilized during an operation involving both federal and National Guard forces.⁶ This command structure intuitively seems to be an obvious solution to combine both forces under a single commander; however, since its inception in 2004 there were several nearly insurmountable problems with its implementation.⁷

In order to answer this question we must first have a very strong understanding of the laws that govern the use of the military on U.S. soil. Current legislation limits the respective military forces from utilizing their full menu of resources to support civil authorities during a disaster. Since the foundation of this country, citizens have been wary of a military that can exert control over its citizens. This uneasiness is even evident with the U.S. founding members as the third amendment to the Constitution addressed quartering of soldiers. The amendment is an attempt to balance the peace and wartime needs of the Army with the rights of citizens.⁸ Other laws are more prescriptive and limiting, hampering the military's ability to operate as a unified force. The first of two secondary research questions aims to identify what laws could change to facilitate multi-status DSCA operations. Subsequent chapters will address these laws in greater detail.

⁶ Joint Chiefs of Staff, Joint Publication 3-28, *Defense Support of Civil Authorities* (Washington, DC: Government Printing Office, 2013), II-10.

⁷ National Defense Authorization Act, Public Law 108-136, § 516, *U.S. Statutes at Large* 117 (2003): 1392.

⁸ U.S. Constitution, amend. 3, sec. 1.

Even more important than knowing the laws is an understanding of the rights of states and the authorities of their respective governors leading to another secondary question: how do laws and doctrine affect the interaction of Title 10 and Title 32 forces? Any mixture of federal and state personnel whether military or other government agency carries an inherent friction due to the parallel sovereignty that states possess. Unless specifically granted by the Constitution, the Federal government must yield to state sovereignty to conduct matters within their borders.⁹ During a disaster, local (city, municipality, or county) governments retain control of the actions in their respective jurisdiction. Additionally, a state governor retains governance and control of actions inside his or her state providing direct or indirect support to the requesting local government. The federal government operates in a pseudo supporting role despite providing all of the primary disaster relief agencies.¹⁰ This applies to federal military forces operating in the state as well. Research will examine potential changes to particular laws in order to allow the military to provide quick and efficient support to civil authorities during a major disaster.

Definitions

Below are definitions of terms used throughout the thesis.

Concept of Operations (CONOP). The military utilizes graphical or narrative depictions that illustrate how an undetermined unit or force will execute an operation or

⁹ U.S. Constitution, amend. 10, sec. 1.

¹⁰ U.S. Department of Homeland Security, *National Response Framework* (Washington, DC: Government Printing Office, 2013), 13.

mission given a set of available resources.¹¹ The depictions are a broad overview of the concept with a planning framework to guide later detailed planning. In terms of this research, CONOPs guide the command and control constructs during a DSCA operation illustrating command hierarchy and coordination points among various departments or cells.

Defense Support to Civil Authorities (DSCA).¹² Use of this term throughout this thesis includes any military response to requests for domestic assistance from civil authorities. This term does not include a localized response by National Guard forces in State Active Duty status unless there are concurrent actions by other statuses. Military forces respond to requests to support law enforcement, domestic emergencies, pre-planned events such as national sporting events, or other major domestic activities. When the size or complexity of an incident overwhelms civil authorities, they request military forces to augment their operations. The military has an assortment of resources and skills to fill capability gaps of civil authorities.

Dual Status Commander.¹³ A Dual Status Commander (DSC) refers to a commissioned Army or Air Force officer in either the National Guard or Active Component. The appointed individual serves concurrently in Title 10 and Title 32 status under the consent of the President and the applicable governor. In a dual status, the appointee receives mission orders from two distinct chains of command: federal and

¹¹ Joint Chiefs of Staff, Joint Publication 1-02, *Department of Defense Dictionary of Military and Associated Terms* (Washington, DC: Government Printing Office, 2016), 114.

¹² Joint Chiefs of Staff, Joint Publication 3-28, vii-viii.

¹³ *Ibid.*, C-1.

state. He or she serves as the intermediate link to connect the two separate command channels and to provide a structure to gain unity of effort between the two elements. A dual status commander is accountable to both chains and must delegate orders appropriately according to federal and supported state laws.

Military. The use of this term throughout this thesis is encompassing of federal and National Guard forces regardless of status. It is a general term to include all branches and services of the United States armed forces.

National Guard.¹⁴ This term refers to the military forces established under the command and control of the 54 states and territories within the United States. The forces receive equipment and training under the same conditions as federal military forces. Generally, the Governor of their state vice the President of the United States commands the organization. National Guard forces are versatile forces capable of functioning under different duty statuses depending on the funding stream for an operation. National Guard forces can operate under Title 10 authority, Title 32 authority, or State Active Duty. Each status is dependent on the required mission, the extent of the operation, and the legal authorities required.

National Response Framework (NRF). The NRF is the framework established by the Federal Government through Homeland Security Presidential Directive 5 and Presidential Policy Directive 8. The purpose of the framework is to establish a comprehensive whole of government response to a domestic emergency or incident. The NRF guides federal agencies, including the military, on how to conduct all hazard

¹⁴ The Department of the Army, Army Doctrine Publication 3-28, *Defense Support of Civil Authorities* (Washington, DC: Government Printing Office, 2012), 8.

responses to domestic events. The framework is scalable to account for small, local level events through large, national level disasters. According to the framework, overwhelmed local, state, or federal civil authorities must request military resources.

State Active Duty.¹⁵ State Active Duty refers to National Guard forces financed by and operating under the control of their respective state. Most civil support operations within the National Guard begin in this status. There is typically little difference between National Guard forces operating in State Active Duty or in Title 32 status with the exception of the funding stream. Each state manages this status differently depending on their annual budget allocations, business practices, and individual state laws. All soldier pay, allowances, and other expenses are the responsibility of the state. States reimburse the federal government for any federal equipment costs incurred in this duty status.

Title 10 or Active Component.¹⁶ Use of this term throughout the thesis is in description of federal military forces operating under Title 10, United States Code (USC). These forces include the active and reserve components of the Army, Air Force, Navy, and Marine Corps. Forces serving under Title 10 are under the command and control of the President of the United States through the Department of Defense.

Title 32.¹⁷ Title 32, USC refers to federally funded National Guard forces that remain under the command and control of the Governor of their respective state. Under

¹⁵ The Department of the Army, *Disaster Response Staff Officer's Handbook: Observations, Insights, and Lessons* (Leavenworth, KS: Center for Army Lessons Learned, 2010), 44.

¹⁶ Title 10, United States Code-Armed Forces, Public Law 99-433, § 162, *U.S. Statutes at Large* 100 (1986): 1018.

¹⁷ Title 32, United States Code-National Guard, Public Law 108-375, § 1041, *U.S. Statutes at Large* 70 (1956): 596.

Title 32 status, the President of the United States authorizes federal funding to train, man, and equip the National Guard for specific missions or training. The President does not retain any commander in chief responsibilities under this title, as the forces remain organized under their Governor. The state Adjutant General under the authority of the Governor executes immediate command and control.

Unity of Effort. Use of this term throughout this document denotes cooperation and collaboration across all military components, branches, and services to accomplish a mutual goal or objective. Unity of Effort does not necessarily require a single command structure in order to accommodate and build toward mutual interests or goals.¹⁸ Coordination and cooperation among the different military services is essential during any operation to accomplish a specific mission or task to reduce wasted efforts and lapses in support. An organization that fosters and maintains a positive atmosphere of trust, respect and cooperation can achieve a focused unity of effort.¹⁹

Scope

Due to the near limitless situations where the military can provide DSCA, the scope of this thesis is on major multi-state disaster operations. Historically, large disasters illustrate the need for improvement; therefore, they are the focus of this study. The study will also focus on federal laws that affect the employment of military forces in DSCA operations, as the breadth of individual state laws is too great.

¹⁸ Joint Chiefs of Staff, Joint Publication 1, *Doctrine for the Armed Forces of the United States* (Washington, DC: Government Printing Office, 2013), V-1.

¹⁹ Joint Chiefs of Staff, Joint Publication 3-0, *Joint Operations* (Washington, DC: Government Printing Office, 2011), V-18.

Limitations

Due to the structure of the National Guard, 54 unique forces operate under the authority of 54 different states and territories. Each of these has a level of sovereignty and autonomy to conduct business how their Adjutant General and governor see fit.²⁰ The District of Columbia National Guard is the only National Guard force that falls under the President as a Commander in Chief; all others answer to their respective governor. Due to this, there are effectively 54 different methods of utilizing the National Guard during state and federal emergencies. Time will not allow for a comprehensive analysis of each state and territory to evaluate and recommend how each state should employ their National Guard forces in conjunction with federal forces.

Conclusion

Defense Support to Civil Authorities is a vital mission for the military: the military cannot afford to fail in this task. In order for the DOD to retain the Nation's trust it must react swiftly and effectively to preserve life and protect property. Failure to retain that trust through boggled internal struggles of command between federal and National Guard forces can lead to a loss in confidence in the military. Losing the trust and confidence of the public will have detrimental effects on the funding and reliability of the services as a whole. Since the U.S. military is under civilian control, Congress controls and allocates all funding for the military to function. A failure to meet the needs of the

²⁰ National Guard Bureau, *2015 National Guard Bureau Posture Statement* (Arlington, VA: National Guard Bureau, 2015), accessed March 8, 2016, <http://www.nationalguard.mil/features/posturestatement.aspx>, 7.

nation may cause Congress to tighten purse strings or become more prescriptive on how the military will function, as was the case with the Goldwater-Nichols Act in 1986.²¹

This study will identify why interaction between federal and National Guard forces has been challenging in the past. Past operations such as responses to Hurricanes Katrina and Sandy highlighted and tested the need for a unified effort between the two forces.²² Current joint doctrine states the preferred command construct in a major disaster is the Dual Status Commander; however, as demonstrated during Hurricane Sandy, this may not be the best option.²³

As was the case with Hurricanes Katrina and Sandy, it is inevitable that future large-scale disasters will cross state lines and overwhelm a multitude of local governments. In order to meet the requests of each incident commander through the FCO immediately and without duplication of efforts, a command construct must be able to traverse state lines and authorities and operate under a single set of laws. Currently, a dual status commander does not have authority to command National Guard forces from multiple states leading to a requirement to have multiple DSCs in a large-scale disaster.

²¹ James R. Locher III, "Has It Worked? The Goldwater-Nichols Reorganization Act," *Naval War College Review* 54, no. 4 (Autumn 2001): 95-96.

²² Davis et al., 43.

²³ Joint Chiefs of Staff, Joint Publication 3-28, II-10.

CHAPTER 2

REVIEW OF LITERATURE

The lack of unity of effort between the National Guard and Federal military forces must be resolved. Natural disasters such as hurricanes, tornados, floods, and earthquakes repeatedly demonstrate that catastrophes can strike unexpectedly and may quickly overwhelm the ability of local, county, tribal, and state governments to respond. . . . It would be a tragedy if any state had difficulty in teaming with the Federal military if any of these scenarios occurred.²⁴

— Jeffrey W. Burkett, *Joint Force Quarterly*

Introduction

As the above quote illustrates, failure of a combined National Guard and Federal military force to support civilian organizations during disasters would be a travesty. The military has a core, directed mission to support civil authorities to limit the loss of life and the destruction of property whenever local or state governments become unable to adequately handle the situation.²⁵ The Army codified this directed mission in its Army Doctrine Publication 3-0 doctrinal publication as one of four fundamental tasks to conduct Decisive Action.²⁶ The publication in conjunction with its supplements provides several key general tasks and a purpose for each to give an organization a framework in which to operate. A major hurdle to military support is federal laws, which limit and restrict the implementation of a clean-cut unified military force.

