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‘Who’s in Charge?’ New Challenges in Homeland Defense and Homeland Security

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‘Who’s in Charge?’ New Challenges in Homeland Defense and Homeland Security

Thomas Goss

Abstract

A secure homeland is the nation’s first priority and is fundamental to the successful execution of its military strategy. The U.S. military will continue to play a vital role in securing the homeland through military missions overseas and by executing homeland defense and civil support missions, and supporting emergency preparedness planning activities. However, it is critical to understand the distinction between the role DOD plays with respect to national security and the role of DHS as lead federal agency (LFA) for Homeland Security (HLS), as defined in the *National Strategy for Homeland Security*. With this paradigm in mind, this article describes the approach approved in the DOD-HLS Joint Operating Concept (HLS JOC) that describes how DOD intends to perform its responsibilities associated with securing the homeland, to include homeland defense and civil support missions, and supporting emergency preparedness planning activities.

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KEYWORDS: DOD, military, HLD, HLS, USNORTHCOM

After the terror of September 11, 2001 (9/11), the world was revealed as a very dangerous place. As a result, nearly everyone in America now agrees that it is the responsibility of the United States government to protect its citizens. However, questions over the division of responsibilities between federal and state officials and between various federal agencies in the current (post-9/11) strategic environment remain unresolved. In addressing this new threat environment of terrorism, the “Axis of Evil,” and the proliferation of Weapons of Mass Destruction (WMD), the recent *National Strategy for Combating Terrorism* asserts “The struggle against international terrorism is different from any other war in our history. We will not triumph solely or even primarily through military might.”¹ President George W. Bush has identified the current struggle in Iraq as the “main front” in the war on terrorism, thus indicating the importance of the Department of Defense (DOD) responsibility for fighting trans-national groups like al Qaeda as “national security” threats.

The unprecedented nature of the current threat to the U.S., and the traditional role of the military in American society, raises challenges for homeland defense (HLD) and homeland security (HLS) planning in the current strategic environment. For military planners at United States Northern Command (and counter-terrorism planners at the Department of Homeland Security [DHS]), specific questions seem dominant: What exactly is the threat? What part of this threat is a “national security threat” or “foreign aggression” that is a DOD responsibility as part of the Homeland Defense mission? What is “homeland security” and what is the DOD role in homeland security? Until these questions are answered, military officers will struggle to clearly understand their role inside domestic society.

DOD took a step toward developing the answers to these questions when the new assistant secretary of defense for homeland defense developed the *Strategy for Homeland Defense and Defense Support to Civil Authorities* (June 2005) and U.S. Northern Command (USNORTHCOM) produced the *DOD Homeland Security Joint Operating Concept* (HLS JOC, February 2004). Work on these two documents by the new assistant secretary of defense for homeland defense, the Joint Staff, U.S. Pacific Command, the Services, and the National Guard Bureau led to the development of a set of concepts to provide a framework for the military’s role internal to the U.S. What emerged was the concept that the delineation between homeland defense and homeland security is based on the simple question “who’s in charge?” The identity of the Lead Federal Agency (LFA), rather than the specific threat or mission scenario, determines the role and responsibilities of the Department of Defense. Following this construct, DOD is the Lead Federal Agency for the homeland defense mission and has a supporting role in homeland security through its missions of civil support (also called Military Assistance to Civil Authorities [MACA] and Defense Support to Civil Authorities [DSCA]) and emergency preparedness.

HOMELAND DEFENSE AND HOMELAND SECURITY CHALLENGES

As America moves into the twenty-first century, answering the question “what is the threat to the U.S. homeland?” presents a very complex problem for USNORTHCOM and DOD. The attacks of September 11 were not only a wake-up call, alerting the U.S. to a more dangerous world; they also triggered an immediate re-thinking of responses to terrorists and terrorism. The impressions of 9/11, and technological proliferation, have changed the strategic environment. This strategic uncertainty has also muddled the nation’s threat assessment by

painting groups like al Qaeda as both trans-national “national security threats” and as groups of terrorist criminals who could be “brought to justice.” In expressing the variety of threats facing the U.S., the current *National Strategy for Homeland Security* (NSHLS) states: “Homeland security is focused on terrorism in the United States...Terrorists can be U.S. citizens or foreigners, acting in concert with others, on their own, or on behalf of a hostile state.”² Statements like this define three main types of threats facing America today: a continuation of conventional military threats from hostile nation-states; traditional asymmetric threats from hostile states and state-sponsored political groups; and a new trans-national terrorist threat from ideological enemies.

