



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**A NEW DEPARTMENT OF DEFENSE FRAMEWORK FOR
EFFICIENT DEFENSE SUPPORT OF CIVIL
AUTHORITIES**

by

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September 20007

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**A NEW DEPARTMENT OF DEFENSE FRAMEWORK FOR EFFICIENT
DEFENSE SUPPORT OF CIVIL AUTHORITIES**

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ABSTRACT

The terrorist attacks of September 11, 2001, triggered a new focus on Department of Defense (DoD) capabilities support to civilian authorities during emergencies. Hurricane Katrina added to this national attention on the role the Department of Defense should play in responding to emergencies. Despite this recognition of the significance of military involvement, little has been done to organize a military framework that can effectively respond to a no notice domestic incident. This thesis analyzes the current context in which DoD capabilities are approved and utilized in a national crisis to examine two core issues: (1) under what circumstances can DoD capabilities be better leveraged in response to a catastrophic domestic event and (2) what are the strategic implications for DoD if they assume a more proactive role in domestic events? Two situational vignettes carved out of the National Planning Scenarios are used to demonstrate that the DoD validation and approval process for civil support operations is slowed by current policy. The study culminates by advocating that DoD reorganize its force structure to most efficiently support a military response to a domestic event. It recommends a new Civil Support Expeditionary Force framework for Defense Support of Civil Authorities.

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LIST OF ABBREVIATIONS AND ACRONYMS

AEF	Aerospace Expeditionary Force
AMC	Air Mobility Command
ANG	Air National Guard
ARF	Action Request Form
ASD-HD & ASA	Assistant Secretary of Defense for Homeland Defense and Americas Security Affairs
BSI	Base Support Installation
CBRNE	Chemical, Biological, Radiological, Nuclear, or High Yield Explosive
CCMRP	CBRNE Consequence Management Response Force
CERFP	CBRNE Enhanced Response Force Package
CJCS	Chairman of the Joint Chiefs of Staff
COOP	Continuity of Operations
CRAF	Civil Reserve Air Fleet
CRS	Congressional Research Service
CSB	Civil Support Battalions
CSEF	Civil Support Expeditionary Force
CSF	Civil Support Force
CSIS	Center for Strategic and International Studies
DCO	Defense Coordinating Officer
DHS	Department of Homeland Security
DoD	Department of Defense
DoDD	Department of Defense Directive
DSB	Defense Science Board
DSCA	Defense Support of Civil Authorities
ELRPO	Enforcement of the Laws to Restore Public Order
EMAC	Emergency Management Assistance Compact
EOC	Emergency Operations Center
ESF	Emergency Support Function
EXORD	Execute Order

FEMA	Federal Emergency Management Agency
GWOT	Global War on Terrorism
HLD	Homeland Defense
HLS	Homeland Defense
JDOMS	Joint Director of Military Support
JFCOM	Joint Forces Command
JFO	Joint Field Office
JTF	Joint Task Force
JTF-PO	Joint Task Force Port Opening
LMW	Large Mobility Wing
MA	Mission Assignment
MACDIS	Military Assistance for Civil Disturbances
MSCA	Military Support to Civil Authorities
NCR	National Capital Region
NDAA	National Defense Authorization Act
NG	National Guard
NGB	National Guard Bureau
NORAD	North American Aerospace Defense Command
NORTHCOM	United States Northern Command
NRCC	National Response Coordination Center
NRP	National Response Plan
NSAS	National Strategy for Aviation Security
NSHD	National Strategy for Homeland Defense
NSHS	National Strategy for Homeland Security
NSS	National Security Strategy
OSD	Office of the Secretary of Defense
PA	Primary Agency
PCA	Posse Comitatus Act
PFO	Principal Federal Official
POTUS	President of the United States
PSMA	Pre-Scripted Mission Assignment
PTDO	Prepare to Deploy Order

QDR	Quadrennial Defense Review
RC	Reserve Component
RFA	Request for Assistance
RFF	Request for Forces
RRCC	Regional Response Coordination Center
SCO	State Coordinating Officer
SECDEF	Secretary of Defense
TAG	State Adjutant General
TRANSCOM	Transportation Command
UCP	Unified Command Plan
USAF	United States Air Force
WMD-CST	Weapons of Mass Destruction Civil Support Teams

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I. INTRODUCTION

A. PROBLEM STATEMENT

Since 1950, the federal government has rarely considered natural and non-terror human-caused disasters within the United States to be matters of national security that required intervention of military forces. The notable exception was civil defense responses in case of a nuclear attack. The terrorist attacks of September 11, 2001, triggered a new focus on Department of Defense (DoD) capabilities support to civilian authorities during emergencies. In particular, on April 30, 2002, the president signed a new Department of Defense *Unified Command Plan* (UCP). Among other things, the UCP established the United States Northern Command (NORTHCOM) to provide command and control of the department's homeland defense efforts and to coordinate Defense Support of Civil Authorities (DSCA).¹

Hurricane Katrina added to this national attention on the role the Department of Defense should play in responding to emergencies. The White House after action report on the federal response to Katrina applauded the military's role. The report praised DoD as follows:

DoD — both National Guard and active duty forces — demonstrated that along with the Coast Guard it was one of the only federal departments that possessed real operational capabilities to translate presidential decisions into prompt, effective action on the ground. In addition to possessing operational personnel in large numbers that have been trained and equipped for their missions, DoD brought robust communications infrastructure, logistics, and planning capabilities.²

The defense community, including NORTHCOM, has also continued to evolve and grow into this new mission. The secretary of defense recommended, and Congress

¹ Scott Shepherd and Steve Bowman, "Homeland Security: Establishment and Implementation of the United States Northern Command," CRS Report for Congress (Washington, DC: Congressional Research Service, 2006): 1, <http://www.fas.org/sgp/crs/homsec/RS21322.pdf> cited 17 August 2005 (Accessed August 21, 2006).

² The White House, *Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: The White House, 2006), 7.

approved, a new command position — the *Assistant Secretary of Defense for Homeland Defense and Americas Security Affairs*. Also approved was the elevation of the Joint Directorate of Military Support (JDOMS), which approves requests for military support to civilian authorities, to flag officer leadership, moving it to the Operations Directorate of the Joint Staff.³

Despite this recognition of the significance of military involvement and initial reorganization, however, little has been done to organize a military framework that can effectively respond to a *no notice* domestic incident that rapidly or instantly overwhelms local and state governments. The *National Strategy for Homeland Security* (NSHS) and the *National Response Plan* (NRP) allude to a more active military role in domestic response, but current policies that describe situations in which DoD assistance in Homeland Security may be required fall short of a military framework that could actually support NORTHCOM serving as a Primary Agency in a domestic Homeland Defense mission. Recognition of the military's success in Katrina also is not unqualified. The federal government's performance during Katrina proved that the current DoD framework to support civil authorities is slow and cumbersome. By the president's own admission, "our government, at all levels, failed that test."⁴ The military response to the crisis took the better part of a week before it could get communications infrastructure, logistics, search and rescue, and planning capabilities into the operational area to begin an effective response to save lives and ease human suffering.

The impacts of the 9/11 attacks and Hurricane Katrina comprise a unique opportunity for DoD, through U.S. Northern Command, to assert a leadership role in catastrophic response planning and execution. In September, 2005, Congress began weighing whether the U.S. military should be granted broader responsibility and authority during catastrophic incident response, perhaps even shifting Lead Federal Agency responsibility from the Department of Homeland Security to the Department of

³ Donald F. Thompson, "Terrorism and Domestic Response: Can DoD Help Get it Right?" *Joint Force Quarterly* 40, 1st Quarter 2006, 17, http://www.ndu.edu/inss/Press/jfq_pages/editions/i40/i40_forum_03.pdf (Accessed July 10, 2007).

⁴ White House, "President Discusses Hurricane Relief in Address to the Nation," Press Release, September 15, 2006.

Defense (DoD).⁵ The president also affirmed his view that the military's unique ability to surge massive logistical and operational support in response to a major national crisis required greater federal authority for DoD under these circumstances.⁶ The challenge, however, is whether DoD and, especially, NORTHCOM have yet constructed a military framework that would effectively and efficiently provide appropriate assistance to and through civilian authorities under crisis situations.

B. RESEARCH QUESTION

President Bush's suggestion to Congress that there may be certain types of natural disasters or terrorist attacks "so vast and so destructive" that the military may be the only institution equipped and trained to respond⁷ warrants an analysis of those situations and DoD's potential effectiveness. This thesis analyzes the current context in which DoD capabilities are approved and utilized in a national crisis to examine two core issues: (1) under what circumstances can DoD capabilities be better leveraged in response to a catastrophic domestic event and (2) what are the strategic implications for DoD if they assume a more proactive role in domestic events?

C. PURPOSE

This thesis examines existing statutes and policies that authorize the use of military forces in domestic incidents. The aim is to begin to identify the foundations of a proposed military framework to provide DoD support to civil authorities under specific emergency situations. The review also seeks to recommend areas of engagement that would significantly increase civil support forces and capabilities. These areas, for instance, include much enhanced interagency cooperation, especially between DHS and

⁵ Mark Sappenfield, "Military wary of disaster role," *Christian Science Monitor*, September 29, 2005.

⁶ White House, "President Bush Addresses the Nation on Recovery from Katrina," Press Release, September 9, 2005.

⁷ Craig Gordon, "Hurricane Rita: Bush urges larger role for military," *Newsday*, September 26, 2005.

DoD, and among federal, state, local and private entities. The thesis also focuses on ways in which DoD capabilities may be better understood among the full range of homeland security practitioners.⁸

D. METHODOLOGY

1. Research Methods

The primary research methods used in this thesis are a hybrid of content analysis and historical research. They are used to analyze current policy, statutes, and regulations that govern the use of military forces in the homeland. The analysis is aimed at establishing the grounds for policy and operational conclusions and recommendations about the organization of DoD structure and use of DoD capabilities in specific domestic incidents.

Content analysis techniques are appropriately suited for this thesis because of the extensive and diverse nature of the policy guidance, opinions, and arguments on the use of military forces in domestic incidents. Content analysis is a method of research that allows the study of human behavior in an indirect way through leaders' and others' communications as recorded in textbooks, articles, essays, etc. It is most often used in conjunction with other methods.⁹ The use of historical research is especially beneficial in this thesis because of the considerable number and significance of dated statutes, like the Posse Comitatus Act, and the legacy of DoD responses to earlier domestic incidents.

2. How Methods are Applied to Derive Recommendations

The design of this study focuses on determining the impact that DoD can have on specific domestic incidents if organized differently. This thesis examines these impacts, and potential revisions and consolidation of the DoD directives and national policies that

⁸ This study is by no means a legal analysis; however, it will, hopefully, spark future legislative research by a qualified legal analyst so that future DoD directives and national policies can more clearly support the use of military forces in domestic incidents.

⁹ Jack R. Frankel and Norman E. Wallen, *How to Design and Evaluate Research in Education*, 4th ed. (St. Louis, MO: McGraw-Hill Higher Education, 2000): 469–470.

address the use of military forces in the homeland. Current DoD policy provides the criteria of legality, lethality, risk, cost, appropriateness, and readiness for evaluating all requests for military assistance by civil authorities.¹⁰ This thesis will evaluate these criteria and identify key elements of the DoD validation process that are particularly important in civil support operations.

This study will present situational vignettes suited to analyze the context in which DoD capabilities are leveraged in a national crisis. The criteria used to direct DoD engagement will be examined within various situational vignettes to identify and clarify a military structure that would improve DoD's capabilities to respond to domestic incidents.

E. THESIS OUTLINE

This thesis follows a qualitative approach that began in this chapter by introducing the subject, presenting the problem and defining the research question, research methods, and evaluative criteria used in the subject analysis.

Chapter II presents an historical review and analysis of how DoD capabilities have been used and of situations in which DoD is expected to be an active participant in domestic events, according to current national policy and guidance. This chapter will also analyze the clarity of current policy guidance for the use of DoD capabilities.

Chapter III presents two situational vignettes carved from the fifteen National Planning Scenarios. These vignettes are best suited to present examples of how the current framework of DoD support of civil authorities is engineered to work in response to a national crisis situation. The DoD process of providing support to domestic civilian authorities is described within the construct of these vignettes. The vignettes provide a simplified example of how a specific DoD capability can be requested in different scenarios. They also outline the DoD validation process required to approve the use of DoD capabilities.

¹⁰ Paul S. Stevens, *U.S. Armed Forces and Homeland Defense: The Legal Framework* (Washington, DC: Center for Strategic and International Studies, 2001): 4–14.

Chapter IV uses these vignettes in a different way. The intent is not to argue in favor of placing DoD in lead of the entire federal response, but to define and identify situations where the current DoD response framework is flawed. The chapter also includes a review of current initiatives aimed at improving DoD response capabilities.

Finally, Chapter V recommends a framework of DoD support to civilian agencies that can best leverage its capabilities and resources for civilian support missions. The chapter provides recommendations on how to implement the recommended framework within the construct of national policy and DoD directives to clarify the use of military forces in domestic incidents. Even at the end of this analysis, however, a desirable framework for support to civilian authorities is not complete. The thesis ends with a call for further analysis to expand the operational implications of many of the recommendations.

II. SETTING THE STAGE

A. HISTORICAL BACKGROUND

There is precedence for the use of military forces in domestic crisis situations. Military forces have led national domestic responses and provided support to civilian law enforcement agencies in this country throughout its existence. As recent examples, it is difficult to overlook the ongoing efforts of Operation Jump Start and Joint Task Force Six for border control and drug interdiction, and the military aircraft that assisted in the search for the Beltway sniper suspects in 2002. The DoD Chemical, Biological, Radiological, Nuclear or High Yield Explosive (CBRNE) teams that were created in reaction to anthrax-laced envelopes sent through the United States Postal system — as well as the countless Defense Support of Civil Authorities missions managed by NORTHCOM in the aftermath of Hurricane Katrina — have also involved military resources. However, military intervention in domestic incidents dates as far as the eighteenth century.

The general distrust of a standing peacetime army among American citizens is as old as the nation itself. This distrust stemmed from our founding fathers' memories of abuses by the British Army, which did not allow for a military to wield unchecked power over the civilian populace.¹¹ However, of equal or greater concern to the framers of the Constitution was an inability of the government to protect life, liberty, and property. These concerns “acted as an effective counterbalance to the fears of the use of federal military force in domestic emergencies.”¹² Because of this realization, our founding fathers purposely rejected any strict prohibition on the use of the military in a law enforcement role.

¹¹ Declaration of Independence, para 13–14 (1776).

¹² Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878* (Washington, DC: Center of Military History, 1988): 7.

Robert W. Coakley's book covers the maturing use of military forces in a domestic role of enforcing civil laws, legislative actions in the development of the Posse Comitatus Act (PCA), and the issues that compelled the passage of the act.¹³ A second book, by Clayton D. Laurie and Ronald H. Cole, continues the analysis of the application of military resources in domestic situations, discussing the successes and failures of each.¹⁴ The authors also summarize the consequences of the PCA during this time period. Laurie and Cole assert that

Although the passage of the 1878 Posse Comitatus Act had a seminal effect on domestic interventions by placing restrictions on how and when federal troops could be used, and by whom, in times of crisis it was often ignored by both civil and military officials alike, was superseded by emergency, executive or general orders, or otherwise circumvented for what was interpreted at the time as being the public good.¹⁵

The "public good" should, inherently, be the basis for any discussion of the use of military forces in domestic events. An equally important concept in the American democratic system, however, is that the ultimate control of military power rests in civilian hands. Success in domestic crisis events lies in finding a way of maximizing the public good within the framework of our democratic system, without sacrificing the capabilities held by the military, which can be of great assistance in a catastrophe. "It is appropriate for those skills, funded by U.S. taxpayers, to be used in a time of great need by the citizens of this country."¹⁶

B. CURRENT LITERATURE

Because the United States Northern Command (NORTHCOM) was established to provide the Command and Control of the Department of Defense efforts in a domestic incident, the literature analyzed in this review begins by understanding the command's

¹³ Coakley, *The Role of Federal Military Forces in Domestic Disorders*.

¹⁴ Clayton D. Laurie and Ronald H. Cole, *The Role of Federal Military Forces and Domestic Disorders, 1877-1945* (Washington, DC: Center of Military History, 1997).

¹⁵ *Ibid.*, 422.

¹⁶ American Bar Association, *Hurricane Katrina Task Force Subcommittee Report* (ABA Standing Committee on Law and National Security, February 2006, viii): 28–29.

missions. NORTHCOM and DoD will be used interchangeably throughout this document since DoD actions in the homeland are coordinated and executed through NORTHCOM.

NORTHCOM's specific missions as defined in the UCP are to conduct operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories and interests, within its assigned area of responsibility; and as directed by the president or the secretary of defense, provide defense support to civil authorities, including immediate crisis and subsequent consequence management operations.¹⁷

As a recently established geographical combatant command, NORTHCOM is still developing and identifying requirements and capabilities to accomplish its mission. Hence, the relevant literature on the topic is still emerging. Current literature on the topic consists of congressional research reports and testimonies, scholarly journals, periodicals, and a myriad of federal government concept plans, some yet to be implemented or verified.

Although the creation of the NORTHCOM has been widely accepted as a positive step in improving Homeland Security and Homeland Defense measures, the literature reviewed to this point supports the development of several distinct philosophies on the subject of DoD response to domestic incidents. The first argues that things should remain status quo, with state and local governments running the response to a national crisis with DHS and DoD support. The second suggests that DoD should be the lead federal agency in some situations. Additionally, a review of statutes and laws on the use of military Title 10 forces in domestic incidents blurs the subject by not providing clear and concise guidance as to when and how military capabilities should be considered for these missions.

¹⁷ United States, Office of the Department of Defense, *Unified Command Plan* (Washington, DC: Office of the Department of Defense, 2002), classified FOUO.

1. First Philosophy

This philosophy is comprised predominantly of scholarly articles and reports. This school of thought succinctly explains and agrees with NORTHCOM's second mission of defense support to civil authorities and consequence management as "a duty that is appropriate and lawful" in support of civilian authorities.¹⁸ This camp continues, however, to express many reservations about NORTHCOM's defense mission, to deter, prevent, and defeat external threats against the American homeland. The Constitution Project, a non-government organization established for the sole purpose of identifying and protecting against potential unconstitutional proposals, argues that the concept of a single military command charged with protecting the entire American homeland raises the long-standing concern that a "standing army" in the United States could pose a potential threat to freedom and liberty.¹⁹ Its report, *The Creation of the United States Northern Command: Potential Constitutional, Legal, and Policy Issues Raised by a Unified Command for the Domestic United States*, highlights that the command should continue to perform the consequence management mission by maintaining its supporting role to civilian authorities, responding only when requested by civilian authorities, and being tasked by civilian authorities rather than assuming command of the governmental response to a domestic disaster.²⁰ The Constitution Project report admits that NORTHCOM is still a work in progress and insists that adequate strategic planning still needs to occur in order to answer three specific questions:

1. Does the president have unchecked authority to define NORTHCOM's Defense Mission?
2. Will adequate safeguards exist to ensure that NORTHCOM forces operate within legal limits?