²⁴ Jeffrey W. Burkett, “Command and Control of Military Forces in the Homeland,” *Joint Force Quarterly*, no. 51 (4th Quarter 2008), 130.

²⁵ The Office of the President of the United States, *Homeland Security Presidential Directive-5* (Washington, DC: Government Printing Office, 2003), 2-3.

²⁶ The Department of the Army, Army Doctrine Publication 3-0, *Unified Land Operations* (Washington, DC: Government Publishing Office, 2011).

Since the events of September 11, 2001, several laws, directives, and policies emphasized a whole of government approach to alleviate a previous lack of unity of effort in response to a disaster. Since their implementation, there have been two significant events to test and validate their effectiveness and overall effects on the military response to a significant disaster. Those events were Hurricanes Katrina (2005) and Sandy (2012). From these events, there have been several articles, studies, and after action reports evaluating the efficacy of the dual status command construct in action, each of which indicated shortfalls and impediments.

In order to grasp the successes and failures within those two hurricanes, one must understand the set of laws that govern the use of military forces within the U.S. and how those laws influence unity of effort. In some cases, the laws are complimentary while in others they conflict with one another creating challenges for a whole of government approach. For this study, the author divided a review of current published works into four categories in order to highlight their individual effects and impacts on the unified military response. In many cases, historical background information illustrates why governing bodies derived and implemented these laws or policies. The four categories utilized include Policy Framework, Federal Laws Affecting the Military Response, Policy Impacts to the Military Response, and Current Doctrine and Its Implementation.

To illustrate relevance to the complex military response, the author incorporated examination of after action reviews and reports from case studies involving Hurricanes Katrina and Sandy. These reports provide useful insight into the tribulations and impediments the military faces when providing unified support to civil authorities. In order to answer the primary research question, an in-depth review of the primary laws,

policies, and historical precedent is required. Each law or policy has the potential to be altered by Congress or the President in order to facilitate a more unified and seamless military response to a multi-state disaster.

The status quo is conducive to a smaller, single state implementation of the dual status command construct as indicated through doctrine, policy, and previous implementation. As the scale increases and more than one state's independent National Guard becomes involved, the construct's efficacy significantly convolutes.

Policy Framework

The terrorist attacks on September 11, 2001 significantly altered the foundation of the military response to national level disasters. Several national policies, directives and subsequent laws derived from that fateful date now shape the whole-of-government approach to a disaster. The following policies have the greatest impact on the military response and they have ultimately shaped the doctrine and command constructs currently in place.

Homeland Security Presidential Directive 5

According to the directive signed by President George W. Bush in 2003, the objective of the government is to ensure all levels are capable to work together effectively and efficiently using a standardized or universal approach to incident management.²⁷ The policy further describes the duties of the Secretary of Defense pursuant to applying military aspects to the government response. The policy explicitly

²⁷ The Office of the President of the United States, 1.

states the Secretary will retain command of federal military forces providing civil support.²⁸

The retention of command of federal military forces has ties with both Title 10 USC and with the Posse Comitatus Act (PCA) of 1878. The NRF established in Presidential Policy Directive-2 designates the lowest level of civil authority as the commander of government efforts during an incident. Depending on the size of the incident, an incident commander tends to be from the municipality or county levels. According to the NRF, federal military forces do not fall under the command of the incident commander or under the designated unified command structure. The federal military, instead, coordinates as a partner to work toward unity of effort in order to retain their mandated Title 10 USC chain of command.²⁹

National Response Framework

The unified command concept outlined throughout the NRF³⁰ is distinct from traditional military definitions. The military does not fall under the direct control or command of the civilian incident commander creating a difference in terminology and producing a reliance on coordination vice control during an incident.³¹ Since the NRF designates authority for the incident at the lowest levels of government, a complex

²⁸ The Office of the President of the United States, 9.

²⁹ U.S. Department of Homeland Security, 6.

³⁰ Ibid., 1-48.

³¹ Ibid., 6.

hierarchy places state officials and FCOs to guide the National Guard and Federal Military responses, respectively.

Because states retain authority in incidents, Dual Status Commanders must comply with all state and federal laws applicable to the location(s) of the incident. The DSC must be able to distinguish among every conceivable law and apply the appropriate military force as not to violate any of the laws. Additionally, they must comply with appropriate military laws and regulations commensurate with state and federal Uniform Codes of Military Justice.

Perhaps the most important aspect of the NRF is the designation of a tiered response. Each level of government from the local-city-municipality through the state are required to expend all available resources before the next level begins to commit. State governments should supplement local governments and incident commanders with available state resources including the state National Guard. As the state reaches culmination of available resources or if a capability gap exists, the NRF directs the use of Emergency Management Assistance Compacts (EMAC) among the other states.

Assistance compacts are standing agreements among 53 states and territories to provide mutual aid and assistance in the event of a state being overwhelmed. EMAC agreements place critical state assets including available National Guard forces on loan to a state in need. The gaining state is responsible for reimbursing the supporting state for all resources supplied.³² In situations such as Hurricane Katrina, Louisiana enacted EMACs between them and several states. More than 10,000 National Guard Soldiers

³² Virginia Department of Emergency Management, *Emergency Management Assistance Compact (EMAC)*, 2012, accessed November 8, 2015, <http://www.vaemergency.gov/em-community/em-resources/logistics/emac>.

from several states provided support to Louisiana under EMAC agreements. Each of these Soldiers fell under the tactical command and control of the Adjutant General of Louisiana.³³

Emergency Management Assistance Compacts provide the requesting governor direct tactical control of all National Guard forces entering their state. This arrangement allows the supported Adjutant General control without consulting with the supporting states.³⁴ The supported Adjutant General has the ability to allocate gained assets how he or she sees fit to best meet the needs within the state.

Federal Laws Affecting the Military Response

The following laws have the greatest effect on the military's ability to function in a unified manner. The laws impose restrictions on the range of options each force, Title 10 or Title 32, is capable to perform. Additionally, the laws indicate authority levels for certain actions, which adds a level of bureaucracy limiting the military's command authority. Finally, through lessons learned from Hurricane Sandy, some of the laws add to the "fog of war" for a commander to completely understand his or her operating environment.

³³ Davis et al., 21.

³⁴ Davis et al., 21; Emergency Management Assistance Compact, Public Law 104-321, § 1, *U.S. Statutes at Large* 110 (1996): 3877.

Posse Comitatus Act

Enacted in 1878,³⁵ Posse Comitatus limits the use of the federal military to police the U.S. population. The premise of the law is to prevent the federal military, specifically the army and air force, from enforcing the law within the United States. Historically, Congress established this law out of a fear of big, powerful government and military.³⁶ Additionally, the law has roots in post-Civil War Reconstruction to appease southern leaders by removing military rule and the ability of local law enforcement to use the military as an impromptu posse. The law prohibits the federal military from operating in a law enforcement capacity primarily because the military's mission is to destroy an adversary, not protect citizen's rights.³⁷

The DOD expanded on the limitation of Posse Comitatus through Department of Defense Directive 3025.21 which implements the PCA to cover all of DOD including the navy and marine corps. The Department of Defense Directive also specifically prohibits a number of actions unless specifically authorized. Those actions include arrests, apprehension, stop and frisk, or vehicle interdiction among several others.³⁸ The President is the only authority to enact exceptions to this law.

³⁵ Posse Comitatus Act, Public Law 130-117, *U.S. Statutes at Large* 20 (1878): 152, codified at *U.S. Code* 18 § 1385.

³⁶ Nathan Canestaro, "Homeland Defense: Another Nail in the Coffin for Posse Comitatus," *Washington University Journal of Law and Policy* 12, no. 1 (January 2003): 1.

³⁷ *Ibid.*, 100.

³⁸ Joint Chiefs of Staff, Joint Publication 3-28, D-1: D-3.

The PCA is a significant reason Title 32 and Title 10 military forces remain under separate command constructs during a major disaster. The PCA only applies to Title 10 forces limiting their function in DSCA operations. Title 32 forces operate under state authority and, therefore, are exempt from the restrictions of the PCA. However, National Guard forces do have to function under respective state laws and restrictions, which may mirror federal laws. When activated, a dual status commander must appropriately assign tasks commensurate with the PCA. He or she must take extreme caution to prevent Title 10 forces from executing policing actions explicitly prohibited by either the PCA or Department of Defense Directive 3025.21.

Altering this law would be a significant undertaking for this country. The spirit of the law is to protect the population from the overbearing and violent nature of a military force. Centuries of military domination in England provided the historical precedent for protecting the government and population from military intervention. Changing this law, while beneficial in a near term emergency, would set the stage for a potentially disastrous outcome in the future. An unrestricted military would open the door for the military to exercise its will on the citizens of the U.S.³⁹ Since its enactment, there have been modifications and other laws written which erode the definitive nature of the law. One such law that circumvents PCA restrictions is the Insurrection Act. The President has the authority to enact the Insurrection Act to bypass the PCA in a number of situations.

³⁹ Canestaro, 142.

Insurrection Act

The Insurrection Act⁴⁰ of 1807 gives the President the authority to employ federal troops to restore order and enforce the laws. The President has the ability to invoke this act when states are unable to maintain order and the rule of law with their organic capabilities. Implementation of this order allows the President to deploy federal troops as a policing force under a multitude of circumstances including rebellion, lawlessness, or insurrections. The President does not need a state's consent to invoke the act, but must notify Congress as soon as possible.⁴¹

Presidents rarely invoke the Insurrection Act as it insinuates a state is incapable of managing their own affairs. In 1992, President George H.W. Bush implemented the act during the Los Angeles Riots. This was the most recent occurrence where it allowed the federalization of the California National Guard and the deployment of up to 4,000 active duty troops.⁴² The breadth of authority given under the act has drawn criticism as it removes friction between state and federal responses granting the federal government greater flexibility in declaring martial law.⁴³

When invoked, the federal government through the arm of the military removes the authority of the state to police its citizens. Under certain circumstances, this is a

⁴⁰ Insurrection Act, Public Law 109-364, *U.S. Statutes at Large* 70 (1956): 15, codified at *U.S. Code* 10 (1807), § 331-335.

⁴¹ *Ibid.*

⁴² Mark M. Becker, "Insurrection Act Restored: States Likely To Maintain Authority Over National Guard In Domestic Emergencies" (Monograph, School of Advanced Military Studies, Fort Leavenworth, KS, 2016), iv.

⁴³ *Ibid.*, 64.

valuable tool, which establishes a unified command without any hindrances of the PCA. When invoked, a governor may lose command and control of his or her National Guard forces as they federalize under Title 10, USC.

Immediate Response Authority

Immediate Response Authority⁴⁴ is a policy established by the DOD to allow temporary support to civil authorities when formal requests through bureaucratic channels are impractical. Department of Defense Directive 3025.18 allows military commanders to respond to a direct civil request under very dire or serious circumstances when time does not permit the request to move through appropriate channels. The authority allows military commanders to employ resources for a duration, not to exceed 72 hours to “save lives, prevent human suffering, or mitigate great property damage.”⁴⁵ An appropriate civil authority must request the support to execute a specific action.

The policy is ambiguous regarding the level of civil authority required to request DOD assistance. According to Ryan Burke and Sue McNeil from the Strategic Studies Institute, the DOD must revise the policy to clearly define the authority indicated.⁴⁶ As evident during Hurricane Sandy, there is a high likelihood of improper action when

⁴⁴ The Department of Defense, Department of Defense Directive 3025.18, *Change 1: Defense Support of Civil Authorities (DSCA)* (Washington, DC: Government Printing Office, 2012).

⁴⁵ Ibid., 4.

⁴⁶ Ryan Burke and Sue McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement* (Carlisle, PA: Strategic Studies Institute and U.S. Army War College Press, 2015), 13.

military forces are unclear of the level of authority required from both their side and that of the civilian requestor.

