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THESIS

**WHAT SHOULD BE THE RELATIONSHIP BETWEEN
THE NATIONAL GUARD AND UNITED STATES
NORTHERN COMMAND IN CIVIL SUPPORT
OPERATIONS FOLLOWING CATASTROPHIC EVENTS**

by

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September 2006

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OPERATIONS FOLLOWING CATASTROPHIC EVENTS**

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ABSTRACT

Military civil support operations following Hurricane Katrina revealed a compelling need for improving the command and control arrangements between the National Guard, operating in Title 32 status subordinate to the governors, and U.S. Northern Command (USNORTHCOM) who controlled all of the assigned Title 10 active duty forces subordinate to the President. This paper details the three mutually exclusive duty statuses of the National Guard, reviews the statutory, strategy and policy environment, and examines the joint military doctrine that covers civil support. It describes the three potential command and control models with their strengths and weaknesses. There is a detailed analysis of the USNORTHCOM's Defense Support of Civil Authority concept plan with recommended enhancements. The paper concludes that the command and control arrangement is situationally dependent and provides considerations for the commander. There is no directive authority that compels the National Guard to work with U.S. Northern Command. However, there are mutual benefits to working in partnership to create the coordination and communication model organization and procedures for future civil support operations that include the National Guard and USNORTHCOM. The USNORTHCOM commander needs to build trust with the governors, and then get a full time National Guard brigadier general on his staff to complete the coordination with the states.

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I. THE RELATIONSHIP BETWEEN THE NATIONAL GUARD AND UNITED STATES NORTHERN COMMAND IN CIVIL SUPPORT OPERATIONS FOLLOWING CATASTROPHIC EVENTS

A. INTRODUCTION

The National Guard predates the establishment of the United States and has its charter in the Constitution of the United States. The National Guard has a long and distinguished record of service to the states and territories, and to the nation in federal status. The National Guard performs with valor in wartime. During peacetime, it has served its governors and citizens well in times of state crisis.¹

The United States Northern Command (USNORTHCOM) has been in existence only since October 1, 2002. Created in the aftermath of the September 11, 2001 terrorist attacks on the United States, its primary focus has been homeland defense. Its secondary mission, defense support to civil authorities, also known as civil support, held a lower priority and emphasis.²

USNORTHCOM's homeland defense mission is the classic warfighting mission the Unified Command Plan assigns to all geographic combatant commanders. In executing its homeland defense role, USNORTHCOM acts as the lead federal agency. It will have operational control of all active duty military forces the Secretary of Defense places subordinate to the command for the defense mission. Although the fact that its area of responsibility contains the United States complicates USNORTHCOM's defense mission, its homeland defense roles and responsibilities are relatively clear, established and uncontroversial.

This is not the case with its civil support role. During most of the first three years of its existence, USNORTHCOM's civil support mission appeared routine. The command's role was to command and control the active duty military forces that the Secretary of Defense assigned to USNORTHCOM for approved civil support mission assignments in support of another lead federal agency. There was only modest active

¹ The Army National Guard, "History of the Guard," www.arng.army.mil/history/ (accessed January 31, 2006).

² *Strategy for Homeland Defense and Civil Support* (Washington D.C: U.S. Department of Defense, June 2005), 1-5.

duty military participation in the domestic disasters that occurred. The National Guard capably met the preponderance of the mission requirements while serving in state active duty status subordinate to the governors and without USNORTHCOM's assistance.

There were some transformational developments and advancements in the civil support mission sector. In 2004 for example, the President placed National Guard general officers in Title 10 or federal status while they retained their Title 32 state status to conduct the civil support mission for the Democratic and Republican presidential conventions and the G8 Summit. They had command authority over both the National Guardsmen serving the respective state governors and the Title 10 federal forces assigned to USNORTHCOM for the missions. This architecture ensured unity of command over the National Guard forces and the supporting active duty military operating in the states. These were the unprecedented first applications of this command and control architecture.³

It took a national catastrophe to expose significant gaps between the National Guard and USNORTHCOM in civil support operations. That catastrophe was Hurricane Katrina in late August 2005. Even though there were tens of thousands of National Guardsmen and active duty uniformed soldiers operating in the devastated area, there was no formal relationship between the National Guard and USNORTHCOM to provide coordination and synchronization of their efforts. This problem adversely impacted the military's response.⁴

B. RESEARCH QUESTION

The research question this thesis addresses is what should be the relationship between the National Guard and USNORTHCOM for civil support operations following catastrophic events.

C. SIGNIFICANCE OF RESEARCH

Defining the relationship between the National Guard and USNORTHCOM for civil support operations is a contemporary and significant problem for the President, the Department of Defense (DoD), the National Guard, and the state and territorial

³ H. Steven Blum, "A Vision for the National Guard," *Joint Force Quarterly*, December 2004, 28.