In assessing these diverse threats, the U.S. is confronted with a spectrum of threats ranging from traditional national security threats (e.g. ballistic missile attack) to law enforcement threats (e.g. drug smuggling). Conceptually, this threat-environment mosaic is not a clear matrix of hostile states and non-state groups, but rather a threat “spectrum” – a range of hostile challenges from what Americans consider “war” to what most label as “crime” (See Figure 1). This is a conceptual spectrum with clear definitions at both ends and less clarity in the middle, where the two ends blend together. At one end of the nation’s threat spectrum are types of threats that are clearly military in nature and are just as clearly DOD’s responsibility. These are traditional threats utilizing military capabilities from hostile and potentially hostile nation-states. Examples include conventional military power and ballistic missile threats from “rogue states” and strategic threats from Russia and China. These threats are not new – they are well understood, with clear responsibilities within the federal government.

Just as clear to the federal government, and the American people, is the opposite end of the threat spectrum where threats are considered criminal in nature. These hostile actors include international criminal rings and narco-terrorists whose missions, motivations, and methods are criminal in nature rather than political or ideological. The law enforcement responsibilities for these types of threats are clear. The most dangerous of these groups, the narco-terrorists, are criminal in nature and there is normally no direct military involvement other than traditional military assistance and counter-drug support. On the periphery of this end of the spectrum are domestic terrorist groups, also dealt with as law enforcement concerns; DOD has little responsibility for these threats, except in the extreme and remote case of fighting insurrection against the government. Even declarations of a “war on drugs” have not changed the dynamic of who in the federal government is charged with countering these criminal acts, as evidenced by what happens when members of criminal drug cartels are captured, tried in a court of law, and imprisoned by the United States.

In the middle is a “seam” of ambiguity, where threats are neither clearly national security threats (requiring a military [DOD] response capability) nor clearly law enforcement threats (requiring a non-military response capability from the Department of Homeland Security [DHS], the Department of Justice [DOJ], or other agency). Along this “seam” are threats such as transnational terrorist groups who challenge the delineation of responsibility between DOD and DHS, DOJ, or other agencies, because it is difficult to label them as either a national security threat or a law enforcement threat. Determining whether a particular adversary is one or the other will depend on the circumstances at the time and who is most capable to lead the nation’s efforts. Because of the nature of this spectrum, a coordinated, integrated, and coherent national effort is essential in securing the U.S. against all threats.

This complexity and lack of certainty also challenge any attempt to divide possible hostile threat actors among various agencies with homeland defense and homeland security

responsibilities. The new types of threats are far more problematic for the traditional division of federal responsibilities – trans-national groups like al Qaeda and Hezbollah, some with state support and some that operate independently – that reside in the middle of the current threat spectrum where the American people cannot decide if the threat represents “war” or “crime.” But 9/11 and the Global War on Terror have compelled the American government to question whether these dangerous groups should be treated as national security threats and foreign aggression, implying a military responsibility, or whether they should be “brought to justice” by law enforcement authorities.

In an effort to clarify responsibilities in countering these threats, the U.S. government after 9/11 tried to reorganize to address concerns over these new emerging threats and the potential domestic use of the military. At the federal level, this is most apparent in the creation of the Department of Homeland Security (DHS) and an increase in law enforcement powers with the USA PATRIOT Act. DHS was created specifically to address the threat of terrorism, bringing together twenty-two federal entities with critical homeland security missions into a single agency with the primary mission to protect our homeland against terrorist threats. In accordance with U.S. Federal Code, DOD’s primary mission, in contrast, has always been to use the nation’s military power and presence to deter aggression against U.S. interests and to defeat enemies should deterrence fail. Historically, this has been an overseas mission and in these forward regions, the role of the American military is clear.