Less than one week into the response effort, a United States Marine Corps unit acted upon a support request from the New York Port Authority. The unit accepted the request as legitimate and employed troops to Staten Island, New York. This incident created significant confusion throughout the military unified command, as the appropriate authorities did not vet the request. Initially, there was fear of a perceived federal incursion into a sovereign state without the governor's request or approval.⁴⁷ However, since the request did originate from a civil authority, albeit one without command of the overall incident, the action was technically allowed under the Immediate Response Authority.⁴⁸ To alleviate the potential severity of that incident, the dual status commander determined as long as the Marine unit was present for less than 72 hours their presence was legal.⁴⁹

This incident highlighted the seriousness of the ambiguity held within this policy. The policy fails to clearly identify or define what constitutes a civilian authority. An additional shortcoming with this policy is its inability to identify what level of military authority is required to react to a legitimate civilian request.⁵⁰ In the above case, the

⁴⁷ Ryan Burke and Sue McNeil, *Toward a Unified Military Response: Hurricane Sandy and the Dual Status Commander* (Carlisle, PA: Strategic Studies Institute and U.S. Army War College Press, 2015), 40-41.

⁴⁸ Burke and McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement*, 9-10.

⁴⁹ Burke and McNeil, *Toward a Unified Military Response*, 40-41.

⁵⁰ Burke and McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement*, 13.

Marine Corps unit had no command authority in the operation as the Joint Task Force (JTF) had yet to task them. The unit was a ready force situated offshore standing by to receive missions from the JTF when needed. Later investigation suggested the civilian Port Authority official circumvented approved channels by directly contacting the Marine Headquarters.⁵¹

The intent of the policy is not any clearer in DOD's Strategy for Homeland Defense and DSCA guidance document.⁵² Still ambiguous and open to broad interpretation, the strategy discusses the geographic distribution of both medium and large DOD installations with a host of tenant capabilities. The available capabilities support civilian agency requests in extreme conditions by successfully meeting urgent requirements in a timely manner close to current formation locations. The strategy further expounds on ways to leverage the IRA and new concepts to utilize DOD resources in a relative proximity to a disaster area.⁵³

The Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act or The Stafford Act⁵⁴ gives the President the authority to provide a wide array of federal aid to states. The law provides the President the authority to employ federal forces for disaster

⁵¹ Burke and McNeil, *Toward a Unified Military Response*, 64.

⁵² The Department of Defense, *Strategy for Homeland Defense and Defense Support of Civil Authorities* (Washington, DC: Government Printing Office, 2013).

⁵³ *Ibid.*, 17.

⁵⁴ Title 42, USC, Chapter 68 The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

support but still under the limitations provided in the PCA. Under this law, federal forces are able to provide a wide array of civil and humanitarian support to an overwhelmed civil entity.⁵⁵

The law prescribes the situations, albeit broad, that federal support applies to a state during a major disaster. A significant aspect of the law is the prescriptive language that identifies federal reimbursement levels for certain support operations. In general, when invoked the law obligates the federal government to cover 75 percent of associated costs of support.⁵⁶ The supported state government is responsible to share the cost of the remaining amount. Reimbursement channels vary between federal and National Guard forces. This becomes a significant challenge for a dual status commander, as they must compartmentalize actions completed by federal and National Guard forces in order to capture accurate costs.

Policy Impacts to the Military Response

Due to the severity of a disaster and the implications it has with the citizens of the U.S., there are sometimes conflicts between laws and policies. This paradox was evident during Hurricane Sandy when President Barack Obama stated, “We’re not going to tolerate any red tape. We’re not going to tolerate any bureaucracy.”⁵⁷ Statements such as

⁵⁵ Jennifer K. Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues* (Washington, DC: Congressional Research Service, 2005), 4.

⁵⁶ Francis X. McCarthy, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities and Funding* (Washington, DC: Congressional Research Service, 2011), 15.

⁵⁷ Barack Obama, “National Address on Hurricane Sandy Response” (Speech, Washington, DC, October 31, 2012).

this create a quagmire in which good intentions may violate laws. The President's speech intended to assure the American population that the government would expeditiously support the affected states without regard to arbitrary fiefdoms and jurisdictions. However, the unintended consequence of the speech encouraged organizations to circumvent or ignore established procedures and in the case of the DSC, the chain of command.⁵⁸

In reaction to President Obama's speech, United States Northern Command (USNORTHCOM) issued guidance through Title 10 channels, which effectively undermined the authority of the established DSCs and the Governors of the supported states. USNORTHCOM's guidance directed tactical level commanders to: get missions, execute immediately upon mission receipt, and do not worry about paperwork until the mission is complete.⁵⁹ These directives pose potentially serious incongruities with the Posse Comitatus Act, the Stafford Act, and Title 10. An uninformed commander could easily violate one of these laws should he or she commit federal forces improperly to an operation.

In the case of the Marine Corps' purported incursion into Staten Island during Hurricane Sandy, the Marines technically violated both the Stafford Act and provisions of Title 10 USC. There was not an officially vetted request for military support nor was there an official approval for commitment of funds to execute the mission. According to both doctrine and law, employment of Title 10 forces is contingent upon all other civil

⁵⁸ Burke and McNeil, *Toward a Unified Military Response*, 33.

⁵⁹ *Ibid.*, 35.

authorities being overwhelmed or incapable of conducting a particular mission.⁶⁰

Typically, aggressive operations such as this are not problematic, but when they occur outside of the designated chain of command, significant coordination issues arise.⁶¹

Although the President intended to emphasize a whole of government approach to the disaster, his speech created much confusion and complicated the DSC command construct. The National Response framework does operate on a complex layered bureaucracy, which is, at times, tough to navigate. The U.S. Government has a coordinating relationship from the highest to the lowest levels through jurisdictions. However, the military has clear command channels that require an uninterrupted hierarchy. Contradictions to the command channels greatly impair the effectiveness of the military effort.

Current Doctrine and its Implementation

Dual Status Command

Current military doctrine identifies the DSC construct as the preferred or customary model to conduct DSCA operations.⁶² Title 32, USC, Section 101(a)(13)(B), 12304a further codifies the same language establishing the DSC as the usual command and control arrangement for the military to respond to an emergency. Both the law and doctrine adopted the DSC construct following a Joint Action Plan conference in August 2010. This conference evaluated available options and selected the DSC as the most

⁶⁰ Burke and McNeil, *Toward a Unified Military Response*, 37.

⁶¹ Burke and McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement*, 11.

⁶² Joint Chiefs of Staff, Joint Publication 3-28, II-10.

viable and suitable to states' needs. The Joint Action Plan was a joint venture including representatives from the Council of Governors, DOD, Department of Homeland Security, and FEMA.⁶³

A DSC may be appointed from either the federal or National Guard force, albeit, the customary or preferred method is to pull from the National Guard. According to Joint Publication 3-28, Title 10 officers may serve as a DSC, but it is not ideal in a state-led disaster effort.⁶⁴ Federal officers may be the best option when a disaster occurs on federal property or if no qualified state officer is available. During the vetting process for the DSC, a specialized training and certification course emerged as a requirement to assume duties as a DSC.⁶⁵ USNORTHCOM manages the course while working with the National Guard Bureau (NGB) to train National Guard officers in every state and territory.⁶⁶

According to a Government Accountability Office report in 2012, doctrine and laws remain too ambiguous for the DSC construct to be completely reliable. Gaps in the guidance remain, as DOD has not developed comprehensive policies congruent to applicable laws for the DSC to be viable.⁶⁷ Because of the near infinite disaster scenarios imaginable, specific criteria and conditions fail to strictly delineate the authorities and

⁶³ Council of Governors, *Joint Action Plan for Developing Unity of Effort* (Washington, DC: Council of Governors and the Department of Defense, 2011), 1.

⁶⁴ Joint Chiefs of Staff, Joint Publication 3-28, C-6.

⁶⁵ Council of Governors, 3.

⁶⁶ Government Accountability Office, GAO-13-128, *Homeland Defense: DOD Needs to Address Gaps in Homeland Defense and Civil Support Guidance* (Washington, DC: Government Accountability Office, 2012), 14.

⁶⁷ *Ibid.*, 13.

initiation points of a dual status command. The most significant gap in DOD guidance is the lack of established guidelines for use of a DSC in a multi-state disaster.⁶⁸

Interestingly, Government Accountability Office published the above report in October 2012 just days before the landfall of Hurricane Sandy. Sandy was the first DSCA operation that included Dual Status Commanders from multiple states.⁶⁹ Initially, preparations for the hurricane established a potential for five simultaneous DSCs from various states. In the end, however, only two states actually implemented them: New York and New Jersey.⁷⁰ The complexity of the multi-state employment led USNORTHCOM to establish a temporary Joint Coordination Element between the DSCs and the combatant commander at USNORTHCOM. This element was cumbersome and created an additional layer of bureaucracy on an already highly complex command construct.⁷¹

Joint Publication 3-28 does not offer a comprehensive description of the dual status commander construct in practice. There is little specific guidance as to the responsibilities of the supported state, USNORTHCOM, an established Joint Task Force, or the DSC. The publication is extremely broad in both the application and the establishment of the dual status command construct. The absence of clear guidance has repeatedly been a finding in both RAND and Government Accountability Office reports

⁶⁸ Ibid., 15.

⁶⁹ Burke and McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement*, 9.

⁷⁰ Ibid., 8.

⁷¹ Burke and McNeil, *Toward a Unified Military Response*, 68.

analyzing the efficacy of the military disaster response.⁷² Both reports present diagrams to outline the command and control relationships among the forces employed in a disaster. These too, fail to capture the true complexity of a multi-status, multi-state military operation. Figures 1 and 2 are the respective diagrams from the RAND Corporation and the Government Accountability Office.

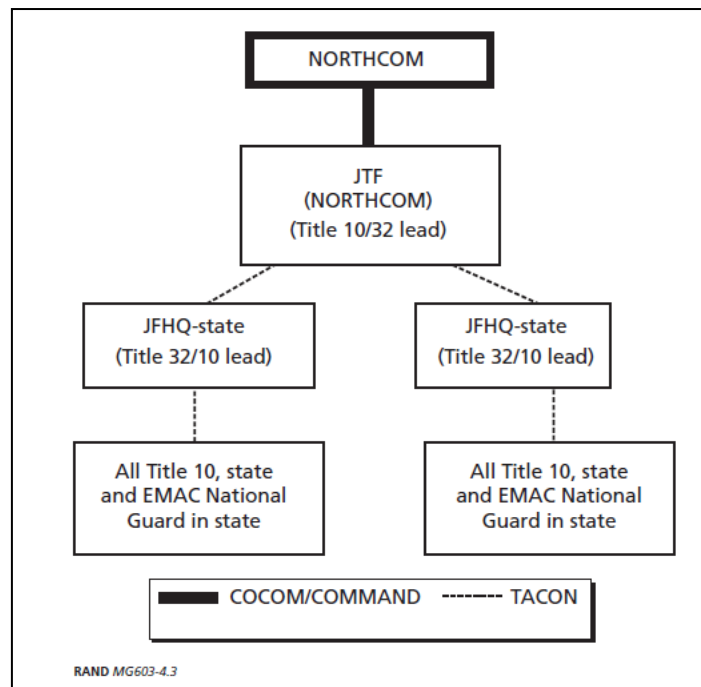


Figure 1. RAND Corporation Dual Status Command Diagram

Source: Lynn E. Davis et al., *Hurricane Katrina: Lessons for Army Planning and Operations* (Santa Monica, CA: The RAND Corporation, 2007), 65. (Modified).

