

**The U.S. Army Acquisition's Role
In Response to Domestic Unrest:
A Qualitative Descriptive Case Study**



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Abstract

Throughout the Calendar Year 2020, there were increasing examples of domestic unrest in the United States. These were brought on by the Global pandemic, protests stemming from the death of George Floyd and the Black Lives Matter movement, and activities surrounding the 2020 Presidential Election. The use of the U.S. Military to put an end to domestic unrest has a very lengthy and distinctive history. This Research Paper will look at the historic background of federal military intervention, political responses, legal justifications and modifications over time. It will attempt to determine the burden of the Army Acquisition Corps in supporting the military in this role. Additionally, it will determine what role the Army Acquisition Corps will play in the future and how best to provide long term support to the military with regards to domestic unrest responses.

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Chapter 1 – Introduction

For over 245 years the United States Army has served “the American people, to defend the nation, to protect vital national interests, and to fulfill national military responsibilities.” (Military.com, 2021). In times of peace and war, the U.S. Army has been sent to foreign nations to do the same. During war, it can use overwhelming firepower to achieve a specified objective. During peace, more finesse is required to maintain peace and to keep incidents from escalating into upheaval.

Recent historic events in the United States has caused what can be called “civil disturbances” in several American cities. “Civil disturbances are riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders prejudicial to public law and order. The term civil disturbance includes all domestic conditions requiring or likely to require the use of Federal Armed Forces pursuant to the provisions of Chapter 15 of Title 10, United States Code.” (GlobalSecurity.org, n.d., p.2). Most pronounced were rioting and looting in Portland, Seattle, Minneapolis, New York, Washington D.C. and Chicago during the spring and summer of 2020. Stress from the Government-forced quarantining caused by the COVID-19 pandemic, the response to the death/murder of George Floyd, the militant responses of portions of the Black Lives Matter movement (as opposed to the peaceful protesting), the rise of Antifa and anarchist groups in society, the “defund the police” movement and state politicians’/leaders’ inability to protect property and the personal safety of private citizens from violence had made the general populace in these areas feel severely threatened.

Through mid-2020, the Federal government had only sent federal agents to Portland to protect the federal courthouse and utilized the National Guard in a few cities to end the initial violence. In the future, the U.S. Army may be needed to end insurrection and rioting on domestic

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soil. However, there may be disagreements between the federal, state and local governments on how to end the violence and how and if the U.S. Army should be utilized for this task. There are also various laws and statutes that need to be adhered to before any action can be taken. Unless these issues are resolved, the current violence could increase over the next decade and beyond. The Army may not be fully prepared with the resources required to subdue these increasing conflicts.

Background

Over the United States' history, the U.S. Army has been called upon to end civil unrest. Because of current on-going events, it is unlikely that the U.S. Army will not be called on again in some capacity to engage the situation. In the past, the U.S. Army has been tasked with ending/controlling civil unrest in the United States. History.com (2019) states that in 1794, President George Washington sent troops to stop what some feared would become a full-blown revolution. What was known as the Whiskey Rebellion took place in western Pennsylvania in protest of a whiskey tax enacted by the federal government. It is considered one of the first major tests of authority of the newly formed U.S. government.

In relation to the Whiskey Rebellion, Congress passed the Insurrection Act of 1807 in which Congress delegated authority to the president to call the military during an insurrection or civil disturbance. Under one provision of the law, a president can use the military to suppress an insurrection at the request of a state government in order to protect states against "domestic violence." It empowers the American president and commander in chief to deploy military troops within the U.S. in particular circumstances, if they believe it is necessary to quell an "insurrection" that threatens a state or its residents. (Public Record Media, 2011)

Kenny (2010, p.25-26) stated that during the bitterly disputed Presidential Election of 1876, former Confederate States had paramilitary groups seeking to suppress African American voters and return the South to rule by the predominantly white Democratic Party. The Compromise of 1877, which elected Rutherford B. Hayes as President, also prioritized prohibiting the federal government from re-imposing control over the former Confederate States. Also during the Great Railroad Strike of 1877, President Hayes used federal troops to end the strike. After these incidents, there was bipartisan support for the Posse Comitatus Act. The Posse Comitatus Act of 1878 signed by President Hayes, limits the powers of the federal government in the use of federal military personnel to enforce domestic policies within the United States. It prohibits active-duty troops from being deployed to U.S. states for routine use as police forces, which was an important and expansive power granted to the president.

“...Armed Forces have been used for domestic law enforcement well over 100 times.” (Merutka, 2013, p.9). Lucas (2020) states that in 1919, President Woodrow Wilson ordered federal troops to stop race riots in 20 cities across the United States that had erupted from post-World War I tensions and competition over jobs. In 1932, President Hebert Hoover sent U.S. troops to disperse a group of over 20,000 World War I veterans assembled at the Washington Mall. The veterans were seeking bonus payments from Congress. During the confrontation, one veteran was killed and over 60 were injured. In 1946, President Harry Truman sent federal troops to act against striking railroad workers. In 1957, President Dwight Eisenhower federalized the Arkansas National Guard and sent the 101st Airborne Division into Little Rock to quell the riots caused by the protesting of the Supreme Court’s ruling on desegregation of schools. In 1992, President George H. W. Bush, used the insurrection law to send federal troops to Los Angeles to restore order after the Rodney King riots. After the September 11, 2001 terrorist attacks,

President George W. Bush also used the insurrection law to place armed soldiers throughout U.S. airports.

Problem Statement

In the context of current violence and the historic use of the U.S. Army to deal with domestic unrest, the general problem is what roles can the U.S. Army play in addressing homeland security and support to civil authorities when dealing with domestic uprisings. The federal government has already used federal officers and the National Guard for separate incidents on both U.S. coasts in May-July 2020. Many expected that they would be called on again either before, during and/or after the Presidential election in November 2020. However, on several occasions the federal and state governments/leadership have not been in agreement on how and if the U.S. Army should be used. One problem may be the legal authority based on conflicting state and local goals and requirements and what is each entity's responsibilities to the populace. The scope of the Army's involvement could be quite significant.

Purpose of This Study

The purpose of this qualitative descriptive case study is to describe the Army Acquisition community's role in support of the U.S. Army in these emergencies, based on the appropriate roles and responsibilities of the U.S. Army as an agent of resolution to on-going domestic unrest. This study was generated from an initial topic taken from U.S. Army War College Key Strategic Issues List, Academic Year 2018, Part II: Army Priorities for Strategic Analysis, Theme 4: "What is the best use of the Army to help defend the U.S. homeland and North America?" Subsection 4.5 Assess the appropriate and inappropriate roles the U.S. Army can play in

addressing homeland security and support civil authorities. Additional significance was taken from a Strategic Research Project from the United States Army War College Class of 2013: “Use of the Armed Forces for Domestic Law Enforcement” by Lieutenant Colonel Craig E. Merutka. (Merutka, 2013). This study looks to update LTC Merutka’s conclusions and provide recommendations for appropriate options for use of the U.S. Army under today’s conditions to Army and political leadership.

Significance of This Research

Army Leadership needs to have more visibility on the topic of U.S. Army domestic support. Future requirements in Manpower, Logistics, Munitions and Training will be significantly affected if the U.S. Army is required to take on a larger role in securing the homeland. Political leaders need to be more decisive to quell any domestic violence as quickly as possible to alleviate the spread and length of time of occurrences. Quickly knowing their responsibilities and what tools they have at their disposal can remove disagreements over jurisdiction and provide appropriate and legal response.

This research paper will gather as much information and analysis that has been provided by scholars, leaders and journalists during this trying time in our nation’s history. While it may not provide solutions, its intent is to further the dialogue on this increasingly relevant topic. It does not look to discredit previous research, but rather to build upon it. This research may also be used to develop future policy decisions at federal, state and local levels. It will attempt to define Acquisition’s role and scope during these difficult times.

Overview of the Research Methodology

The research for this topic will use a qualitative literature review methodology. There are three (3) main areas of review. First, a review of all historical incidents where the federal government has used military intervention in domestic unrest will be captured and analyzed for scope of commitment and responses from all levels of government. This includes a review of previous and current laws and statutes that apply. Second, a review of previous research papers will be made to capture prior analysis, conclusions and recommendations. These will be scrutinized for relevancy for today's challenges and updated and/or refuted. Last, a review of current media coverage will be collected from the continuum of positions in an attempt to remove any unconscious bias. This data will be analyzed in an attempt to determine fact from opinion and develop an accurate frame of reference for the U.S. society.

Research Question

As part of this research paper, the following questions will attempt to be answered: 1) What is the role of the Army Acquisition Corps to support the Army in these emergencies?; 2) What immediate changes in acquisition will be required (i.e. Contingency Contracting, Standing-Up a new Program Office?; 3) What pieces are the most important (i.e. Program Managers, Contracting, Urgent Operational Need (UON) Statements, Internal Contingency Operations, Rapid Acquisition Cells)?