⁴ David M. Walker, *Preliminary Observations on Hurricane Response, GAO-06-808T* (Washington, DC: United States Government Accountability Office, 2006), 4.

governors. Admiral Timothy J. Keating, Commander, USNORTHCOM, said there is no more important issue for him than the proposed research question.⁵ The uniformed military's substandard performance during the Hurricane Katrina response and recovery exposed the scope and importance of the problem, and its problematic nature. It also demonstrated improvement is imperative.

This is a complex problem. The operating environment has friction on many planes, such as between federal and state executives, between the federal government and sovereign states, between federal and state militaries, and so forth. Governors do not want to give up control of their National Guardsmen, nor do they want federal forces in their state not under their control. The governors would welcome models that allow for federal funding while preserving their control of the uniformed forces. However, in a national catastrophe, the nation expects the federal government to take effective actions to mitigate the damages and restore normalcy.

Title 10 U.S.C. 162(b) requires the active duty Title 10 military to have its chain of command run through the Secretary of Defense to the President, but not through a governor. There are concerns regarding the qualifications and experience of National Guard general officers to effectively command and control large numbers of soldiers. For example, in the hurricane Katrina relief efforts, there were approximately 72,000 uniformed troops, including 22,000 active-duty soldiers and more than 50,000 National Guardsmen, deployed in response.⁶ Command and control of that number of soldiers normally requires a corps commander, i.e., a three-star general. There are no three-star National Guard general officers in any state or territory to command such an effort. There is none in the National Guard who has experience commanding corps-sized units.

The potential for natural, man-made and terrorist caused national catastrophes is significant and the consequences are severe. In the interest of preparedness, military planners must give serious thought and consideration to the issue and potential solutions

⁵ Admiral Timothy Keating, (Commander, United States Northern Command), interview with the author, Monterey, CA, February 1, 2006.

⁶ U.S. Department of Homeland Security, "Emergencies and Disasters," <http://www.dhs.gov/interweb/assetlibrary/katrina.htm> (accessed 01/31, 2006).

before crisis confronts policy makers again. It is imperative that the National Guard and USNORTHCOM determine how they will work together in catastrophic disaster civil support operations before the next crisis.

D. LITERATURE REVIEW

USNORTHCOM is a relatively new organization so there is not an abundance of existing literature that addresses the relationship between it and the National Guard, especially in civil support operations following catastrophic events. Major General Timothy J. Lowenberg, the Adjutant General of Washington, does an excellent job of outlining the chains of command and funding for the National Guard with respect to the governors and DoD, depending on the Guard's duty status. The issue of state versus federal control is a key component in the debate regarding relationships between the National Guard and USNORTHCOM. When performing civil support missions, Major General Lowenberg favors having the National Guard serve under the control of the governor and having the federal government fund the operations.⁷ He suggests having Title 10 personnel operate under the "supervisory authority" of the National Guard task force commander. The term does not exist in joint doctrine. He probably meant coordinating authority, i.e., the authority to require consultation between agencies involved but without the authority to compel agreement.⁸

Brigadier General (Retired) Raymond E. Bell proposes making a National Guard general officer the commander of USNORTHCOM. He also suggests the National Guard would become the force provider for USNORTHCOM's operations.⁹ Although interesting, neither of these suggestions effectively advances the discussion of the command and control relationship between the National Guard and USNORTHCOM for civil support operations after catastrophes.

⁷ Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, Vol. 2006 (Washington, DC: National Guard Association of the United States, 2005), 1-7, <http://www.ngaus.org/ngaus/files/ccLibraryFiles/Filename/000000000457/primer%20fin.pdf> (accessed January 31, 2006).

⁸ Joint Staff, *Joint Publication 0-2, Unified Action Armed Forces (UNAAF)*, Vol. JP 0-2 (Washington, DC: U.S. Department of Defense, 2001), GL-6, http://www.dtic.mil/doctrine/jel/new_pubs/jp0_2.pdf#search=%22jp%200-2%22 (accessed August 21, 2006).

⁹ Raymond E. Bell Jr., "U.S. Northern Command and the National Guard," *Joint Force Quarterly* : JFQ, no. 36 (December 2004), 36.

Lieutenant General H. Steven Blum, Chief, National Guard Bureau, presents his vision for the National Guard as a joint force within each state and territory.¹⁰ He has instructed each state to establish a Joint Force Headquarters-State and two Joint Task Force headquarters to provide command and control over the National Guard operations within a state or territory. While these initiatives move the National Guard in the direction it needs to go and make the force more efficient and relevant, the enhancements do not address the external command relationship problem.

E. TENTATIVE SOLUTIONS OR ANSWERS

There are three general potential policy solutions to the research question. The first would be to accept the current situation as the model. This preserves the governor's control of the National Guard, which would work cooperatively with the deployed federal forces subordinate to USNORTHCOM. However, if the President federalizes the National Guard, it would be subordinate to USNORTHCOM resulting in unity of command by placing one commander over all federal military forces and removing the governor from the National Guard's chain of command.