⁷² Davis et al., *Hurricane Katrina: Lessons for Army Planning and Operations*; Government Accountability Office, GAO-13-763, *Civil Support: Actions Are Needed to Improve DOD's Planning for a Complex Catastrophe* (Washington, DC: Government Accountability Office, 2013).

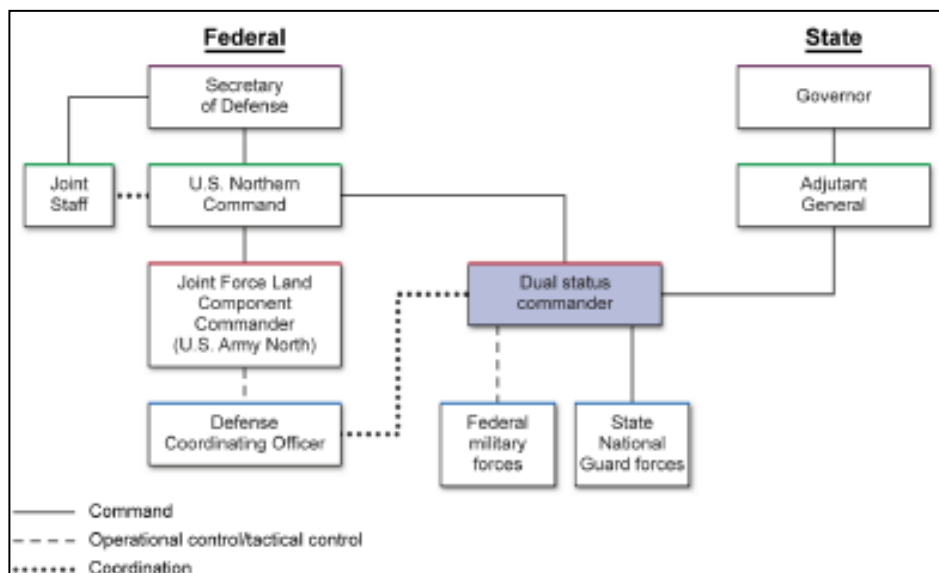


Figure 2. Government Accountability Office Dual Status Command for Single State Operations Diagram

Source: Government Accountability Office, GAO-13-763, *Civil Support: Actions Are Needed to Improve DOD's Planning for a Complex Catastrophe* (Washington, DC: Government Accountability Office, September 2013), 17.

There have been five unplanned instances where the military established a dual status command construct. The first four, however, did not utilize Title 10 forces so the DSC dissolved shortly after establishment.⁷³ Table 1 identifies the consequence management operations where the government initiated a DSC following its inception. Hurricane Sandy became the first true unplanned disaster response to incorporate the DSC and test the loose guidance for its implementation. Figure 3 illustrates the final command and control relationships used during the disaster. The diagram is very

⁷³ Burke and McNeil, *Maturing Defense Support of Civil Authorities and the Dual Status Commander Arrangement through the Lens of Process Improvement*, 39.

complex demonstrating a confusing and complicated hierarchy. Further compounding an already complex construct was the flow of forces into the operation.

Table 1. Previous Unplanned Dual Status Commander

Year	Event	DSCs Activated	DSCs Utilized
2011	Hurricane Irene	4	0
2012	Hurricane Isaac	2	0
2012	California Wildfires	1	0
2012	Colorado Wildfires	1	0
2012	Hurricane Sandy	5	2

Source: Created by author.

According to some after action reports, the command hierarchy changed several times during the operation as new forces flowed into the area. USNORTHCOM established the Joint Coordination Element to serve as a link between the respective DSCs and the Joint Forces Land Component Commander.⁷⁴ Reports are conflicting as to the actual role of the Joint Coordinating Element (JCE), however. The intent of the JCE was to be a coordination link between the Brigadier General DSCs to the Lieutenant General Joint Force Land Component Commander. This link would facilitate the allocation of Title 10 forces to ensure appropriate unit types and resources went to the appropriate state mission. Contrary to this, however, many believe there was a command relationship, which greatly added to confusion.

⁷⁴ Burke and McNeil, *Toward a Unified Military Response*, 68.

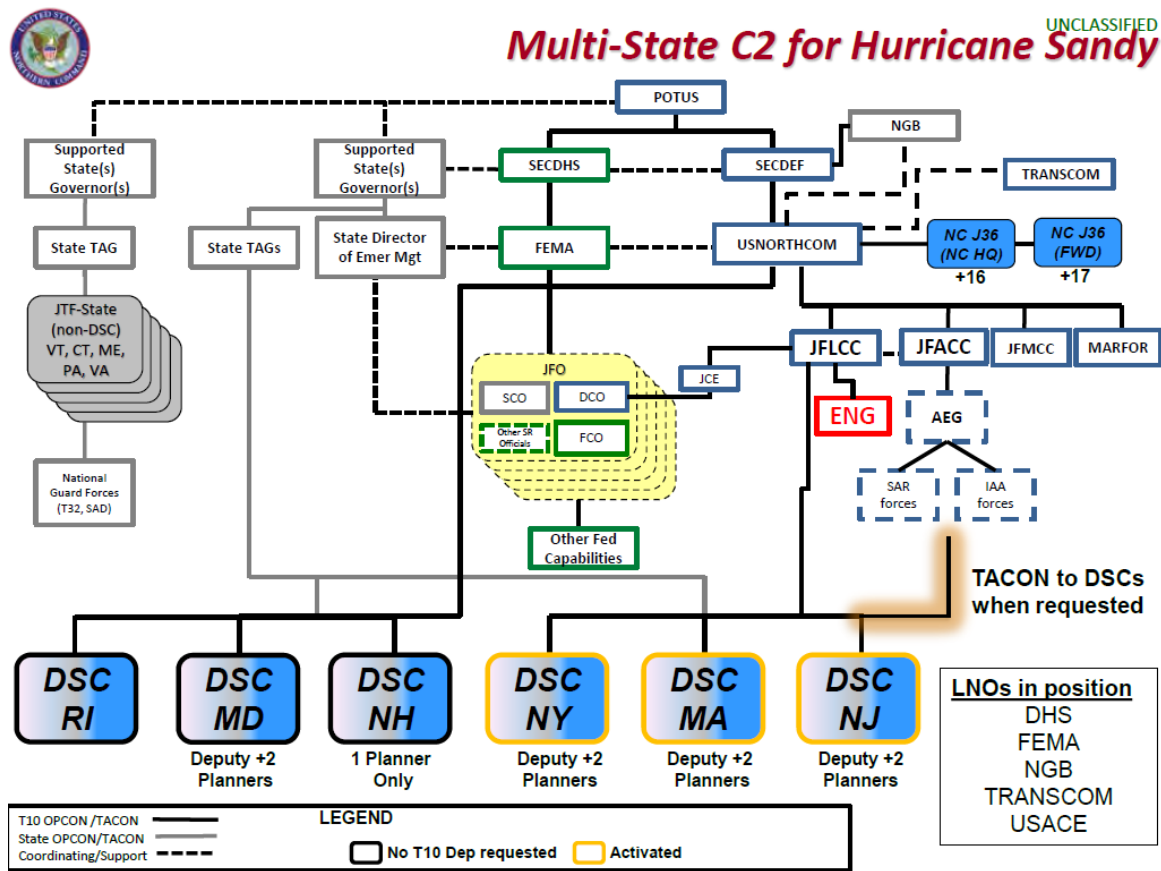


Figure 3. Multi-State C2 for Hurricane Sandy

Source: LTC Andy Muser, *United States Northern Command Hurricane Sandy Response*, 2012.

Regardless of the intent, the ambiguity of the impromptu structure complicated the Title 10 command channels as DSCs and their staffs were unsure of the authorities inherent in the organization. This effectively placed two levels of Title 10 command between the DSCs and the USNORTHCOM commander. Both levels, perceived or not, issued and received orders and reports creating parallel or broken communication channels.⁷⁵

⁷⁵ Burke and McNeil, *Toward a Unified Military Response*, 68.

Conclusion

A complex series of laws and regulations creates a significant challenge for the military to provide a rapid, unified response to a disaster. Throughout the last few decades, the military utilized several different command constructs including the DSC, Parallel Command, and Title 10 only. Each of the constructs has had strengths and weaknesses leading to the selection of the Dual Status Command as the most applicable. Previous attempts to utilize a parallel construct demonstrated significant shortcomings during Hurricane Katrina. Federal and National Guard forces encountered several challenges during the response leading to an overhaul of the process.

State autonomy and a complicated set of laws designed to protect citizen and states' rights impede on the military's ability to unify completely during a disaster. Constraints imposed by Title 10 USC, the PCA, the Stafford Act, and the NRF limit the effectiveness of the military response. Conversely, however, the laws aim to retain state autonomy allowing states to manage their own affairs as they see fit. The situations become extremely complicated as disasters extend beyond a single state's borders. Title 10 forces remain a unified force with a Title 10 chain of command while National Guard forces segregate to their home state or EMAC assigned location. Adjacent state National Guards reacting to the same disaster do not fall under a unified command creating a divide in unity of effort.

Adjacent states will likely vie for limited assets with no overarching command authority to prioritize the effort. The current Dual Status Command construct is limited to state boundaries creating several DSCs throughout a major disaster. Since a National Guard officer customarily serves as a DSC, USNORTHCOM must apportion federal

forces to the states in a manner consistent with their needs and an established priority. As indicated during Hurricane Sandy, this proves exceptionally challenging with just two affected states.

Even with appropriate force apportionment there is little unity of effort among the functional DSCs despite responding to the same disaster. The adjacent DSCs effectively operate in a parallel command function despite doctrine and policies stating, a dual status command is superior and preferred. In order to overcome this significant hindrance to effective operations, the military and lawmakers must review restrictive laws to determine what risk is acceptable. As proven with Hurricane Sandy, the DSC construct mitigates some of the restrictive nature of the laws, but a significant degree of risk lies with the future of disaster operations. As world climates change and threats proliferate, the magnitude of future disasters is likely to exceed previous situations.

CHAPTER 3

RESEARCH METHODOLOGY

Introduction

The purpose of this study was to determine how current laws inhibit a unified military response effort to a large multi-state disaster. Military doctrine and national policy prescribe the dual status command construct as the preferred hierarchal structure for use during any domestic disaster. This study presumed the current templated dual status structure is flawed or inadequate to provide a truly unified effort to support civil authorities.

Chapters 1 and 2 provided a brief overview of the dual status command construct and the various laws that shaped doctrine and policy to accept the construct as the most effective model. The chapters provided the primary research question and highlighted past examples of the dual status commander in action in conjunction with constraints originating with the foundation of the U.S. through the events following September 11, 2001. This chapter will illustrate the research methodology utilized throughout to conduct subsequent analysis and conclusions in the following chapters.

Methodology

The research for this study used a qualitative methodology approach by means of a thorough document review of published works. The impetus for this study originated with two Government Accountability Office studies indicating the military's dual status command construct was immature, flawed, or inadequate. The Government Accountability Office reports built on previous uses or attempts to use the construct in

small and large disasters, specifically Hurricane Katrina. The reports provided the foundation for this study.

The study analyzed these reports and other previous works covering current military doctrine and national directives for the utilization and implementation of a dual status command construct. In keeping with the study's primary research question, the methodology focused on the constraints placed on the military by laws and policies. Additionally, the study concentrated on the military's use of the dual status command construct in large, multi-state disasters, as these situations present the greatest degree of complexity posed by legal impediments.

The qualitative review of literature will attempt to link the relationship among the Title 10 federal military, the Title 32 National Guard, and the laws and policies that effectively limit their range of options. The study will provide potential solutions to overcome legal impediments or to improve the efficacy of the military disaster response as indicated by the primary research question.