While the traditional DOD role continues overseas, the American military has also been given expanded responsibility for some new threats the U.S. faces today. One of the main reasons for expanded DOD involvement, and the view that this new trans-national threat is different from traditional criminal terrorism, is the growing fear that the rapid proliferation of Chemical, Biological, Radiological, Nuclear, and high-yield Explosive (CBRNE) technology has led to an increasing probability that these powerful weapons might be used in future terrorist attacks in what President Bush labels “the crossroads of radicalism and technology.”³ This expanded DOD responsibility, and its clearly legislated limits, are the strongest evidence available that these new trans-national threats are in the middle of the new threat spectrum and may or may not be a military threat.

For all these reasons, DOD adjusted its strategic focus after 9/11 (driven by expectations of the American people for security) to address not only a new emphasis on defeating threats overseas, but to prepare to defeat new asymmetric threats to the U.S. homeland. Because of the unique capabilities of the military, even before 9/11 Congress directed DOD to expand into new missions, including assisting with drug interdiction, protecting nuclear materials, and assisting with terrorist events involving WMD. As a check against mission creep and in recognition of cultural concerns over domestic use of the military, DOD involvement in these domestic missions requires invoking presidential authority and/or coordination between the attorney general and the secretary of defense over military missions and rules of engagement. The current embryonic nature of DHS and other agencies with counter-terrorism responsibilities and the demands of providing security for the American people only increase the potential for the president to turn to robust military capabilities during a crisis.

Overlaying these DHS/Law Enforcement and DOD responsibilities on the current threat spectrum yields areas of overlap, both geographically and in mission orientation, because the trans-national threats in the middle of the spectrum pose a new challenge for the federal government. While robust DOD capabilities face historical resistance to their use in domestic operations, even more problems exist for law enforcement and DHS because of the fear that

threat capabilities have grown faster than the required legal authorities and operational abilities. The Department of Justice, (DOJ), DHS, and state and city governments are still developing required operational counter-terrorism and WMD defensive capabilities. Many state and local law enforcement agencies could potentially be overwhelmed in a direct attack by a terrorist cell using military weapons and paramilitary tactics. This capability shortfall was identified even before 9/11 when the federal *Interagency Domestic Terrorism Concept of Operations Plan* recognized that no “single federal, state, or local government agency has the capability or requisite authority to respond independently” to terrorist threats or attacks.⁴ When the absence of a clear delineation between military and non-military responsibilities is added to the concern over potential terrorist use of WMD, national leaders naturally want to use every asset available – including military capabilities – because of the threat and the magnitude of the danger.

This absence of clear lines of responsibility for terrorist threats is not unique to this aspect of American government. The current *National Strategy for Homeland Security* recognizes this by defining HLS as a “concerted national effort to prevent terrorist attacks...” where the “concerted national effort” is based on “the principles of shared responsibility and partnership” among various federal, state, and local agencies and with the American people.⁵ The current overlap of DHS and DOD’s domestic roles in the war on terrorism may be a positive development. This duplication presents the federal government with options, both military and non-military, during a crisis to address each specific threat (See Figure 1). Under existing legislation or the president’s constitutional authority, DOD may be directed to move against specific threats to the United States or against any threatened use of a weapon of mass destruction.