A second solution for consideration would be to accept that the problem is too complex to have a standard approach for all situations and recognition that the relationship will always have to be situationally dependent. With fifty-four sovereign state and territory governors and multiple scenarios to consider, it may be too hard to develop a plan with sufficient flexibility to apply across the spectrum of possible events. It could also be it is not possible to get the concurrence of those having to cede some degree of control of their assets, whether it is the governors or the USNORTHCOM commander.

Lastly, there may be a permanent relationship between the National Guard and USNORTHCOM that provides continual situational awareness on a daily basis, but could expand for civil support operations. This could present the situation whereby the National Guard gains a combatant commander as its advocate for enhanced federal resources while USNORTHCOM improves its capabilities to perform domestic operations.

¹⁰ H. Steven Blum, "A Vision for the National Guard," 24.

At the beginning of this research, there was a high probability that the military would be in charge of catastrophic event disaster relief operations and it appeared unity of command was paramount. High-level officials suggested there needed to be a more authoritative command and control arrangement when the consequences were great and the damages severe. President Bush recommended that Congress examine the issue.¹¹ Press accounts quoted Admiral Keating as having suggested a similar idea for the most severe catastrophic events.¹²

The state and territory governors voiced immediate and vigorous objection to even contemplating such proposals.¹³ The governors and their Adjutants General collectively rejected the suggestion and would not entertain it as a viable alternative. Because the political resistance was so intense, the administration backed away from the idea, at least in the public forum. However, there has been continuing discussion at the federal level regarding if DoD should take a leadership role in emergency response to catastrophic events.¹⁴

The net effect of this has been to make the research for this thesis more meaningful. Rather than just building a case for the federal military to take control of all military assets in the catastrophe response effort, the political and legal aspects compelled a more nuanced and sophisticated consideration of the complex issues at hand.

F. PAPER ORGANIZATION

To provide context for the reader, Chapter II leads with a review and description of the legal basis for the three duty statuses of the National Guard. Chapter III reviews the Hurricane Katrina reports of investigation and their findings on Title 10 and Title 32 command and control issues. Chapter IV establishes the Constitutional and statutory context and Chapter V reviews the applicable policy documents. Chapter VI reviews

¹¹ Bill Sammon, "Bush Offers Pentagon as 'Lead Agency' in Disasters," *Washington Times*, September 26, 2005.

¹² Ann Imse, "Proposal Would Use Military in Disasters," *Rocky Mountain News*, October 26, 2005.

¹³ Mark Sappenfield, "Battle Brews Over A Bigger Military Role," *Christian Science Monitor*, December 13, 2005.

¹⁴ Michael Chertoff and Donald Rumsfeld, *Memorandum for the President, Katrina After Action Lessons Learned Recommendation that DoD and DHS Determine when the Department of Defense Would be Involved in a Catastrophic Event - Natural or Man-Made*, (Washington, DC: Department of Homeland Security, April 7, 2006), 1-2.

military policy guidance contained in joint doctrine publications. Chapter VII presents the command and control alternative models with considerations for each. Chapter VIII provides an analysis of the stakeholders, their interests and authorities. Chapter IX reviews the USNORTHCOM civil support concept plan and provides analysis. It determines that the character of the catastrophe's nature and its impacts will shape the requirements for the C2 architecture. The commander should consider the following as he develops his C2 recommendation to the Secretary of Defense and the President.

- Politics
- Effectiveness of response
- Nature of the response and trend for the future
- Requirement for regional uniformity of response
- Size and composition of the response force
- Planning time available
- Duration of the support
- Public expectation

Chapter X provides conclusions and the way ahead.

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II. NATIONAL GUARD DUTY STATUS

The National Guard is the only military component shared between the states and territories, and the federal government. The National Guard can serve in three different duty statuses. Although it appears to be technical and bureaucratic, the distinctions among them are important to understand because they have command and control, legal authority and funding implications.

Many active duty soldiers do not routinely get exposure to the different duty statuses of the National Guard during their careers. Often they do not appreciate the differences and their significance. Part of the problem is terms such as “National Guard of the U.S.” and “National Guard in the service of the U.S.” appear so similar as to be the same. Actually, they describe two different duty statuses, i.e., Title 10 and Title 32. The term “National Guard” can mean state active duty or Title 32. For those who do not work with the different duty statuses routinely, it can be frustrating and confusing.