There is relatively little prior precedent for large-scale domestic military responses; therefore, providing recommendations to alter legal restrictions or the overall military response to a major multi-state disaster is subjective. The dual status command construct itself is still in its infancy, being tested at this scale only once during Hurricane Sandy in 2012. The available after action reports, audits, and other studies highlighting the successes and failures from that event limit this study. Additionally, the author is aware laws and policies have historical precedent and are in place for several reasons beyond the scope of this study. However, this study will demonstrate the importance of a unified effort between the two core military components: federal and National Guard.

Failure for these two elements to work cohesively with few incongruities is not acceptable to the military or the American people.

As the primary research question indicated and implied, the document review primarily covers laws and policies that affect the military's doctrine and ability to provide a unity of effort construct during a large disaster. The analysis will include lessons learned from both Hurricanes Katrina and Sandy and will incorporate them into the consequent conclusions. Aspects of other researchers' analysis and conclusions from those events are included in the forthcoming analysis.

As inherent with a qualitative study, credibility of the research is a challenge. Through a thorough comparison and comprehensive review of peer and other professional studies over the topic, this research gains a degree of credibility rigor. Several studies from the Strategic Studies Institute, the Government Accountability Office, and after action reports from USNORTHCOM identified a shortfall in the command structure implemented in large-scale domestic disasters. Each focused on the identification of the lack of a unity of effort created when a disaster encompasses more than one state.

Included in the following analysis are highlights from these studies illustrating the significance of the problem around a military framework. Since the military standard for analyzing requirements and capability gaps is centered around a Doctrine, Organization, Training, Materiel, Leadership, Personnel, Facilities (DOTMLPF) foundation it makes sense to utilize a portion of it for the sake of this study. It is impractical to investigate the entire DOTMLPF foundation for this study; therefore, the study's conclusions will focus heavily on the Doctrine and Organization subsets. The remaining categories, although

important, have less of an impact on this research. Chapter 5 will recommend those areas for future research.

Conclusion

Through review of previous published works, this study aims to provide a credible qualitative analysis of the military's command structure during a large-scale domestic disaster. By analyzing current laws and policies coupled with lessons learned from previous disaster responses this study provides conclusions in an attempt to answer the primary research question: How can laws be changed to support the use of a dual status commander during a multi-state national disaster? The military's DOTMLPF assessment provides the foundation for the conclusions and future recommendations.

CHAPTER 4

ANALYSIS

Introduction

The United States Armed Forces have an obligation to support and defend the nation from all threats whether foreign or domestic. This obligation is exceptionally broad in many respects encompassing hostile belligerents abroad to disasters at home. The military's undertaking of these tasks is complex and challenging especially when emphasis is on the far end of the operational spectrum: to fight and win the nation's wars. In many respects, fighting a defined enemy is much more simplistic than supporting myriad of civil authorities throughout an array of jurisdictions.

As established in previous chapters, DSCA operations are a primary mission for the military. Military forces possess countless vital capabilities, which can enable and enhance a civil response to a natural disaster. No other organization in the world can employ the personnel and unique capabilities as rapidly as the U.S. military. In many cases, the military has specialized capabilities and a vast labor pool readily available to support civil authorities unlike any other organization. These capabilities have the ability to save lives, relieve suffering, and aid in the return to normalcy over a shorter period of time.

The friction involved with this support originates with the distribution of these capabilities and ultimate responsibilities between the federal component services and the National Guard. Support to civil authorities may originate from any various combinations of National Guard and federal forces bringing legal constraints, state sovereignty, and integration issues to the forefront. The separation of Title 10 and Title 32 forces has

historical undertones and provides state governors relative autonomy to handle their own affairs and retain control of their militias.⁷⁶

The following analysis studies how current laws and doctrine affect the actions of military forces throughout a large multi-state disaster. Ideally, when called upon, federal and National Guard forces can work symbiotically and seamlessly to support a domestic relief effort. Unfortunately, that has not been the case in recent history. Dual Status Commanders have become a prescribed command construct to overcome many of these challenges and flaws, but it too, has its limitations.

Organization

Previous chapters established the preferred method of integrating both federal and National Guard forces is with the use of a dual status commander. Doctrine, policies, agreements, and CONOP fail to completely address the complexity of such a construct, however. Joint Publication 3-28 does not provide any organizational recommendations beyond placing a federally recognized officer in command of both state and federal forces.⁷⁷ Doctrine falls woefully short in providing relevant and comprehensive data to effectively employ a dual status commander.

In order to unite multiple independent military organizations, one must understand the unique command and control structure within the National Guard. The top organization for the National Guard is the National Guard Bureau located in the National Capitol Region. This organization has no command authority over the 54 state and

⁷⁶ U.S. Constitution, amend. 10, sec. 1.

⁷⁷ Joint Chiefs of Staff, Joint Publication 3-28, C-1 : C-10.

territory National Guards. NGB is an organization responsible for the training and readiness of all National Guard forces through administrative actions. They serve as an intermediate link between state Adjutant Generals and the active components ensuring National Guard units meet established readiness requirements.⁷⁸

State Adjutant Generals, by authority of their respective governor, possess sole command of all forces residing within their state. They liaise with NGB to maintain readiness and receive the necessary funding stream to train and conduct business within their state. Because of the autonomy granted by the U.S. Constitution, there is no command relationship between a state guard force and NGB or a federal service. Figure 4 illustrates how this relationship functions.

⁷⁸ The Department of Defense, Department Of Defense Directive 5105.77, *National Guard Bureau (NGB)* (Washington, DC: The Department of Defense, 2015), 5-7.

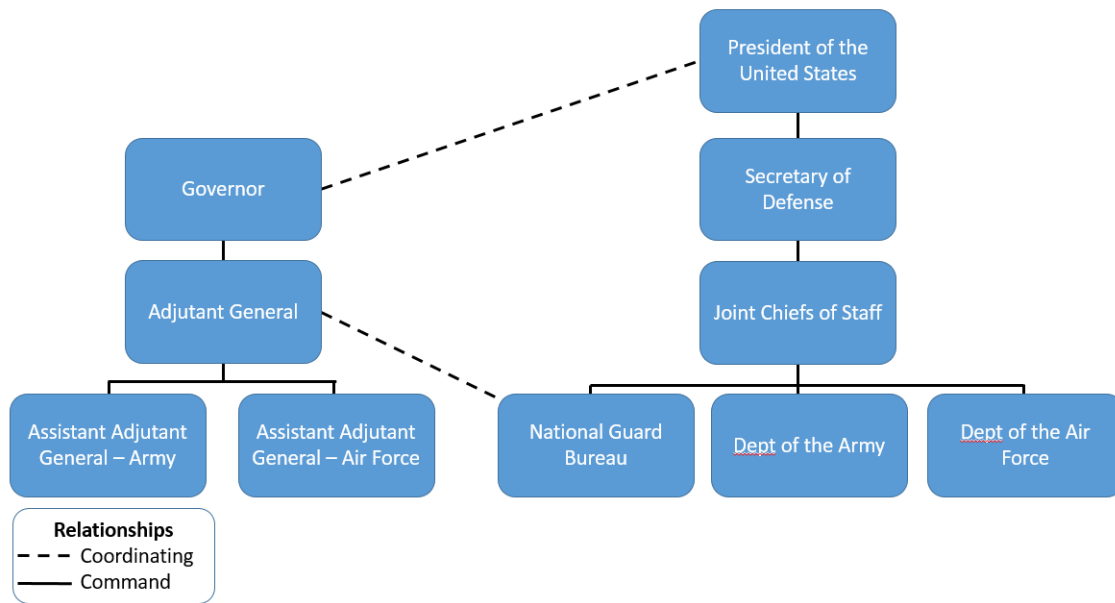


Figure 4. National Guard Bureau Command Relationships

Source: Created by author.

Because state National Guard forces are autonomous from the federal military, there is limited direct coordination among the various states and regional federal forces. This creates a deficit among the state and federal forces as National Guard elements integrate with local and state civil authorities as an inherent part of their daily operations. Since National Guard elements are assets of their respective governors, it is incumbent upon them to incorporate into their respective state emergency management agency. Shortly after the response to Hurricane Katrina, USNORTHCOM modified the Defense Coordinating Officers' (DCO) role to better bridge the gap in regional coordination.⁷⁹

⁷⁹ Barry Cronin, "U.S. Northern Command and Defense Support of Civil Authorities," *The Police Chief* 74, no. 4 (2007), accessed March 7, 2016, http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1162&issue_id=42007.

The DCO provides a direct link between regional FEMA officers and USNORTHCOM. Additionally, the DCO provides an indirect link among USNORTHCOM and the state National Guard forces in that region. USNORTHCOM uses these positions to build regional response concepts and to train for regionally specific issues. Specifically, DCOs provide the link to incorporate federal military planning into large-scale disaster plans such as the New Madrid Fault Line.⁸⁰ DCOs are post-command officers in the rank of colonel and have a small planning staff incorporated directly into their supported FEMA region office.

During a disaster, the DCO's function changes from a planner to a validator. The DCO is the direct link to the FEMA Federal Coordinating Officer who is the focal point for all federal requests for support. As local incident commanders request specific military assets or capabilities, the FCO coordinates with the DCO for federal military resources. The DCO validates the requirement and forwards the request through USNORTHCOM for sourcing. Figure 5 illustrates the relationship of the DCO to other organizations.

⁸⁰ Burkett, 134.

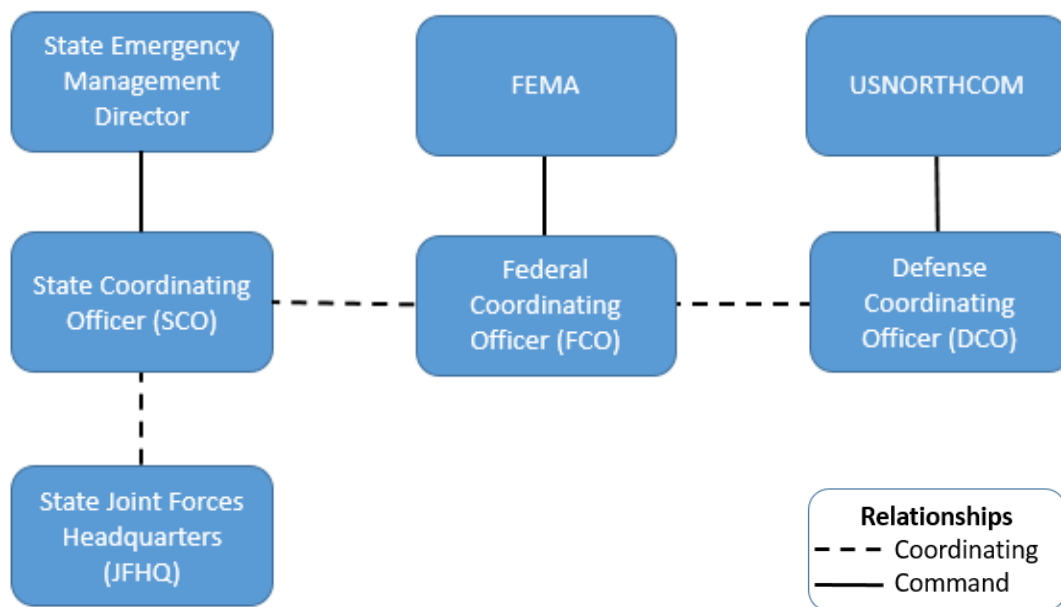


Figure 5. Emergency Management Relationships

Source: Created by author.