Objectives and Outcomes

The objective of this paper is to provide scope and recommendations for Army Acquisition to provide current and future assets to the U.S. Army for the protection of U.S.

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Citizens from domestic unrest. Recommendations will be provided from a historic, judicial and political perspective. The intent is to have this research used to develop future acquisition decisions. Where there are not conclusive solutions between jurisdictions, conflicts may continue to exist. At a minimum, this research will be used to provide input to strategic updates and continue a dialogue among all affected parties.

Limitations

This research paper was limited by the time available to complete. It will be undetermined if all avenues of research and analysis were reviewed prior to completion. Also as directed by SSCF guidelines, interviews were not permitted to be used in support of this document. It would have been beneficial to contact several recent DoD authors that have been cited throughout this paper and discuss their previous conclusions and recommendations. Additionally, there was concern that the writer's personal bias could skew the analysis, or during research various supporting documents were biased and not realized as such, or the reader of the research paper lets their own personal bias negatively affect the utilization of the provided results, conclusions and recommendations. Persons who may be considered from each side of the political spectrum were utilized for reviews of this paper in an attempt to minimize bias as much as possible. Additionally, the analysis to support final conclusions and recommendations were constrained by the classified nature of existing Operational Planning documents. Finally, this paper will be a living document. It is expected that the next several years may continue to be turbulent in the United States. Conclusions/recommendations were made with the best available information at the time of production. Discussions on current events were limited to Calendar Year 2020.

Chapter 2 – Literature Review

Basis

This literature review presents the various Articles, Laws, Statutes, Field Manuals and Research Papers that define the historical, contemporary and recent information that discusses the need for U.S. Army intervention in domestic unrest. The objective of this chapter is to provide any data analysis that would lead to a determination on Army Acquisition responsibilities in support of U.S. Army homeland defense and security. Existing laws and historical incidents were reviewed to define the starting point of the analysis. Research papers were utilized to draw more definitive recommendations or solutions. These were found using ProQuest and the DAU Knowledge Repository. Recent articles on current affairs and media coverage were collected to determine if the scope of responsibility needs to be modified based on the last twenty years (post 9/11). These were found by internet searches on domestic unrest, Government response and the U.S. Army.

Reviews

Historic Articles

An initial internet search provided the following articles and information pages: *Whiskey Rebellion* (History.com, 2018), *The Insurrection Act of the United States* (Public Record Media, 2011), and *The History of Presidents Using Military to Restore Order within US* (Lucas, 2020). These were reviewed for historical references to U.S. Army involvement with domestic disturbances. Other than providing the frequency of occurrences and size of participation, no

specific data or sample sizes were provided. Further discussion on these articles will be provided in Chapter 4 Findings.

Laws, Statutes, Guidance

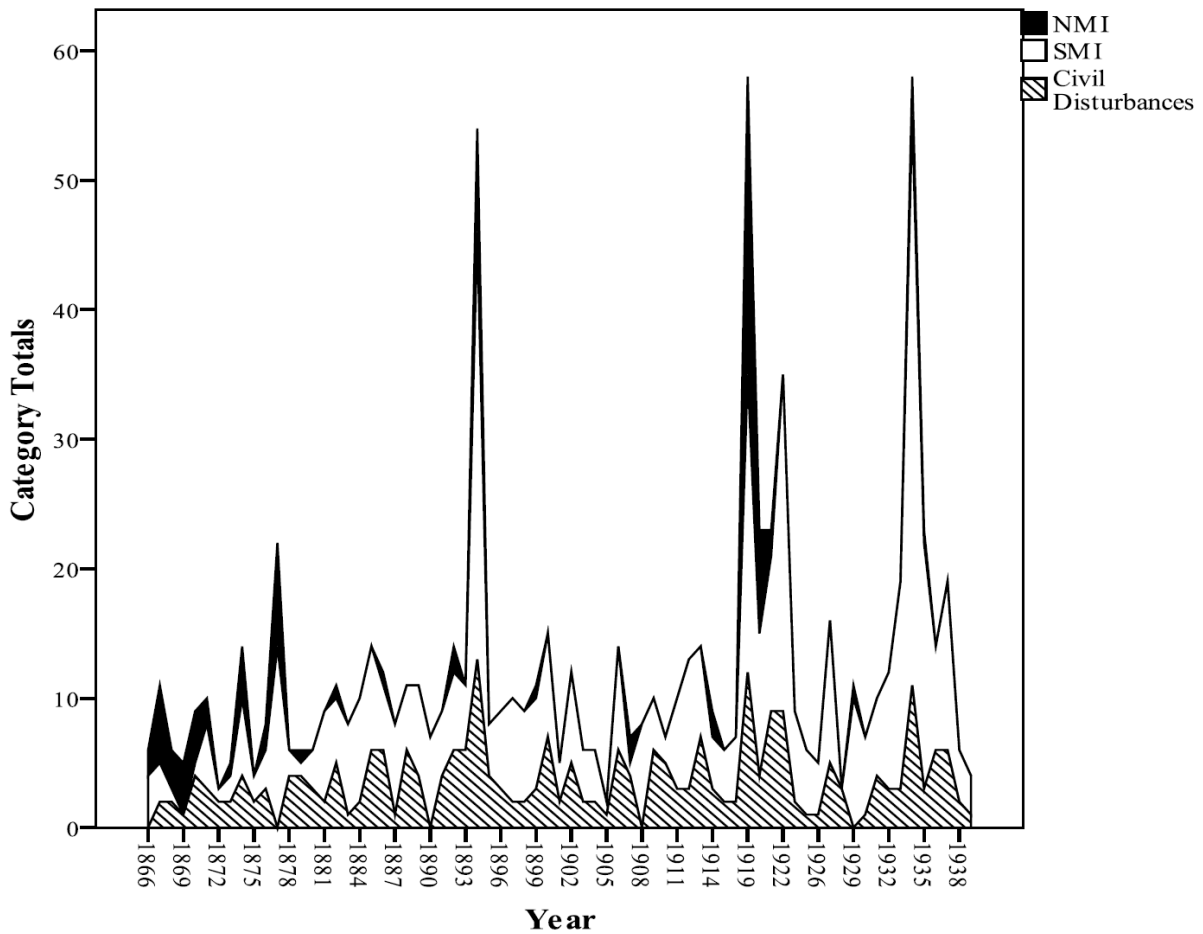
The following documents were reviewed as a justification and framework for past, current and future military responses: The Posse Comitatus Act, 1878; FM 3-19.15 Civil Disturbance Operations; ADP 3-28 Defense Support of Civil Authorities; Defense Support to Civil Authorities (DSCA) - Support to Law Enforcement Joint Publication 3-28, Civil Support; Emergency Management Assistance Compact; 1942 Executive Order 9066 - War Relocation Authority; 2007 National Defense Authorization Act (NDAA); U.S. Constitution Article IV, Section 4; Article 1, Section 8; Federalist Paper #29; Militia Acts 10 U.S.C. 331-335 (Insurrection Acts); DODD 5525.5, DOD Cooperation with Civilian Law Enforcement Officials DODD 3025.18 Defense Support of Civil Authorities (DSCA); U.S. Constitution 4th, 5th, 6th and 8th Amendments; 1988 Stafford Act; National Response Framework (NRF); National Preparedness System (NPS); USCODE – 2018 - Title 18 - Part I - Chapter 115 - Section 2383.

Research Papers

The dissertation, *Seizing domestic tranquility: National military intervention in America, 1866–1940* (Kenney, 2010), provides an abundance of data to explore state and national military intervention patterns in the United States. It discusses the U.S. Presidents’ utilization of “domestic war powers” to confront large-scale social unrest. “[The] dissertation examines 832 political conflict observations including 92 national military interventions and 519 state military interventions that occurred in America between 1866 and 1940.” (Kenney, 2010, p.35). An

analysis is provided on both type (riot, strike, gathering, general law enforcement, other) and causes (race, labor, political, other) of conflict by population. Kenney includes a discussion on conflict frequency and policy development (i.e. 1795 Militia Act, 1807 Insurrection Act, 1878 Posse Comitatus Act). The strength of this dissertation is the historic data provided to explain that “national military force is the strongest deterrent against mass domestic unrest...” (Kenney, 2010, p.261), as well as the expectation and questions of how presidents will utilize this in the future. Kenney provides a total of National Military Interventions (NMI), State Military Interventions (SMI) and Civil Disturbances from post-Civil War to pre-World War II in Figure 2.1 Below:

Figure 2.1: Military Interventions and Civil Disturbances in America, 1866-1940



(Kenney, 2010, p.38)

In his dissertation *THE CIVIL DISTURBANCE MISSION OF THE DEPARTMENT OF THE ARMY, 1963-1973: AN ANALYSIS OF PERCEPTIONS, POLICIES AND PROGRAMS*, Gardner (1977) gives a thorough analysis of this time period where the “Regular Army” is deeply involved in civil disturbance planning and operations. He discusses both troop increases and reductions over time with respect to various incidents of civil unrest. These include: The period of transition, 1962-1966; The aftermath of the Newark/Detroit riots, July 1967 – March 1968; The aftermath of the King riots, April 1968 – September 1969; Civil Disturbance Planning for the 1972 National Political Conventions; and Wounded, Knee South Dakota, 27 February – 08 May 1973. While the dissertation was very thorough and had a good discussion on the Army decision-making, uncertainty and organizational structure, it did not provide any hard data to scrutinize or make a recommendation of the overall size of future Army support operations. These first two papers provide historical reference of the need of the military for domestic purposes.