There may be another dynamic at work, too. Depending on the author and his agenda, it may be convenient to use ambiguous terms. For example, some reports following the Hurricane Katrina response cited DoD’s overwhelming support by the US military totaling more than 70,000 soldiers.¹⁵ Technically, DoD’s contribution was the active duty force of about 22,000 and only the funding for the 50,000 National Guardsmen who worked in state status. Some in the National Guard see this as DoD improperly taking credit for work the National Guard did.¹⁶

Because of both the intentional and unintentional use of fuzzy terms, documents may include terms that are ambiguous if not incorrect. For example, “uniformed,” “military,” and “DoD resources” do not clearly define a specific component and readers with different backgrounds may interpret them differently. The National Guard is uniformed, military and employs DoD resources in all three duty statuses.

¹⁵ U.S. Department of Defense, *Quadrennial Defense Review Report* (Washington, DC: 2006), 16, <http://www.defenselink.mil/pubs/qdr2001.pdf#search=%22quadrennial%20defense%20review%20report%22> (accessed August 22, 2006).

¹⁶ Christine E. Wormuth and others, *The Future of the National Guard and Reserves, the Beyond Goldwater-Nichols Phase III Report*, (Washington, DC: The Center for Strategic and International Studies, 2006), 84.

Even “federal” and “state” status can be unclear from a logic perspective, i.e., Title 32 is a federal status described in United States Code although control resides with the state. According to the legal experts, however, the determination of whether the National Guard is in federal or state service depends not on who funds the activity, rather which entity has command and control.¹⁷ In the interest of clear and precise communication, all plans, regulations, policies and strategy documents referring to National Guard forces should include their mutually exclusive duty status, i.e., state active duty, Title 32 or Title 10.

A. STATE ACTIVE DUTY

When the governor calls up the National Guard to respond, it is in state active duty. This is typically the National Guard’s status in response to disaster events or civil unrest. In state active duty status, they have no command connection to DoD or the federal government. The governor is their commander in chief, the state funds their operation and they operate according to state law. While in state active duty status, the National Guard is not subject to the Posse Comitatus Act and they may participate in law enforcement activities in accordance with the state constitution and law. They are the National Guard of their state, e.g., the National Guard of Louisiana or the Louisiana National Guard.

B. TITLE 32 UNITED STATES CODE

Title 32 duty status allows use of the National Guard for a federal purpose but leaves command and control authority with the governor. Because the missions executed in Title 32 status serve a federal purpose, the federal government funds it. Typically, this is the duty status for Guardsmen during their training and other federally authorized operations. For example, Title 32 U.S.C. 502(f) authorizes federal funding of the Guard for DoD approved operations. At the President’s request, governors quickly placed Guardsmen in airports following the 9-11 attacks under this authority in 2001. It was also the authority cited for the National Guard’s participation in the civil support

¹⁷ Center for Law and Military Operations, *Domestic Operations Law (DOPLAW) Handbook for Judge Advocates, 2001*, (Charlottesville, VA: The Judge Advocate General’s Legal Center and School, 2001), 182-183.

operations following Hurricane Katrina.¹⁸ The federal government funded the operation while state governors commanded and controlled it.

Governors must request Title 32 status for approval by the Secretary of Defense. Traditionally Title 32 U.S.C. 502(f) authorization was restricted to training rather than domestic operations. Recently DoD has used it for civil support operations such the 2004 political parties' presidential conventions, the G8 summit and the current Operation Jump Start on the southwest border. Title 32 U.S.C. 901 broadened the Secretary of Defense's authority to direct and fund homeland defense activities at the request of the governors. Governor Blanco initially requested the funding for her Guard operations following Hurricane Katrina under this authority. DoD determined the operation was a homeland security civil support mission rather than a homeland defense activity and approved the request under Title 32 U.S.C. 502(f).¹⁹

Because it is under the governor's command in Title 32 status, the National Guard may participate in law enforcement activities consistent with the state laws and constitution, i.e., the Posse Comitatus Act does not limit its law enforcement operations.²⁰

From the states' perspective, Title 32 is the preferred status for the employment of their National Guard in civil support. It gives the governors the best of all worlds, i.e., governor control of the National Guard with federal funding. The National Governors Association adopted the position "when the National Guard members perform domestic missions they should do so in Title 32 U.S.C. status rather than Title 10 U.S.C. status, unless the President has called them in Title 10 for a federal mission requiring federal

¹⁸ Kenneth Bea, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109th Congress, RL33064*, (Washington, DC: Library of Congress, 2005), 18, <http://fpc.state.gov/documents/organization/53095.pdf#search=%22crs%20report%20for%20congress%20133064%22> (accessed August 22, 2006).

¹⁹ Colonel Richard Chavez, (Office of the Assistant Secretary of Defense for Homeland Defense), interview with the author, Washington, DC, June 12, 2006.