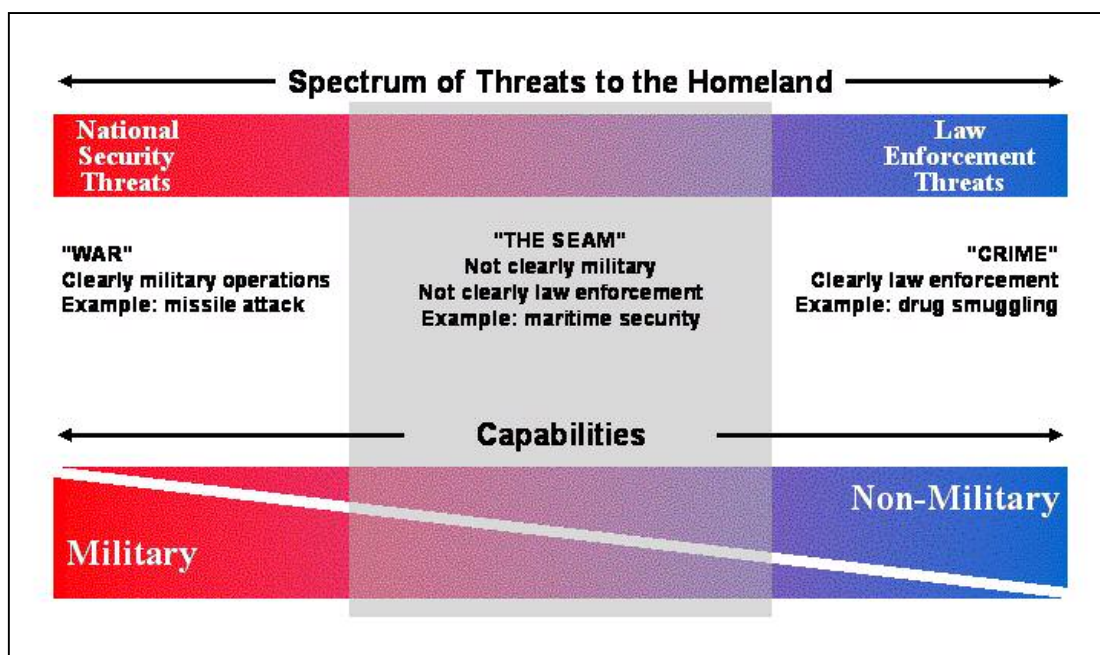


Figure 1: Current National Challenge

This absence of a clearly defined border between DOD and DHS, DOJ, or other agency responsibilities, and the overlap of capabilities, is in reality an inherent strength for the federal government; it allows the president to determine which threats are best met by law enforcement and which require military response. This absence of clear lines of responsibility in the “seam” between “war” and “crime” is also an enabler for DOD because in most cases it will limit military involvement in law enforcement and allow DOD to focus on warfighting responsibilities. In this way, the overlap of DHS, DOJ, or other federal agency and DOD’s domestic role in the homeland supports the national strategy by providing the federal government with military and non-military options to address a specific threat.

HOMELAND DEFENSE AND HOMELAND SECURITY PARADIGM

A secure homeland is the nation’s first priority and is fundamental to the successful execution of the nation’s military strategy. It is also essential to America’s ability to project power, sustain a global military presence, and to honor its global security commitments. The military will continue to play a vital role in securing U.S. territory through the execution of homeland defense and civil support missions, as well as emergency preparedness planning activities (as defined in Figure 2). As shown in Figures 2 and 3, HLS is not synonymous with HLD, nor are HLD, Civil Support (CS), and Emergency Preparedness (EP) subordinate to HLS. On the contrary, while HLS (as defined in the NSHLS) is concerned with preventing and mitigating the effects of terrorist attacks, DOD’s concern cannot be limited to terrorists. DOD must prepare for conventional or unconventional attacks by any adversary (including, but not strictly limited to, terrorists). When DOD conducts military missions to defend the people or territory of the United States at the direction of the president, this is homeland defense.