As the Geographic Combatant Command responsible for all federal military operations occurring in the continental United States, USNORTHCOM produced a CONOP providing increased detail on the preferred command relationships in a DSCA operation. The CONOP provides the organizational concept for incorporating National Guard and federal forces in both single state and multi-state disasters.⁸¹

As indicated in figure 6, USNORTHCOM conceptualizes the dual status commander construct functioning at each individual state level. As the scope of a disaster spreads beyond the boundaries of a single state, adjacent dual status commanders stand

⁸¹ The USNORTHCOM CONOPS are an Unclassified//For Official Use Only (FOUO) document. This research uses generalizations of the data contained in the CONOPS to illustrate the Dual Status Command construct concepts at the combatant command level.

up to conduct operations within each independent state. Operations during Hurricane Sandy initially implemented this concept as states requested federal forces for DSCA missions.

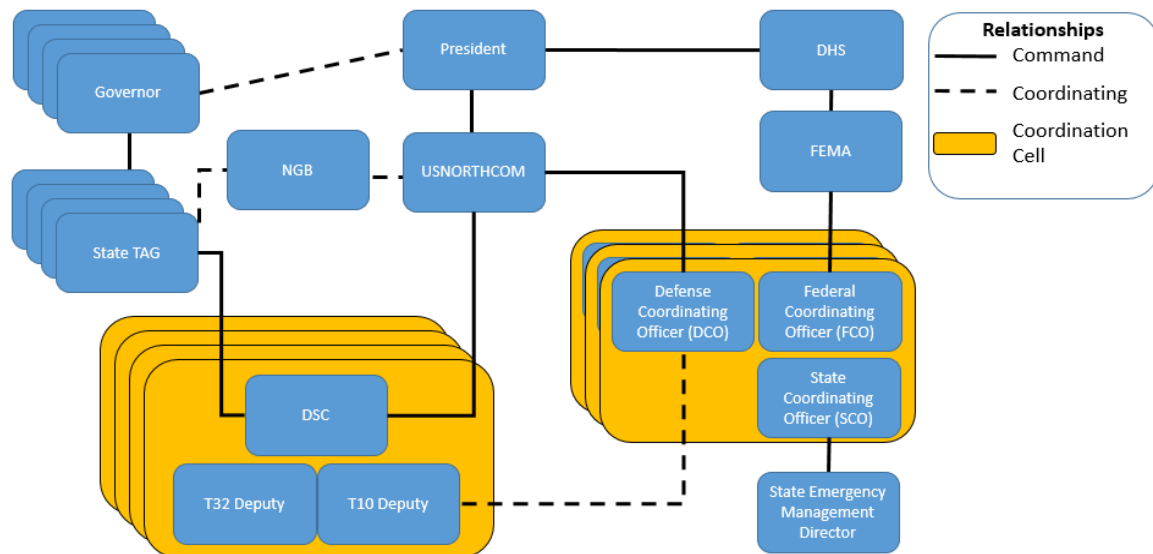


Figure 6. USNORTHCOM Dual Status Command Concept

Source: Created by author.

There are several significant faults with placing the dual status commander individually at the state level. First, the dual status commander has a large disparity between his or her respective commanders. The dual status commander would be reporting to a Major General on the Title 32 side while potentially answering to a General on the Title 10 side. There is no identified intermediary command between the force commander and the combatant commander.

The rank disparity has the potential to create situations where Title 10 operations may receive more priority or emphasis as the higher-ranking general officer may exercise

his or her clout over the dual status commander. This potential amplifies as the operation incorporates more dual status commanders. The USNORTHCOM commander may exercise control over several brigadier or major generals while each Adjutant General only has influence on the one operating in his or her state. This leaves the USNORTHCOM commander establishing priorities for the dual status commanders that may be contrary to the interests of the effected states' governors or Adjutant Generals.

The second major fault with this structure involves the allocation and prioritization of forces within each state. With each state operating its own dual status commander there is the potential for severe lapses in unity of effort. Each dual status commander, in theory, have their state's best interests in mind as they allocate resources and assign missions. With the lack of a commander unifying the efforts of each state task force, there is no efficient or effective method to allocate Title 10 or other Title 32 forces as they flow into the theater. This has the potential to have each dual status commander compete for resources to meet the needs of their state devoid of adjacent operations in other states.

In this structure, the commander of USNORTHCOM would likely allocate all federal forces to each dual status task force as they flow into theater. Requests for highly sought after specialty units, specifically helicopter aviation assets, would likely exceed availability leading to conflict among the separate dual status commands. Similar issues would exist with the allocation of Title 32 forces as well.

Emergency Management Assistance Compact ⁸² agreements established at the outset of a disaster can create an imbalance of Title 32 forces. EMAC agreements allow for the loaning of Title 32 forces from any state to meet a capability shortfall within the requesting state. The requesting state works directly with external supporting state agencies or National Guards with a specific capability to meet a need. Although this is a very effective method to support civil authorities it may not be the most efficient or effective method in a multi-state disaster.

Emergency Management Assistance Compacts allow for the loan of state forces with the contingent to reimburse the loaning state. The requesting state may not exclusively have the greatest need for the asset, but without a commander overseeing the entire DSCA operation, there is no way to rectify the situation. The conceptual command framework does allow for a parallel command structure among the various dual status commanders. This implies each commander should have a coordinating relationship with one another to resolve conflicts and assist each other; however, each commander will have different priorities, which weigh heavily on their willingness to support.

An EMAC agreement among states is the primary method utilized for the introduction of additional National Guard forces into an operation. Once a state becomes overwhelmed or identifies a significant capability gap, they begin the process to request assets. The requesting state may work directly with other supporting states or may receive assistance from NGB. Regardless of the process used, tactical command and control of the loaned forces resides with the receiving state with caveats as established in the

⁸² Emergency Management Assistance Compact, Public Law 104-321, *U.S. Statutes at Large* 110 (1996): 3877-83.

EMAC agreement. The loaned forces remain under operational control from their home state.⁸³ Due to the provisions of the EMAC, the requesting state is obligated to reimburse the supporting state for all personnel and equipment utilized. The severity of the incident will typically dictate the status of the loaned forces as they transition into a theater. Regardless of the multitude of statuses ranging from State Active Duty to Title 32, the chain of command resides with the requesting state Adjutant General.

In general, National Guard forces loaned under EMAC agreements operate under the same laws and restrictions as the host state forces. They may enforce civil laws as long as the host and loaning governors agree to authorize their participation.⁸⁴ Since the forces continue to function under Title 32, USC or state active duty, the PCA does not restrict their ability to provide policing actions during a disaster. They have freedom to operate as needed under the host state span of command.

Under the provisions of the EMAC, states have the ability to coordinate directly for additional National Guard assistance once there is a state disaster declaration. Without a central figure in place to manage these requests, a multi-state disaster may lead to competing efforts to acquire critical personnel and assets from adjacent states. Existing relationships and other agreements among states may weigh in on National Guard asset allocation to a region. At this point in the operation, there is a need for a central figure to manage force allocation even before federal forces arrive.

⁸³ National Guard Bureau, National Guard Regulation 500-5, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations* (Arlington, VA: National Guard Bureau, 2010), 7.

⁸⁴ *Ibid.*, 24.

The introduction of federal forces to a disaster scene further necessitates a need for a central figure to command, control, and apportion forces. Federal forces applied to a situation must maintain their Title 10 chain of command. The chain of command must remain uninterrupted from the individual soldier, sailor, or airman to the President. Title 10 establishes the Geographic Combatant Commander as the first military commander in the chain under the President and Secretary of Defense.⁸⁵ This provision mandates a clear and distinct separation of the military forces, federal and National Guard, as they operate within the scope of DSCA operations unless the President opts to federalize the National Guard removing them from state control.

Under Title 10, federal forces are subject to the Posse Comitatus Act, federal laws, and presidential policies when functioning within a state. They are unable to operate in a policing capacity unless the President invokes the Insurrection Act or another PCA exception. Additionally, they are unable to operate outside of federal jurisdiction without an approved support request validated from the FCO. Without an approved support request, the incident may be a federal incursion on state sovereignty or the federal government may deny reimbursement of activities.

Both funding and the preservation of state sovereignty necessitate the creation of a unified command structure that is cognizant of the needs, forces available, and the legal intricacies of all states and areas involved. As was the case during Hurricane Sandy when a purported federal incursion occurred on Staten Island, a localized DSC possessed

⁸⁵ Title 10, United States Code-Armed Forces, Public Law 99-433, § 162, *U.S. Statutes at Large* 100 (1986): 155.

inadequate control of the total situation.⁸⁶ Although the incident was later determined to be legal, it still demonstrated a significant weakness in the military response system.

Current laws and policies such as the IRA and Stafford Act coupled with vague DSCA doctrine leave much ambiguity for lower level commanders to react to emergency situations. Laws and regulations do not stipulate the level of authority required by a civil entity to request military support. This ambiguity led to a New York Port Authority officer requesting support directly from Marine Corps elements without vetting the request through the local incident commander, state coordinating officer, federal coordinating officer, or dual status commander. The Marine element reacted as if it were an approved and vetted request, and it required an immediate response.⁸⁷

According to current laws and policies, the Marine reaction was seemingly legitimate. This incident highlighted how contrived the command construct was during Hurricane Sandy. Many officers indicated they were completely unaware of the dual status command construct and how the command relationships affected their operations. Additionally, the operation indicated a general lack of knowledge of DSCA laws and regulations, which prohibit or limit certain actions.⁸⁸ As forces flowed into the operation, a convoluted command structure changed several times confusing military leaders on where their orders should be coming from and to whom to report.⁸⁹

⁸⁶ Burke and McNeil, *Toward a Unified Military Response*, 40-41.

⁸⁷ *Ibid.*, 64.

⁸⁸ *Ibid.*, 65.

⁸⁹ *Ibid.*, 68.

Although the intent of the dual status command construct is to establish a military unity of effort and to streamline the apportionment and allocation of forces, it appears to be overly complicated in a multi-state situation. A dual status commander must receive orders from two separate chains of command and keep them separate as he or she issues orders down the chain. This still necessitates the need to have two independent staffs, Title 10 and Title 32, in order to maintain the separation of orders.⁹⁰ This implies the separate staffs work closely in a parallel manner to alleviate gaps or duplicated efforts. This method is conceivable in many single state disasters as the two staffs could potentially collocate or establish liaisons with one another. However, as a situation dictates more than one dual status commander, this coordination continues to be exceptionally complicated.

Under the current concept, there would be a separate Title 10 and Title 32 staff for each state engaged in a disaster operation. Currently, there is no clear unifying commander or element designed to align priorities and efforts among the states.⁹¹ To alleviate this shortfall during Hurricane Sandy, USNORTHCOM created a JCE to facilitate Title 10 coordination among the various dual status commanders. Although well meaning, the element added to confusion creating a perception that it had command authority. According to a Strategic Studies Institute review of the response, many Title 10 leaders were unsure of the command relationships or to whom they should report.⁹²

⁹⁰ National Guard Bureau, National Guard Regulation 500-5, 8.

⁹¹ US Northern Command, *Department of Defense Dual-Status Commander (DSC) Concept of Operations (CONOPS)* (USNORTHCOM, 2011), 20.

⁹² Burke and McNeil, *Toward a Unified Military Response*, 68.

Regardless of the role the JCE actually entailed, it still lacked true unity of effort ability, as it was restricted to Title 10 forces only. As an intermediary command or coordination element, it operated above the scope of the individual dual status commanders and had no approved dual status commander leading the organization.⁹³ The element did provide a capability to potentially better allocate Title 10 forces but without command authority that cannot be definitively decided. Senior DOD officials indicated the JCE was a concept designed to facilitate dual status commander coordination but the idea failed to produce effective results.⁹⁴

Currently, there is no clear or delineated method to mediate the actions and requirements of multiple dual status commanders operating in a particular FEMA region. The DCO(s) shoulder the responsibility to provide the vetting of requirements and coordinate with the federal military force providers to allocate resources to a particular commander.⁹⁵ This method still does not provide a unity of effort or command as no single commander has full situational awareness of the entire operation. In this scenario, each dual status commander is responsible to individually coordinate with adjacent states, the DCO, and NGB among other various local, state, and federal agencies. No one individual or staff would have a full common operating picture of the encompassing operations in order to make critical timely decisions.