The Congressional Research paper, *Command and Control of Army National Guard Units*, Galdi (1970) discusses the relationship between the National Guard and the regular U.S. Army as well as riot control training and standards to include Civil Disturbance Plans. Sections 501 through 505 of Title 32 U.S. Code provides guidelines for National Guard training requirements. “...Army Regulation 500-50 governs the rules for the commitment and use of Army troops in civil disturbances, the controlling document for the actual behavior of Army Troops in a riot situation is Field Manual 19-15.” (Galdi, 1970, p.10). The strength of this paper is that it defines the starting point of this overall research project. The riots of the late 1960’s

provide the modern guidelines for the U.S. Army's response to domestic unrest and the need for funding, training and requirements as a response. Unfortunately, no specific study was associated with this paper, although data such as civil disturbance costs to states and training requirements for Individual Preparatory Training and Unit Refresher Training – Control of Civil Disturbances was provided.

While not a research paper, Snyder's article *The Army Reserve and Homeland Security Support*, (Snyder, 2001) equated that the expertise and capabilities of the Army Reserve in handling natural disasters is applicable to homeland security. "Though it currently is not tasked to do so, the Reserve can provide Federal authorities a locally based Army component command structure to support the Federal response to homeland security requirements, when, as, and where required and directed." (Snyder, 2001, p.13) Specific security requirements or events that the Army Reserve can augment civil authorities and Federal and State militia assets were discussed.

Snyder (2001) continues with areas applicable to domestic unrest: Security and traffic management; Firefighting; Recovery, evacuation, and identification of remains; Public affairs; Civilian-military coordination; Information recovery, protection, and management; Automation operations. The Army Reserve is exploring with its Active Army and Army National Guard counterpart what changes in equipment are needed to meet the homeland security mission. The strategic storage sites will need to be located near major urban centers, so they also can provide readily accessible equipment sets maintained at high readiness to meet civil support or homeland security missions.

At the time of this article, there was insufficient force structure to meet all the requirements that will be created by adding the homeland security mission to the existing requirement to fight two near-simultaneous major wars. Snyder determined that an increase in

the use of the Army Reserve will require more equipment. The weakness of the article was that it did not offer direct solutions or how Army Acquisition will be affected. The article was written prior to the events of 9/11, so an updated look at the Army Reserve's role over the last twenty years is warranted.

In the dissertation, *State Defense Forces and Homeland Security*, (Tulak, Kraft & Silbaugh, 2003) discusses the beginning of the formation of U.S. Northern Command (NORTHCOM) and the importance of State Defense Forces (SDFs). SDFs are..."military forces created, funded, and controlled solely by the individual states, and already integrated into the emergency management operations of more than 20 states – are a potential force-provider for homeland security operations." (Tulak, Kraft & Silbaugh, 2003, p.132). This paper details an expansion in the role of SDFs beyond responding to natural disasters and terrorist attacks. It is promoting an added requirement to NORTHCOM to fully incorporate SDFs into homeland security operations. The paper's weakness is the lack of data or studies provided.

In his thesis, *The domestic realm of Homeland Security: What does the Department of Defense have to do with it?*, (Gamez, 2005) examines the DoD's historical role in domestic support operations and the evolution of legal considerations when employing federal military forces for domestic support. Gamez asserts that, "The discussion of Civil Defense proves that when the Nation has felt vulnerable, both public and elected officials have immediately looked to the Department of Defense for security...[and based on]...historic examples, the Department of Defense can presume that in times of crisis, changes to its primary mission is inevitable." (Gamez, 2005, pp.73, 74). While Gamez provides excellent rationale for the use of the U.S. military in domestic operations, a portion of his thesis deals with presidential actions and

weapons of mass destruction, which is not relevant for this research paper. Another weakness is the lack of quantitative recommendations and/or conclusions provided.

In the thesis, *Securing the homeland? The impact of 9/11 on the internal role of the United States Army*, Paquin (2006) also discusses in detail the use of the military on domestic soil as well as the difficulties in determination of civilian or military leadership in operations. It discusses the restrictions on the U.S. military with respect to domestic use, past operations, and the relationship with state and federal authorities. The thesis points out the increase use of the military post-9/11, with the creation of NORTHCOM and in emergency operations, such as the Government's response to Hurricane Katrina in 2005. Much discussion was on the possible changes to the Posse Comitatus Act (PCA). "Even after 9/11, and now Hurricane Katrina, and despite the national attention paid to homeland security, it seems that the government has not yet determined the proper activities, or manner of deployment, for the military within the United States." (Paquin, 2006, p.119). The article's weakness is that it lays out the need for military participation on domestic soil, but questions the authority. No clear conclusion is provided and no specific study was provided for analysis.

In the strategy research paper *Use of Armed Forces for Domestic Law Enforcement*, Merutka (2013) provides the concerns of military use domestically, supporting legal basis and identifies deficiencies and recommendations for improvement. In his review of the PCA, he provides justification for its use and discourages the attempts for its repeal. "When the PCA and the related statutes are considered alongside agency regulations, it's very clear that they advance the American ideal and tradition that the military's main mission is to protect the U.S. from outside threats and that they should only be used within the U.S. in extreme emergencies." (Merutka, 2013, p.19). Because different training and skill sets are required for domestic

operations, he is concerned that there has not been enough attention with regards to civil support. The strength of the article was that it provided the legal basis for military use domestically, explained the conditions under which these activities will increase, and justification for required increases in study, education and training. Although this article is seven years old, it correctly foreshadowed the events of 2020. Unfortunately, no specific case studies and data to analyze was provided.

The dissertation, *Senior Military Leadership in Civil Support Operations: An Exploratory Study* (Denny, 2019) utilized a qualitative approach by collecting interviews of senior National Guard officers. This study explores leaders' judgment during civil support operations. While this study does have actual data for review, all of it deals with leadership decision-making. Discussions on civil unrest, disaster response, Defense Support of Civil Authorities (DSCA) and National Guard Civil Support (NGCS) are included, however these do not lead to answering the question or Army Acquisition and the scope of the Army's role in support of civil unrest incidents.

Recent Articles

Internet searches have provided articles from media websites as well as searches for Field Manuals and other relevant documents. Further discussion on these articles will be provided in Chapter 4 Findings. Below is the list currently under review, many deal with civil disturbances that have occurred in 2020:

- Resurrecting Posse Comitatus in the Post-9/11 World (Trebilcock, 2009)
- Inside the U.S. Military's Plans to Stop 'Civil Disturbances' Amid Coronavirus Pandemic, Something They Haven't Done in 30 Years (Arkin, March 2020)

- Employment of Military Resources in the Event of Civil Disturbances (Department of Defense, 2018)
- Garden Plot / CONPLAN 2502 (Civil Disturbance Operations) (GlobalSecurity.org, n.d.)
- The U.S. Military's Plan for London-Like Riots (Hudson, 2011)
- NORTHCOM Operational Plans, Pandemic and Endemic (Arkin, 16 April 2020)
- The President's Private Army (Goitein, 2020)
- Election 2020: Police in cities nationwide bracing for potential unrest in days before, after Nov. 3 (Pagonis, 2020)

Conclusion

There is a well-documented history of domestic civil unrest in the United States. In most cases, the U.S. Government and Military has been more reactive than proactive in dealing with these issues. The research supports the need for U.S. Army involvement, which in turn will require training, equipment and material in response. As detailed in “CONPLAN 3502, Civil Disturbance Operations, the [Joint Strategic Capabilities Plan] (JSCP) directs CDRUSNORTHCOM to conduct necessary planning and coordination to prepare DOD forces to assist civil authorities in response to civil disturbances, when directed by the President and Secretary of Defense. US domestic civil disturbances include riots, acts of violence, insurrections, unlawful obstructions or assemblages, group acts of violence, and disorders prejudicial to public law and order. Initial responsibility for the civil disturbance response rests with state and local authorities. This plan is implemented when the President determines that a civil disturbance situation exceeds either the capabilities or willingness of the state and local authorities to restore law and order.” (Arkin, 16 April 2020). The classified nature of the Op

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Plans make it difficult to determine acquisition requirements. The basic gap in the research has been determining the importance and the role of acquisition in providing materiel in support of the military regarding domestic unrest. Based on recent events, this paper will attempt to make a determination for the updated requirements for Civil Disturbance Operations and changes required within the Acquisition community to facilitate the changing domestic environment.