¹⁸ The Constitution Project, *Creation of the United States Northern Command: Potential Constitutional, Legal, and Policy Issues Raised by a Unified Command for the Domestic United States* (Washington, DC: Georgetown Public Policy Institute Press, 2003): 1, http://www.constitutionproject.org/pdf/Northcom_Interim.pdf (Accessed August 21, 2006).

¹⁹ Ibid., 2.

²⁰ Ibid., 2.

3. Should NORTHCOM be expressly precluded from intelligence gathering in the United States?

Clearly, the president does not have unchecked authority to define or execute NORTHCOM's defense mission; he must work within the construct of the Constitution and legal authorities such as the Posse Comitatus (PCA) and the Stafford Acts. The literature reviewed to this point warrants an in-depth look at the federal statutes that govern the use of active duty Title 10 forces in domestic situations; such a review will be undertaken later in this section.

The same legal statutes that serve to define the authorities of the president also safeguard the equities of the laws themselves. Neither of these pieces of legislature, however, identifies a situation where DoD roles in domestic response are clearly delineated. Doubts about military operations inside the homeland are difficult to squelch, particularly in light of the recent NSA wiretapping debacle. The question of whether NORTHCOM forces can be trusted to operate within legal limits is of concern, particularly since the former Commander of NORAD and USNORTHCOM, General Ralph E. Eberhart, testified to congress in March 2003 that NORTHCOM is considering Special Operations missions within the homeland.²¹

P. H. Liotta, chair of the Economic Geography and National Security School, U.S. Naval War College, argues in support of this school of thought. In his article, "Boomerang Effect: The Convergence of National and Human Security," he emphasizes that inter-agency cooperation will only increase in the future and that military means will often provide a supporting hand in many issues involving vulnerabilities — whether these be homeland security or environmental scarcity.²² Furthermore, he proposes the use of military forces for "non-traditional" means, from disease surveillance and monitoring to intelligence gathering and information relay networks. Shephard Scott and Steve

²¹ House Armed Services Committee, *Statement of General Eberhart before House Armed Services Committee*, 108th Congress, 2nd Session, March 10, 2003, <http://www.house.gov/hasc/openingstatementsandpressreleases/108thcongress/03-03-13eberhart.html> (Accessed September 3, 2006).

²² P. H. Liotta, "Boomerang Effect: The Convergence of National and Human Security," *Security Dialogue* 33, no. 4 (December 2002): 495.

Bowman, from the Federation of American Scientists, also write about the implementation of NORTHCOM's mission to support civil authorities. They contend that the command has made significant strides at the national level in interagency cooperation and relationship building. They discuss the organizational structure of the command and its components.²³ Much like Liotta and the Constitution Project they verify the need for NORTHCOM support to civil authorities but they fall short of discussing the requirements for military operations in the homeland defense realm.

Furthermore the Constitution Project goes so far as to say that a traditional military intelligence collection apparatus that reports directly to the Military Commander would be unconstitutional in the homeland because it would "subvert numerous Constitutional guarantees relating to privacy and illegal search and seizure." However, the report does recognize that President Bush's *National Strategy for Homeland Defense* recommends a review of whether the restrictions imposed by the Posse Comitatus Act should be revised.²⁴

2. Second Philosophy

The second sub-literature or school of thought is mostly comprised of federal government documents, plans and congressional testimony. These documents more clearly define and clarify NORTHCOM's defense mission. The most prominent of these documents is the Unified Command Plan (UCP) of 2002. The UCP identifies NORTHCOM's specific missions as discussed in the introduction. What the UCP does not clearly define is the difference between homeland defense and homeland security and who will perform specific tasks under each mission set.

Later documents have attempted to rectify this deficiency, with the National Strategy for Homeland Security (NSHS) providing the most widely-accepted definitions:

Homeland security is a concerted National effort to prevent terrorist attacks within the United States, reduce the vulnerability of the US to terrorism, and minimize the damage and assist in the recovery from

²³ Scott and Bowman, *Homeland Security*, 3.

²⁴ Constitution Project, *Creation of the United States Northern Command*, 2.

terrorist attacks. Homeland defense is the protection of US sovereignty, territory, domestic population, & critical defense infrastructure against external threats and aggression or other threats as directed by the President.²⁵

There are clear seams and gaps between these mission sets that do not clearly define *when* the use of military force will be required and/or mandated. Furthermore, despite DoD efforts to emphasize that the military has no desire to assume responsibility for traditional civilian missions, “in reality, apart from combat operations, the mission areas of homeland security and homeland defense overlap more often than not, suggesting the need for greater civil-military interaction.”²⁶

Other terms like, “incidents of national significance” and “catastrophic incidents,” further obfuscate the matter. The National Response Plan defines incidents of national significance²⁷ as “an actual or potential high-impact event that requires coordination of federal, state, local, tribal, nongovernmental and/or private sector entities in order to save lives and minimize damage” and catastrophic incidents as “any natural or manmade incident, including terrorism, which results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, and national morale and/or government functions.”²⁸ These definitions further complicate the assignment of clear duties and responsibilities between DHS and NORTHCOM.

The National Response Plan outlines three primary mechanisms by which DoD would take part in a federal response to a domestic incident. Federal assistance, including DoD, would be provided:

²⁵ United States, Office of Homeland Security, *The National Strategy for Homeland Security* (Washington, DC: Office of Homeland Security, 2002): 2, http://www.hsdl.org/homesec/docs/whitehouse/nat_strat_hls.pdf (Accessed August 25, 2006).

²⁶ Thompson, “Terrorism and Domestic Response,” 17.

²⁷ Note: The National Response Framework (NRF) currently under revision recommends the term “incident of national significance” be removed/deleted from the NRP/NRF because of it being vague and potentially confusing.

²⁸ United States, Office of Homeland Security, *The National Response Plan* (Washington, DC: Office of Homeland Security, 2004): 41–43, <http://www.hsdl.org/homesec/docs/dhs/nps22-053106-03.pdf> (Accessed September 1, 2006).

(1) at the direction of the president; (2) if the secretary of homeland security declares an event an Incident of National Significance; or (3) at the request of the governor of the affected state in accordance with the Stafford Act. The second and third instances require a Request for Assistance (RFA) and approval of the secretary of defense in order to obligate DoD assets to provide support.²⁹ Any Request for Assistance is answered through a mission assignment process that will be discussed in later chapters.

The National Response Plan and the National Strategy for Homeland Security clearly identify the requirement for the defense mission. The National Strategy for Homeland Security even suggests that the Posse Comitatus Act restrictions should be reviewed in order to identify potential changes that can better enable the use of military forces in the homeland.

C. MILITARY DIRECTIVES

Much of the confusion surrounding the use of military forces in domestic events can also be attributable to the sheer number of DoD Directives that govern the involvement of the armed forces in civil operations where the possibility exists for military personnel to engage in defense support of civil authorities. Unfortunately, the differences in the subjects each directive covers, in many cases, seem to overlap, further blurring the understanding of the application of military resources in domestic events. Following is a summary of the predominant regulations on this subject. This list is not all inclusive, but serves to highlight the confusing and sometimes contradictory directives on this subject.

- DoD Directive 3020.26, *Continuity of Operations (COOP) Policy and Planning*, defines the responsibilities of DoD agencies for completing critical missions and continuing mission-essential functions during times of emergency. Specifically, this document emphasizes the need for planning to facilitate

²⁹ United States, Office of Homeland Security, *The National Response Plan*, 42.

continuity of government³⁰ missions and continuity of operations focusing on those operations that support the maintenance of “military effectiveness, readiness, and survivability.”

- DoD Directive 3025.1, *Military Support to Civil Authorities (MSCA)*, addresses the responsibility of DoD agencies to conduct missions for and provide assistance to state and local governments for the purpose of consequence management following a natural or manmade disaster or other emergency situations.³¹ The emphasis in this type of support is placed on protection of the civilian population and critical infrastructure to exclude support to civil law enforcement. This directive also governs the conduct of prior planning and coordination with civil authorities to ensure effective management of DoD resources.³² This directive speaks to the requesting process, approval authorities, and evaluation criteria used to validate military support to civil authorities in both emergency situations and for projected requirements.

DoD Directive 3025.12, *Military Assistance for Civil Disturbances (MACDIS)*, addresses the use of military forces to assist state and local authorities in quelling insurrections, rebellions, and domestic violence that threaten life, property, and the general welfare of the United States. This document mandates that DoD forces will be used only in this type of situation — by the authority of a Presidential Executive Order that defines a specific officials are unable or unwilling to deal with and prior presidential approval is not feasible.³³

³⁰ U.S. Department of Defense, Directive 3020.26, *Continuity of Operations (COOP) Policy and Planning* (Washington, DC: Government Printing Office, May 26, 1995) 2, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

³¹ U.S. Department of Defense, Directive 3025.1, *Military Support to Civil Authorities (MSCA)* (Washington, DC: Government Printing Office, January 15, 1993) 3, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

³² *Ibid.*, 3.

³³ U.S. Department of Defense, *Military Assistance for Civil Disturbances (MACDIS)* (Washington, DC: Government Printing Office, February 4, 1994) 5, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

- DoD Directive 5525.5, *DoD Cooperation with Civilian Law Enforcement Officials*, expands the meaning of the PCA to include the Navy and Marine Corps and defines exceptions to the PCA based on military status (Title 10 vs. Title 32).³⁴ It also describes and defines the requesting process of DoD assets by authorized agencies, provides a list of permissible direct assistance activities that are not restricted by the PCA as well as a list of actions that are prohibited by the PCA. This directive also provides guidelines for performing each of the permissible direct assistance activities (training, expert advice, and equipment maintenance).³⁵

These directives, a “convoluted mass of legalese,”³⁶ serve to confuse and discourage any military commander who hopes to find clear and concise guidance for the legal use of military resources in domestic events.

D. STATUTORY REVIEW

The reluctance of the American government to use military forces in domestic incidents is derived from long-standing issues of public policy and social trust inherent in our way of life. John R. Brinkerhoff, researcher for the Institute for Defense Analyses and former Federal Emergency Management Agency (FEMA) Director for National Preparedness from 1981–1983, opines that this reluctance has been exacerbated by four factors: (1) an unwillingness of the DoD to get involved in domestic actions; (2) a “general antipathy” to the use of troops as police by the American public; (3) confusion and inconsistency resulting from court rulings, case law, and the misguided additions of

³⁴ U.S. Department of Defense, *DoD Cooperation with Civilian Law Enforcement Officials* (Washington, DC: Government Printing Office, December 20, 1989) 1, 20-21 <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

³⁵ *Ibid.*, 14-17.

³⁶ Gerald J. Manley, *The Posse Comitatus Act Post-9/11: Time for a Change?* (Washington, DC: National Defense University, National War College, Unpublished Essay, 2003).

DoD directives and military regulations; and (4) poor research by authors writing about the Posse Comitatus Act that propagates continual misunderstandings.³⁷

Although Brinkerhoff is talking specifically about the Posse Comitatus Act in his opinion, his ideas are directly relevant to the scope of this effort. Although this act is not the only piece of legislation that regulates the use of military forces and capabilities in the homeland, it is certainly the most frequently quoted in DoD directives, and frequently misunderstood by policy makers and DoD leaders. Therefore, it is imperative that we clarify some of the “continual misunderstandings” about the overall national policy on the use of military forces in domestic incidents in accordance with this act.

A review of the Posse Comitatus Act itself, Title 18, U.S. Code Section 1385, as amended, identifies it as a criminal statute.

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned for not more than two years, or both.³⁸

The Stafford Act, much like the Posse Comitatus Act, guides the actions of the president and safeguards the constraints of the constitution. It authorizes the POTUS to provide DoD assets for relief efforts, once the POTUS formally declares an emergency or a major disaster. DoD assets for emergency work may be provided on a limited basis prior to the presidential declaration. DoD policy for providing disaster assistance (as related to the Stafford Act) is contained in DoDD 3025.15 *Military Assistance to Civil Authorities (MACA)*, and DoDD 3025.1 *Military Support to Civil Authorities (MSCA)*.³⁹ These directives were summarized above, but will be discussed in more details in later chapters.

³⁷ John R. Brinkerhoff, “The Posse Comitatus Act and Homeland Security” (Washington, DC: Ansler Institute of Homeland Security, February 2002): 1, <http://www.homelandsecurity.org/journal/Articles/brinkerhoffpossecomitatus.htm> (accessed December 8, 2006).

³⁸ United States Congress, *Posse Comitatus Act*, U.S. Code, Title 18, sec. 1385 (1878).

³⁹ United States Congress, House of Representatives, *Stafford Disaster Relief and Emergency Assistance Act*, 107th Congress, 2nd sess, 2000, Pub. L. 106–390, & 301.

A further review of the Posse Comitatus Act finds that it does allow use of military forces in the homeland for some intelligence and surveillance activities and limited operations.⁴⁰ The act does not apply to the National Guard when it is operating at the direction of the state governor because it not part of the Army or Air Force and is operating as a state militia. The act does apply when the National Guard is in a federal (Title 10) status. Furthermore, it does not apply to military operations, such as flying defensive missions over U.S. cities, protecting military installations, or enforcing law and regulations on military installations.⁴¹ The act does not apply to situations that are recognized as exceptions by the U.S. Constitution or statute. Key exceptions are the Insurrection Act (Title 10, U.S. Code Sections 331-335 and 672 et seq, as amended) as well as Title 10, U.S. Code Section 382 and Title 10, U.S. Code Section 831, which allow military forces to take enforcement action related to chemical and biological weapons of mass destruction in an emergency situation declared by the U.S. attorney general and SECDEF.⁴² It is also important to note that neither the U.S. Navy nor the U.S. Coast Guard are restricted in the same manner as the U.S. Army and the U.S. Air Force while operating in the homeland.

The Heritage Foundation, much like the Constitution Project, and a widely accepted national guidance like the *National Strategy for Homeland Security* have all recommended a review of current statues on the subject to discover more proactive use of DoD forces and assets for HLS purposes.⁴³ In October of 2006, the Homeland Security Council directed the DoD and the DHS to develop recommendations for revision of the NRP to delineate the circumstances, objectives, and limitations of when DoD might temporarily assume the lead for the federal response to a catastrophic incident.⁴⁴ Interestingly enough, although these scholarly organizations and national security policy

⁴⁰ United States Congress, *Posse Comitatus Act*, U.S. Code, Title 18, sec. 1385 as revised by the 1971 "Packard Memo" or "Employment of Military Resources in the Event of Civil Disturbances," which modified the Code of Federal Regulations, Title 32, Volume 2, Chapter 1, Part 215, Section 6, providing exceptions to the Act.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Constitution Project, *Creation of the United States Northern Command*, 2.

⁴⁴ Derived from NORTHCOM *Katrina Lessons Learned* video teleconference, October 2006.

bodies have recommended these reviews, legislation that recommends changes to these policies has not been forthcoming. Furthermore, attempts at modifying current statutes such as the National Defense Enhancement and National Guard Empowerment Act proposed by Senator Patrick Leahy from Vermont, failed to survive the senate vote in September of 2006.⁴⁵

This philosophy is also concerned with the recently debated amendment to the Insurrection Act. The 2007 National Defense Authorization Act (NDAA), Section 1076, amends the Insurrection Act in several ways. It renames the Insurrection Act the “Enforcement of the Laws to Restore Public Order” (ELRPO), and amends Section 333 to authorize the president, without request from the state, to employ the armed forces, including the National Guard in federal status, to suppress insurrection or restore public order and enforce the laws of the United States where the insurrection or lawlessness causes an associated deprivation of Constitutional rights.⁴⁶ It further permits the president greater authority to employ the armed forces in response to natural disasters, terrorist attacks, and epidemics/serious public health emergencies, or other situations⁴⁷ if the state cannot maintain public order, and if violence results in a condition that hinders the execution of the law of the state and the U.S., therefore depriving any part or class of people of the Constitutional rights, privileges or protections. If the POTUS invokes the authorities granted to his office under ELRPO, he may provide only supplies, services and equipment to the extent state authorities are unable, and may act only until the state is able, and may act only to the extent it does not interfere with military operations.⁴⁸

Similarly, other legislature allows some leeway in the use of military forces in the homeland. DoDD 3025.1 establishes a commander’s “immediate response” authority.

⁴⁵ United States Congress, House of Representatives, *National Defense Enhancement and National Guard Empowerment Act*, HR 5200, 109th Cong., 4th sess., September 30, 2006, <http://leahy.senate.gov/press/200604/042606a.html> (Accessed October 9, 2006).

⁴⁶ United States Congress, House of Representatives, *John Warner Defense Authorization Act of 2007*, HR 5122, 109th Cong, 4th sess., September 30, 2006, Public Law 109-364, Sec 1076, “Enforcement of the Laws to Restore Public Order,” <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR05122:@@L&summ2=m&> (Accessed June 1, 2007).

⁴⁷ Ibid.

⁴⁸ United States Congress, House of Representatives, *John Warner Defense Authorization Act of 2007*.

This authority allows military commanders to provide disaster relief when “imminently serious conditions resulting from any civil emergency or attack . . . require immediate action by military commanders” in order to “save lives, prevent human suffering, or mitigate great property damage.”⁴⁹ Immediate response authority is generally terminated upon the conclusion of support being rendered for small-scale local responses, or once FEMA is operating at its deployed command center at the disaster incident site.⁵⁰ This immediate response policy warrants another question. Can a military commander consider it his duty, under “immediate response,” if the state requests preemptively use his forces to prevent an attack that will obviously cause loss of life, human suffering and great property damage? Furthermore, if this decision is made, how would the military commander integrate with civilian law enforcement agencies that will undoubtedly be planning or conducting operations in parallel?