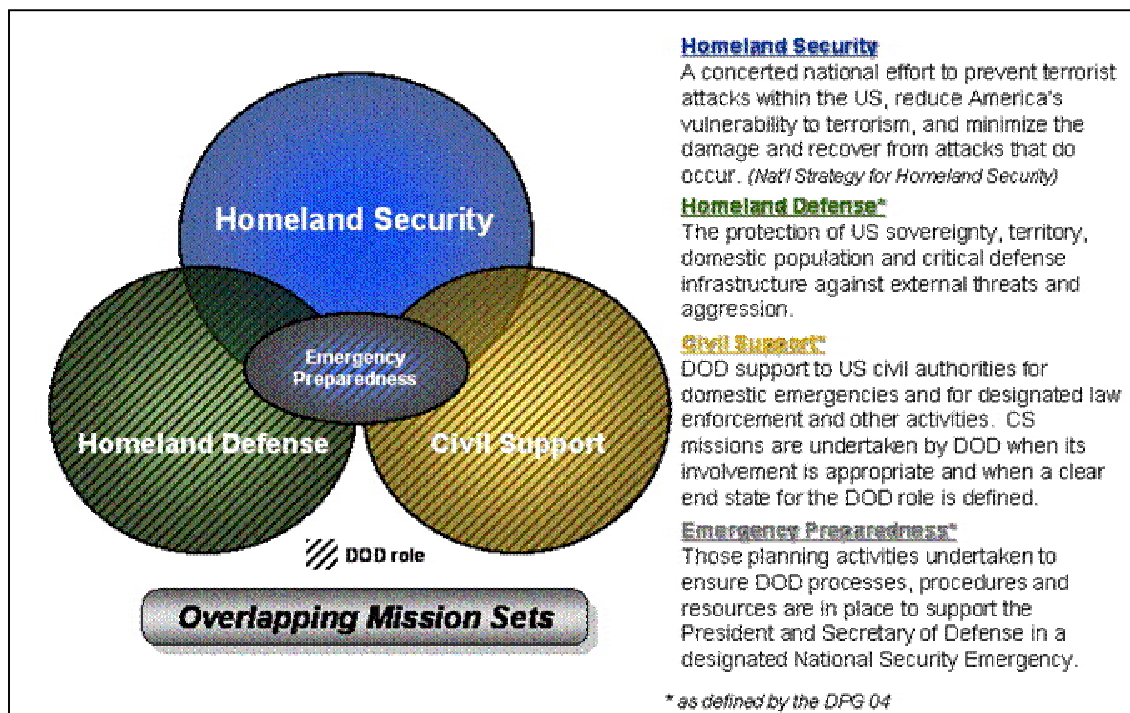


Figure 2: DOD-HLS Paradigm from Homeland Security Joint Operating Concept

As with military missions abroad, DOD is the Lead Federal Agency (LFA) for HLD, with other departments and agencies in support of DOD efforts. Circumstances in which DOD supports the broader efforts of the federal, state, and/or local government, as coordinated by and in cooperation with the DHS or another agency as LFA, are appropriately described as Civil Support.