Chapter 3 – Research Methodology

During the history of the United States, U.S. Army personnel have been required to react to domestic unrest. Recent events and growing tensions would lead us to believe that U.S. Army intervention will continue to be required and possibly on a more frequent and larger scale. The Acquisition community will need to be capable to react to this probable increasing threat. This chapter discusses the key processes and methods of data collection and how the analysis will be performed.

Research Questions

After determining the previous scope of military activities with respect to domestic unrest on a historical and contemporary basis, this research paper looks to answer, the following questions:

- 1) What is the role of the Army Acquisition Corps in support of the Army in these domestic disturbances?
- 2) What immediate changes in acquisition will be required (i.e. Contingency Contracting, Standing-Up a new Program Office)?
- 3) What pieces are the most important (i.e. Program Managers, Contracting, Urgent Operational Need (UON) Statements, Internal Contingency Operations, Rapid Acquisition Cells)?

Research Design

A qualitative literature review methodology was used for this research paper. It consisted of articles and news reports regarding history, laws, policies and current events. The research was narrowed because initial searches were not specific enough for the research topic or too broad in the number of results. The following databases were used for source material: DAU, EBSCO, ProQuest, Inside Defense, Congressional Research Service Reports, GAO Reports, Institute for Defense Analyses (IDA), RAND Corporation and Google. The searches were made using the following terms: Insurrection (Act), Posse Comitatus (Act), Civil Unrest, Rioting, Rebellion, Protests, Suppression, Military Intervention, State Defense Forces, Defense Support of Civil Authorities, Domestic Acquisition and Contingency Contracting.

Through the qualitative analysis of the data retrieved, each article or report was reviewed to determine if it could provide answers or recommendations regarding the research questions. Although the paper is qualitative, any specific data uncovered was reviewed for applicability and will be provided in Chapter 4. The methodology was broken into three (3) main sections: 1) Historical Perspective; 2) Laws and Policies; 3) Current Events and Media Coverage. As stated previously, political conditions in the United States were highly uncertain during the development of this research paper. All recommendations/conclusions were based on the latest current information available through 31 December 2020.

Bias and Error

With respect to this research paper, the most appropriate definition of bias according to Merriam-Webster is: “a) an inclination of temperament or outlook especially: a personal and sometimes unreasoned judgment: prejudice; b) an instance of such prejudice; c) bent, tendency”

(Merriam-Webster, n.d.). Discussions of historical events, laws and policies should have little or no bias. However, reports on current events were found to be likely based on opinions more than facts. (i.e. domestic dissent or peaceful protests vs. riots). There has also been claims of information being subverted, repressed or ignored by large media corporations. With conditions in the country in such a dichotomous state, it may be difficult to discern an accurate representation of its current status. With the ability of retrospect, history may view the current circumstances differently, as opposed to this research being produce concurrently. Every attempt was made to either remove or point out any bias within this research paper.

Summary

The call for military intervention may have been downplayed from May to November 2020, however the importance and relevancy of the need remains. This research paper's findings will look to provide the role of the Army, its acquisition requirements and the best ways to implement those requirements.

Chapter 4 – Findings

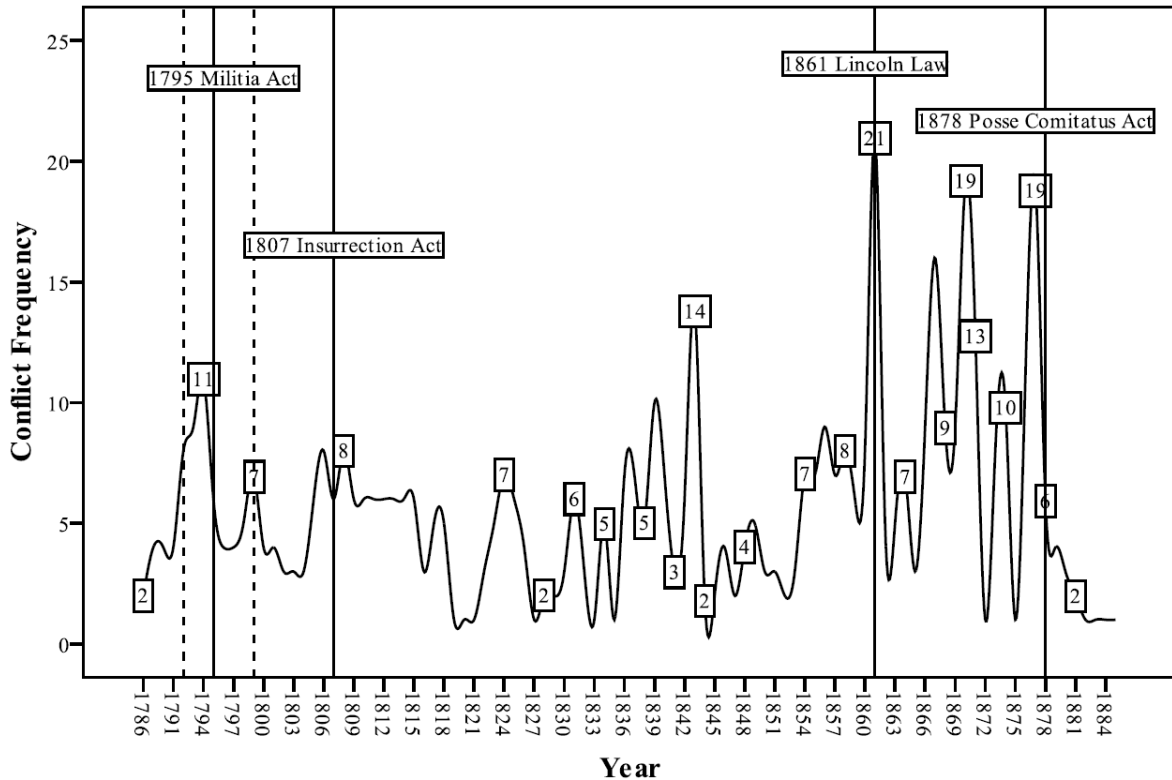
Reactive not Proactive

The concern of how the U.S. Government deals with insurrection was discussed prior to the U.S. Constitution's ratification. In the Federalist Paper #29, Alexander Hamilton as "Publius" wrote "In times of insurrection or invasion it would be natural and proper that the militia of a neighbouring state should be marched into another to resist a common enemy or to guard the republic against the violences of faction or sedition. This was frequently the case in respect to the first object in the course of the late war; and this mutual succour is indeed a principal end of our political association." (Hamilton, 1788). Hamilton was making an argument for the Constitution, while critics were concerned with the upcoming power of a federal government. Both sides were reacting to the previous concerns that occurred during the Revolutionary War.

Six years later in 1794, President George Washington utilized the U.S. Military to end the Whiskey Rebellion. "The federal response to the Whiskey Rebellion was widely believed to be a critical test of federal authority, one that Washington's fledgling government met with success. The whiskey tax that inspired the rebellion remained in effect until 1802." (History.com Editors, 2019). Once Thomas Jefferson becomes President, the tax is repealed and the power of the president is further defined. "Under the Insurrection Act of 1807, Congress delegated authority to the president to call the military during an insurrection or civil disturbance. Under one provision of the law, a president can use the military to suppress an insurrection at the request of a state government in order to protect states against 'domestic violence.'" (Lucas, 2020). Here we see one of Congress' first reactive measures.

Kenney provides a correlation of conflicts and changes in policy that occurred in America from the Revolutionary War to post-Reconstruction in Figure 4.1 Below:

Figure 4.1: Conflict Frequency and Policy Development



Note: Totals for each year are the weighted sum of NMIs, Militarized Interstate Disputes that involve force and the U.S., and international wars not involving the U.S. Each NMI and war-year, in which the U.S. is involved is given a value of two. All conflicts in the international system not involving the U.S. directly are given a value of 1. Dotted lines indicate policy change that was contained sunset provisions. Solid lines reflect permanent changes. Sources: Moaz (2002) for U.S. MID, COW data for international system wars, and Appendix for NMIs.

(Kenney, 2010, p.238) As can be seen in the figure, laws are enacted to react to spikes in military involvements and use of force.