The Center for Strategic and International Studies (CSIS) initiated a study to reflect the impact of these important issues on the Reserve Component. The CSIS study focuses on how the National Guard and Reserves should be organized, trained, and equipped to carry out the roles and missions of civil support tasks, as part of its ongoing Beyond Goldwater-Nichols project.⁵¹ “The Guard and Reserve study team’s goal was to provide practical, actionable recommendations to DoD to help shape the Reserve Component effectively for the future.”⁵² This study provides numerous recommendations for the future of the National Guard and Reserve forces employment in Homeland Defense and Civil Support missions. Among these are a need for DoD to accept civil support as a central mission, and leveraging the National Guard to be the backbone of regional Civil Support Forces.⁵³ The U.S. Army commissioned the Rand Corporation to

⁴⁹ U.S. Department of Defense, Directive 3025.1, *Military Support to Civil Authorities (MSCA)* (Washington, DC: Government Printing Office, January 15, 1993), 5
<http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

⁵⁰ Congress, *Stafford Disaster Relief and Emergency Assistance Act*.

⁵¹ Christine E. Wormuth, Michele A Flournoy, Patrick T. Henry, Clark A Murdock, *The Future of the National Guard and Reserves: The Beyond Goldwater-Nichols Phase Three Report* (Washington DC: Center for Strategic and International Studies, July 2007: VII.

⁵² Ibid.

⁵³ Wormuth et al., *The Future of the National Guard and Reserves* 7, XI.

complete a similar study titled *Hurricane Katrina: Lessons for Army Planning and Operations*. This study focused efforts on analyzing the timeliness and robustness of the Army, both Title 10 and National Guard components, in response to Hurricane Katrina.⁵⁴ Additionally, this study recommended that DoD take a more proactive role in civil support by establishing regional Civil Support Battalions to match the multi-state FEMA regional framework.⁵⁵ These studies provide some clear recommendations for the future of the Reserve Components and the Department of the Army with respect to civil support missions. They do not, however, clarify how these missions will be coordinated with other federal, state and local agencies. Furthermore, both these studies recommend that DoD move away from viewing its role in a domestic crisis as a one-dimensional event that would respond only in a terrorist incident. Clearly, as we have discussed earlier, Hurricane Katrina demonstrated that the DoD role in domestic incidents should be analyzed in an “all hazards approach.”

E. LITERATURE REVIEW CONCLUSION

The Unified Command Plan, National Response Plan and the National Strategy for Homeland Security create a blend of disciplines between the newly established Department of Homeland Security (DHS) and the more deeply-rooted DoD. DHS seeks to manage federal relationships by networks that rely on lateral relationships among member jurisdictions. The first philosophy studied asserts that, to the extent that intergovernmental policies exist in the area of DoD actions in a national crisis, these policies are voluntarily embraced and enforced by mutual agreements. Furthermore, these policies do not pose clear and concise responsibilities and roles for DoD in the area of DSCA because they see DoD involvement in civil support as a fallback and failsafe alternative to a civilian response. To the contrary, the second philosophy points out that DoD encourages coordination and management of federal, state, and local action in a top-down or hierarchical fashion and relies on authority to manage. Therefore, this

⁵⁴ Davis et al., *Hurricane Katrina, Lessons for Army Planning and Operations* (Washington DC: RAND, January 2007): iii.

⁵⁵ Ibid.

philosophy has strong reservations about the current DoD framework's ability to perform effectively in domestic operations because of a misunderstanding of the legislation and lack of DoD policy that enables a civil support mission. The statutes that govern the execution of actions reviewed in the different philosophies further obfuscate the matter by establishing a myriad of legal requirements that must be met before DoD can take action in response to a domestic catastrophic incident. These different approaches to intergovernmental management create challenges in management areas — like organization, interagency cooperation, information sharing and future strategy — that must be resolved before the homeland faces the next catastrophic event.

F. HOW KATRINA HAS SHAPED THE SUBJECT

An analysis of the potential requirements for the president to take an executive decision to utilize the DoD to provide a large portion of the response to a domestic situation finds that this political decision is marred with controversy. There is a great deal of national policy to analyze on the subject of DoD roles in homeland security and homeland defense. Fundamental to any discussion on this subject is a strong foundation in federalism unique to American government. With regards to federalism, the major struggles in American history, continuing to present times, have been related to the struggle for power between the states and central government.⁵⁶ However, in the nation's history, major historical events with potential for cataclysmic outcomes — like 9/11 and Hurricane Katrina — have inevitably allowed for more centralization of power in the national government.⁵⁷

Much has been written about the perceived protracted federal response to one of these potential “cataclysmic events”: Hurricane Katrina. The House Select Bipartisan Report on this event, *A Failure of Initiative*, states that the call for increasing the military's role in domestic incidents is reasonable: “...who else can respond the way the

⁵⁶ Samuel H. Clovis Jr., “Federalism, Homeland Security and National Preparedness: A Case Study in the Development of Public Policy,” *Homeland Security Affairs* II, no. 3 (October 2006): 2, <http://www.hsaj.org> (Accessed December 28, 2006).

⁵⁷ Ellis Katz, *American Federalism, Past, Present and Future* (Washington, DC: United States Department of State, 1997), <http://usinfo.state.gov/journals/itdhr/0497/jjda/Katz.htm> (Accessed December 28, 2006).

military can? Who else can stand up when others have fallen?”⁵⁸ This thesis argues that a domestic incident of the magnitude of this natural disaster is the type of situation where the DoD capabilities and response need to be reorganized for a more comprehensive and expeditious execution. During the 2004 Indonesian Tsunami relief efforts, the Department of Defense responded by delivering emergency supplies within eighteen hours of the tsunami.⁵⁹ During Hurricane Katrina, however, emergency relief supplies were not delivered by DoD aircraft until approximately thirty-six hours after the hurricane had subsided. If military forces had been structured and organized to properly address civil support missions, the DoD response to Katrina could have enabled the military logistical infrastructure more quickly and effectively than the cumbersome local, state and federal/ FEMA architecture currently utilized.

From another perspective, this thesis argues that, according to the National Response Plan, legal and constitutional standards exist for DoD to more proactively organize a military response in specific situations where the nation’s security is at stake.⁶⁰ Additionally, Major General (Ret) Walter Huffman, the former U.S. Army Judge Advocate General (JAG), agrees with the NRP and asserts that the presidential authorities available through the Insurrection Act and under Article II of the U.S. Constitution are sufficient to allow the president to contain a crisis in which the nation’s security could be imperiled.⁶¹ Furthermore, implementation of more aggressive DoD civil support response would be relatively straightforward since the DoD, as noted in the White House report on the federal response to Hurricane Katrina, has an extensive communications, transportation, and logistical infrastructure already in place across the homeland.⁶² If Huffman’s premise — that sufficient legal authorities exist for DoD to be more proactive

⁵⁸ U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, 109th Cong., 2d sess., 2006, S. Rep. 000-000, 15.

⁵⁹ Rhoda Margesson, *Indian Ocean Earthquake and Tsunami: Humanitarian Assistance and Relief Operations* (Washington, DC: Congressional Research Service, 2005): 17, <https://www.hsdl.org/homesec/docs/crs/nps21-112105-20.pdf> (Accessed December 15, 2006).

⁶⁰ Office of Homeland Security, *National Response Plan*, 9, 43.

⁶¹ Katherine J. Gereski, “The Department of Defense as Lead Federal Agency,” *Homeland Security Affairs* II, no. 3 (October 2006): 6, <http://www.hsaj.org> (Accessed December 15, 2006).

⁶² White House, *Federal Response to Hurricane Katrina*, 57.

in domestic incidents — is accepted, it can then be inferred that it is human behavior, political interpretations, and cultural perceptions of what is right and wrong in a democratic society, through the establishment of policies, that hinder the application of DoD capabilities in domestic events. Therefore DoD must lead the way by changing military policies that hinder the development of military civil support forces.

Hurricane Katrina is but only one example of how the current national policy on the use of military forces does not maximize all instruments of national power during domestic catastrophic incidents. For instance, limitations under federal law and DoD policy cause the active-duty military to be dependent on requests for assistance from other federal, state and local entities. These limitations result in a slowed application of DoD resources during the initial response to a catastrophic event. This slow response causes excessive and needless loss of life, human suffering, and damage and destruction to national critical infrastructure.

The following chapter will present two situational vignettes, carved from the fifteen National Planning Scenarios. In the author's opinion, these vignettes are best suited to present examples of how the current framework of DoD response to support of civil authorities is engineered to work in response to a national crises situation. Additional chapters will analyze these vignettes, not with the intent of presenting an argument in favor of placing DoD in lead of the entire federal response, but to define and identify situations where the current DoD response framework is flawed. Furthermore, these chapters will recommend both a framework of DoD support to civilian agencies that can best leverage DoD capabilities and resources for DSCA missions, and how DoD should prepare for these missions.

III. CRITICAL SCENARIOS

A. INTRODUCTION

The fifteen National Planning Scenarios were developed as a tool to measure national preparedness activities from the federal to the local level. The Homeland Security Council coordinated this effort across the entire federal interagency community.⁶³ The scenarios cover a broad range of potential threats to homeland security and provide a great opportunity to evaluate federal preparedness and response plans.

This study uses two scenarios that are most likely to escalate to a national or regional level and that will require significant amounts of federal and DoD support: National Planning Scenario # 1, Detonation of a 10-kiloton Improvised Nuclear Device; and National Planning Scenario # 9, Major Earthquake. A brief overview and summary of assumed consequences from the scenario event are presented. Furthermore, this analysis identifies areas where the DoD support will be required. The National Response Plan and the National Incident Management System guidance for the identification, request, approval and execution process required for the DoD support to reach the agencies or entities that requested DoD assistance is analyzed for each scenario.

B. SCENARIO # 1: DETONATION OF A 10-KILOTON IMPROVISED NUCLEAR DEVICE (NATIONAL PLANNING SCENARIO # 1)

1. Scenario Overview

In this scenario, a 10-kiloton nuclear device is smuggled into the United States and detonated near a large metropolitan area. A device of this magnitude will destroy most buildings within a half-mile radius of the detonation. Injuries from flying debris and secondary fires may occur out to three-quarters of a mile. An Electromagnetic Pulse will

⁶³ National Planning Scenarios (*Washington Post*, April 2005) 4, <http://media.washingtonpost.com/wp-srv/nation/nationalsecurity/earlywarning/NationalPlanningScenariosApril2005.pdf> (Accessed April 20, 2007).

damage many electronic devices within approximately three miles. A radioactive mushroom cloud will rise above the city and begin to drift along the prevailing wind direction.⁶⁴

2. Key Assumptions⁶⁵

- The detonation of a nuclear device inside the homeland will be immediately recognized by national level authorities and an Incident of National Significance will be declared by the POTUS or the Secretary of the Department of Homeland Security.
- Panic and the lack of electrical power and viable roads will contribute to traffic fatalities/injuries and will further complicate any directed or self-initiated evacuation.
- Workers, to include first responders, may be unwilling to perform their jobs due to fears of radiation or contamination.
- Basic human needs such as electricity, water, food, communication/information and medical services will be disrupted across the affected area. Service will be restored outside of a twenty-mile radius of the immediate detonation area within ten to twenty days following the explosion. Services in the immediate area of the explosion will not be available for a significantly longer time due to radioactive contamination of the area and the extent of the damage.
- All medical facilities in the area will be immediately overwhelmed.
- Many first responders will subject themselves to large and perhaps fatal doses of radiation.
- A Temporary Flight Restriction will be required over the affected area; this will further complicate and delay evacuation and response.
- Tens of thousands will require evacuation and decontamination.
- Limiting the time rescue crews are exposed to contaminated areas will hamper and delay search and rescue operations.

Although the above-mentioned assumptions are not all-encompassing, for the purposes of this analysis, they are sufficient to justify and require a large DoD support footprint for the given scenario.

⁶⁴National Planning Scenarios, 10.

⁶⁵ Ibid., 13-14.

3. Areas Where DoD Support will be Required

Given this scenario, it is not difficult to grasp the need for federal assistance in many areas. This analysis we will focus on DoD support in the area of Chemical, Biological, Radiological, Nuclear and High Explosive (CBRNE) response teams.

State National Guard units are developing Weapons of Mass Destruction Civil Support Teams (WMD-CST) that will be tasked to support civil authorities in their state at a CBRNE incident site.⁶⁶ These teams will be followed or augmented by a CBRNE Enhanced Response Force package (CERFP). It is these units that will be tasked with searching an incident site, rescuing and decontaminating casualties, performing medical triage and stabilizing patients for transport to a medical facility.⁶⁷ In a scenario of this magnitude it is clear that this capability will be absolutely essential and in high demand.

4. How will the DoD Assistance be Requested?

When any incident occurs, response begins at local jurisdictions. As local efforts become overwhelmed, resources are requested from the state level. State governors and emergency management officials will normally inform the president and appropriate federal departments of their need for support if they become overwhelmed. It is at this time that the National Response Plan will begin to organize the federal response.

The authorities that govern the request and approval of DoD assets in domestic events are different depending on the type of domestic event being supported. In this situation our first assumption was that the POTUS or the secretary of DHS has issued an Incident of National Significance declaration. This step is important because without it the procedures for requesting assistance from the federal government would be managed by the Economy Act of 1932 instead of the Stafford Act.⁶⁸ The Incident of National Significance declaration will be accompanied by the establishment of a Primary Agency

⁶⁶ Wormuth et al., *The Future of the National Guard and Reserves*, 71.

⁶⁷ Ibid., 72.

⁶⁸ Reimbursement is the means by which the interagency support procedures are organized. Unless waived by the POTUS or SECDEF, all DoD support is provided on a reimbursable basis. The Economy Act of 1932 delineates management guidelines for interagency reimbursement.

(PA) that has jurisdictional authority over the incident. According to the National Response Plan, the Primary Agency will establish a Joint Field Office (JFO) to coordinate the federal assistance to the affected jurisdictions.⁶⁹ The JFO should be co-located with the state Emergency Operations Center (EOC). The state's Request for Assistance (RFA) to DoD will begin at the JFO through the Defense Coordinating Officer (DCO). The DCO will field and validate requests for DoD assistance before they are forwarded to both FEMA and DoD.⁷⁰ In the next few paragraphs, we will explain this process step-by-step as outlined in the NRP and depicted in Figure 1.

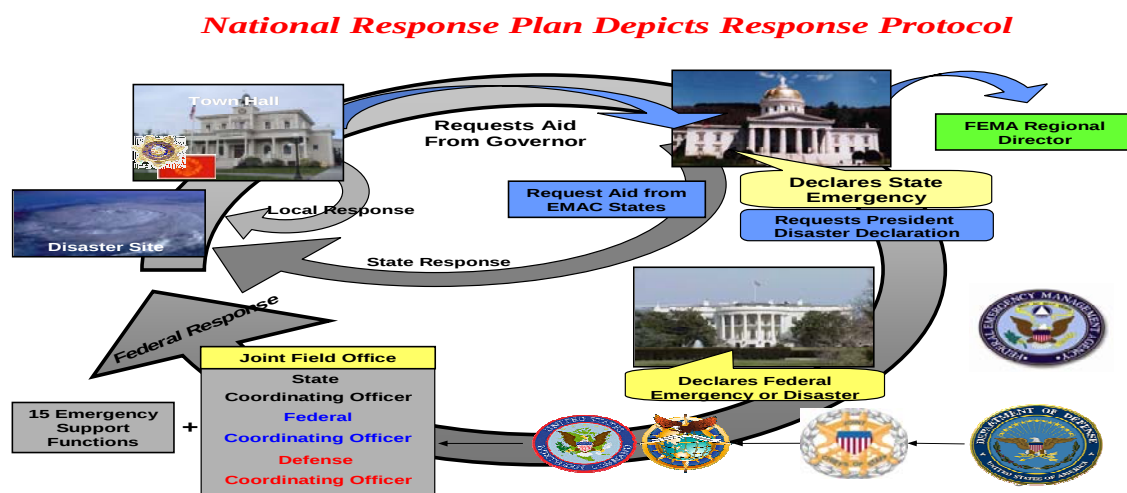


Figure 1. National Response Plan Outline.⁷¹

Assume that a State Emergency Operations Center has determined that there is a requirement for more WMD-CST/CERFP capabilities and that the State National Guard capabilities have been exhausted (Step 1). At this point, a request for assistance is forwarded to the State Coordinating Officer at the Emergency Operations Center/Joint Field Office (Step 2). The State Coordinating Officer will enable any Emergency

⁶⁹ United States, Office of Homeland Security, *The National Response Plan* (Washington, DC: Office of Homeland Security, 2004), 16.

⁷⁰ Ibid., 42.

⁷¹ Robert Reininger, DoD Request for Assistance and Mission Assignment Process, NORAD and USNORTHCOM Interagency Coordination Directorate Power Point Brief, slide 5, 1 March 2007.

Management Agreement Compact (EMAC)⁷² arrangements they may have with neighboring states for the use of their WMD-CST/CERFP capabilities. Once these EMAC assets are exhausted, or if they are not available, the State Coordinating Officer presents the request to the Federal Coordinating Officer (Step 3). An Action Request Form (ARF) is developed and provided to all the Emergency Support Functions (ESF) for review and analysis. If it is determined that the ESFs are unable to support the request, it is sent to the Defense Coordinating Officer for his analysis (Step 4). The DCO (and his staff, the Defense Coordinating Element or DCE) validates the Action Request Form if DoD is able to support the request. The validated request form is returned to the Federal Coordinating Officer who is now responsible for determining/forwarding the ARF as a FEMA Mission Assignment (MA) request (for DoD it is still called a RFA until approved by SECDEF) (Step 5). The FEMA Mission Assignment is now simultaneously forwarded to USNORTHCOM for mission analysis and to the Joint Director of Military Support (JDOMS) at the Pentagon and JDOMS forwards it to the office of the Assistant Secretary of Defense for Homeland Defense (ASD/HD) and the SECDEF for validation and approval. Once SECDEF approves the FEMA Mission Assignment or Request for Assistance, it becomes a DoD Mission Assignment (Step 6). JDOMS now issues and Execute Order (EXORD) to NORTHCOM or any other Supported Combatant Command, Service, or Agency that will participate in the DoD mission assignment. An important step in this process is the sourcing of the military personnel and assets that will accomplish the DoD Mission Assignment. JDOMS has the responsibility to identify and notify the units that will participate. Figure 2 provides a summary of these steps.

⁷² Emergency Management Assistance Compact website at <http://www.emacweb.org/> (Accessed July 1, 2007).