²⁰ Center for Law and Military Operations, *Domestic Operations Law (DOPLAW) Handbook for Judge Advocates, 2004*, (Charlottesville, VA: The Judge Advocate General's Legal Center and School, 2004), 357-358, <http://www.fas.org/irp/doddir/army/law2004.pdf#search=%22domestic%20operations%20law%20handbook%20for%20judge%20advocates%202004%22> (accessed August 22, 2006).

troops, such as to repel an invasion.”²¹ As discussed under the Stafford Act in Chapter IV of this paper, Title 32 funding for civil support is problematic for DoD. The Title 32 costs come out of the DoD budget but the Federal Emergency Management Agency (FEMA) does not reimburse them. This represents a significant departmental funding liability if DoD is to use Title 32 for future civil support operations.

C. TITLE 10 UNITED STATES CODE

Title 10 is federal service that DoD controls and funds. It removes the governor and the state Adjutant General from the National Guard chain of command and replaces them with the President and the Secretary of Defense. The President mobilizes National Guardsmen and DoD deploys them outside the United States in Title 10 status. Presidential use of the National Guard domestically in Title 10 status is controversial. Absent an invasion or rebellion that would lead to invoking the Insurrection Act, the governors do not favor the President’s use of Title 10 in the United States for domestic missions.²² While in Title 10 status, the National Guard is part of DoD.

When the National Guard becomes part of the federal military, there are restrictions on its use and operations in the United States. In Title 10 status, the Posse Comitatus Act applies and may limit its participation in law enforcement activities. As members of the reserve component, the President cannot call up the National Guard for federal service to provide assistance to either the Federal Government or a state in time of a serious natural or manmade disaster, accident or catastrophe, per 10 U.S.C. 12304(c).

D. SUMMARY

The following National Guard Bureau matrix summarizes the three duty statuses and the compares the effect each has on key aspects.

²¹ National Governors Association, *Policy Position HHS-03, Army and Air National Guard Policy*, (Washington, DC: February 27, 2004), <http://www.nga.org/portal/site/nga/menuitem.8358ec82f5b198d18a278110501010a0/?vgnextoid=24ca9e2f1b091010VgnVCM1000001a01010aRCRD> (accessed August 27, 2006).

²² Jennifer Steinhauer, "Governors Resist Shifting Authority Over Guard," *The New York Times*, August 15, 2006, <http://www.nytimes.com/2006/08/15/us/15governors.html?ei=5094&en=c6a303540e70c772&hp=&ex=1155700800&partner=homepage&pagewanted=print> (accessed August 15, 2006).

Guardsman Duty Status Comparison



	STATE <i>State Active Duty</i>	FEDERAL <i>Title 32</i>	FEDERAL <i>Title 10</i>
Command & Control	Governor	Governor	President
Where	IAW State Law	CONUS	Worldwide
Pay	State	Federal	Federal
Mission types	IAW State Law (Riot control, Emergency Response, etc.)	Training, And other federally authorized.	Overseas Tng, & as assigned after mobilization
Discipline	State Military Code	State Military Code	UCMJ
Support Law Enforcement	Yes	Yes	Limited by <i>Posse Comitatus</i>

Figure 1. National Guard Duty Status Comparison²³

²³ Fred Rees, *The National Guard: Americans at their Best*, (Washington, DC: National Guard Bureau, 2002), 3, <http://www.ndu.edu/inss/symposia/jointops02/rees.pdf> (accessed August 25, 2006).

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III. IS THERE A PROBLEM?

During the response and recovery operations following Hurricane Katrina, the President, the Chief of National Guard Bureau and the Governor of Louisiana could not come to an early agreement on a command and control architecture for the federal forces and the state National Guard. The President proposed placing a Title 10 commander in dual status as a Title 32 officer to command both the federal military and National Guard of Louisiana. Governor Blanco felt she would lose control of her National Guard in this arrangement and declined the President's proposal. The negotiations were time-consuming and may have delayed the deployment of federal forces to assist the devastated population.²⁴

After the civil support operations concluded, numerous reports and investigations found improvement in achieving unity of effort was necessary. The White House published its February 2006 report, *The Federal Response to Hurricane Katrina: Lessons Learned*. It found under the Critical Challenge: Integrated Use of Military Capabilities that the Department of Defense should ensure the transformation of the National Guard focuses on increased integration with active duty forces for homeland security plans and activities.²⁵

The United States Government Accountability Office provided a statement for the record on May 25, 2006 titled *Hurricane Katrina: Better Plans and Exercises Need to Guide the Military's Response to Catastrophic Natural Disasters*. While noting that the military mounted a massive response that saved many lives, it determined DoD needs to take action to integrate the military's active duty and Reserve and National Guard forces in civil support. The current plan does "not address key questions of integration,

²⁴ Spencer Hsu, Joby Warrick and Rob Stein, "Documents Highlight Bush - Blanco Standoff," *The Washington Post*, December 5, 2005.