In May 1977, Gardner concludes in his dissertation of U.S. Civil disturbances in 1963-1973 (predominately riots) that the U.S. Army will remain reactionary. “The case for any meaningful alteration of “domain consensus” becomes even weaker when one compares “sets of role expectations” pre-1963 and post-1973. As research indicates, the stresses and uncertainties

associated with the Army's civil disturbance mission did not provoke any "radical readjustment," involving changes in organizational norms or goals. Prior to 1963, civil disturbance control was perceived as a distasteful and generally unwanted secondary mission. Such was certainly the case during the 1960's and remains today [1977]." (Gardner, 1977, p.328-329).

As a reaction to the increase in riot activity, the Department of the Army completes a study in September 1972 on "Training and Equipping the Army National Guard for Maintaining Order during Civil Disturbances". (Keller, 1972). The recommendations are as follows: "Because some Guard units with a mission of maintaining order may not receive annual refresher training, we recommend that the Secretary of Defense direct that the Army: --Require appropriate refresher training for National Guard units with a civil disturbance control mission. -- Establish an evaluation system to insure that an adequate civil disturbance control capability is maintained. Because of the importance of proper equipment in maintaining order, we recommend also that the Secretary of Defense direct that the Army continue research on, and conduct appropriate field training in the use of, special equipment and munitions." (Keller, 1972, p.23). An increase in military activity and responsibility is expected to be maintained.

The Rodney King riots occurred in May 1992. Again, the U.S. Government reacts to the use of the military. As stated in the November 1993 GAO Report on Department of Defense Support for Domestic Activities, "The Joint Staff began in the summer of 1992 to evaluate the impact of DOD support for domestic civil activities on the National Military Strategy and to formulate a joint doctrine for DOD's involvement." (GAO/NSIAD-94-41, 1993, p.6).

Besides civil unrest, the military has also been called upon to defend the homeland against terrorist attacks and provide assistance during natural disasters. There has always been concerns that the PCA has been too restrictive. However from a political standpoint, any

changes to the PCA could expand the executive branch's powers and military to levels uncomfortable with the populace. As Paquin asserts in 2006, "Even after 9/11, and now Hurricane Katrina, and despite the national attention paid to homeland security, it seems that the government has not yet determined the proper activities, or manner of deployment, for the military within the United States." (Paquin, 2006, p.119).

In 2009, political arguments held relevancy to the use of military intervention. Restrictions of the military in homeland security operations caused frustration for the Bush administration in the use of the military to respond to the attacks of 9/11 and relief efforts following Hurricane Katrina. "To remedy this 'defect', the 2007 NDAA was signed into law by President Bush in September 2006, containing language written by the administration that vastly expanded presidential authority under the Insurrection Act." (Trebilock, 2009, p.22). With the upcoming change to the Obama administration, COL Trebilock states the concerns of military overreach and argues that federal troop usage should be minimized. "Future homeland security policies should be designed to limit the employment of federal troops in domestic security operations, not to render them the preferred policy choice or to maximize their use." (Trebilock, 2009, p.24).

"Following the September 11 terrorist attacks, DOD realized the need for a more integrated civilian and military response capability for any future attack on the homeland. In response, DOD established the U.S. Northern Command (NORTHCOM) to provide and manage homeland defense and civil support." (GAO-09-849, 2009, p.2). In 2009, GAO was concerned that NORTHCOM was not coordinating properly with other agencies. It concluded that, "There is an increasing realization within the federal government that an effective, seamless national response to an incident requires a strong partnership among federal, state, and local governments

and organizations, including integrated planning, training, and the exercise of those plans.” (GAO-09-849, 2009, p.58). The Government was questioning NORTHCOM’s ability to coordinate and possibly attempting to redefine its mission. It is yet to be seen how the federal government will alter military intervention in the future based on the events that occurred in 2020.

Roles and Responsibilities

The best document to explain the Army’s role and responsibility in domestic unrest is FM 3-19.15 CIVIL DISTURBANCE OPERATIONS, Headquarters of the Army, April 2005, Appendix B. OPERATIONS AND LEGAL CONSIDERATIONS IN THE CONTINENTAL UNITED STATES. “...FM 3-19.15 addresses domestic unrest and the military role in providing assistance to civil authorities requesting it for civil disturbance operations. It provides the commander and his staff guidance for preparing and planning for such operations. The principles of civil disturbance operations, planning and training for such operations, and the TTP employed to control civil disturbances and neutralize special threats are discussed in this manual...” (FM 3-19.15, HQDA, 2005, p. iv). “Within the federal government, the following personnel’s/agencies’ roles and responsibilities are defined: Secretary of Defense, Secretary of the Army, Director of Military Support, State Coordinating Officer, Director of the Federal Emergency Management Agency, Defense Coordinating Officer, National Guard and United States Army Reserve.” (FM 3-19.15, HQDA, 2005, p.B-2-B-3). As defined in B-16, “...The US Army Reserve is capable of providing military support. This assistance and support may include the use of equipment and other resources, including units and individuals.” (FM 3-19.15, HQDA, 2005, p.B-3). It is

defining the requirements and how to provide them to the Army Reserve that this research paper is interested in.

ADP 3-28 DEFENSE SUPPORT OF CIVIL AUTHORITIES (DSCA) July 2019 is the doctrinal foundation for the Army's contribution to DSCA. Of specific interest is the role of United States Northern Command Organization (USNORTHCOM). "USNORTHCOM anticipates and conducts homeland defense and DSCA involving federal military forces within its [Area of Responsibility] AOR to defend, protect, and secure the United States and its interests. In accordance with the Chairman of the Joint Chiefs of Staff standing execute order for DSCA (referred to as the CJCS DSCA EXORD) the Commander, USNORTHCOM, has the authority to alert and prepare to deploy assigned and allocated forces in support of a primary agency such as FEMA. The Commander, USNORTHCOM may request, deploy, and employ selected forces upon notification from the Chairman of the Joint Chiefs of Staff and the Secretary of Defense, in support of a validated request for assistance from a primary agency." (ADP 3-28, 2019, p.3-6). "The mission at NORTHCOM is to anticipate events in the homeland and to be prepared to respond, to either prevent the attacks or defeat them if they occur and then to mitigate the consequences of those attacks should they occur. In addition, NORTHCOM has a secondary mission to provide defense support to civil authorities. It's an old mission that the Army used to lump together under the Garden Plot scenario [U.S. Dep't of Defense Civil Disturbance Plan (15 Feb. 1991)], in that there was always a brigade that was prepared to respond to civil disturbances." (GlobalSecurity.org, n.d., p.3). Based on NORTHCOM's responsibility, how does it determine its acquisition requirements?

Based on the civil unrest in 2020, this research is concerned with the following crimes: Insurrection and Sedition. These are defined in U.S. Code 2018 Title 18 – Crimes and Criminal

Procedure. “Section 2383. Rebellion or Insurrection. Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States...Section 2384. Seditious conspiracy. If two or more persons in any state or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.” (U.S. Code 2018 Title 18 Part I Chapter 115 Sections 2383-4, 2018, p.580). Occupations, such as the one in Seattle, could be defined as criminal acts. However, local authorities took little to no action against them.

USNORTHCOM has a specific Concept of Operations Plan to deal with U.S. civil disturbances. “CONPLAN 3502, Civil Disturbance Operations: The JSCP directs CDRUSNORTHCOM to conduct necessary planning and coordination to prepare DOD forces to assist civil authorities in response to civil disturbances, when directed by the President and Secretary of Defense. US domestic civil disturbances include riots, acts of violence, insurrections, unlawful obstructions or assemblages, group acts of violence, and disorders prejudicial to public law and order. Initial responsibility for the civil disturbance response rests with state and local authorities. This plan is implemented when the President determines that a civil disturbance situation exceeds either the capabilities or willingness of the state and local authorities to restore law and order.” (Arkin, 16 April 2020). In 2020 President Trump did not

make this determination, but it is conceivable that a future situation and/or President will come to a different conclusion.

Back in the summer of 2011, “British Prime Minister David Cameron authoriz[ed] the use of rubber bullets and water cannons in [the] wake of the turbulent London riots spreading through Britain.” (Hudson, 2011). National Journal’s White House correspondent Marc Ambinder discussed the U.S. Military plans on Twitter, CONPLAN (which stands for an “operation plan in concept format”). “CONPLAN 3502 is the U.S. military's plan for assisting state and local authorities in the event of a riot or major civil disturbance: "Tasks performed by military forces may include joint patrolling with law enforcement officers; securing key buildings, memorials, intersections and bridges; and acting as a quick reaction force." (Hudson, 2011).

The role of the military with respect to coordination is also increasing. “In October 2012, GAO found DOD had not developed guidance for the use of dual-status commanders (active-duty military or National Guard officers who were authorized to command both state and federal personnel) for incidents affecting multiple states and territories.” (GAO-15-686T, 2015, p.i). This could apply to civil unrest as well as disaster relief. In the DOD’s 2014 Quadrennial Defense Review, DOD planned to “monitor and evaluate (1) DOD’s cyber civil support, (2) the status of the homeland response forces, (3) DOD’s preparedness for civil support in the event of a pandemic, and (4) coordination with federal agencies to counter improvised explosive devices in the United States.” (GAO-15-686T, 2015, p.12). DOD’s support was required in all four (4) areas in 2020.