If DCO/JTF Deployed Stafford Act declaration likely

Request for Assistance (RFA) Process

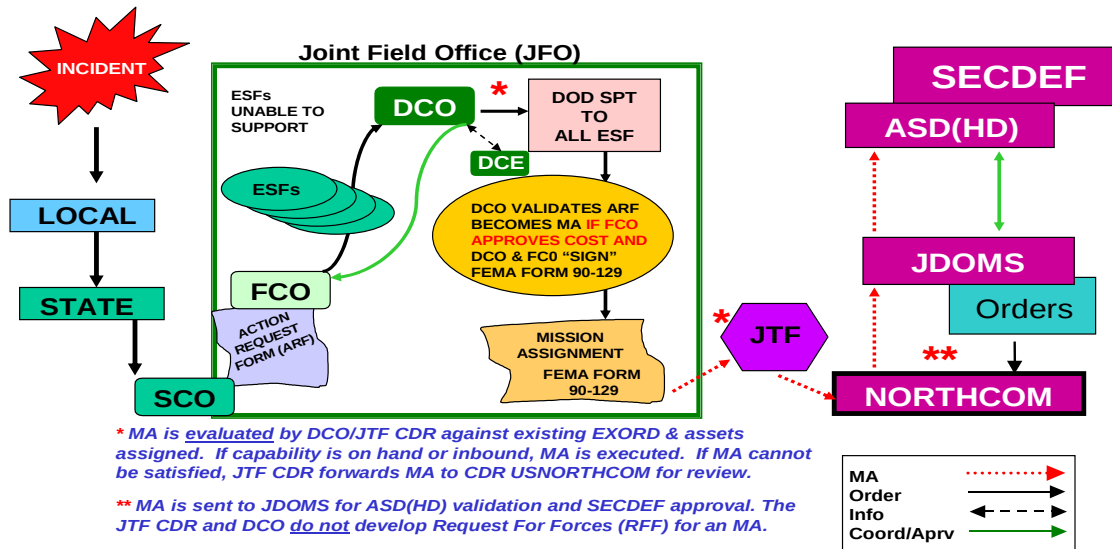


Figure 2. Request for Assistance with DCO/JTF.⁷³

5. Scenario # 1 Conclusion

Scenario # 1 provides an opportunity to understand how the National Response Plan, through the National Incident Management System, will organize the federal response to an Incident of National Significance. Although the plan has a Catastrophic Incident Annex⁷⁴ that provides more detailed guidance in the event of national response of higher magnitude, the process for requesting DoD assistance would not change drastically.

Although Scenario # 1 would undoubtedly require DoD support in many other areas, the purpose of this analysis was to clarify the process by which each specific type of DoD support is vetted and approved. Although the National Response Plan process described above is burdensome, it must be followed for every individual Request for Assistance or FEMA mission assigned to DoD.

⁷³ Reininger, DoD Request for Assistance and Mission Assignment Process, slide 10.

⁷⁴ United States, Office of Homeland Security, *The National Response Plan*.

A few exceptions to the assistance request process will also bring military assets and forces to bear on a domestic incident. Regardless of a disaster declaration, under the provisions of “Immediate Response Authority,” military commanders may respond to requests for support from civil authorities in order to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions resulting from civil emergencies or attacks.⁷⁵ DoDD 3025.1 provides a list of authorized immediate response activities that span from rescue, evacuation, and emergency medical treatment to facilitating the establishment of civil government functions.⁷⁶

Another exception to the Request for Assistance process is the use of the Request for Forces (RFF) process. In a catastrophic incident NORTHCOM is likely to establish a Joint Task Force (JTF) to be collocated with the JFO and assist in the Command and Control of the DoD response.⁷⁷ The JTF commander can approve mission assignments that the troops under his command could accomplish. If the JTF can not accomplish the mission, the JTF commander will make a RFF to NORTHCOM for equipment and personnel required to support the JTF mission.⁷⁸ NORTHCOM will request force capabilities by message to the Joint Staff.⁷⁹ This RFF will proceed through a process similar to the RFA process once it enters the Pentagon. However, the sourcing of the capabilities for RFFs and RFAs is coordinated through JDOMS once the NORTHCOM mission analysis is complete. In later chapters, we will discuss the implications of this process on the execution of the civil support mission.

The RFA and RFF approval process can vary drastically in the amount of time it will take to be approved depending on the efficiency and effectiveness of an EOC, JFO,

⁷⁵ United States, Office of Homeland Security, *The National Response Plan*, 545.

⁷⁶ U.S. Department of Defense, Directive 3025.1, *Military Support to Civil Authorities (MSCA)* (Washington, DC: Government Printing Office, January 15, 1993) 7-8, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007).

⁷⁷ U.S. Department of Defense, Concept of Operations Plan 2501-05, *Defense Support of Civil Authorities* (Headquarters, US Northern Command, April 2006), 346 (re-issued as CONPLAN 3501 in 2007).

⁷⁸ Ibid.

⁷⁹ Ibid.

DCO and the Pentagon.⁸⁰ Although the time required for the administration of Step 1 through Step 5 can vary this analysis assumes that twenty-four hours is an appropriate amount of time to determine that DoD assistance is needed and gain SECDEF approval of the DoD MA. Although the approval process poses numerous challenges that will be discussed later, the timely and effective notification, preparation, deployment and employment of military capabilities in support of a domestic incident is also a major concern.

Scenario # 2 provides a slightly different look at the National Response Plan process and the DoD validation and approval procedures since the process may or may not be governed by the Stafford Act.

C. SCENARIO # 2: MAJOR EARTHQUAKE (NATIONAL PLANNING SCENARIO # 9)

1. Scenario Overview

In this scenario, a 7.0-magnitude or greater earthquake occurs along a fault zone in a major metropolitan area of a city. The earthquake greatly impacts a six-county region with a population of approximately ten million people. An estimated one hundred and fifty thousand buildings will be destroyed and over one million buildings will be damaged. At a minimum, three hundred thousand households will need to be evacuated. Critical infrastructure such as ports, airports and highways will be destroyed further complicating response efforts.⁸¹

⁸⁰ The White House, *Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: The White House, 2006), 42–43, provides a synopsis of the DoD troop deployment across a 5–7 day timeline after the hurricane had subsided.

⁸¹ National Planning Scenarios (*Washington Post*, April 2005), 105, <http://media.washingtonpost.com/wp-srv/nation/nationalsecurity/earlywarning/NationalPlanningScenariosApril2005.pdf> (Accessed April 20, 2007).

2. Key Assumptions:⁸²

- The earthquake damage will need to be assessed prior to the state governor making a state of emergency declaration or requesting the POTUS or the Secretary of DHS make a declaration of an Incident of National Significance.
- The lack of electrical power and viable roads will contribute to traffic fatalities/injuries and will further complicate any directed or self-initiated evacuation.
- Workers, to include first responders, may be unwilling or unavailable to perform their jobs since their work places and homes will be damaged by the disaster.
- Basic human needs such as electricity, water, food, communication/information and medical services will be disrupted across the affected area. Service will be restored outside of a twenty-mile radius of the disaster area within ten to twenty days following the earthquake. Services in the immediate area of the earthquake will not be available for a significantly longer time due to critical infrastructure damage and possible contamination of the area (hazardous material spills).
- All medical facilities in the area will be immediately overwhelmed.
- Tens of thousands will require evacuation and medical treatment.

Although the above-mentioned assumptions are not all-encompassing for the purposes of this analysis, they are sufficient to justify and require a large DoD support footprint for the given scenario.

3. Areas Where DoD Support will be Required

This scenario, like the first scenario studied, will require a significant DoD support structure. The analysis we will focus on DoD assistance in the area of transportation and logistical support.

DoD in coordination with the National Guard Bureau (NGB) is developing a Port Opening Joint Task Force (JTF-PO) for the purposes of responding to civil support request for re-establishing the operation of major sea and aerial ports.⁸³ JTF-PO is a

⁸² National Planning Scenarios, 106.

⁸³ Kenneth King, *Joint Task Force—Port Opening: supplies when you need them most* (Translog: Journal of Military Transportation Management, Summer 2006) 1, http://findarticles.com/p/articles/mi_m0LEG/is_2006_Summer/ai_n16675885 (Accessed Mar 10, 2007).

concept that the United States Transportation Command (USTRANSCOM) and the Surface Deployment and Distribution Command have developed to bring logistical support and open distribution nodes with an early entry force opening distribution pipelines immediately after natural disaster. With this expeditionary capability, supplies can be brought in within hours after the military has arrived, in order to support the range of military operations that will be supporting civilian authorities after a natural disaster.⁸⁴ In a scenario of this magnitude, it is clear that this capability will be absolutely essential and in high demand.

4. How will the DoD Assistance be Requested?

In some circumstances, Stafford Act Request for Assistance may originate from the State Emergency Operations Center, as discussed in the first scenario. In other situations, requests may originate at the FEMA Regional Response Coordination Center (RRCC) or the FEMA National Response Coordination Center (NRCC) and pass directly to the DoD Executive Secretary (ASD/HD), vice through a Defense Coordinating Officer. This may occur for initial requests in accordance with the National Response Plan where an Incident of National Significance has not been established, or when a Defense Coordinating Officer is not assigned or available to the FEMA regional office, or when the request is thought to be Non-Stafford Act. These requests are processed the same as Non-Stafford Act requests, with JDOMS and USNORTHCOM conducting parallel coordination and providing a recommendation to ASD/HD and the SecDef for approval or disapproval.⁸⁵

In Scenario # 2, a request for a JTF-PO-type support will be initiated by the Primary Agency (Step 1). The request will be sent to the DoD Executive Secretary directly by the Primary Agency because the Defense Coordinating Officer may not be deployed (Step 2), it is then forwarded to ASD/HD for validation (Step 3). JDOMS will

⁸⁴ King, *Joint Task Force—Port Opening*.

⁸⁵ U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities* (Washington, DC: Government Printing Office, February 18, 1997) 5, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007). (Under revision, will be re-issued under the name *Defense Support of Civil Authorities*).

process the request, primarily for sourcing, in coordination with NORTHCOM, who will provide mission analysis (Step 4). SECDEF approves the request (Step 5), and JDOMS issues an EXORD (Step 6) to NORTHCOM and any other supported Combatant Commander, Service, or agency that will provide support for the request. The command authorities task the units and they deploy to provide the support requested. Figure 3 provides a summary of these steps.

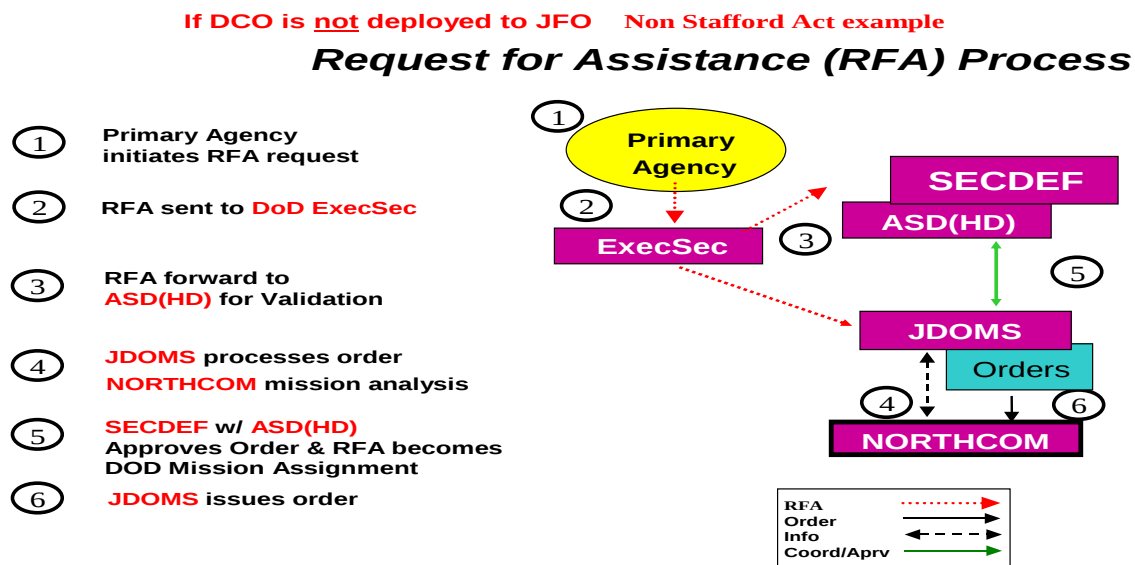


Figure 3. Request for Assistance without DCO/JTF.⁸⁶

5. Scenario # 2 Conclusion

Scenario # 2 provides an opportunity to understand how the National Response Plan will organize the federal response to a domestic incident that has not been declared an Incident of National Significance. Although the plans' framework in this case is somewhat simplified, it still requires a very comprehensive process. This process guarantees that the statutory and legislative requirements of all the applicable laws — like the Posse Comitatus Act, the Stafford Act, and the Insurrection Act (ELRPO) discussed in the legal review — are vetted against all the DoD directives (3025 series) via

⁸⁶ Reininger, DoD Request for Assistance and Mission Assignment Process, slide 8.

a validation process that spans from the DCO to the SECDEF. However, to fully understand the DoD validation process the criteria used in this process need to be clearly understood.

D. DOD VALIDATION PROCESS

DoD Directive 3025.15 identifies the criteria the Defense Coordinating Officer, ASD/HD and the SECDEF will use to validate all requests for military assistance by civil authorities. These criteria are legality, lethality, risk, cost, appropriateness, and readiness.⁸⁷ Legality, the first of these criteria, requires a complete understanding of all the statutory implications and legislative and executive authorities that may apply to the situation.

This depth of understanding does not rest solely on the shoulders of the Defense Coordinating Officer. That is why, under this criterion, a Request for Assistance for DoD capabilities requires numerous validation steps from the Defense Coordinating Officer to the SECDEF. Although recent legislation — such as the changes to the Insurrection Act or Enforcement of the Laws to Restore Public Order — has given federal authorities more leeway in the employment of military capabilities, the legality criteria are absolutely essential to ensure the principles of federalism, which are the bedrock of our Constitution, are upheld.

Lethality is a determination of the potential use of lethal force by or against DoD forces.⁸⁸ In the examination of this condition, the DoD validation process must weigh the likelihood of the use of lethal force against the urgency of the situation. If the situation indicates any real potential of lethality, the validation process must determine the true necessity of military forces.

⁸⁷ U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities* (Washington, DC: Government Printing Office, February 18, 1997) 3, <http://www.dtic.mil/whs/directives/corres/pdf/302501p.pdf> (Accessed May 15, 2007). (Under revision; will be re-issued under the name *Defense Support of Civil Authorities*).

⁸⁸ Ibid.

Risk is a measure of safety of DoD forces⁸⁹ and also relies heavily upon the urgency of the situation. In domestic operations, risk to the forces can be mitigated by using protective equipment, training for civil support missions, and integrating with local authorities.

Cost as a criterion for approving military support is really addressed under the statutes that authorize the use of the DoD assets. Any costs incurred by DoD employment in support of civilian authorities will be reimbursed under the authorities of the Stafford Act, if an Incident of National Significance has been declared — or the Economy Act, if no emergency declaration has been established.

Appropriateness is simply a measure of whether military action is the right thing to do. The Defense Coordinating Officer is the first to determine if the incident merits the use of military force, and if military involvement will achieve the desired effects, however, this criterion is evaluated from the DCO to the SECDEF.

The last criterion provided in DoDD 3025.15, Readiness, is the consideration of the implications of authorizing and undertaking a domestic support mission on the warfighting readiness of the force.⁹⁰ If the involvement of the military in domestic operations produces a subsequent degradation in the ability of that force to deploy, conduct combat operations, or complete mission-essential tasks, the use of military assets is weighed very closely against the requirements of the situation by the DoD executive Secretary, ASD/HD, and the SECDEF. These concerns are reflected in the JFCOM sourcing of these units. Therefore, the sourcing process can take in excess of twenty-four hours. The importance of this time requirement will be evident in later discussions.

E. CONCLUSIONS

The purpose of the analysis in this chapter was to clarify the National Response Plan and DoD process for validating and providing defense support to civil authorities. Two different scenarios, carved out of the National Planning Scenarios, were used to

⁸⁹ U.S. Department of Defense, Directive 3025.15, 3.

⁹⁰ Ibid, 3.

, or equipment exclusively for providing DSCA, unless otherwise directed by the secretary of defense” and “USNORTHCOM has no legal authority to initiate DSCA operations without the approval of the president or SECDEF”.⁹¹ Therefore, any deployment and employment of military assets and capabilities requires validation to ensure no degradation of military missions and readiness.

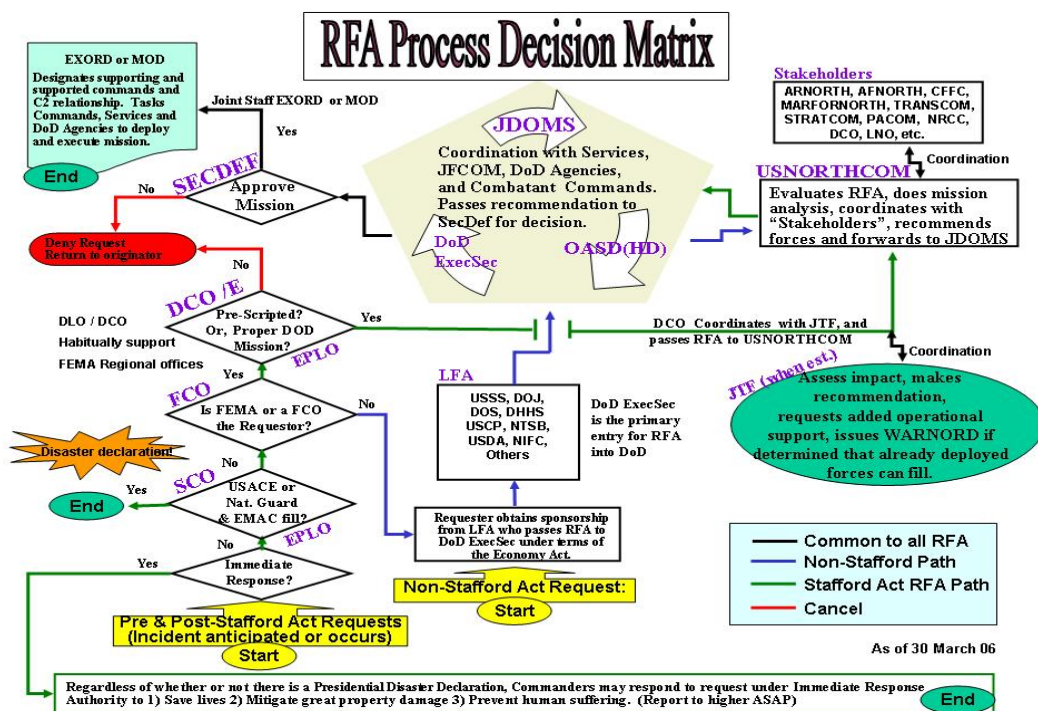


Figure 4. RFA Process Matrix.⁹²

⁹¹ U.S. Department of Defense, Concept of Operations Plan 2501-05, Defense Support of Civil Authorities (Headquarters, U.S. Northern Command, April 2006) ix (re-issued as CONPLAN 3501 in 2007).