²⁵ White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: 2006), 94, <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf#search=%22the%20federal%20response%20to%20hurricane%20katrina%3A%20lessons%20learned%22> (accessed August 22, 2006).

command and control, and division of tasks between National Guard resources under state control and federal resources under U.S. Northern Command's control."²⁶

The United States Senate Committee on Homeland Security and Governmental Affairs released its report, *Hurricane Katrina: A Nation Still Unprepared*, dated May 2006. Their Recommendation 70 is "DoD and the States should develop the systems and process of communication, coordination, and command and control, to ensure unity of effort when National Guard and Title 10 forces are deployed in integrated disaster response missions."²⁷

The Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina released their report titled *A Failure of Initiative* on February 15, 2006. They reported there were two distinct military chains of command—one for federal troops and one for National Guard under state command. "This dual chain of command structure...contributed to a poorly coordinated federal response."²⁸

In summary, all of the investigations reported there were deficiencies in the integration of the efforts of the National Guard working for the governor of Louisiana and the federal military forces working for the President.

The press contained anecdotes of missed coordination. There were reports of multiple helicopters responding to rescue victims stranded by the floodwaters. The Defense Coordinating Officer reported he had difficulty validating missions for the Title 10 military because he did not have visibility over the National Guard activities. The press reported that inadequate coordination between the National Guard and Title 10 forces delayed evacuation operations at the Superdome.²⁹ Taken together, there is ample evidence that the command and control of the civil support operations were insufficient.

²⁶ Walker, *Preliminary Observations on Hurricane Response*, GAO-06-808T, 10.

²⁷ U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared, Report of the Committee on Homeland Security and Governmental Affairs*, (Washington, DC: 2006), Rec-25, http://hsgac.senate.gov/_files/Katrina/FullReport.pdf (accessed August 22, 2006).

²⁸ U.S. House of Representatives, *Failure of Initiative, Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina* (Washington, DC: 2006), http://katrina.house.gov/full_katrina_report.htm (accessed August 22, 2006).

²⁹ Robert Burns, "McHale: Hurricane Response Could Have Been Better," *Associated Press*, October 12, 2005.

IV. REVIEW OF THE U.S. CONSTITUTION AND PERTINENT STATUTES

The United States is a nation of laws. The Constitution is the legal foundation. It, with amendments and statutes, gives authorities and limits to the branches and levels of government. In addition to the balance of power the authors intended, it established a government that is always in dynamic tension as the branches and levels attempt to tip the balance to serve their interests. This tension results in friction among the actors.

A. THE U.S. CONSTITUTION

The Constitution defines the nation as a union of sovereign states with a federal government to operate that union. The Constitution provides the basis for the republican form of government, and defines the roles and authorities of the different branches and levels of government with respect to the military. It recognizes the value of the militias under the states' control. However, the Constitution also recognizes the need to raise armies for the nation.

Article I, Section 8 of the Constitution gives Congress the power to declare war, to raise and support armies and to make rules for the government and regulation of them. Clause 15 authorizes Congress “to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.” Clause 16 is important because it gives broad authority to the Congress over the National Guard, i.e., “to provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”

Article II, Section 2 designates the President as the commander in chief of the Army and Navy of the United States. The section also names the President as the commander in chief of the state militias, i.e., National Guard, when called into service of the United States. Today, we recognize the National Guard of the United States as a federal reserve military force in Title 10 status as described in Chapter II.

Amendment X states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people.”

B. TITLE 10, UNITED STATES CODE

See Chapter II.

C. TITLE 32, UNITED STATES CODE

See Chapter II.

D. POSSE COMITATUS ACT, 18 U.S.C. 1385

The Posse Comitatus Act (PCA) is a criminal statute that prohibits the use of the Title 10 Air Force and Army forces to perform law enforcement activities except as authorized by the Constitution or statute. DoD administratively extended the prohibition to the Navy and Marine Corps. The primary prohibition is against Title 10 forces’ direct involvement in traditional law enforcement activities, such as search, seizure, arrests, apprehension and interdicting vehicles. One of the exceptions is the Insurrection Act, discussed below. PCA does not apply to the National Guard in state active duty or Title 32 status. In those statuses, the governor may use the National Guard to enforce local, state and federal laws, consistent with the laws and constitution of the state. This makes the National Guard a powerful and flexible military tool for the governors. Once the President places the National Guard into Title 10 status, PCA restrictions apply.³⁰

The issue came up during the civil support operations following Hurricane Katrina. The 82nd Airborne Division, Title 10 forces, patrolled the streets of New Orleans. Their presence had the effect of suppressing criminal behavior. The military claimed it was merely showing presence and was not engaged in prohibited law enforcement activities. The Congressional Research Service felt active duty military patrols were inconsistent with the PCA.³¹

³⁰ Center for Law and Military Operations, *Domestic Operations Law (DOPLAW) Handbook for Judge Advocates, 2004*, 357-358.