“There are two distinct methods to initiate defense support of civil authorities: a *request for assistance* (RFA) from civil authorities, or the direct authorization of the President or

Secretary of Defense...” (Kapp, 2020, p.1). “DOD evaluates requests based on six criteria: Legality, Lethality, Risk, Cost, Readiness and Appropriateness.” (Kapp, 2020, p.1). One law and one policy are related to the acquisition costs of military support of DSCA. “The Economy Act provides authority for federal agencies to order goods or services from other federal agencies ...and Military Support to Civilian Law Enforcement Agencies provisions (10 U.S.C §§271-284) authorize certain types of military support to civilian law enforcement officials and agencies. In specified circumstances, support may include use of military equipment and facilities...” (Kapp, 2020, p.2). In each case, material acquisition costs originally bore by the military will be utilized by other government agencies and will need to be replaced.

As we have seen the military’s roles and responsibilities are always changing and in most cases expanding. The implementation of their role can be dependent on political decisions rather than conditions on the ground. A further discussion on public consensus and political decision making follows.

Politics and the Public

“Soon after Congress was first assembled under the Constitution, it authorized the President to call out the militia, initially to protect the frontier against “hostile incursions of the Indians,” and subsequently in cases of invasion, insurrection, or obstruction of the laws [under the Insurrection Act].” (Elsea, 2020, p.2) “After the Civil War, Congress added a new provision for the use of federal military forces to protect civil rights.” (Elsea, 2020, p.2). After Hurricane Katrina in 2006, Congress amended the statute again because of “concerns that the statutory requirements impeded the military’s ability to render effective assistance amid the perceived breakdown of civil law and order, but repealed that amendment the following year after state

governors objected to it.” (Elsea, 2020, p.2). Once again, we see disagreement between the federal and state governments with the military getting caught in the middle.

“The Insurrection Act, Chapter 13 of Title 10 (10 USC Sections 251-255). This act allows the President to use U.S. military personnel at the request of a state legislature or governor to suppress insurrections. It also allows the president to use federal troops to enforce federal laws when rebellion against the authority of the U.S. makes it impracticable to enforce the laws of the U.S. by the ordinary course of judicial proceedings.” (Google.com, n.d.).

The Insurrection Act is an exception to the Posse Comitatus Act. As Rand Corporation (n.d.) states, the original intent of the Posse Comitatus Act, 18 U.S. Code, Section 1385, was to end the use of federal troops to police state elections in former Confederate states. Over time Congress has made exceptions to the Posse Comitatus Act, such as National Guard forces operating under state authority, use of federal troops to quell domestic violence based on presidential power and law enforcement assistance to the “war on drugs”. Thus the Army may be involved with many potential activities dealing with homeland security. “It is critical that the Army develop doctrine, leadership, and training programs that can provide clear and specific guidance on when and how the Posse Comitatus Act – as well as any other laws that proscribe Army activities in the domestic arena – applies and when it does not.” (Rand Corporation, n.d.).

“The original Insurrection Act required the President to seek approval from state legislatures or governors before deploying soldiers, except in cases where: a localized breakdown of authority has made the enforcement of federal laws impracticable; or any insurrection, domestic violence, unlawful combination, or conspiracy hinders the execution of the laws of that State.” (Public Record Media, 2011). Because of the activities during Hurricane Katrina, Congress revised the Insurrection Act to add the “new criteria that can trigger unilateral

Presidential troop deployments, including ...natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States...that results in a breakdown of local law and order.” (Public Record Media, 2011).

As stated previously this decision was politically difficult for the nation’s governors to agree with. Shortly after the changes to the Insurrection Act are enacted, they are repealed. In August 2006, the National Governors Association writes a letter to Congress on federalizing the National Guard. Their argument is that “...this provision is very open-ended without a definition of what constitutes a "serious" natural or manmade disaster. We understand that in case of a National Security incident where the state may have been incapacitated by an event, the President may need this power. However, he is granted this authority under the ‘insurrection act.’” (Huckabee; Napolitano, 2006).

Another reason for the Governor’s opposition may have been the military’s use of lethal force to defuse domestic disasters. In June 2006, it was reported that “U.S. military forces are ‘unlikely to very unlikely’ to employ non-lethal weapons when deployed in support of civilian authorities in the aftermath of a domestic disaster, according to the officer in charge of U.S. Northern Command.” (Inside Defense Editors, 2008). Adm. Timothy Keating told *InsideDefense.com* that “We considered the use of non-lethal weapons in a broad suite of capabilities for Katrina...We chose not to use them because of the Posse Comitatus Act [which bars federal military forces from conducting law-enforcement activities].” (Inside Defense Editors, 2008). While NORTHCOM updated their CONPLANS to provide relief to disasters that included the allowance for the use of non-lethal weapons, it was unlikely the military would do so in action. Keating said, “We have included non-lethals in our concepts of operations. But the

scenario in which we would actually deploy them is very far-fetched.” (Inside Defense Editors, 2008).

Even today there remains ambiguity in the Army performing its duties and violating the Posse Comitatus Act. “The armed forces, when in performance of their military responsibilities, are beyond the reach of the Posse Comitatus Act and its statutory and regulatory supplements. Neither the act nor its legislative history resolves the question of whether the act prohibits the Army from performing its military duties in a manner which affords incidental benefits to civilian law enforcement officers. The courts and commentators *believe* that it does not. As long as the primary purpose of an activity is to address a military purpose, the activity need not be abandoned simply because it also assists civilian law enforcement efforts.” (Elsa, 2018).

Along with the ambiguity in military response, there can be uncertainty of who is in control. “Typically, crises and disasters result in the centralization of power in the executive branch of the federal government...The states retain a critical role in disaster response that the federal government cannot override. The expansion of authority for the National Guard is an example of this. As [state] budgets have shrunk, demands on state and local government have remained constant, if not grown. Increased federal funding for the state-controlled National Guard is one way in which federal government has avoided overreaching into local affairs.” (Griswold, 2012). As the federal government continues to fund state shortfalls for the National Guard, when will it demand a greater say on its usage?

Besides the military themselves, the general populace is also concerned with the use of military equipment. It can be argued that the use of military materiel can incite more violence in the future. “[Two] Humvees, (the “unofficial” tanks), are being taken away from Ferguson and are being relocated to another city in Missouri. Removing weapons from Ferguson, or any other

city in the US, and relocating them into other areas only invites more acts of violence and justified harsh action. The movement is symbolic, and in the wake of the continuing events at Ferguson, a year after the death of [Michael] Brown, it seems like the right thing for the White House to do to put their conscience at ease while giving the American people false hope for peace and conflict resolution.” (Pereira, 2015).

The fear of the military continues in the early 21st century. LTC Peter W. Derouin concludes in his thesis, “An increasing number of American citizens even regard Big Army as a threat to their liberties, if less from its size, which is shrinking, than from the inculcated attitudes of some of its professionals and their civilian masters who appear to be purging the armed forces of flag officers deemed politically unreliable.” (Derouin, 2015, p.105). He further argues that due to the military’s shrinking budgets, the United States should return to volunteer state militia forces activated for national service to support a small standing Army. (Derouin, 2015, p.ii). While this solution may not be feasible, it reflects the politics and the popular thinking of a large portion of the American society today, which leads us to a discussion on the U.S. climate in 2020.

Current Climate

There were three major events that affected life in the United States in 2020. First was the on-going struggle against the COVID-19 pandemic, which has led to fear, uncertainty and changes in everyday life since mid-March. Second was violent protests that occurred in major U.S. cities, predominately but not solely, led by the Black Lives Matter movement in the wake of the death of George Floyd. Lastly, all aspects of the 2020 U.S. Presidential election weighed on the minds of the public from state primary voting dates, primaries, debates, mail-in ballots,

media suppression, the outcome, possible fraud, irregularities and the eventual transition of power. A home-bound populace was constantly inundated with information from social and other media outlets. All of these events had the possibility of military assistance and/or intervention and the media spent much time analyzing the situation. The following is a small but encompassing sample of relevant discussions.

On 20 March 2020, “the National Guard now active in 22 states and governors continuing to declare more severe emergency measures daily, the U.S. military is preparing forces to assume a larger role in the coronavirus response, including the controversial mission of quelling "civil disturbances" and enforcing the law, a mission that the military has not engaged in for almost 30 years...Rumors of a nationwide lockdown spread through social media this week, and Democratic presidential candidate Joe Biden said he would mobilize military forces "now" to respond to coronavirus...[A senior military planner stated that] I'm just not sure that our troops, as good as they are, can be ready for something as widespread and explosive as COVID-19. At the same time, he worries that the presence of uniformed personnel on the streets of America, rather than providing a comforting presence will instead signal the use of federal force and martial law—just making the situation worse.” (Arkin, 20 March 2020).