⁹² Ibid.

Chapter IV will focus on the analysis of the vignettes presented in Chapter III. The intent of this chapter will be to discuss DoD initiatives for expediting deployment and employment of military assets in response to Request for Assistance and Request for Forces. Furthermore, it will pinpoint reasons why this effort is insufficient to adequately address DSCA requirements.

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IV. CURRENT DOD RESPONSE FRAMEWORK

A. INTRODUCTION

The purpose of this chapter is to highlight current DoD initiatives to address gaps in the current DoD civil support response framework. To accomplish this, a thorough analysis the Request for Assistance and Request for Forces process presented in the vignettes in Chapter III will be conducted to identify flaws in the current DoD response framework. These flaws in the process will be compared against the DoD initiatives intended to fill these gaps to emphasize areas that need to be re-structured to ensure an efficient Defense Support of Civil Authorities framework.

B. DOD CANNOT SUPPORT ALL EMERGENCY SUPPORT FUNCTIONS IN THE NATIONAL RESPONSE PLAN IN AN EFFECTIVE MANNER

Chapter III emphasized that the National response Plan provides the operational framework for the coordination of federal support to state, local, and tribal incident managers and for two exercising direct federal authorities and responsibilities.⁹³ Furthermore, it pointed out that DoD is the only agency identified in the plan that has a supporting responsibility to all of the fifteen Emergency Support Functions (ESFs). The ESFs are the structure for coordinating federal interagency support for Incidents of National Significance.⁹⁴ The ESFs coordinate the federal assistance under specific mission areas. This allows a framework to identify which agencies will be asked to provide support under a specific mission area. Since DoD is tasked to provide assistance under all fifteen ESFs, DoD organizations must be prepared to respond to all fifteen mission areas. Figure 5 provides a summary of all fifteen ESFs and the primary agency charged with responsibility to provide and coordinate these functions. The purpose of this chart is not to reiterate information available in the plan, but to point out the vast spectrum of mission areas for which DoD can be tasked to provide support.

⁹³ United States, Office of Homeland Security, *The National Response Plan* (Washington, DC: Office of Homeland Security, 2004): 37, <http://www.hsdl.org/homesec/docs/dhs/nps22-053106-03.pdf> (Accessed September 1, 2006).

ESF	Scope	Primary Agency
ESF # 1 Transportation	Federal and civil transportation support Transportation safety Restoration/recovery of transportation infrastructure Movement restrictions Damage and impact assessment	DOT
ESF # 2 Communications	Coordination with telecommunications industry Restoration/repair of telecommunications infrastructure Protection, restoration, and sustainment of national cyber and information technology resources	DHS
ESF # 3 Public Works and Engineering	Infrastructure protection and emergency repair Infrastructure restoration Engineering services, construction management Critical infrastructure liaison	DoD/USACE
ESF # 4 Fire Fighting	Firefighting activities on federal lands Resource support to rural and urban firefighting operations	USDA
ESF # 5 Emergency Management	Coordination of incident management efforts Issuance of mission assignments Resource and human capital Incident action planning Financial management	DHS/FEMA
ESF # 6 Mass Care, Housing, and Human Services	Mass care Disaster housing Human services	DHS/FEMA
ESF # 7 Resource Support	Resource support (facility space, office equipment and supplies, contracting services, etc.)	GSA
ESF # 8 Public Health and Medical Services	Public health Medical Mental health services Mortuary services	HHS
ESF # 9 Urban Search and Rescue	Life-saving assistance Urban search and rescue	DHS/FEMA
ESF # 10 Oil and Hazardous Material Response	Oil and hazardous materials (chemical, biological, radiological, etc.) response Environmental safety and short- and long-term cleanup	EPA
ESF # 11 Agriculture and Natural Resources	Nutrition assistance Animal and plant disease/pest response Food safety and security Natural and cultural resources and historic properties protection and restoration	USDA
ESF # 12 Energy	Energy infrastructure assessment, repair, and restoration Energy industry utilities coordination Energy forecast	DOE
ESF # 13 Public Safety and Security	Facility and resource security Security planning and technical and resource assistance Public safety/security support Support to access, traffic, and crowd control	DOJ

⁹⁴ United States, Office of Homeland Security, *The National Response Plan*, 11.

ESF # 14 Long Term Community Recovery and Mitigation	Social and economic community impact assessment Long-term community recovery assistance to States, local governments, and the private sector Mitigation analysis and program implementation	DHS/FEMA
ESF # 15 External Affairs	Emergency public information and protective action guidance Media and community relations Congressional and international affairs Tribal and insular affairs	DHS

Figure 5. ESFs Identified in NRP.⁹⁵

It is important to note that, in the third column in this chart, DoD is not identified as a Primary Agency (PA) to any of the fifteen ESFs. Therefore, every request to support these Primary Agencies in the execution of the ESFs would have to follow the procedures identified in the vignettes studied in Chapter III. Since DoD is not directly assigned the responsibility or Primary Agency for any of these ESFs, almost all DoD responses to these functions are conducted via contingency or ad hoc planning, and require detailed coordination for sourcing and mobilization of forces and assets. Contingency sourcing means that forces and capabilities are not readily available, trained, or equipped for this particular mission; units, therefore, are sourced via contingency process that will identify the most readily available and prepared units for the mission. Chapter V will address how DoD can overcome the contingency ad hoc sourcing process.

Although Chapter III made it clear that the approval process is slow and cumbersome, the challenge does not lie solely in the approval process, but also in the timely and effective notification, preparation, deployment, and employment of military capabilities in support of these emergency functions. The Center for Strategic and International Studies stated in July of 2006 in its study, *The Future of The National Guard and Reserves: The Beyond Goldwater-Nichols Phase Three Report*, that DoD, as currently organized, “lacks a structured and orderly process to flow military capabilities rapidly to the areas that need them most.”⁹⁶ Figure 6 depicts the time required to move troops into the Joint Operation Area during Hurricane Katrina operations.

⁹⁵ United States, Office of Homeland Security, *The National Response Plan*, 12.

⁹⁶ Wormuth et al., *The Future of the National Guard and Reserves*.

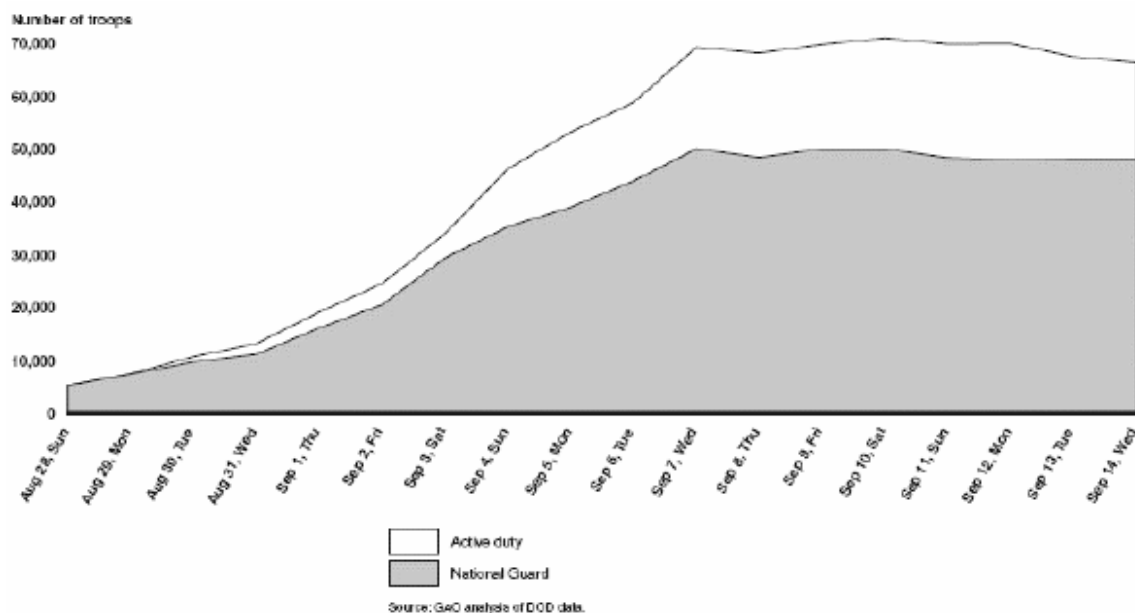


Figure 6. Buildup of Forces Supporting Hurricane Katrina Operations.⁹⁷

Although the DoD response to Hurricane Katrina is a poor model to follow because of the political ramblings that slowed the federal response, it highlighted some practical implications of DoD's limited approach to civil support missions, despite being "...the largest, fastest deployment of military forces for a civil support mission in our nation's history."⁹⁸ An analysis of Figure 6 can infer that it took ten days from the outset of the catastrophic event before DoD had an appropriate level of troops to accomplish the DSCA mission requirements levied by the National Response Plan Request for Assistance and DoD Request for Forces processes. These processes require such an extensive validation, approval and execution procedure that it might delay the effective employment of military assets for up to ten days. Furthermore, it can be argued that a catastrophic event like Katrina is not typical of the most challenging civil support scenario DoD may face in the future. "Katrina announced herself in advance, there were

⁹⁷ Government Accountability Office, *Hurricane Katrina: Better Plans and Exercises Needed to Guide the Military's Response to Catastrophic Natural Disasters*, GAO-06-643: May 2006, 21

⁹⁸ See testimony of Assistant Secretary of Defense for Homeland Defense Paul McHale before the Senate Committee on Homeland Security and Governmental Affairs, *Hearing on The Defense Department's Role In Hurricane Katrina Response*, February 9, 2006.

no other major events taking place inside the United States, and the hurricane did not involve a weapon of mass destruction.”⁹⁹ The scenarios analyzed in Chapter III can present greater challenges to a DoD civil support response, since they can require assistance in a broader geographical area and pose a contamination threat to the response forces.

C. EMACS WILL NOT SOLVE THE PROBLEM

The analysis of the Request for Assistance process stated that when any incident occurs, response begins at local jurisdictions. If local responders are overwhelmed, resources are requested from the state level through the state Emergency Operations Center. Once state National Guard capabilities have been exhausted, the State Coordinating Officer will enable any Emergency Management Agreement Compacts (EMAC) arrangements the affected state may have with neighboring states, for the use of their National Guard or civilian capabilities.

The Emergency Management Assistance Compact is a congressionally ratified organization that provides a framework for interstate mutual aid.¹⁰⁰ Through EMAC, a disaster-impacted state can request and receive assistance from other member states quickly and efficiently through a governor-declared state of emergency. The EMAC legislation solves the problems of liability and responsibilities of cost, since the affected state will be responsible for reimbursement of the cost of the response.¹⁰¹

EMAC agreements also govern the use of other state National Guard assets and forces. Under this agreement National Guard forces of a supporting state can be deployed to support and affected state and would be placed under the command and control of the Adjutant General (TAG) of the affected state’s National Guard.¹⁰²

⁹⁹ Wormuth et al., *The Future of the National Guard and Reserves*, 67.

¹⁰⁰ Emergency Management Assistance Compact website, <http://www.emacweb.org/> (Accessed July 1, 2007).

¹⁰¹ Ibid.

¹⁰² Wormuth et al., *The Future of the National Guard and Reserves*, 75.

The EMAC process is a practical concept that creates a Guard network of civil support capabilities. Unfortunately, Guard capabilities are leveraged in the same way as Title 10 assets are for DoD global missions. Therefore, National Guard capabilities are not always resident in state garrisons but may be deployed to the Middle East in support of Operation Iraqi Freedom or Operation Enduring Freedom.¹⁰³

The gap in available National Guard capabilities is evident in weekly reports of hurricane state preparedness provided to the National Guard Bureau Directorate of Operations by the Adjutant Generals of each state. Figure 7 depicts the National Guard capabilities the State of Louisiana has identified as a requirement. The chart depicts available capabilities classified by the category of the hurricane in question. The color scheme depicts the preparedness level, with green meaning the state has the assets required for that category of hurricane, and red meaning the assets are not available. The right side of the chart depicts the support capabilities that will be required by the state EMAC and which state will provide the support.

A category 4 or 5 hurricane will produce the greatest level of devastation and, therefore, will probably require a more extensive DoD civil support mission. Unfortunately, as seen in Figure 7, when DoD capabilities will be needed the most, the EMAC process is incapable of providing the assets the affected state will require. Furthermore, the EMAC framework is based on providing support from neighboring states, thereby expediting the arrival of assistance and maintaining the DoD assets under the operational control of the TAG and the governor. In a catastrophic disaster like the scenarios studied in Chapter III, it is possible that the neighboring states will also be affected by the catastrophic incident, and therefore in need of assistance themselves. Furthermore, the state infrastructure may be incapable of providing command and control, logistical support, and sustainment for EMAC capabilities, based on the devastation of the catastrophic incident. A review of other hurricane state slides also finds similar issues when facing catastrophic hurricane scenarios.

¹⁰³ Pauline Vo, "Have National Guard Deployments in Iraq Eroded States' Disaster Response Capability?" *Pew Research Center Publications*, stateline.org, May 2007, <http://pewresearch.org/pubs/476/national-guard-disaster-response> (Accessed June 12, 2007).

The EMAC process highlights the interdependencies of state civil support requirements. Although states depend on each other for the success of the EMAC process, this dependency can be leveraged more efficiently to ensure that a wider range of state partners can enjoy the benefits of EMACS. Chapter V will explain how the recommended framework can leverage EMAC type capabilities to a wider range of states while freeing up other EMAC resources for warfighter needs. This concept will be the basis of the recommended framework.

Support Mission Essential Tasks	CA T 1	CA T 2	CA T 3	CA T 4	CA T 5	EMAC Reqmts	EMAC Resources Available	EMAC Provider
C2						JTF Staff Support (PAO, SJA, CHP)	None	FL, VA, AL,
Transport						None	None	
Signal						LMR Fly Away Equip Pkg (NGB) / (DHS) SATCOM Terminal Hub, ISCIS Team, ATC TAC Tower, 1 Signal Force Package	None	KY, FL, GA, AL, SC,
Aviation						Up to 10 ea CH-47, Up to 2 OH-58, Up to 4ea UH-1 w/hoist, Up to 4ea UH-60 w/hoist, Up to 4 ea UH-60, Up to 2 ea C-23 w/crews	None	KY, NC , MS, AL, NY, PA, OK, SC (ATC), TN (TALC), NV (ISR)
Logistics						2 CO size LOG Force packages (AR& OK), Up to two 600 pax BN Distribution (POD OPS) (CAT 2-3) (AR& OK), Up to three 600 pax BN Elements CAT 4-5 (OK, & TN)	None	FL, SC, GA, VA, AL
JRSOI							None	
Power Generation							None	
Security						Up to two 600 pax BN (CAT 2-3) (AR), Up to three 600 pax BN Elements CAT 4-5 (OK, & TN)	None	FL, AL, GA, TN, KY,
Engnrng							None	
Medical							None	
Maint							None	
Chemical (WMDCST CERFP)						Up to 6 CSTs (TX, AR, OK, AL, MS, & TN)	None	FL, SC, VA, GA, AL

Figure 7. EMAC National Guard Capabilities for Louisiana. ¹⁰⁴

¹⁰⁴ NGB J3 Hurricane State Preparation VTC, Power Point Brief, June 2007.

D. CURRENT DOD INITIATIVES TO IMPROVE DSCA RESPONSE

Numerous national-level strategy and policy documents have addressed a need for DoD to take a more proactive approach to DSCA response operations. As early as 1997 the National Defense Panel ascertained that DoD should focus efforts to “... provide forces organized and equipped for training of civil agencies and the immediate reinforcement of first-response efforts in domestic emergencies. They would focus on management of the consequences of a terrorist attack (to include weapons of mass destruction) and natural disasters.”¹⁰⁵ After the September 11 attacks DoD efforts in DSCA operations took on renewed urgency. The Department of Defense *Strategy for Homeland Defense and Civil Support*, published in June 2005, noted that “the nation needs to focus particular attention on better utilizing the competencies of the National Guard and Reserve Component organizations.”¹⁰⁶ Following the DSCA operations in support of Hurricane Katrina, there has been yet another exigency for organization and development of DoD DSCA operations. The DoD *Homeland Defense and Civil Support Strategy* makes clear that DoD will play a key role in responding to events here at home, “when directed by the president or the secretary of defense,” using “military force and DoD capabilities designed for use in expeditionary war fighting missions.”¹⁰⁷

Since Hurricane Katrina, refinement of the DSCA mission has been led by NORTHCOM and has followed continuous progression. Many of these efforts have been guided by the recommendations of the report on the *Federal Response to Hurricane Katrina: Lessons Learned*. The next few paragraphs will summarize the latest initiatives in the realm of DSCA operations aimed at improving and expediting the Request for Assistance and Request for Forces processes.

¹⁰⁵ National Defense Panel, *Transforming Defense: National Security in the 21st Century*, December 1997, 54–55.

¹⁰⁶ Department of Defense, *Strategy for Homeland Defense and Civil Support*, June 2005, 37–38.

¹⁰⁷ *Ibid.*, 19.

1. DCOs Assigned to FEMA Regional Offices

In response to the Katrina lessons learned report recommendation number four; “DHS should develop and implement Homeland Security Regions that are fully staffed, trained, and equipped to manage and coordinate all preparedness activities and any emergency that may require a substantial federal response,”¹⁰⁸ DoD has collocated a single point of contact at all FEMA regional offices. This position is now permanently staffed by a National Guard colonel who serves as the Defense Coordinating Officer (DCO) during domestic response incidents. For a small-scale DoD response, the Commander of USNORTHCOM can designate the DCO as a Joint Force Commander (JFC).¹⁰⁹ In this capacity, the DCO can provide command and control (C2) for the entire DSCA effort as long as the response force does not exceed the DCO’s C2 capability.¹¹⁰ However, other than a small administrative staff known as the Defense Coordinating Element (DCE) the DCO does not have any troops to accomplish the DSCA mission until the Request for Assistance or Request for Forces process has been completed. Although the DCO is key to facilitating this process, his position has minimal impact in the rapid deployment and employment of military capabilities in response to a Request for Assistance.

2. Base Support Installations and Operational Staging Areas

In response to the Katrina Lessons learned report recommendation number 21 (a): “DHS should coordinate with other federal agencies and states to identify physical locations around the country that could be used as crisis support centers or bases for receiving, staging, and integrating emergency management resources during disasters,”¹¹¹ DoD has identified procedures for the use of military installations as Base

¹⁰⁸ The White House, *Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: The White House, 2006), 89.