³¹ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues, RS22266*, (Washington, DC: Congressional Research Service, Library of Congress, 2005), 4, <http://www.fas.org/sgp/crs/natsec/RS22266.pdf#search=%22Congressional%20Research%20service%20rs22266%22> (accessed August 21, 2006).

E. INSURRECTION ACT, 10 U.S.C. 331-335

The Insurrection Act authorizes the President to deploy federal military forces into a state to suppress insurrections, rebellions and domestic violence, or to enforce state and federal laws. He may use the military to restore order, prevent looting, and engage in other law enforcement activities that the PCA would otherwise prohibit. He has the authority to federalize the National Guard for these purposes.³²

Presidents have exercised the Insurrection Act in the not too distant past. For example, Presidents Eisenhower and Kennedy effectively used it to enforce civil rights laws in the South. Without the consent of the state governor, President Eisenhower placed the Arkansas National Guard into Title 10 federal service to enforce integration of Little Rock schools in 1957. In 1963, President Kennedy placed the Alabama National Guard in Title 10 federal service to remove it from Governor Wallace's control and to enforce federal civil rights laws at the University of Alabama.

In 1992, President Bush exercised the Insurrection Act at the request of the California governor to quell the rioting following the Rodney King incident in Los Angeles. He also placed the California National Guard into Title 10 status. In this case, the federal force commander's misunderstanding of the Insurrection Act and the PCA resulted in his imposing inappropriate restrictions on the use of the federal forces. The result was a significant reduction in the utility and effectiveness of the National Guard in its mission execution.³³

F. THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT (PL 93-288), 42 U.S.C. 5121 – 5206, ET SEQ

The Stafford Act authorizes the President to issue major disaster declarations and direct federal agencies including DoD to provide assistance to states overwhelmed by disasters. The Stafford Act gives the President authority to deploy federal military forces into the states or territories for defense support of civil authorities missions when the governors request it.

³² Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, RS22266, 3.

³³ Thomas R. Lujan, "Legal Aspects of Domestic Employment of the Army," *Parameters*, Autumn 1997, <http://carlisle-www.army.mil/usawc/Parameters/97autumn/lujan.htm> (accessed August 21, 2006).

In implementing the Stafford Act, FEMA reimburses DoD's incremental costs associated with providing requested civil support following a President declared disaster. This means that the costs DoD would pay regardless of the civil support operations, for example, soldiers' pay and allowances, FEMA will not reimburse. This interpretation is problematic for DoD when it employs National Guard soldiers in Title 32 status for civil support. FEMA does not reimburse DoD for the soldiers' pay and allowances even though the National Guard would not be in Title 32 status but for the civil support operation. Alternatively, states may receive federal assistance in funding their National Guard in state active duty costs on a shared basis. This means that unless FEMA waives the state portion of the shared cost, the states and territories must pay a portion of the cost of their National Guard in state active duty status under the Stafford Act.³⁴

G. HOMELAND SECURITY ACT OF 2002, 6 U.S.C. 101 - 1557 (2002)

This act implements Homeland Security Presidential Directive/HSPD-5 and establishes the Department of Homeland Security (DHS) by merging several agencies. It designates DHS as the federal lead for natural and manmade crises and emergency planning. DHS coordinates the federal response resources in major disasters. The current interpretation is this law would not allow DoD to act as a lead agency for a homeland security event.

H. NATIONAL EMERGENCIES ACT, 50 U.S.C. 1601 – 1651 (2003)

This law provides procedures for Presidential declaration of national emergencies. The President must identify the specific provision of the law under which he will act in dealing with a declared national emergency. The Presidential declaration of a national emergency under the act is a prerequisite to exercising any special or extraordinary powers authorized by statute for use in the event of a national emergency.³⁵

I. THE ECONOMY ACT, 31 U.S.C. 1535 – 1536, (2002)

The Economy Act allows federal agencies to purchase goods and services from other federal sources on a reimbursable basis. This act is sometimes employed before the President triggers the Stafford Act with a disaster declaration. It ensures federal agencies do not augment their congressionally approved appropriations by having other

³⁴ Chavez, interview, Washington, DC, June 12, 2006.

³⁵ U.S. Department of Homeland Security, *National Response Plan* (Washington, DC: 2004), 80, http://www.dhs.gov/interweb/assetlibrary/NRP_FullText.pdf (accessed August 22, 2006).

departments perform the requestors' mission without reimbursement. For example, DHS cannot request DoD perform one of their homeland security missions without DHS funding it.

J. SUMMARY

The Constitution and statutes give significant authority to the President to act, but also place limits on him. Usually the governors must invite the federal government into their states and territories. Normally the governors will command the National Guard, but there are provisions to have it under the command of the President. PCA may limit Title 10 forces from performing law enforcement functions. There are instances such as the Insurrection Act in which the President can act unilaterally, but there are onerous implications of such action. The law that established DHS made it the principal federal agency in preparation for and responding to emergencies. Other federal agencies including DoD respond to DHS requests for assistance.