Mr. Arkin follows up on this report three weeks later and writes that “the pandemic is rewriting the Pentagon's secret domestic emergency plans. If coronavirus incapacitates government, the military could take control of keeping order... When might the military's "emergency authority" be needed? Traditionally, it's thought of after a nuclear device goes off in an American city. But now, planners are looking at military response to urban violence as people seek protection and fight over food...NORTHCOM stresses in almost everything it produces for public consumption that it operates only in "support" of civil authorities, in response to state

requests for assistance or with the consent of local authorities... Local authorities around America are already expressing worries that they have insufficient equipment, particularly ventilators...And brawls have already broken out in stores where products are in short supply. The worst case is that shortages and violence spreads, that the federal military, isolated and kept healthy behind its own barricade, is called to take over.” (Arkin, 10 April 2020).

In early June, “...after days of violent outbursts following the death of George Floyd...President Donald Trump threatened to deploy the U.S. military to end "riots and lawlessness" across the country... Trump said he would deploy the military ‘if a city or state refuses to take the actions that are necessary to defend the life and property of their residents,’ suggesting he might become the first president to invoke the act without the support of state governors. The effort could face legal challenges because of the Civil War-era Posse Comitatus Act, which prevents federal troops from performing domestic law enforcement activities. Yet allies of the president argue that extreme measures are justified after days of protests across major American cities.” (Jacobs, Sink, Egkolfopoulou 2020). At this time, it appeared that the U.S. Military’s role would be significantly increasing in 2020.

Following President Trump’s threat, “House Armed Services Committee Chairman Adam Smith (D-WA) said today he is concerned by Defense Secretary Mark Esper's recent characterization of U.S. cities beset by protests and riots as "battlespace" and wants a public hearing as soon as possible to discuss the U.S military's role in quelling civil unrest...[He said], we feel that this is the wrong approach, the wrong use of the military, it is more likely to escalate the conflict, rather than bring down the violence and we are very concerned about the optics of using the U.S. military for domestic law enforcement...Meanwhile, more than 67,000 members

of the National Guard are deployed around the United States to assist law enforcement and respond to the COVID-19 pandemic.” (Bertuca, 2020).

Further questioning the role of the military, questions on aircraft use are made in early July. Defense Secretary Mark Esper states that a review will be complete by the end of the month on “issues that drew public concern, such as the use of helicopters and reconnaissance aircraft in support of civilian law enforcement or National Guard ground forces... [Also], he would follow up with lawmakers on whether DOD will require supplemental funding to cover the costs of recent deployments in response to COVID-19 and civil unrest.” (Doubleday, 2020). The cost of on-going military support, up to this point, is attempted to be quantified.

With continued rioting in Portland, Oregon and the federal buildings threatened, President Trump sends federal law enforcement agents to defend them. A liberal-leaning article frames his actions as borderline illegal with an underlying conspiracy theory. “The Department of Homeland Security personnel deployed in Portland are federal law enforcement agents, not members of the armed forces. But the evidence is mounting that they are not there to enforce the law. Instead, they are acting as a paramilitary wing to assist the president in his longstanding goal to (in his words) “take over” U.S. cities run by Democrats...As a legal matter, Trump’s misuse of federal law enforcement in Portland doesn’t violate the Posse Comitatus Act, because the agents are not members of the armed forces. But with DHS acting as a paramilitary force, the deployment nonetheless violates the fundamental principle behind the law. And it highlights the reason that principle exists in the first place: so that the president will not have a personal army at his disposal to “take over” local governments or to suppress domestic dissent...He could deploy his paramilitary forces in Democratic strongholds on Election Day as a means of

suppressing voter turnout.” (Goitein, 2020). The use of military or paramilitary forces is being questioned as a power grab as opposed to a necessity required to restore order.

As Election Day neared, Fox News reported on precautions and expectations of several major cities across the United States. “Police departments – many of which saw days, weeks and even months long anti-police brutality protests and riots this summer – said they are hoping for the best when voters hit the polls on Nov. 3, but are also preparing for the worst in the days before and after... NYPD brass are planning for potential civil unrest as New York City and the nation begin a contentious series of weeks, starting with the U.S. Senate confirmation hearing for U.S. Supreme Court nominee Amy Coney Barrett and coupled with the upcoming presidential election, Police Commissioner Dermot Shea said in the internal announcement. ‘This November 3rd will be the (sic) one of the most highly contested presidential elections in the modern era,’ Shea wrote, noting that Barrett’s confirmation hearing was set to begin at the same time of the missive's release. ‘Accordingly, we should anticipate and prepare for protests growing in size, frequency, and intensity leading up to the election and likely into the year 2021.’” (Pagones, 2020). The expectation of civil unrest will continue into the New Year.

During Election Day many states utilized the National Guard, but they were not federalized. “Stephen Dycus, professor emeritus at Vermont Law School, said states can, if necessary, deploy uniformed Guard troops to help keep order at the polls. But, he said, ‘There's a very fine line between protection and intimidation. So any activity that is designed to intimidate voters or suppress voting violates federal election laws.’” (Schallom, 2020). Some states requested assistance from the Guard, while others maintained them as a contingency plan. “In Ohio, Republican Gov. Mike DeWine [said]...I will not hesitate if a mayor requests that help, he

said, adding that if law enforcement asks for help, ‘we’ll have that discussion, and then we can certainly deploy the National Guard. We hope that that’s not necessary.’” (Schallom, 2020).

Four days prior to Election Day, *Time Magazine* discussed the possibility of Civil War. “The preparations for political unrest around an election have never been so widespread, or palpable, in modern American history. Armed militia members have been threatening about a coming civil war. The President has refused to commit to a peaceful transition of power. And there’s a rising threat of domestic extremists aligned with the far-right and far-left.” (Hennigan, 2020). Meanwhile, the military continued to publicly minimize their participation in the election. “‘If there is any civil unrest, it will go through the normal 9-1-1 channels,’ said Army Brig. Gen. Robyn Blader, an assistant adjutant general with the Wisconsin National Guard, adding that her troops will be unarmed at the polls. Active-duty troops cannot be used for civil law enforcement within the U.S. under the Posse Comitatus Act. President Donald Trump has repeatedly said he’s willing to invoke the 213-year-old Insurrection Act, which could allow him to deploy military forces as he saw fit to put down violent protests. But that would almost certainly result in severe backlash from military leaders, who are loathe to cross that line. ‘In the event of a dispute over some aspect of the elections, by law, U.S. courts and the U.S. Congress are required to resolve any disputes, not the U.S. military. I foresee no role for the U.S. armed forces in this process,’ wrote General Mark Milley, the chairman of the Joint Chiefs of Staff, in response to questions earlier this year from House lawmakers.” (Hennigan, 2020).

In the end, there were no major conflicts on Election Day. It is yet to be seen if the transition of power in January 2021 will occur without incident. The widespread use of the military was not required, but the U.S. came ever closer to their implementation and discussions abounded on when it would be appropriate and how much would it cost.

Acquisition's Role

Previous sections of findings have detailed the changes in laws that have changed the military's role over time as well as their responsibilities. The political winds change over time as well as the public's view of military intervention. Finally, the events in the year 2020 have led to a greater spotlight on what the military can accomplish, if allowed to do so. Other than NORTHCOM'S classified COMPLAN 3502 and others, there is no clear definition of what needs to be acquired. Because of the uncertainty of the American society, the definition and scope of requirements may be unclear, however the necessity of a capability of swift implementation of acquisition is recognized.

In a further review of Snyder's (2001) *The Army Reserve and Homeland Security Support*, he promotes the use of Army Reserve to meet homeland security missions, which could include civil unrest. However, "there are two significant issues that need to be addressed. First, ...effective use of the Army Reserve requires proper planning. The actions needed to access the Reserves must be identified and planned for execution when required. Much of the delay in bringing Army Reserve units to active duty to respond to homeland security events would be eliminated if the authority to mobilize these units was planned and coordinated in advance with the relevant authorities. Second, there is insufficient force structure to meet all the requirements that will be created by adding the homeland security mission to the existing requirement to fight two near-simultaneous major wars...Currently, the Army Reserve can meet the deployment and sustainment requirements for power projection and strategic- and operational-level [combat support] CS and [combat service support] CSS within a theater for one major war immediately and for a second major war after a reasonable length of time. However, neither the Army

Reserve nor the Army as a whole can meet the force requirements for three major theaters and continue to meet military-oriented treaty obligations.” (Snyder, 2001). From an acquisition standpoint, it is trying to fund a greater number of requirements with a limited and shrinking budget.