⁹³ Ibid.

⁹⁴ Ibid., 82.

⁹⁵ Ibid., 84.

Organization Summary

Both elements of the military possess unique challenges and complications derived from their current organization or procedures for introducing forces into a domestic theater of operations. The National Guard, although founded on the premise of state sovereignty, faces significant hurdles when allocating forces to a multi-state disaster. Unless federalized by the President, each state's National Guard operates under their respective governor and loans troops to other states under EMACs. Federal forces suffer from a general lack of knowledge of the hierarchy associated with a DSCA operation and have struggled with the establishment of a suitable command structure to support multiple dual status commanders.

The most significant hurdles to the effective integration of these dual forces into a DSCA operation are the stipulations contained in their respective governing U.S. Code Titles: 10 and 32. Each law mandates a continuous, unbroken chain of command along their respective lines. The establishment of the dual status commander was an effective and ingenious tool to overcome that chain. However, the dual status commander appears to be limited in its effectiveness as the size of the operation exceeds the boundaries of a single state.

The dual status command construct is conceptually limited to the state level placing a National Guard or federal general officer in charge of state forces, any additional National Guard forces loaned under an EMAC, and any allocated federal forces as necessary. As an operation reaches multi-state status, a dual status commander at the state level no longer has complete situational awareness outside of his or her state

border. As seen during Hurricane Sandy, USNORTHCOM established a coordination cell to help facilitate cross state coordination but it had many faults.

The JCE focused only on federal force operations attempting to allocate crucial low-density assets across the region to meet the most pressing needs. The element did not do the same for any inbound National Guard elements from other states nor did it have a firmly established command relationship with any of the dual status commanders. Many personnel were unsure whether it had a command relationship or if it was simply a coordination cell to assist the dual status commanders.⁹⁶

Another organizational challenge is the current definition of the IRA in Department of Defense Directive 3025.18. The directive is extremely ambiguous in regards to who has the authority to authorize and execute a response to a serious incident. The directive states military commanders have the authority to respond to a request for assistance from a civil authority.⁹⁷ Neither the directive nor doctrine, clarify the level of military commander authorized to make that determination. As written, one could assume any Title 10 leader from the company level to the installation level could make that determination devoid of the current status of the operation.

This ambiguity allowed the purported Marine incursion of Staten Island during Hurricane Sandy. The Marine commander received a request from a New York Port Authority officer to immediately assist. Under the current wording of this directive, that Marine commander was authorized to commit federal forces since there was a civil

⁹⁶ Burke and McNeil, *Toward a Unified Military Response*, 68.

⁹⁷ The Department of Defense, Department of Defense Directive 3025.18, 4.

request for support. However, herein lies another problem with the directive, it does not clearly define civil authority.

The directive does little to establish what level of civil authority is required to provide assistance. Under stipulations of the Stafford Act, even actions conducted under IRA require local reimbursement to the DOD. This should imply the requesting civil entity has the authority to reimburse the federal government. It would also imply the requesting entity and the civilian incident commander are connected and have situational awareness of the operation.

The IRA directive is powerful and absolutely critical for the federal government to assist in an emergency. However, the directive is woefully vague, which can lead to serious misunderstandings and misuse of federal forces. As was the case in Staten Island, the requesting civil entity was not in a role granting them the authority to directly request federal military assistance. Additionally, the Marine commander was unaware of the established military command channel and did not properly integrate into the unified command. Conversely, the military eventually deemed their response acceptable due to the confusion and the fact their actions were necessary to save property.

This response highlighted a fault in the organizational structure of the federal military response as it integrates into the operation. The Marine unit offshore of Staten Island was unaware of proper DSCA processes and the established chain of command. They operated independently from the operation and only loosely within the stipulations of the IRA and Stafford Act.

In conclusion, modification of three laws could facilitate a unified military effort during a disaster: Title 10, USC; Title 32, USC; and the IRA. A revision of the IRA to

give it much more specificity in authority levels would greatly reduce ambiguity during an existing operation and ensure elements of the military do not operate outside of the established command effort. Additionally, Title 10 and Title 32's prohibition of breaking the respective codified chains of command limits the military's ability to function as a total force. The dual status command construct circumvents these rules but not at high enough levels to be completely effective. Allowing officers recognized at state and federal levels to command at several echelons would enhance the overall unity of effort during an operation.

Doctrine

The military's DSCA doctrine, specifically Joint Publication 3-28 and the joint Army Training Publication 3-28.1, account for many of the guiding laws, policies, and regulations, which affect a military response to a disaster. Each publication provides a broad overview of how the military provides support to civil authorities during a serious incident. However, each fails to completely capture the complexity associated with a multi-state incident in which federal and National Guard forces respond to multiple regions under diverse commands.

Army Training Publication 3-28.1, as with USNORTHCOM CONOP, provides a simplified dual status command structure illustrating a shallow span of control. As indicated in figure 7, the publication correctly shows a single state dual status command construct and the relative permissiveness entailed. The publication fails to take into account the command lines required as additional states or dual status commanders enter the incident. Under the prescribed structure and a single state scenario, this construct is

likely sufficient as it proved during pre-planned events such as the National Boy Scout Jamboree in 2010.⁹⁸

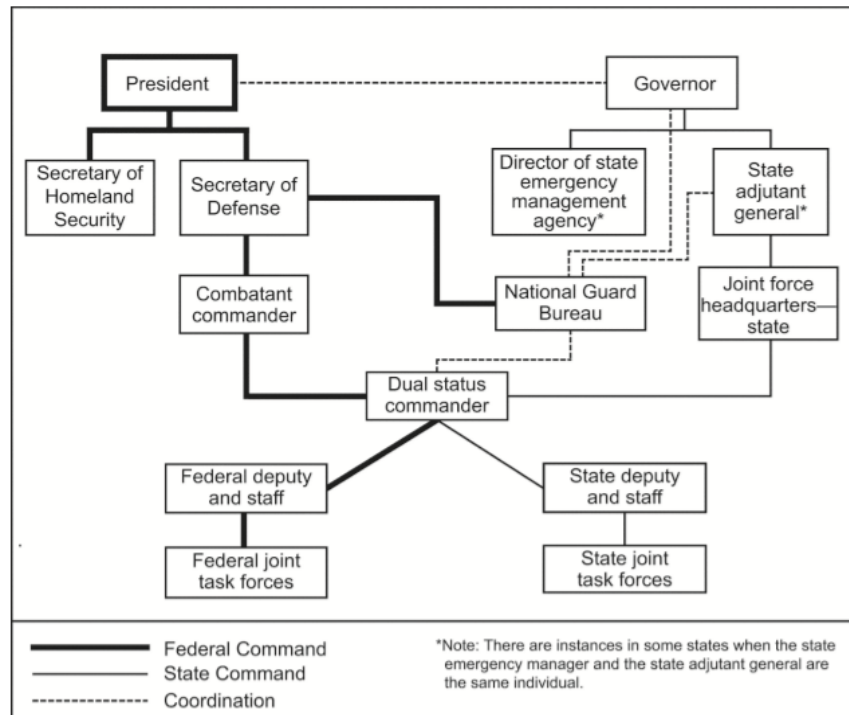


Figure 7. Dual Status Command Structure

Source: Department of the Army, Army Training Publication 3-28.1, *Multi-Service Tactics, Techniques, and Procedures for Defense support of Civil Authorities (DSCA)* (Washington, DC: Government Printing Office, September 2015).

Doctrine provides recommended methods or techniques to accomplish tasks in order to alleviate confusion or provide a starting point, in which, to execute a complicated mission. As proven twice in the last decade with Hurricanes Katrina and Sandy, disasters

⁹⁸ U.S. Northern Command, "Active-Duty General Sworn Into Guard to Take JTF Command Slot," last modified 2010, accessed March 8, 2016, <http://www.northcom.mil/Newsroom/tabid/3104/Article/563750/active-duty-general-sworn-into-guard-to-take-jtf-command-slot.aspx>.

have the potential to encompass massive swaths of land devoid of jurisdictional or state boundaries. Doctrine does not adequately represent this potential, only providing templates based on smaller single state operations. As the breadth of an incident increases, there should be a doctrinal template, with which, commanders can rely upon to be the foundation of their operations.

Under the doctrinal dual status commander structure, dual status commanders reside independently at the state level with no single command or doctrinal coordination element to synchronize efforts. Both USNORTHCOM and NGB function separately as the coordinating elements for their respective forces, as there is no indication of a JTF combining the efforts of the two legally independent organizations.

A large-scale incident such as Hurricane Sandy highlighted this flaw, but the military did little to consolidate the efforts of Title 10 and Title 32 forces beyond the state level. USNORTHCOM did establish the JCE as previously noted, but it functioned as a coordination cell for Title 10 forces only. Even with its narrowed aperture to Title 10 forces only, its effectiveness was questionable. Since there was no doctrinal construct to handle the multi-state incident, the JCE served as an ad hoc organization with unclear roles and authorities.

The most recent publication of Army Training Publication 3-28.1 on September 25, 2015, provides a broad overview of the laws and a better description of the roles and authorities of military entities under IRA. The publication also provides several planning considerations for commanders and staffs for specific types of missions and responses. Unfortunately, the manual does not adequately address the integration of the Title 10 and Title 32 forces in a large event. Much of the manual focuses on specific tactical level

actions but does not address the operational or strategic implications of the laws, command constructs, or response escalation.

Doctrine Summary

Despite several doctrinal publications, DOD directives, and federal policies, there appears to be no template for commanders to utilize in a multi-state incident. Establishing a dual status commander at the state level is ideal when a single state is engaged in an emergency response, but it falls woefully short when other states join the fray. Since doctrine establishes the first and only dual status commander at the state level, there is no overarching entity to synchronize all available military forces among multiple states and statuses.

Doctrine does not preclude a dual status commander establishment at the JTF level, but it does not expressly state it as an option. There are obvious constraints with placing a dual status commander at that level. First, in essence, each state would relinquish some military autonomy by granting the JTF allocation control of EMAC and federal forces. Second, identifying the source of this dual status commander could be a point of contention between the supported states, NGB, and USNORTHCOM. As was the case with the origination of the dual status commander construct, several key individuals would need to negotiate this option before implementation into doctrine.⁹⁹

Conclusion

The military's response to a major disaster to support civil authorities is an extremely complex and challenging operation, particularly with the involvement of

⁹⁹ Council of Governors, 1.

multiple states. State relative autonomy and dual sovereignty are the foundation of the U.S. and play a major role in how the military functions within the country. These factors coupled with laws and policies such as the Stafford Act, Posse Comitatus, the Insurrection Act, and the IRA have shaped and formed the complex domestic environment that we operate in today.

Since the turn of the century, a handful of domestic incidents have tested how the government, specifically the military, can operate in a unified and seamless manner. Unfortunately, the results of these responses have left the country wanting. Following each event there is reform and modification to overcome the greatest hurdles by realigning policies and setting standing agreements on how to run operations.

In lieu of changing laws such as the Posse Comitatus or restructuring the chain of command requirements mandated in Title 10 and Title 32, the creation of the dual status commander was a significant step forward. The command structure's inherent capability to overcome legal requirements opened the door for a unified military DSCA response. The construct is able to operate through mutual agreement from the affected state and the President. Once in place, the dual status command construct better achieves unity of effort than a parallel command between federal and state forces.