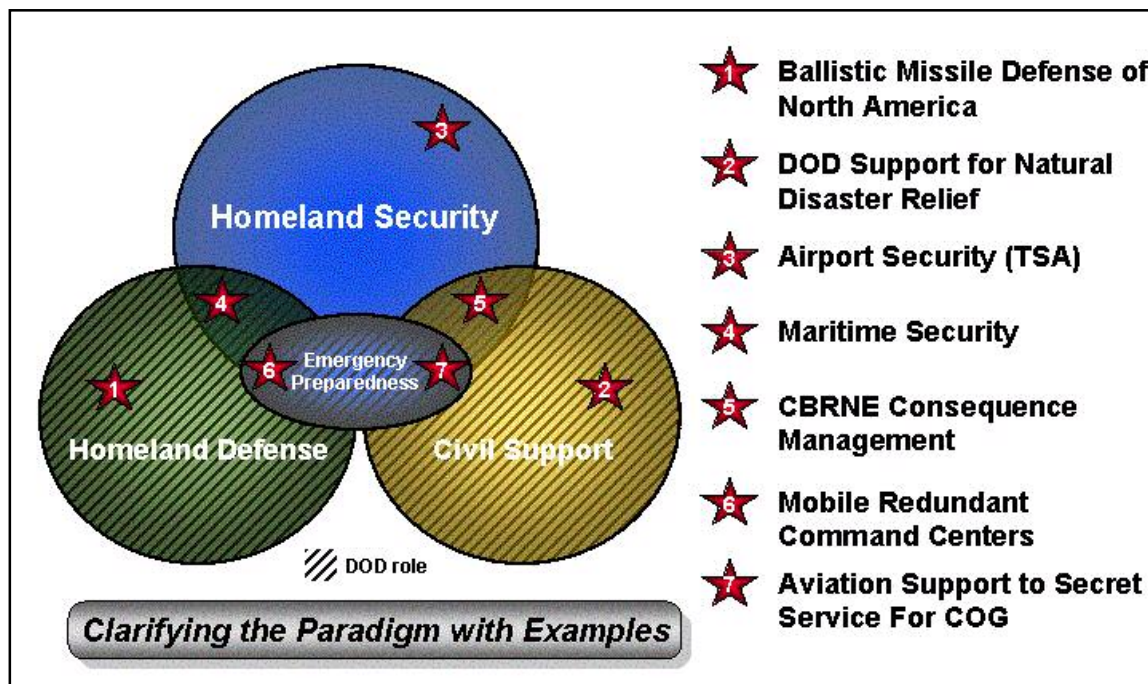


Figure 3: Clarifying the DOD HLS Paradigm with Examples

In these cases, DHS (or another LFA) coordinates activities and DOD is prepared to support the plans that are developed. In the same way that some aspects of HLD are unrelated to HLS, some aspects of DOD's civil support functions are unrelated to terrorism and do not fall under HLS, yet DOD can still provide other unique capabilities in support of civilian authorities (for example, support for natural disaster relief). Similarly, some aspects of HLS fall outside the purview of DOD. These functions (such as airport security measures enacted by the Transportation Security Administration [TSA]), fall under the lead of DHS (or another LFA). Where a particular scenario or incident falls within this paradigm is not for DOD (or DHS) to decide. As shown in Figure 4, this responsibility rests with the president as commander in chief and chief executive.

In many cases, the answer is unequivocal. In clear cases of foreign aggression and threats to national security, DOD will be directed to conduct HLD operations necessary to defeat an attack (including, if applicable, actions taken in anticipatory self-defense to preempt an attack before it takes place). In cases with clear law enforcement responsibility, the president will direct DHS, DOJ, or another agency to assume LFA responsibility for HLS, and DOD may or may not be directed to perform a supporting role. It is also possible for the president to direct the transition of LFA responsibility during a crisis from DOD to another federal agency, or vice versa, should changing circumstances warrant such a transition (for example, if law enforcement capabilities are unexpectedly exceeded).



THE ROLE OF DOD IN THE HOMELAND

In the United States, there are three circumstances⁶ that govern DOD involvement in homeland defense, civil support operations and emergency preparedness planning:

1. **In extraordinary circumstances**, DOD would conduct military missions such as ballistic missile defense (BMD), combat air patrols, or maritime defense operations as the lead in defending the people and the territory of the U.S., supported by other agencies. Included in this category are cases in which the president, exercising constitutional authority as commander-in-chief and the chief executive, authorizes military actions to counter threats within the U.S., as well as steady-state operations in which DOD is preparing and/or posturing for extraordinary circumstances.
2. **In emergency circumstances**, such as responding to an attack or to catastrophic events (for example, forest fires, floods, hurricanes, or tornadoes), DOD could be directed to act quickly to provide capabilities that other agencies do not possess or that have been exhausted or overwhelmed. In such circumstances, other federal agencies take the lead and DOD provides support.
3. **In limited-scope missions**, such as special events, like the Olympics, or special projects such as assisting other federal agencies to develop capabilities to detect chemical and biological agents, other agencies have the lead and DOD supports.

These three circumstances are neither mutually exclusive nor static. At any given time, DOD could be conducting multiple operations concurrently under some or all of these circumstances. Furthermore, any number of potential scenarios could necessitate a transition among the circumstances (for example, transitioning from a “limited scope” mission to “emergency circumstances” after a terrorist attack at a special event). DOD must plan for and be able to simultaneously defend the homeland, provide support to civil authorities as directed, and help prepare for national security emergencies. By so doing, DOD helps preserve the nation’s freedom of action and ensures the ability of the U.S. to project and sustain power wherever and whenever it chooses. DOD’s responsibilities for securing the homeland fall into three areas: homeland defense, civil support operations, and emergency preparedness planning activities.

Homeland Defense (HLD): the protection of U.S. sovereignty, territory, domestic population, and critical infrastructure against external threats and aggression (*DPG 04 and Draft Joint Pub 3.26*).