One solution for rapid procurement could be the utilization of Contingency Contracting. “Contingency Contracting is used to procure supplies and services that directly support domestic and overseas armed conflict and noncombat contingency operations (such as stability operations and disaster relief efforts). A contingency contract is a legally binding agreement awarded by Government contracting officers in the operational area as well as contracts that have a prescribed area of performance within a designated operational area. For contingency operations, DoD routinely relies on contractors to provide front-line support and assist with the cradle-to-grave contracting process. These contractors perform vital tasks in support of U.S. defense and development objectives, including logistics support, equipment processing, construction, base operations support, and transportation. Additionally, because contingency contracting occurs in less controlled environments and within varying cultural, political, and economic conditions overseas, there is a greater potential for violations of law, regulations and contract terms, which increase the need to maintain high ethical standards and procurement integrity for DoD contracting officers.” (U.S. Department of Defense Inspector General, 2015, p.1).

The use of contingency contracting for domestic purposes would alleviate the concerns of violations in overseas conditions. The 2015 DoDIG report identified nine (9) contracting problems areas associated with contingency contracting: “Oversight and Surveillance; Requirements; Property Accountability; Financial Management; Contract Pricing; Source Selection; Contract Documentation; Contract Type; and Contractor Personnel.” (U.S.

Department of Defense Inspector General, 2015, p.6). The listing of problem areas appear to be all encompassing in the acquisition process. With greater oversight in the U.S. and the use of best practices, these problems can be lessened or eliminated.

Chapter 5 – Interpretation

Introduction

To answer the overall research question of the U.S. Army Acquisition's Role in Response to Domestic Unrest, we first had to define what "domestic unrest" means and how it applies to today. Next, we needed to define what role the U.S. Military (Army) has in dealing with this unrest. Finally by getting a clear understanding of these first two statements, we hoped to define what the U.S. Army Acquisition's role should be.

Conclusion

How do we define domestic unrest/disturbance or what are the legal responses to it?

While we understand what insurrection, sedition and rioting is, people can see the same events differently. In 2020 activities in Portland, Oregon were described as mass rioting or domestic dissent depending on your political viewpoint. Regardless of agreement of what constitutes domestic rioting, there is a fear that the executive branch (U.S. President) will wield executive power (U.S. Army) against the populace for its own purposes. The Insurrection Act did provide additional powers to the President, while the PCA would limit the President's power. Later, amendments were made to the Insurrection Act to provide the President greater capabilities. Over time, based on historical incidents the President power has fluctuated with regards to federalizing troops for domestic use.

What is the role of the Army Acquisition Corps in support of the Army in these domestic disturbances?

Because there was no clearly defined response for the U.S. Army in dealing with these disturbances, it is difficult to determine the Acquisition Corps' role. The best definition is the requirements associated with NORTHCOM CONPLAN3502 (Civil Disturbance Operations), also known as "Garden Plot". "Garden Plot is the DoD Civil Disturbance Plan, the generic Operations Plan [OPLAN] for military support related to domestic civil disturbances. The department of the Army Civil Disturbance Plan (DA GARDEN PLOT), is the governing publication for planning, deployment, employment, and redeployment of federal military resources involved in countering domestic civil disturbances. Military assistance to Federal, State, and local government (including government of U.S. territories) and their law enforcement agencies for civil disturbances and civil disturbance operations, including response to terrorist incidents, are referred to cumulatively as 'Military Assistance for Civil Disturbances (MACDIS).'" (GlobalSecurity.org, n.d.). Continuing to support the acquisition of these resources should be the Army Acquisition Corps' main role.

What immediate changes in acquisition will be required (i.e. Contingency Contracting, Standing-Up a new Program Office)?

Because we are not privy to the details within DA GARDEN PLOT, it is difficult to provide specific changes in acquisition. However based on the increase in domestic disturbances over the last year, it can be assumed that DA GARDEN PLOT may have to be implemented in the near future and at scales larger than anticipated. Therefore, it would be advantageous for the Army Acquisition Corps to have a better understanding of Contingency Contracting and have plans in place to implement its usage for domestic purposes. Unless the U.S. finds itself in a

constant state of domestic unrest, which is unlikely, the need for a specific new Program Office is unwarranted.

In Chapter 9, Domestic Emergency Response, of the Defense Contingency Contracting Handbook Version 5 (April 2017), key points are discussed regarding acquisition support.

“Many domestic support operations are handled at the state level. In these cases, U.S. Army and Air National Guard units provide military support under state active duty or under 32 United States Code (U.S.C.). Contingency contracting officers (CCOs) can be expected to respond to disasters on or around bases, especially when DoD assets are involved.” (Defense Contingency Contracting Handbook Version 5, 2017, p.273). The framework to provide contractual support is in place, however response time and scope may still be limited. “CCOs should also note that DoD response to domestic incidents is almost always the last resort. All DoD support to disaster response is temporary, and the end state is the transfer of all emergency functions back to civilian authorities.” (Defense Contingency Contracting Handbook Version 5, 2017, p.278). As domestic incidents continue to rise, CCOs should be prepared to support these types of disasters more frequently and for longer durations.

What pieces are the most important (i.e. Program Managers, Contracting, Urgent Operational Need (UON) Statements, Internal Contingency Operations, Rapid Acquisition Cells)?

The most important piece is contracting. Known required resources should continue to be procured through existing PM offices. As stated above, Contingency Contracting should be utilized, if deemed necessary. Acquisitions through this process should avoid the problems uncovered by the Department of Defense Inspector General’s office (2015) that occurred overseas. The Army Acquisition Corps should avoid the five most prevalent problem areas by

maintaining best practices: “1) develop quality assurance surveillance plans; 2) properly define all requirements; 3) establish records and maintain accountability for Government property; 4) manage and execute Government funds in accordance with Federal and DoD guidance; and 5) conduct cost and price analysis to determine whether prices paid on contracts are fair and reasonable.” (U.S. Department of Defense Inspector General, 2015, p.v).

Shortcomings / Limitations

The limitations of this paper was the amount of time to uncover research based on the deadlines of the SSCF. Additionally, relevant facts were being uncovered in real time throughout 2020, but research was cut off at the end of the year (prior to the Capitol Riots of 06 January 2021). At the end of 2020, there had not been a conclusion to the COVID-19 epidemic. Shortfalls in resources may cause an increase in domestic unrest as well as the transition of power in the federal government. The final outcomes of these events could make this research paper prophetic or misguided in its relevance. The classified nature of NORTHCOM’s CONPLANS makes it unclear if current or future requirements will be met by the Acquisition community. Without that understanding, it is hard to know if we have uncovered a systemic inadequacy or are overestimating a problem that does not exist.

Recommendations / Future Research

The use of the U.S. Army in combating domestic uprisings has been part of this country’s past. The utilization of the U.S. Army has been recently minimized because it is not advantageous politically to do so. Events of the last year have brought that determination into question. At what point will military involvement be necessary? The Acquisition community

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needs to be diligent in being prepared to react to this fluid situation. Contracting at rapid speeds may be required in the face of an increasing threat. New procedures such as domestic contingency contracting is one avenue to pursue to meet this threat, and there may be others available in the future.

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Glossary of Acronyms and Terms

ADP	Army Doctrine Publication
AOR	Area of Responsibility
CCO	Contingency Contracting Officer
CDR	Commander
CONPLAN	Operation Plan in Concept Format
COVID-19	Coronavirus Disease-19
CS	Combat Support
CSS	Combat Service Support
DA	Department of the Army
DAU	Defense Acquisition University
DHS	Department of Homeland Security
DOD	Department of Defense
DODD	Department of Defense Directive
DoDIG	Department of Defense Inspector General
DSCA	Defense Support to Civil Authorities
EBSCO	Elton B. Stephens Company
EXORD	Exercise Order
FEMA	Federal Emergency Management Agency
FM	Field Manual
GAO	Government Accountability Office (formerly General Accounting Office)
HQDA	Headquarters, Department of the Army

IDA	Institute for Defense Analyses
JSCP	Joint Strategic Capabilities Plan
MACDIS	Military Assistance for Civil Disturbances
NDAA	National Defense Authorization Act
NGCS	National Guard Civil Support
NMI	National Military Interventions
NORTHCOM	Northern Command
NPS	National Preparedness System
NRF	National Response Framework
NSIAD	National Security and International Affairs Division
NYPD	New York Police Department
OPLAN	Operations Plan
PCA	Posse Comitatus Act
PM	Program Manager
RFA	Request for Assistance
SDF	State Defense Force
SMI	State Military Interventions
SSCF	Senior Service College Fellowship
TTP	Tactics, Techniques and Procedures
U.S.C.	United States Code
UON	Urgent Operational Need