The dual status command construct begins to develop weaknesses as the scope of an incident increases beyond state lines, however. Current laws, policies, and agreements do not adequately account for this complexity. As seen with Hurricane Sandy, a dual status commander established in each state effectively operates in a parallel structure with their adjacent states. The creation of the dual status command construct was to overcome the deficiencies of the parallel structure identified during Hurricane Katrina.

The dual status commander has proven an effective and useful tool to combine the efforts of federal and state military elements by allowing a single individual authority to command. The construct operates well within the current set of laws and agreements among the states; however, further modification is required. In order to ensure unity of effort among multiple states, the construct must be able to freely traverse state boundaries. Failure to manage state and military forces across state lines hinders the military's ability to allocate and maneuver critical forces and assets to the greatest needs.

The laws of this country shape and limit the options available to leadership to facilitate DSCA operations. The military's pre-planned organization and DSCA doctrine are not conducive to a multi-state disaster either. There are options to alter, or at least refine, how the funding of a military response occurs as this is often times a limiting factor in how leaders allocate and validate missions for the military. However, modification of the IRA and a standing agreement from the Council of Governors with the President will likely be sufficient to clarify and solidify an effective alternative.

The following chapter highlights options to both reorganize certain organizations within the military to better support a unified domestic response as well as an option to place the dual status command construct at the FEMA regional level encompassing a myriad of states under one umbrella. With legal refinement of the IRA and a clear adjudicated agreement of the preponderance of governors, the dual status commander construct can be highly effective at any level of incident providing a unity of effort to best meet the needs of the residents of the affected states.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Introduction

The purpose of this research was to answer the primary and secondary research questions based on the how national leaders can modify laws to better support the use of a dual status commander in a multi-state disaster. The preceding analysis strove to answer the questions by exploring relevant studies, after action reports, doctrine, and laws in order to paint a picture of the complexity surrounding large DSCA operations. The methodology presented in chapter 3 provided the framework for the overall analysis and placed the study in terms of the DOTMLPF problem solving construct utilized by the Army Capabilities Integration Center.

Across DOTMLPF, the study primarily focused on the doctrinal and organizational aspects of the military and identified challenges associated with the dual status command construct in a large disaster. This chapter will present the conclusions and recommendations based on this analysis and offer areas for further research. Although a definitive solution to this problem is outside the grasp of this study, the following may provide options to eventually reach a suitable solution to this complex problem.

Conclusions

The premise of this study was to analyze relevant laws affecting the dual status commander construct and determine where legal changes would best benefit the integration of federal and state military forces. Through careful review of doctrine, peer

research, and case studies on applicable disaster events, very few legal changes are feasible enough to have a substantial effect and be suitable to the U.S. Government framework. The following will discuss the secondary research questions followed by the primary research question providing this study's ultimate conclusions on the subject.

The first of the two secondary research questions: what laws could change to facilitate multi-status DSCA operations, remains fairly open. Potentially, every law affecting domestic military interaction could use some revision to add clarity and simplicity. The most significant hurdle to changing laws is the U.S. dual sovereignty structure between the state and federal government. Various laws, particularly, the PCA and the Insurrection Act help to guarantee state and citizen rights and protect the population from an overbearing or dominating federal government or military. Modifications to these laws are unlikely because they are in keeping with state sovereignty allowing each state to police their citizens according to their specific laws and methods. The PCA provides the impetus for a separate federal force and National Guard response, as there are specifically delineated duties that each can conduct.

On top of the PCA are the specific U.S. codes that govern the federal military and, in part, the National Guard. An unbroken chain of command from the lowest levels of the military to the highest level of the federal government poses a significant challenge to placing a federal military force in support of a localized disaster response. Because of this Title 10 chain of command stipulation, a federal military force can never operate under the control of a state entity. They can, however, operate in a supporting or parallel role with an independent command structure. There is the potential to modify or make exemptions to this stipulation to temporarily break the chain in favor of placing federal

forces under a state Adjutant General or governor for a pre-determined duration and purpose. A revision such as this would require significant research and legal analysis as to the complete ramifications and limitations that would be inherent in a change of this magnitude. Ultimately, a change such as this is unnecessary as the dual command construct already addresses this issue, albeit inadequately at the multi-state level. Modification of the dual status command construct would be equally as effective and require much less effort and debate.

The final secondary research question: how do laws and doctrine affect the interaction of Title 10 and Title 32 forces, has a fairly clear-cut answer. Laws and doctrine complicate the overall interaction between the various military statuses. As previously noted, the PCA and Title 10 delineate specific command channels and limitations of the specific forces. Laws such as the Stafford Act create a major hurdle in a multi-status response due to the reimbursement requirements for accepted and executed missions. The organization, National Guard or federal military, conducting a mission plays a role in the type and amount of reimbursement authorized from the federal government to the state and vice versa. Strict accountability and a robust knowledge of the law is crucial, to maximize support and ensure states do not have an unexpected bill.

Doctrine's effect on the interaction is detrimental due to its minimal data on the implementation of a dual status commander beyond a single state event. Although there are references to multi-state operations with a DSCA event, doctrine and USNORTHCOM CONOPs fail to recognize an intermediary position beyond the state level to economize and unify the parallel operations. Since the dual status command construct was to eliminate a disorganized response and duplication of effort inherent in a

parallel command construct, doctrine should recognize that the dual status command solely at the state level allows a parallel structure to still exist. In a multi-state disaster, doctrine simply creates parallel commands in each state similar to the Title 10 and Title 32 parallel commands experienced during Hurricane Katrina. As evident during Hurricane Sandy, the dual status command is more effective but still creates coordination issues that leaders need to address in doctrine.

This doctrine revelation leads to the primary research question: how can laws be changed to support the use of a dual status commander during a major national disaster? Ultimately, changing laws could be beneficial but would not necessarily be the most effective or economical means to improve this command construct. The dual status command construct has proven to be an effective system in preplanned activations and was moderately effective during its Hurricane Sandy implementation. Therefore, the construct appears to be a viable solution to the laws that are in place.

The analysis during this study identified the military organization and doctrine as the likely issues with an effective implementation of the dual status construct relegated solely at the state level. The lack of a multi-composition staff or commander above the individual state level fosters parallel commands without a higher unified effort to manage resources, delegate priorities, or apportion incoming units. The current lack of a higher dual status structure above the state retains state sovereignty; conversely, a command above the state level would likely reduce state governors' authority to prioritize efforts creating the potential for some friction.

This study concludes that the best method to support the military's unity of effort during a multi-state disaster is to modify the Joint Action Plan between the Council of

Governors, the Department of Defense, and the Federal Emergency Management Agency. The plan established the dual status command construct as the customary method to gain unity of effort at the state level. A modification to this plan should include provisions to establish a regional or national dual command capacity. That capacity must include buy-in from the Council of Governors as they would have to acknowledge the loss of some authority with the structure, but a compromise is possible. The following recommendation section provides some potential options for this with a possible reorganization of the military.

Recommendations

With a modified Joint Action Plan and the concurrence of the Council of Governors, two major options are possible to better facilitate a unity of effort among a multi-state DSCA operation. The first and least disruptive to current organization, includes the reinforcement of the current Defense Coordinating Elements (DCE) collocated with FEMA in each region. The second option calls for a significant overhaul of two major elements within the military: USNORTHCOM and NGB. Without a revised Joint Action Plan, neither option is viable or suitable to overcome the unity of effort issues inherent with a state parallel command structure.

The first option consists of a more robust DCE with a revised or dual mission set. With concurrence of the respective state governors, a regional DCE should consist of a pre-approved general officer capable of serving as a regional dual status commander. Each state, on a rotational basis, would appoint and approve this general officer to serve in this role. Each state in the region would pre-approve the general officer to exercise command and control over their respective forces during a multi-state DCSA event. Each

state would still create and operate their own respective dual status commander to command multi-status forces within their state. The regional dual status commander's roles would primarily include force allocations for both federal and National Guard troops flowing into the operation but could also include some mission prioritization.

Since the DCE's current mission includes collocation with FEMA, the standing staff is already predisposed to working with FEMA and understands the intricacies of their operations. During an activation, the general officer would be detached and augmented with a Title 10 staff and a joint National Guard staff comprised of personnel from the affected states. The standing DCE staff would continue to validate federal requests as they currently do, but pass the requests to the regional dual status commander for prioritization and asset allocation to the necessary state. The regional dual status commander would also be able to coordinate directly with state Adjutant Generals, governors, and state level dual status commanders for mission prioritization and asset allocation.

The second and much more invasive option coupled with the idea of reducing and optimizing staff looks at a reorganization and consolidation of aspects of USNORTHCOM and NGB. This option could culminate in a number of ways but this recommendation will highlight only two possibilities. First, a multi-composition subordinate command comprised of components of both USNORTHCOM and NGB would provide a standing JTF capable of providing a nationwide dual status capability regardless of region. The dual status commander would be a general officer appointed from the National Guard who would operate in a fashion similar to the aforementioned DCE dual status commander. The primary difference is the position has a national

responsibility vice a regional one. This structure would increase cooperation and unity of effort between USNORTHCOM and NGB for force and resource allocation but would likely not be a preferable option for state governors as they have less say in decisions made at that level.

The second restructure option entails a complete consolidation of USNORTHCOM and NGB into a unified multi-composition command. Since both organizations have a domestic responsibility, it is conceivable to optimize these elements into a unified command with a multi-status role. By consolidating the two, there would be a unity of effort when allocating assets and forces to an operation and both military components could network much more closely prior to a disaster. Again, this option would not resolve governor concerns about control but each state maintaining their own dual status commander to manage missions and assets within the state would be a possible mitigation.

Additionally, a consolidation of the two unlike elements, a command and an administrative bureau, would meet stiff resistance due to the authorities and political aspects inherent in both. Further study on this option is necessary to confirm its viability and acceptability for all players involved. A change of this magnitude is unlikely, but is an option as budgets dwindle and the total army concept of optimized multi-composition forces comes to fruition.

Suggestions for Further Research

This study provided only a cursory analysis of the complexity of integrating Title 10 and National Guard forces during a DSCA operation. There are many opportunities for further research to advance the knowledge base toward a suitable solution to allow

both separate elements to operate with unity in a disaster. In particular, fellow researchers should conduct further analysis on the acceptability of a regional or national dual status command construct to manage a multi-state operation. Key individuals from NGB, USNORTHCOM, and FEMA as well as state governors and Adjutant Generals can provide key insights into whether the dual status command construct is viable outside of a single state.

Additionally, this study focused solely on the doctrinal and organizational aspects of the DOTMLPF framework to identify possible solutions to a unity of effort. Further research on the remaining categories may shed further light on a viable solution or negate the previous recommendations in this study. Furthermore, a legal review by qualified analysts would provide a comprehensive assessment of the previous conclusions, as this study likely missed a number of discrete laws, codes, or regulations affecting domestic military operations.

Conclusion

The creation of the dual status command construct was a significant step to build toward a military unity of effort during a national disaster. The construct has the ability to function within the confines of the laws of the U.S. and within the acceptable parameters of the preponderance of state governors to alleviate an inefficient parallel command between state and federal forces. However, the construct only eliminates the parallel command structure when a DSCA event occurs within the confines of a single state.

Although laws limit the ability of the two separate entities from working in a direct unity of command function, changing the laws appears to be unnecessary as the dual status command has been effective in past implementations. Hence, the challenge

with the construct lies with its implementation above the state level. U.S. dual sovereignty becomes the most significant challenge to overcome in order for the federal military and state National Guard to effectively gain a unity of effort. Each state would have to accept a lower level of authority over their military with a command element established at a level beyond the state. This study offered possible options to overcome this issue, with all options contingent on a Council of Governors acceptance of a revised Joint Action Plan. A revised plan in conjunction with some clarification and simplification of some other laws and doctrine would enable the military to operate in a more unified manner to provide effective and efficient support to civil authorities.

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