HLD operations ensure the integrity and security of the United States by detecting, deterring, preventing, and defeating threats and aggression against the U.S. as early and as far from its borders as possible so as to minimize their effects on U.S. society and interests.⁷ This defense must be proactive, externally focused, and conducted in-depth by layering integrated military, interagency and multi-national partner capabilities beginning at the source of the threat. The mission sets for HLD include the following:

- **Air Defense:** includes all measures taken to deter, detect, or destroy hostile air threats against the U.S. homeland. Air defenses are designed to destroy, nullify, or reduce the effectiveness of attacking adversary aircraft, and manned and unmanned missiles.
- **Land Defense:** includes homeland defense operations taken under extraordinary circumstances to deter and, if necessary, defeat land threats when the president

directs or SECDEF orders. Although the threat of a full-scale land invasion by a hostile power is remote, when directed by the president ground forces may be employed to conduct offensive operations and establish active and passive defenses in depth to counter a host of conventional and asymmetric threats.

- **Maritime Defense:** includes homeland defense operations undertaken to detect, deter, defeat, or nullify maritime threats against U.S. territory, domestic population and infrastructure. A full-scale maritime invasion of the United States is also unlikely, but when directed by the president maritime forces may be employed to conduct offensive operations and active and passive defenses in-depth to counter maritime attacks within U.S. territorial waters.
- **Ballistic Missile Defense (BMD):** BMD is a supporting homeland defense mission and its capabilities are designed to detect, deter, defend against, and defeat adversary ballistic missile threats. BMD of the homeland includes the integration of capabilities to destroy or disrupt adversary missiles in flight or prior to launch. BMD consists of sensors, weapons, command and control, manning, and logistic systems, which are employed collectively.

Civil Support (CS): DOD support to U.S. civil authorities for domestic emergencies and for designated law enforcement and other activities. Also called Military Assistance to Civil Authorities or MACA (*DPG 04 and Draft Joint Pub 3.26*).

In addition, DOD may be directed to assist civilian authorities in order to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. DOD maintains many unique capabilities that can be used to mitigate and manage the consequences of both natural and man-made disasters, and must be prepared to provide support to state and local authorities, if requested by the LFA. The president and the secretary of defense determine priorities regarding what DOD resources will be made available for civil support. This civil support mission, also known as Military Assistance to Civil Authorities (MACA), is the broad mission consisting of the three mission subsets of military support to civil authorities, military support to civilian law enforcement agencies, and military assistance for civil disturbances.⁸ The mission sets for civil support include:

- **Military Support to Civil Authorities (MSCA):** a mission of civil support consisting of support for natural or man-made disasters, chemical, biological, radiological, nuclear, or high-yield explosive consequence management, and other support as required.
- **Military Support to Civilian Law Enforcement Agencies (MSCLEA):** a mission of civil support that includes support to civilian law enforcement agencies. This includes but is not limited to: combating terrorism, counter-drug operations, national security special events, and national critical infrastructure and key asset protection.
- **Military Assistance for Civil Disturbances (MACDIS):** a mission set of civil support involving DOD support, normally based on the direction of the president, to

suppress insurrections, rebellions, and domestic violence, and provide federal supplemental assistance to the states to maintain law and order.

Emergency Preparedness (EP): those planning activities undertaken to ensure DOD processes, procedures, and resources are in place to support the president and secretary of defense in a designated national security emergency (*DPG 04*).

In addition to the homeland defense and civil support missions, DOD has certain responsibilities to help prepare for emergencies. These responsibilities fall into one of three mission sets for emergency preparedness:

- **Continuity of Operations (COOP):** the degree or state of being continuous in the conduct of functions, tasks, or duties necessary to accomplish a military action or mission in carrying out the national military strategy. COOP includes the functions and duties of the commander, as well as the supporting functions and duties performed by the staff and others acting under the authority and direction of the commander.
- **Continuity of Government (COG):** a coordinated effort within each branch (executive, legislative, and judicial) to ensure the capability to continue minimum essential functions and responsibilities during a catastrophic emergency. COG activities involve ensuring the continuity of minimum essential branch functions through plans and procedures governing succession to office and the emergency delegation of authority (when and where permissible and in accordance with applicable laws); the safekeeping of vital resources, facilities, and records; the improvisation of emergency acquisition of vital resources necessary for the continued performance of minimum essential functions; the capability to relocate essential personnel and functions to alternate work sites and to reasonably sustain the performance of minimum essential functions at the alternate work site until normal operations can be resumed. COG is dependent upon effective COOP plans and capabilities.
- **Other Emergency Preparedness roles:** in addition to COOP and COG, if the president directs, DOD may be tasked with additional missions relating to emergency preparedness.