¹⁰⁹ U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities* (Washington, DC: Government Printing Office, 18 February 1997): vi (Under revision: will be re-issued under the name *Defense Support of Civil Authorities*).

¹¹⁰ *Ibid.*, vi.

¹¹¹ The White House, *Federal Response to Hurricane Katrina*, 94.

Support Installations (BSI). When directed, the military services will provide installations based on Service Components nomination of appropriate installations as BSIs.¹¹² However, BSIs provide military-to-military support to DoD assets only.¹¹³ If FEMA requires DoD support for a logistical mobilization center, it will need to follow the request process. Although the BSIs are intended for military-to-military support only, this process has alerted the services to the potential for the use of their facilities as a FEMA operational staging or mobilization area. Despite this being a step in the right direction, DoD has not provided any guidance for the services or installation commanders to prepare specific FEMA support plans. Therefore, in the event of a BSI being used as a FEMA mobilization center, all interactions will be ad hoc and unrehearsed unless this specific installation has previously participated in a DSCA national-level exercise (Ardent Sentry, Vigilant Shield).

3. Joint Staff Standing DSCA Execute Order

In response to Katrina lessons learned report recommendation number 24; “DoD and DHS should plan and prepare for a significant DoD supporting role during a catastrophic event,”¹¹⁴ DoD has implemented a significant initiative.

This initiative has been guided by the development of the chairman of the Joint Chiefs of Staff (CJCS) Standing Defense Support of Civil Authorities Execute Order or CJCS Standing DSCA EXORD. This EXORD expands the NORTHCOM commander’s authority. It enables DoD to lean forward and initiate DSCA response preparations without having statutory authority, such as a Stafford Act declaration. The EXORD organizes DoD response to a domestic incident in a three-tier framework that allows DoD to push forces or capabilities forward before the Request for Assistance staffing process is complete.¹¹⁵

¹¹² U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities*.

¹¹³ *Ibid*, 7.

¹¹⁴ The White House, *Federal Response to Hurricane Katrina*, 94.

¹¹⁵ Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities Execute Order* (Washington, DC: June 2007) 6.

A summary of the key provisions of the 2007 CJCS Standing DSCA EXORD is provided below:

- 1) Tier 1 (Assigned Capabilities):¹¹⁶ The commander USNORTHCOM has authority to deploy Tier 1 forces and can employ them upon an approved Request for Assistance and notification of SECDEF:
 - a) DCO / DCE w/augmentation
 - b) Commander's Assessment Element (assesses damage and provides recommendations for capability requirements)
 - c) Task Force or Joint Task Force Headquarters (provides Command and Control capabilities for follow on forces)
- 2) Tier 2 (Pre-Identified Capabilities):¹¹⁷ The commander USNORTHCOM can place these pre-identified capabilities on a twenty-four-hour Prepare To Deploy Order (PTDO) and can deploy and employ them upon an approved Request for Assistance and notification of SECDEF:
 - a) DoD Installations – Federal Operational Staging Areas, Mobilization Centers, BSIs
 - b) Modular Airborne Fire Fighting Systems (8)
 - c) Rotary Wing Support: Medium (8) / Heavy (4)
 - d) Communications Support Packages (three sizes)
 - e) Fixed Wing Search Aircraft (1 – P3C)
 - f) Patient Movement Capability to support evacuation (capable of evacuating five hundred patients in twenty-four hours)
 - g) DoD Civilian Firefighters
 - h) EMEDS (Forward Surgical Team)
 - i) USTRANSCOM and Defense Logistic Agency personnel to support a Deployable Distribution Operations Center (elements of a JTF-PO discussed in Chapter III)
- 3) Tier 3 (Large Scale Event Capabilities):¹¹⁸ The commander USNORTHCOM can plan on using these forces however the Prepare to Deploy Order can not be given

¹¹⁶ Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities*, 7.

¹¹⁷ Ibid., 8.

¹¹⁸ Ibid., 10.

until a validated Request for Assistance is approved. Furthermore, deployment and employment requires SECDEF approval:

- a) Catastrophic / Large Scale Initial Entry Force (includes one Ground Brigade / approx seventy-five hundred troops)
- b) Incident, Awareness and Assessment Packages (Authorizes the use of traditional intelligence capabilities for non-intelligence purposes in support of DSCA missions in accordance with the exemptions to the Posse Comitatus Act)
- c) Joint Personnel Recovery Center Package (Conducts joint air rescue operations, coordinates, and de-conflicts with other federal, state, and local rescue agencies)

Note: There are numerous other capabilities in this tier, however, the three mentioned above constitute the bulk of the assets added in this tier.

Although the CJCS Standing DSCA EXORD allows the NORTHCOM commander more leeway and autonomy in DSCA operations it does not accelerate the Request for Assistance or the Request for Forces processes, it requires they be completed following the normal process, before sourcing units and issuing prepare to deploy orders. Furthermore, The CJCS EXORD clearly states that Tier 3 forces will not be sourced before an approved Request for Assistance is processed and it further allows up to twenty-four hours for JDOMs to source these forces.¹¹⁹ Tier 2 forces have twenty-four hours to report prepared to deploy once they have been notified by the supported commander and Tier 3 forces have ninety-six hours upon notification of SECDEF approval.¹²⁰ An analysis of this timeline identifies that Tier 1 and Tier 2 forces can potentially be available and/or employed in DSCA operations in less than forty-eight hours however Tier 3 forces will require a minimum of 120 hours before employment (adding twenty-four hours for a Request for Assistance administrative process to work from the local first responder that needs the assistance to the SECDEF for approval and mobilization to affected area and assuming the JDOMS sourcing process will be instantaneous). This analysis asserts that in a catastrophic hurricane disaster situation, where preparation can be initiated prior to an event, the CJCS Standing DSCA EXORD

¹¹⁹ Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities*, 10, 13.

¹²⁰ Ibid.

can be an effective DoD response framework. Unfortunately in an un-announced catastrophic scenario, like the ones studied in Chapter III, the CJCS EXORD will require five days to have an appropriate level of DoD forces employed in essential DSCA operations. The CJCS Standing DSCA EXORD process highlights that if DSCA requirements can be pre-planned and pre-coordinated the response process is expedited. Therefore, NORTHCOM has been working with JDOMS and FEMA to develop a set of Pre-Scripted Mission Assignments (PSMA).

4. Pre-Scripted Mission Assignments

The PSMA's expedite the validation and coordination of Mission Assignments by pre-coordinating requests for specific capabilities. For these specific capabilities the scope, dollar amount, and details are worked out with FEMA beforehand.¹²¹ This allows the Defense Coordinating Officer to have a pre-coordinated plan sitting on the shelf that can be quickly validated and submitted to the Joint Director of Military Support for SECDEF approval. Furthermore, the mission execution can be planned beforehand. Figure 8 provides a list of twenty-five mission areas that have been identified as PSMA's. An additional twenty-eight PSMA's have been coordinated between FEMA and the US Army Corps of Engineers.

PSMA's are probably the only DSCA development since Hurricane Katrina that can actually expedite portions of the Request for Assistance process. Unfortunately, PSMA's do nothing to accelerate the DoD approval, sourcing, deployment, and employment of capabilities. Furthermore, the CJCS Standing DSCA EXORD states that "deployment of assigned assets in support of DSCA must not interfere with the primary DoD mission unless otherwise directed by the president or SECDEF."¹²² This statement clearly allows DoD an avenue to not source capabilities required under PSMA agreements if they are needed for a "primary DoD mission." The DoD does source a

¹²¹ FEMA, *Development of Pre-Scripted Mission Assignments*, FEMA website, <http://www.fema.gov/media/archives/2007/061207.shtm> (Accessed April 15, 2007).

¹²² Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities*, 7.

limited amount of forces that are trained in civil support missions. These forces are predominantly prepared to respond to Chemical, Biological, Radiological, Nuclear, and high Explosive (CBRNE) incidents.

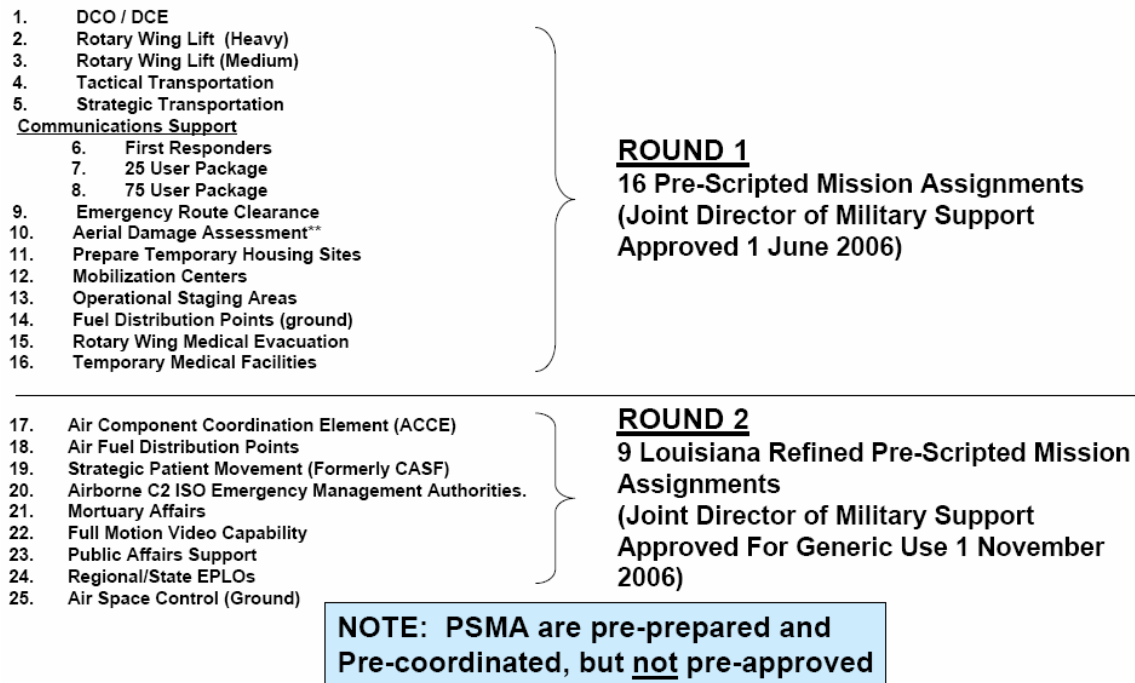


Figure 8. Pre-Scripted Mission Assignments.¹²³

5. CSTs, CCMRFs, and CERFPs

The National Guard has led DoD in the sourcing and training of forces for civil support missions. The weapons of Mass Destruction Civil Support Teams (WMD-CSTs) are the best prepared, trained, and equipped forces in the DoD for civil support missions. The WMD-CSTs consist of specialized units designed to assist first responders in detecting the presence of chemical, biological, or nuclear materials and support the development of appropriate consequence management decisions.¹²⁴ These units were

¹²³ Don Reed, *Pre-Scripted Mission Assignments* (2007 National Emergency Preparedness Liaison Officers Conference, February 2007), Power Point presentation, slide 4.

¹²⁴ Wormuth et al., *The Future of the National Guard and Reserves*, 71.

developed by DoD only after they were mandated by Congress in 1998. By the end of fiscal year 2007, every state in the country should have a WMD-CST that is trained and equipped for this mission.¹²⁵

The National Guard has also developed specialized CBRNE units called CBRNE Enhanced Response Force Packages (CERFPs). These units consist of approximately one hundred twenty-five troops that can provide medical triage, mass decontamination, and search and rescue in contaminated areas.¹²⁶ Congress has authorized seventeen of these packages to be located in each FEMA region, plus one in Hawaii and one in West Virginia, near the National Capital Region (NCR).¹²⁷

Additionally, DoD is developing a predominantly active duty Title 10 CBRNE Consequence Management Response Force (CCMRF). These units would be capable of providing CBRNE, medical, and support units that are organized into three task forces with a total of approximately thirty-six hundred troops.¹²⁸ These forces would report to Joint Task Force Civil Support and fall under the command and control of the NORTHCOM commander.

WMD and CBRNE efforts are an outstanding example of specialized capabilities that DoD can leverage for civil support operations. Unfortunately, CST, CERFP and CCMRF forces do not receive any significant specialized civil support training for these missions.¹²⁹ Furthermore, they are not focused exclusively on these missions for any specified period of time therefore they are susceptible to deployments in support of warfighting efforts.¹³⁰ Additionally, even when activated for DSCA operations they do

¹²⁵ Wormuth et al., *The Future of the National Guard and Reserves*, 70.

¹²⁶ Ibid., 72.

¹²⁷ Ibid., 72.

¹²⁸ Chris Hornbarger, *Katrina Lessons-Learned: National Contingency Planning for Domestic Incidents*, September 23, 2005 Memorandum, [http://www.dean.usma.edu/sosh/Academic_Program/Courses/ss493/LESSONS/Military Role in Homeland Security/Memo_DoD-DHS_Cooperation.pdf](http://www.dean.usma.edu/sosh/Academic_Program/Courses/ss493/LESSONS/Military_Role_in_Homeland_Security/Memo_DoD-DHS_Cooperation.pdf) (Accessed May 1, 2007).

¹²⁹ Wormuth et al., *The Future of the National Guard and Reserves*, 71.

¹³⁰ Ibid., 70.

not have any organic airlift capabilities therefore their employment is slowed by their dependence on Request for Forces for airlift support.¹³¹

E. CONCLUSION

1. Current Efforts are Not Supported by an Efficient Framework

NORTHCOM led efforts to prepare for domestic incidents are laudable yet insufficient since they do not have an efficient framework to support them. The CJCS Standing DSCA EXORD, Pre-Scripted Mission Assignments, and CBRNE Consequence Management Response Forces are all prudent planning efforts to enable a DoD response to multiple and/or simultaneous events. In spite of these efforts, the analysis to this point has highlighted that, despite being the only federal department capable of mobilizing a massive support network to respond to a catastrophic event,¹³² the “military has not organized, trained, or equipped its active or reserve forces to reflect civil support as a priority mission.”¹³³ The creation of USNORTHCOM without assigned forces requires the combatant commander responsible for DSCA to request forces after the event requiring the forces has occurred. Furthermore, the National Response Plan not assigning DoD lead responsibilities for any of the fifteen Emergency Support Functions (ESFs) keeps DoD from planning a framework that can immediately support any of the ESFs since they are not responsible for its execution. Additionally, the refusal of the CJCS Standing DSCA EXORD to source forces prior to an approved Request for Assistance points to a DoD doctrinal reluctance to accept civil support missions as a force structure requisite.

2. Way Ahead

Although Lieutenant General Inge, former deputy commander of NORTHCOM, stated at a March 2006 Senate hearing that NORTHCOM “stands ready to assist primary

¹³¹ Wormuth et al., *The Future of the National Guard and Reserves*, 71.

¹³² With the exception of some limited CCMRF capabilities discussed earlier in this chapter.

¹³³ Wormuth et al., *The Future of the National Guard and Reserves*, 65.

agencies in responding quickly to man-made and natural disasters as directed,”¹³⁴ much work remains to be done before NORTHCOM has forces available, trained and equipped to effectively coordinate a DoD response to a domestic catastrophic event of the scope of the scenarios studied in Chapter III.

The next chapter will recommend a framework of DoD support to civilian agencies that can best leverage DoD capabilities and resources for DSCA missions. This framework will require DoD to re-structure forces and properly train and equip them for these missions. This chapter will provide recommendations on how to apply this concept to national policy and DoD directives to clarify the use of military forces in domestic incidents.

¹³⁴ Lieutenant General Joseph Inge, Testimony before the Emerging Threats and Capabilities Subcommittee of the Senate Armed Services Committee, March 10, 2006.

V. SUCCESS REQUIRES CHANGE

The Department of Defense should recognize civil support, particularly in response to a catastrophic event, as a central mission for which it must plan, program and budget.

— *Commission on the National Guard and Reserve, May 2007*

A. INTRODUCTION

To recap the argument thus far, this review of the Request for Assistance and the Request for Forces processes concluded that the current mechanism for requesting, validating, and approving the use of DoD assets and capabilities is inherently slow and ineffective. Furthermore, along with the less-than-efficient approval process, military forces and capabilities are not postured for a timely and effective notification, preparation, deployment, and employment to a civil support response.

The problem, however, is not due necessarily to impediments to military operations from civilian authorities. As argued in Chapter II, current legal and statutory guidelines for military civil support missions provide a framework for working constructively with state and local jurisdictions. Rather than recommending that civil support operations be centralized under DoD control, the military pieces of the civil support puzzle need to be reorganized and restructured to accomplish this mission effectively. This chapter expands on that argument by presenting a framework for improvement in a critical element in the military role — that of validating the use of military forces as well as preparing a DoD effective response system.

B. TWO-STEP PROCESS

This thesis has outlined the military civil support process into two distinct steps. The first step is the Request for Assistance and Request for Forces processes or request, validation and approval step. The second step is the execution step or preparation, notification, deployment, and employment step.

1. Step 1 Changes

Although the Defense Coordinating Officer provides a DoD contribution to how the Request for Assistance process works, the military cannot control the “who, what, when, and where” of the request process. The Request for Assistance process, while complex, ensures the statutory jurisdictions of state and local authorities. In step 1, DoD can only control the validation process of the assistance request and the internal DoD approval process for the request. The problem is, that in controlling its own processes, DoD has not yet fully incorporated the needs of civilian support into its plans.

DoD’s control of the validation process traditionally uses the criteria of legality, lethality, risk, cost, appropriateness, and readiness to validate requests for DoD support. To some extent, these criteria give greater weight to established military missions. For instance, the CJCS Standing DSCA EXORD affirms that “deployment of assigned assets in support of DSCA must not interfere with the primary DoD mission unless otherwise directed by the president or SECDEF.”¹³⁵

In its evolving homeland defense role, however, new criteria may need to be developed, as civil support becomes an equal DoD priority. The NORTHCOM commander, General Victor Renuart, recently argued for this higher placement of civil support in the priorities list. At a recent Senate hearing, the general argued that “...disasters of significant magnitude have the potential to considerably interrupt governmental operations and emergency services to such an extent that national security could be threatened.”¹³⁶ If natural or manmade disasters can threaten national security, DoD has a responsibility and duty, as the nation’s protectors, to be prepared to utilize military capabilities to both deny a threat and to mitigate its consequences. The current DoD Strategy for Homeland Defense and Civil Support also affirms that securing the U.S. homeland is “the first among many priorities.”¹³⁷

¹³⁵ Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities Execute Order* (Washington, DC: June 2007), 7.

¹³⁶ General Victor Renuart, Commander U.S. Northern Command, Statement before the Senate Committee on Homeland Security and Governmental Affairs, July 19, 2007, 7.