CONCLUSION

The implication drawn from this review of the DOD-HLS paradigm and the traditional role of DOD in domestic operations is that DOD has a near-monopoly of responsibility for homeland defense. For homeland security, DOD's role consists of civil support and emergency preparedness. There is a military component in HLS, just not at the federal level. The National Guard is organized, trained, and equipped by the Department of Defense, and when federalized in a Title 10 status can conduct traditional DOD missions such as homeland defense or civil support. Additionally, the National Guard in state or Title 32 status possesses many of the attributes required of an effective joint force, yet remains responsive to state sovereign authorities free of the limitations that constrain federal forces such as *Posse Comitatus*. This

provides the capability to execute a synchronized military response in those HLS areas where DOD Title 10 forces may not be the most effective response. By conducting HLS missions under state control, the use of these National Guard forces helps bridge the gap and facilitates operations in the “seam.”

The shared responsibility for the terrorist threat makes it challenging for U.S. Northern Command and others in DOD to structure clear responsibilities based on threat scenarios because of the expectations that both military and non-military planners will address the current trans-national terrorist threat – regardless of the legislated responsibilities of each component. This overlap between DOD and non-military agencies will continue unless the American electorate decides that either law enforcement capabilities will expand into this domain or military authorities will be assigned a greater domestic role. Both potential solutions have significant challenges and may well be decided based upon reactions to future terrorist actions. Another 9/11-type terrorist attack inside the United States – especially one involving weapons of mass destruction – may propel the military into increased domestic responsibilities to protect the U.S. and mitigate the fears of the American people.

The implications of the spectrum of threats ranging from “war” to “crime” will continue to challenge the implementation of the current *Strategy for Homeland Defense and Defense Support to Civil Authorities* and resulting homeland defense and civil support missions and emergency preparedness activities, especially until policies, procedures, statutes, and legal authorities are clarified through legislative and/or executive action. In the interim, DOD must be capable of operating against adversaries in the “seam,” should the president so direct. For example, under existing legislation, or the president’s constitutional authority, DOD may be directed to move against specific threats to the United States or against any threatened use of a weapon of mass destruction. As the current *National Security Strategy* concludes, “To defeat this [terrorist] threat we must make use of every tool in our arsenal – military power, better homeland defense, law enforcement, intelligence, and vigorous efforts to cut off terrorist financing.”⁹ Though the current response to this national challenge may create overlap and redundancy in capabilities between DOD and its interagency partners, maintaining this “seam” will serve to prevent gaps in government-wide counter-terrorism capabilities and will continue to provide the president the flexibility to confront adversaries across the threat spectrum.

¹ *National Strategy for Combating Terrorism* (Washington, D.C.: Government Printing Office, February 2003), 1.

² *National Strategy for Homeland Security* (Washington, D.C.: Government Printing Office, July 2002), 2.

³ From President Bush’s address to the graduating class of West Point, New York, June 1, 2002. Quoted in *National Security Strategy of the United States* (Washington, D.C.: Government Printing Office, September 2002), 13.

⁴ *United States Government Interagency Domestic Terrorism Concept of Operations Plan*, January 2001 www.fas.org/irp/threat/conplan.html, 12.

⁵ *National Strategy for Homeland Security*.

⁶ Secretary of Defense Donald Rumsfeld. Testimony to the Senate Appropriations Committee, 7 May 2002, and codified in the *National Strategy for Homeland Security*, July 2002, 13.

⁷ Definitions for Homeland Defense mission sets are from the final coordination draft of Joint Pub 3.26 *Joint Doctrine for Homeland Security*, dated 26 March 2004.

⁸ Definitions for Civil Support mission sets are from the final coordination draft of Joint Pub 3.26 *Joint Doctrine for Homeland Security*, dated 26 March 2004.

⁹ *National Security Strategy of the United States* (Washington, D.C.: Government Printing Office, September 2002), i.