¹³⁷ Wormuth et al., *The Future of the National Guard and Reserves*, 78.

If DoD is to fully embrace the homeland defense mission, the validation criteria described above and outlined in DoDD 3025.15 need to be modified to reflect civil support missions. A new DoD framework would establish a process that satisfies both warfighter and civil support needs.

The National Strategy for Aviation Security (NSAS), published in March 2007, recognized this need for a more appropriate set of criteria, but it was limited to the military's support role in an Air Domain emergency. The NSAS established a set of five criteria to be used by any agency or department that has a response role in this domain:¹³⁸

- Existing law
- Desired outcome
- Response capabilities required
- Asset availability
- Authority to act

These criteria are applied across all responders to guide the Primary Agency in deciding what agency is best suited to accomplish a specific role. These criteria aid the Primary Agency in maximizing the use of capabilities across all federal departments and agencies by focusing the decision on the effectiveness of a capability to achieve a desired outcome, rather than restricting action that is based on an assumed risk, cost, or subjective judgment of appropriateness.¹³⁹

The National Response Plan would benefit from incorporating this new set of criteria. Modeled after the National Strategy for Aviation Security, the Principal Federal Official would be able to decide what agency should respond and with what capabilities. Furthermore, DoD should cease using the current validation criteria and allow the Principal Federal Official to make the decision to use military capabilities for civil support missions based on the threat scenario and the outcome desired. This change in

¹³⁸ Department of Homeland Security, *National Strategy for Aviation Security* (Washington, DC: March 2007) 23, <http://www.whitehouse.gov/homeland/aviation-security.html> (Accessed May 5, 2007).

¹³⁹ *Ibid.*, 23.

policy does not require DoD to relinquish command and control of military forces. It simply allows the Principal Federal Official to expedite the decision process to use a certain capability.

If DoD is not willing to delegate this authority to a Principal Federal Official, it should at least limit its decision criteria to legality and readiness. The issue of legality in the use of military forces in domestic incidents stems from misinterpretations of the Posse Comitatus Act. Legality should be measured against the exceptions to the Act that were outlined earlier in this thesis. Furthermore, the recent changes to the Insurrection Act or Enforcement of the Laws to Restore Public Order (ELRPO) also highlight concerns with respect to the legality of the use of military forces and capabilities for civil support missions. If the president, for instance, invokes the authorities granted to his office under ELRPO, he may provide supplies, services, and equipment: to the extent state authorities are unable; may only act until the state is able; and may only act to the extent it does not interfere with military operations.¹⁴⁰

Readiness is also key. At a hearing before the Senate Committee on Homeland Security and Governmental Affairs, Pete Verga, acting Assistant Secretary of Defense for Homeland Defense and Americas Security Affairs (ASD/HD & ASA) stated, “DoD, at the direction of the president or the secretary of defense, as appropriate and consistent with the law and the imperative to maintain military readiness, will provide critical CBRNE consequence management support to civil authorities as part of the comprehensive national response to a CBRNE incident.”¹⁴¹ Mr. Verga’s reference to the “imperative to maintain military readiness” is directly associated with the definition of the readiness criteria provided in DoDD 3025.15. According to this DoD directive, readiness is the consideration of the implications of authorizing and undertaking a domestic support mission on the warfighting capabilities of the force.¹⁴²

¹⁴⁰ United States Congress, *John Warner Defense Authorization Act of 2007*.

¹⁴¹ Peter Verga, Acting Assistant Secretary of Defense for Homeland Defense and Americas Security Affairs, Statement before the Senate Committee on Homeland Security and Governmental Affairs, July 19, 2007, 2–3.

¹⁴² U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities* (Washington, DC: Government Printing Office, February 18, 1997) 3 (Under revision; will be re-issued under the name *Defense Support of Civil Authorities*).

As crucial as this focus on readiness is, however, it implies that warfighter readiness outweighs domestic civil support, even when the latter directly results from a level of damage that rises to the level of a risk to national security. The new homeland defense and civil support mission is now well-documented and challenges this apparent policy priority dilemma. DoD's reluctance to accept civil support as a central mission stands in opposition to numerous national policy analyses and directives.¹⁴³ Readiness as criteria for the use of military forces in a domestic incident should be redefined to facilitate, rather than impede, support to civilian authorities. Criteria should be used that evaluate the readiness or preparedness of military forces to effectively employ capabilities in domestic incidents — instead of serving as a barrier to employment in the homeland due to risk of sacrificing combat readiness. If readiness was used in this context, DoD would structure forces in a manner that would prepare them for service in combat operations overseas as well as domestic incidents in the homeland. Such preparation would lead to a substantial restructuring of military planning and force deployment.

2. Step 2 Changes

In March 2006, the latest report on the Commission on the National Guard and Reserves stated that "although the current DoD strategy for homeland defense and civil support affirms that securing the U.S. homeland is "the first among many priorities," DoD in fact has not accepted that this responsibility requires planning, programming and budgeting for civil support missions."¹⁴⁴ Planning, programming and budgeting are essential requirements in the preparation and readiness of military forces to provide assistance to civil authorities in domestic events. The budgeting piece of this puzzle is outside the scope of this thesis, and is one area that requires further study. For the purposes of this analysis, military and congressional leaders would realign the defense

¹⁴³ General Victor Renuart, Commander U.S. Northern Command, Statement before the Senate Committee on Homeland Security and Governmental Affairs, July 19, 2007, 3–4.

¹⁴⁴ Wormuth et al., *The Future of the National Guard and Reserves*, 78.

budget to support a redesigned planning and programming model that can improve the structure of military forces to provide DSCA.

C. NEW MILITARY FORCE STRUCTURE

Earlier chapters in this thesis contained a review of the mission and composition of DSCA EXORD Tier 1–3 forces, CST, CCMRFs, CERFPs, and several other military dual purpose forces like the JTF-PO. Common to all these efforts was the lack of a requirement for these forces to receive specific training for civil support missions, as well as the requirement for these forces to be equipped and able to respond in a timely manner. The Center for Strategic and International Studies (CSIS) latest report on the *Commission on the National Guard and Reserve*, as well as the RAND Corporation report, *Hurricane Katrina, Lessons for Army Planning and Operations*, have recently called for a restructuring of military capabilities to meet these civil support missions.

Central to these recommendations for change is a focus on a regional framework for military support to civil authorities.¹⁴⁵ This regional framework would allow for military capabilities to train with local first responders in their areas of responsibility as well as spread DoD CBRNE capabilities across the homeland in an effort to posture them for a quicker response. This suggested regional framework would be similar to the current EMAC process, which highlights the interdependencies of state civil support requirements. Although states depend on each other for the success of the EMAC process, this dependency can be leveraged more efficiently to ensure that a wider range of state partners can enjoy the benefits of an EMAC-like civil support structure. The CSIS and RAND models are the basis for our recommended framework. In the following paragraphs we will explain how our recommended framework can leverage EMAC-type capabilities to a wider range of states while freeing up other EMAC resources for warfighter needs. This concept will be the basis of our recommended framework.

¹⁴⁵ For a more detailed description of these regional frameworks, see Wormuth et al., *The future of the National Guard and Reserves*, Washington, DC: CSIS, July 2006, 74 and Davis et al., *Hurricane Katrina, Lessons for Army Planning and Operations* (Washington, DC: RAND, January 2007):. 54–58.

1. The CSIS Model

The Center for Strategic and International Studies report recommends that National Guard units be postured under the control of regional state joint force headquarters in ten regional Civil Support Forces to match the ten FEMA regions across the country.¹⁴⁶ This concept would draw forces and capabilities only from the National Guard and Reserve forces.¹⁴⁷ This report recommends these forces receive specific civil support training and exercise regularly for this mission. Furthermore, it recommends these forces be organized in three to four month alert windows where they would be available only for civil support missions and not eligible to deploy overseas.¹⁴⁸ Additionally, this model identifies a need for pre-identified airlift support to ensure deployment timelines can be met.¹⁴⁹ Command and Control of these forces would be exercised by the state joint force headquarters, which would be under the command of the adjutant general of the state in which they are deployed.¹⁵⁰

2. The RAND Model

The RAND report also recommends a regional approach that utilizes National Guard forces in a regional taskforce construct with Civil Support Battalions (CSBs) that are trained for HLS missions.¹⁵¹ These battalions would be ready for deployment within eighteen hours of notification and would not be available for deployment overseas.¹⁵² The RAND report recommends four alternatives for command and control: separate federal and state forces, dual status commanders, NORTHCOM in command of forces, and State Joint Force Headquarters TAGs in command of forces.¹⁵³

¹⁴⁶ Wormuth et al., *The Future of the National Guard and Reserves*, 74.

¹⁴⁷ Ibid, 74–78.

¹⁴⁸ Ibid, 79.

¹⁴⁹ Ibid, 78.

¹⁵⁰ Ibid, 74.

¹⁵¹ Davis et al., *Hurricane Katrina, Lessons for Army Planning and Operations* (Washington, DC: RAND, January 2007): 54.

¹⁵² Ibid., 54.

¹⁵³ Ibid., 63–67.

3. Putting it all Together

The RAND and CSIS models are a great first step in the development of DoD efforts to accept civil support as a critical mission requirement. Unfortunately, they only focus on the structure of National Guard and Reserve forces to support these missions. In our earlier analysis we highlighted that DoD support missions in catastrophic domestic events will require the deployment and employment of National Guard (CST and CCMRF), Reserves (medical and support forces), and active duty, Title 10 forces (CBIRF, JTF-PO). If there is to be an organized and coordinated training, equipping, notification, deployment and employment of these individual forces, they must be trained, equipped, and organized in a coordinated framework.

D. INTEGRATED DOD EFFORT

The model proposed here integrates the CSIS and RAND models with the EMAC and the Joint Staff Standing Defense Support of Civil Authorities Executive Order processes to incorporate the training and deployment of active duty Title 10 forces. This model is a compromise that will integrate the regionalization idea of the RAND model with the CSIS alert windows concept. It is designed to work across the entire DoD force structure to ensure the military can effectively support all fifteen Emergency Support Functions identified in the National Response Plan and continue to expand the Pre-Scripted Mission Assignment process.

The United States Air Force (USAF) Air Expeditionary Force concept is the bedrock of this model's framework. Doctor William Dowdy of the Air Force Research Institute quotes Richard G. Davis of the Air Force History and Museums Program in his analysis of Air Expeditionary Forces I–IV, *Testing the Expeditionary Force Concept*, as saying that “the painfully slow response to the outbreak of the Korean War led to the USAF's first attempt to institutionalize a *rapid* response force.”¹⁵⁴ The Air Force has been experimenting with organizing a force structure that can rapidly respond to

¹⁵⁴ William Dowdy, *Testing the Expeditionary Force Concept: An Analysis of AEFs I – IV (1995-97) and the Way Ahead* (Air University, Air Power Research Institute, 1999) 1, <https://research.maxwell.af.mil/viewabstract.aspx?id=801> (Accessed June 1, 2007).

warfighter needs since the 1950s. Air Expeditionary Forces are defined by the USAF Scientific Advisory Board as “tailorable and rapidly employable air and space assets that provide the National Command Authority and the theater commanders-in-chief with desired outcomes for a spectrum of missions ranging from humanitarian relief to joint or combined combat operations.”¹⁵⁵

1. Force Structure

The proposed model would structure civil support capabilities across DoD’s force structure in a Civil Support Expeditionary Force (CSEF) framework. Forces would be geographically separated by region, but operationally linked to a ninety-day rotational support alert window that can provide a rapid response to a domestic crisis.¹⁵⁶

Following this framework, National Guard, Reserve, and Title 10 forces that have resident civil support capabilities can be identified and operationally linked into an expeditionary force framework. These forces would be geographically separated into regions across the country. The Air Force divides their expeditionary efforts into 10 AEFs that support ongoing operational efforts and two on-call AEFs to support pop-up contingencies.¹⁵⁷ The ten AEFs construct provides the Air Force the ability to have one AEF actively deployed for a period of three months, eight AEFs in a training and preparation cycle (twenty-four months), and one AEF in a three-month stand down/rest cycle (following the deployed period). Civil support forces could be organized to follow the same cycle, where a CSEF would be on call/employed in a domestic incident scenario for a period of ninety days. Following that period, the CSEF would rotate to a three-month stand down/ rest cycle and then fall into a twenty-four-month cycle that is split into three-month periods. This framework would require these civil support forces to be organized into ten separate groups or “buckets of capabilities” to use former Chief of

¹⁵⁵ United States Air Force Scientific Advisory Board, *Report on United States Air Expeditionary Forces 1*: “Summary,” SAB-TR-97-01, November 1997, vii.

¹⁵⁶ Idea derived from General Michael E. Ryan, *Commander’s NOTAM 98-4*, July 28, 1998, <http://www.issues.af.mil/notam984.html> (Accessed 1 August 2007).

¹⁵⁷ *Ibid.*, 3.

Staff of the Air Force General Michael Ryan's terms.¹⁵⁸ These buckets of capabilities would include CSTs, CCMRFs, CERFPs, JTF-POs, and other similar military units that can provide assistance in all fifteen Emergency Support Functions identified in the National Response Plan and the twenty-five Pre-Scripted Mission Assignments FEMA and DoD hope will expedite military assistance. Furthermore, they could be arranged into separate groups that can be organized to coincide with the ten FEMA regions. Therefore, they can train and exercise with their DHS counterparts during the twenty-four month training cycle. Figure 9 describes what the CSEF framework would look like if we followed the Air Force Air Expeditionary Force model.

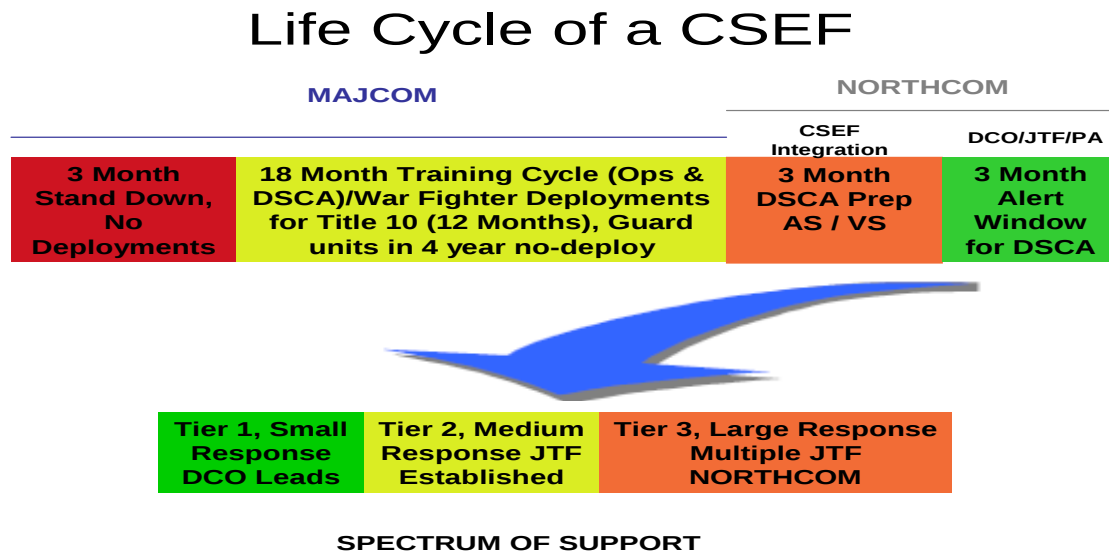


Figure 9. Concept Adopted from USAF AEF.¹⁵⁹

The CSIS report identified a critical gap in all current civil support initiatives. For any framework or model that is followed (RAND model, CSIS model, JS DSCA EXORD, etc.) the civil support forces would need pre-identified airlift in order to deploy

¹⁵⁸ General Michael E. Ryan, *Commander's NOTAM 98-4*, July 28, 1998, <http://www.issues.af.mil/notam984.html> (Accessed 1 August 2007).

¹⁵⁹ William Dowdy, *Testing the Expeditionary Force Concept: An Analysis of AEFs I – IV (1995-97) and the Way Ahead* (Air University, Air Power Research Institute, 1999) 11, <https://research.maxwell.af.mil/viewabstract.aspx?id=801> (Accessed June 1, 2007).

anywhere in the homeland within twelve to twenty-four hours.¹⁶⁰ The Air Force AEF construct recognized this problem on the global scale as well. To solve this issue, the Air Force designated five Lead Mobility Wings (LMWs)¹⁶¹ within the ten AEF structure to support the airlift process on a rotating basis. During the Hurricane Katrina response, the National Guard moved over thirteen thousand tons of supplies, equipment, and over thirty-three thousand personnel with their organic airlift capability.¹⁶² This effort was separate from the U.S. Transportation Command (USTRANSCOM) organized airlift via the DoD Request for Forces process enabled by Air Mobility Command (AMC). Despite this, the active duty Air Force via AMC controls the majority of the DoD airlift capability and capacity; therefore, a National Guard-only airlift model for DSCA would not be sufficient to mobilize all forces and capabilities required for incidents of the magnitude of those studied in Chapter III.

Since the Air Force maintains and operates the majority of the DoD airlift capabilities, the only way to ensure airlift is available for civil support missions is to have the Air Force place Mobility Wings on an alert rotation cycle that coincides with the CSEF cycle. The CSIS report recommends this process and our analysis agrees with their recommendation. The CSIS report also recommends that the Civil Reserve Air Fleet (CRAF) process (civilian air fleet used in military deployments) be considered as an alternative to a civil support airlift possibility.¹⁶³

2. Training and Exercising (Readiness and Preparation)

During the 24-month CSEF cycle depicted in Figure 9, units would train for warfighter operational needs as well as civil support mission needs, and would actively participate in HLS and HLD exercises — such as Ardent Sentry and Vigilant Shield — in

¹⁶⁰ Wormuth et al., *The Future of the National Guard and Reserves*, 78.

¹⁶¹ Air Force Instruction (AFI) 10-400, October 1, 1999, 2.

¹⁶² Wormuth et al., *The Future of the National Guard and Reserves*, 78.

¹⁶³ The CSIS reports quotes the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Defense Science Board 2003 Summer Study, DoD Roles and Missions in Homeland Security*, May 2004, Volume II-A: Supporting Reports, 114, as recommending the CRAF agreement be re-negotiated to provide airlift for civil support missions.

order to sharpen their civil support skills.¹⁶⁴ Despite numerous other civil support exercises, the primary DoD civil support exercises nationwide are Ardent Sentry and Vigilant Shield. These exercises follow an annual cycle with Ardent Sentry occurring every spring and Vigilant Shield every fall. In a twenty-four-month period, there would be four separate opportunities for these eight CSEFs to participate in civil support exercises. This pattern would allow a schedule that requires the participation of two CSEFs in every exercise. CSEF participation in these exercises could be arranged within three-to-six months of the CSEF entering the deployment or alert ninety-day cycle in order to ensure that civil support skills have been recently exercised and are current with statutory and technical requirements and capabilities.

Since NORTHCOM sponsors these exercises, this pattern of training and exercises would allow all CSEFs to become familiar with the DSCA mission, as well as the NORTHCOM command and control structure. Additionally, it would allow NORTHCOM to familiarize themselves with the different regional leaderships (state, local and military) as well as the different unit capabilities and requirements of each CSEF. This is of particular importance because the ten CSEFs will use different equipment or teams to accomplish the DSCA mission requirements, since they are pulled from DoD forces that are predominantly dual-purpose forces. Although CSEF units would be identified ahead of time, each CSEF may have units that are equipped differently but are intended to accomplish the same mission. In our statutory and legal review, we identified that DoD forces are constrained by DoDD 3025.15 restrictions that prohibit DoD from procuring or maintaining any supplies, material, or equipment exclusively for providing DSCA, unless otherwise directed by the secretary of defense.¹⁶⁵ Therefore, it is essential that DSCA providers train and exercise with a myriad of capabilities, since the type of equipment and personnel that respond to a civilian request may be different each time it is required. Furthermore, a continued exercise cycle with

¹⁶⁴ For specific details on these exercises, see NORTHCOM website at <http://www.northcom.mil/News/2007/AS07/index.html> (Accessed September 25, 2007).

¹⁶⁵ U.S. Department of Defense, Directive 3025.15, *Military Assistance to Civil Authorities* (Washington, DC: Government Printing Office, 18 February 1997), 14 (Under revision; will be re-issued under the name *Defense Support of Civil Authorities*).

rotating CSEFs will ensure the maximum amount of DoD forces trained for DSCA operations. Additionally, this would serve to resolve the lack of DoD training for civil support missions, which plague forces that respond to these requirements.

This also illustrates why it is important for CSEF forces to be paired with FEMA regions. FEMA regions are characterized by different political, cultural, and capability requirements and sensitivities. For example, during recent preparations for the potential impact of Hurricane Dean in Texas, local authorities attempted to borrow the Louisiana aerial medical evacuation plan for implementation in Texas.¹⁶⁶ Authorities discovered that the Louisiana plan, although very thorough, was tailored for the political and cultural sensitivities of the region; it worked because of the population density and the availability and type of ports of embarkation in the region. In Texas, authorities found different legal requirements for the evacuation of high-risk patients, different cultural barriers to the separation of families and loved ones, and populations that were more dispersed. Additionally, airports were smaller and less capable of supporting large military aircraft or civilian contracted airframes that constituted the primary means of mobilization for the Louisiana plan. Tailoring military CSEFs to the regions that they will support, and mandating recurring training with state and local first responder capabilities in these regions, would mitigate the cultural differences across regions, identify particular sensitivities and capabilities specific to each region, and allow the continued improvement of DoD civil support plans by incorporating lessons learned from the recurring exercises.

The National Guard, under the leadership of Lieutenant General Blum, has unveiled a five-year plan for unit rotations to meet the Global War on Terrorism requirements. This plan is incorporated into the DoD Global Force Management Plan, which has had tremendous success in the past three years. “The end result of these processes has proven to be timely allocation of those forces and capabilities necessary to execute combatant command missions, timely alignment of forces against future requirements, and informed strategic decisions on the risk associated with allocation

¹⁶⁶ Personal conversation with the USNORTHCOM Director of Operations, 23–27 August 2007.

decisions while eliminating ad hoc assessments.”¹⁶⁷ The Global Force Management Plan establishes U.S. Joint Forces Command (USJFCOM) as the lead organization for identifying and recommending sourcing options for forces and capabilities to meet combatant commander requirements utilizing the same Request for Forces process employed in Defense Support of Civil Authorities.¹⁶⁸ We learned earlier that JFCOM is also in charge of providing the sourcing of units tasked with civil support missions. If CSEF requirements are incorporated into this overall Global Force Management Plan the twenty-four-month CSEF readiness and preparation cycle could be de-conflicted with GWOT deployments and other combatant commander requirements. JFCOM could manage the CSEF cycle while de-conflicting other military requirements. Additionally, because of the dual-purpose nature of the forces, DSCA training and readiness exercises would also benefit unit warfighter training requirements. DoD advocates that the Global Force Management plan has been successful because there is a “measurable reduction of the time between identification of the requirement by the supported combatant commander and receipt of the force in-theater.”¹⁶⁹ This is exactly the type of effectiveness needed in the Defense Support of Civil Authorities construct. CSEFs can be the tool by which JFCOM incorporates the civil support requirements of the combatant commander in charge of HLD and HLS, the commander of U.S. Northern Command, thereby eliminating the current ad hoc contingency sourcing process that can delay military forces and capabilities for up to five days from the time they are requested.

3. Command and Control

As discussed earlier, the RAND report presented four alternatives constructs for the command and control (C2) of civil support missions (separate federal and state forces, dual status commanders, NORTHCOM in command of forces, and State Joint Force Headquarters TAGs in command of forces). These alternatives are all possibilities

¹⁶⁷ Michael Ferriter and Jay Burden, “The Success of Global Force Management and Joint Force Providing,” *Joint Force Quarterly* 44, 1st Quarter 07, 2, ndupress.ndu.edu, http://www.oft.osd.mil/library/library_files/article_557_031407%20success%20of%20global%20force%20management%20and%20joint%20force%20providing.pdf (Accessed August 22, 2007).

¹⁶⁸ Ibid., 2.

¹⁶⁹ Ferriter and Burden, 3.

depending on the magnitude of DoD assistance. The C2 enabler is really not an issue with the construct of the CSEF. Our framework recommended earlier in this chapter that the PFO be given the authority to determine what military capabilities the situation requires based on the threat or domestic incident and the outcome desired. With the CSEF construct providing these military capabilities, the PFO would identify the amount and type of capability or support he needs and the units that comprise the CSEF would deploy to provide the support. If the support mission required only Title 10 units, then NORTHCOM could maintain C2 through the Defense Coordinating Officer or a Joint Task Force. If the support consisted of National Guard or reserve forces, the state Joint Force Headquarters via the Adjutant Generals could maintain C2. If a large support requirement was required, the best answer might be a dual-status commander in charge of a JTF that answers to the commander of NORTHCOM.

If the validation process is changed, as recommended earlier, to criteria similar to that used by the National Strategy for Aviation Security (existing law, desired outcome, response capabilities required, asset availability, authority to act), the Principal Federal Official and the military commander could use the proposed CSEF framework and would have the authority to act under the constraints of current law, to utilize the assets available in the CSEF, to enable the response capability required and thereby reach the desired outcome by exercising the appropriate C2 model.

The proposed model does pose one significant challenge to use of National Guard forces in a CSEF construct. Currently, National Guard Weapons of Mass Destruction Combat Support Teams (WMD-CST) and CBRNE Enhanced Response Force Packages (CERFP) are being sourced strictly from National Guard forces and equipment. WMD-CSTs are planned for every state in the country and Congress has authorized seventeen CERFP packages for the nation. Under the CSEF model, these capabilities would be linked into regional response cells. For example, WMD-CSTs for the states of California, Nevada, and Arizona would be linked into a regional response force that coordinates efforts with FEMA region IX (see Figure 10). If California had a catastrophic incident that required DoD support at the level of a Tier 3 response in accordance with the CJCS Standing DSCA EXORD, all three of these WMD-CSTs would be tasked to respond to

the catastrophic incident — assuming that region IX was currently on the ninety-day alert window. If, for example, it was region VII that was on alert, the WMD-CSTs from Kansas, Nebraska, Iowa, and Missouri would respond to the incident. This process allows for every region/state in the country to always have a WMD-CST enhanced (more than one unit) capability available around the clock. The seventeen CERFPs would fall into these regions depending on their geographical location. The major issue with this process is that state governors would have to relinquish command and control of the capabilities resident in their state for these teams to serve on a regional and national capacity. Although the CSEF framework guarantees an alert capability that will be able to respond within hours instead of days, state governors must be willing to conform to this process, or the POTUS would be forced to federalize these troops to employ them in a different state or region in accordance with the authorities in the new modification to the Insurrection Act ,or ELRPO.

The incentives for states to participate in this process are significant. Currently, many states may find that units that are part of their WMD-CST or CERFPs packages may be deployed in support of warfighter requirements, or have recently returned from deployments and are not mission ready. Therefore, they do not have an operational capability in this mission set on an alert basis and would have to rely on the current DoD contingency process to source these capabilities if needed. With the CSEF model, even if the state capabilities are deployed or not available, the state still has a WMD-CST or CERFP capability on an alert basis.

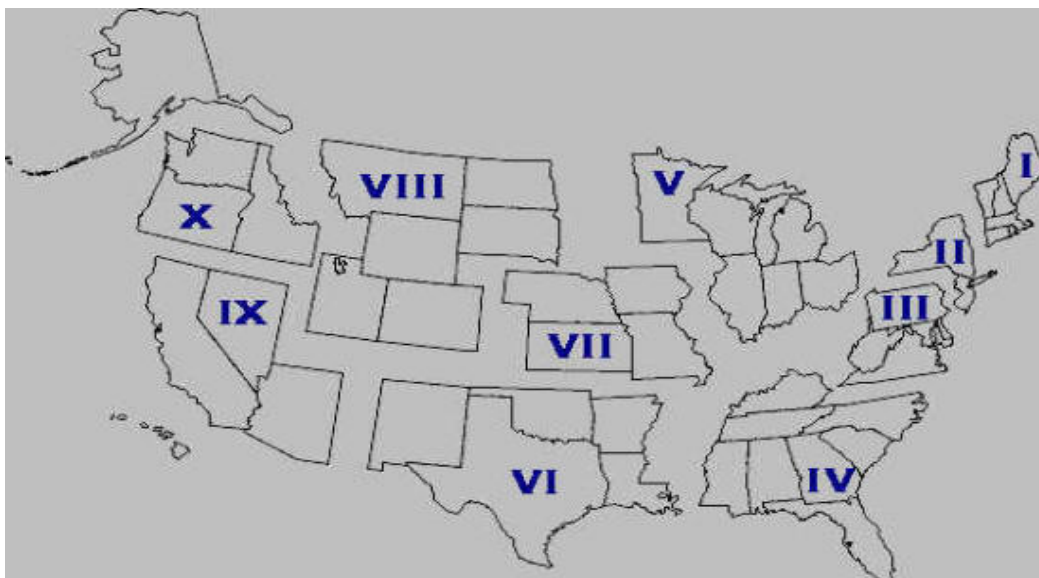


Figure 10. Proposed CSEF Regions to Match FEMA.¹⁷⁰

Clearly, this issue becomes a political decision that will require significant debate at the appropriate levels. It will certainly require further research. However, the Command and Control process for the strategic, tactical, and operational control of these forces under the CSEF framework can function as described in the previous paragraph. The key to the success of a flexible C2 construct is that all options be exercised and validated so that, at the time of an incident, the C2 process decision depends on the level of response required instead of a political decision.

4. Framework Complements and Improves Existing Processes

It is important to develop a DoD civil support system that can be activated and function within the construct of existing laws and processes. The CSEF framework accomplishes this requirement by working within the boundaries of the Posse Comitatus Act. CSEFs would not be used specifically for law enforcement purposes; they would prepare forces to accomplish the intent of the recent changes to the Insurrection Act, or Enforcement of the Laws to Restore Public Order, by enabling a structure that

¹⁷⁰ Image from Louisiana Homeland Security and Emergency Preparedness website <http://www.loep.state.la.us/femarelated/FEMAREgMap.htm> (Accessed September 1, 2007).

consistently trains National Guard, Reserves, and active duty Title 10 forces for civil support missions. Under the CSEF framework, the current Request for Assistance and Request for Forces process studied earlier would still be applicable, yet the DoD validation and response process would be much faster. The Pre-Scripted Mission Assignment process would be improved because the Principal Federal Official would already have units identified, sourced, trained, and standing by to accomplish the specific pre-scripted mission desired. All fifteen Emergency Support Functions identified in the National Response Plan could still enlist assistance from DoD under the CSEF construct. Furthermore, the CSEF units could still be employed under the three-tiered process identified in the CJCS Standing DSCA EXORD. The major changes to the EXORD would be in the Prepare to Deploy Order timeline process and in the sourcing of DoD units. The CSEF framework would require that all the forces in that specific bucket of capabilities be prepared to deploy within twelve to eighteen hours (this number is subjective; different units will require different timelines based on the nature of their mission and their logistical preparations and en-route time). Assuming that the prepare order process would take eighteen hours and the en-route time would take six hours, the CSEF framework would enable DoD support within twenty-four hours, as opposed to spending twenty-four hours in the validation and approval phase, as is currently the case. Furthermore, the DoD civil support units would already be identified and sourced, eliminating the JS DSCA EXORD restriction that some Tier 2 forces and all Tier 3 forces not be sourced before hand.¹⁷¹

E. AREAS REQUIRING FURTHER RESEARCH/LIMITATIONS TO IMPLEMENTATION

- The proposed framework requires that CSEF be developed into 10 different regional buckets of capability that coincide with the 10 FEMA regions. Based on the geographical demographic of DoD capabilities across the nation it might be difficult to create 10 different CSEFs with like capabilities. Further research is required utilizing the military's Defense Readiness Reporting System (DRRS).

¹⁷¹ Department of Defense, *Chairman of the Joint Chiefs of Staff Defense Support of Civil Authorities Execute Order* (Washington, DC: June 2007) 10, 13.

DRRS gives military planners and policy makers a real-time, data-driven tool to evaluate the readiness and capability of DoD forces to carry out assigned and potential missions.¹⁷²

- The CSEF framework would require a significant amount of NG, Reserve, and Title 10 forces. For this concept to be successful under the current operational deployment tempo, state governors would have to relinquish ownership of their civil support forces. In return, they would receive the backing of a framework that assures their state and region a “24/7 365” DSCA support network that is fully trained, equipped, and ready to respond. Nevertheless, the framework would necessitate a nationwide campaign to convince and solicit maximum participation from all state governments.
- As noted earlier, CSEFs are not effective without reliable airlift support. Increased requirements on U.S. Transportation Command and USAF Air Mobility Command airlift capabilities would significantly reduce warfighter support. Short of generating more airlift capabilities, which would require an extensive timeline, DoD should consider creating an In-System select process for National Guard and Reserve organic airlift capabilities. This type of airlift was successful in mobilizing the majority of the Katrina response forces without the use of the Air Mobility Command system. Furthermore, serious consideration should be given to the 2003 Defense Science Board recommendation that the Civil Reserve Air Fleet contract be re-negotiated to provide DSCA support.
- The DoD Request for Assistance process is rooted in a series of interagency agreements based on reimbursement of funds for services rendered. The fiscal constraints on the DoD budget have undoubtedly been a driving force in DoD’s reluctance to plan, program, and budget for civil support missions. With the

¹⁷² Derived from Defense Readiness Reporting System mission statement, <http://drrs.org/> (Accessed August 1, 2007).

CSEF framework, DoD would be responsible for the training and equipping of the CSEFs. The states or agencies requiring the CSEF support, however, would still be responsible for the reimbursement of the cost of the support. Therefore, the fiscal process would become more complex, since the current EMAC construct that governs the state-to-state reimbursement process would expand to more states and agencies, and costs may increase if CSEF troops are mobilized from a further distance.

- Although Chapter IV lauded DoD efforts to improve the effectiveness of DSCA operations in recent years, the thesis analysis has highlighted numerous times that an effective DSCA framework will require a doctrinal shift in DoD focus. The CSEF requires a commitment by DoD to accept the civil support mission as a central mission and plan, program, and train to effectively accomplish this central mission. Therefore, the CSEF framework will require buy-in from all levels of leadership across DoD.

F. CONCLUSION

This thesis began by asserting that the federal government's performance during Hurricane Katrina proved that the current DoD framework to support civil authorities is slow and cumbersome. President Bush's suggestion to Congress, that there may be certain types of natural disasters or terrorist attacks "so vast and so destructive" that the military may be the only institution equipped and trained to respond,¹⁷³ warrants an analysis of situations where DoD resources and capabilities can be used more effectively.

This analysis has identified and reviewed two distinct philosophies on DoD involvement in domestic events. The conclusion was that the statutes that govern the execution of DoD actions in DSCA operations further obfuscate the matter by establishing a myriad of legal requirements that must be met before DoD can take action in response to a domestic catastrophic incident. Furthermore, these policies do not pose clear and concise responsibilities and roles for DoD in the area of DSCA because they

see DoD involvement in civil support as a fallback and failsafe alternative to a civilian response. This analysis also supported the philosophical approach that held strong reservations about the current DoD framework's ability to perform effectively in domestic operations because of a misunderstanding of the legislation and lack of DoD policy that enables a civil support mission.

Two situational vignettes carved out of the National Planning Scenarios were used to demonstrate that the DoD validation and approval process is slowed by policy that prohibits DoD from procuring or maintain any supplies, material, or equipment exclusively for providing DSCA, unless otherwise directed by the secretary of defense. Furthermore, NORTHCOM, the command charged with providing civil support, has no legal authority to initiate DSCA operations without the approval of the president or SECDEF. These limitations fuel an argument for a change in the current mechanism for requesting, validating, and approving the use of DoD assets and capabilities.

To mitigate this restricted process, DoD has initiated numerous efforts to prepare for domestic incidents. The CJCS Standing DSCA EXORD, Pre-Scripted Mission Assignments, and CBRNE Consequence Management Response Forces are all prudent planning efforts to enable a DoD response to multiple and/or simultaneous events. Despite these efforts, this thesis asserts that military forces and capabilities are not postured for a timely and effective notification, preparation, deployment and employment to a civil support response. Therefore, these efforts are not sufficient to produce an effective DoD response that will prevent human suffering, loss of life, and critical infrastructure.

In the end, the overall recommendation developed in this thesis calls on DoD to reorganize its force structure to most efficiently support a military response to a domestic event. The CSEF framework offers one, if not the best, strategy for maximizing the use of DoD capabilities in response to a catastrophic domestic event. The CSEF framework, however, requires leadership support for a doctrinal shift. In this age of terror and

¹⁷³ Gordon, "Hurricane Rita: Bush urges larger role for military," 4.

catastrophic homeland emergencies, DoD's responsibilities to national security requires a positive embrace of civil support as a central mission on par with its traditional warfighting readiness obligations.

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