This model sets up an inherent conflict in civil support operations following catastrophic events. DHS has the statutory authority to respond, but lacks the organic assets and capability to do so. DoD has the capability to respond, but lacks the statutory authority.

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V. REVIEW OF STRATEGY AND POLICY DOCUMENTS

This chapter reviews the strategy and policy documents as they pertain to civil support operations following catastrophic events. In particular, it examines the guidance and policy that apply to USNORTHCOM and the National Guard in those operations. Strategy in its basic form defines the ends, ways and means. Generally, the following strategy documents do a good job of laying out the desired ends. However, they occasionally employ broad terms when describing the ways and means because the precise enabling legal foundation to achieve the ends does not exist. With respect to the National Guard, some of the ambiguous terms in the strategy and policy documents include “military forces,” “uniformed forces,” “armed forces,” “military support” and “DoD resources.” The reader must take into account the originating office’s authority, the context of the reference and the legal basis that supports it before he can understand the implications of the document.

A. NATIONAL SECURITY STRATEGY (NSS), MARCH 2006

This is the President’s capstone security strategy document. The strategy focuses primarily on international security. Other than noting the establishment of the Department of Homeland Security, it is silent on civil support. One of the stated national security priorities is minimizing the damage and facilitating the recovery from attacks that do occur. The NSS observes that DoD completed its 2006 Quadrennial Defense Review, discussed later in this chapter. In that section of the NSS, it notes DoD is transforming itself to better balance its capabilities across four categories of challenges including catastrophic challenges involving natural disasters that produce weapons of mass destruction-like effects.³⁶

B. NATIONAL STRATEGY FOR HOMELAND SECURITY (NSHS), JULY 2002

This document focuses on the nation’s preparedness for countering terrorist attacks, but it includes natural disasters as well. In its Executive Summary, the NSHS addresses Emergency Preparedness and Response in stating that an effective response to a major terrorist incident and natural disasters depends on being prepared. The nation

³⁶ White House, *The National Security Strategy of the United States of America* (Washington, DC: 2006), 43-44.

needs a comprehensive national system to bring together and coordinate all necessary response assets quickly and effectively. It must plan, equip, train, and exercise many different response units to mobilize without warning for any emergency.³⁷ Because the strategy predates the Homeland Security Act of 2002, it includes a section noting that per the President's proposal, DHS will consolidate federal response plans and build a national system for incident management in cooperation with state and local government. Among the twelve major initiatives of the NSHS is one to prepare an integrated single all-discipline incident management plan, i.e., the National Response Plan, and to plan for military support to civil authorities.

The strategy states DoD contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities. DoD would be involved during emergencies such as responding to forest fires, floods, tornadoes or other catastrophes. In these emergencies, DHS may ask DoD to act quickly provide capabilities other agencies do not have.³⁸

The NSHS notes the establishment of USNORTHCOM and describes its role in homeland security.

In April 2002, President Bush approved a revision of the Unified Command Plan that included the establishing a new unified combatant command, U.S. Northern Command. This command will be responsible for homeland defense and for assisting civil authorities in accordance with U.S. law. As in the case with all other combatant commanders, the commander of Northern Command will take all operational orders from and is responsible to the President through the Secretary of Defense. The commander of Northern Command will update plans to provide military support to domestic civil authorities in response to natural and man-made disasters and during national emergencies.³⁹

It does not make an overt distinction to exclude the National Guard from the military support to civil authority mission although the USNORTHCOM commander has no command authority over or planning responsibility for the National Guard except when it is in Title 10 status and assigned to him.

³⁷ Office of Homeland Security, *National Strategy for Homeland Security* (Washington, DC: 2002), x, http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf (accessed August 22, 2006).

³⁸ *Ibid.*, 13.

³⁹ *Ibid.*, 45.

C. THE NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA, MARCH 2005

This is DoD's strategy that sets defense objectives, one of which is protecting the homeland. DoD contributes to protecting the U.S. Homeland by sustaining the offensive against terrorist organizations and by providing defense support to civil authorities as the President directs. DoD is committed to act quickly in emergencies to provide unique capabilities to other federal agencies when the need surpasses the capacities of civilian responders and when directed to do so by the President or the Secretary of Defense.⁴⁰ This strategy addresses the federal military only and does not include the National Guard except when it is in Title 10 status.

D. NATIONAL MILITARY STRATEGY (NMS) OF THE UNITED STATES OF AMERICA, 2004

The NMS is the Chairman of the Joint Chiefs of Staff's document to provide strategic direction and guidance to the federal military forces regarding military objectives. This document predates the current National Defense Strategy. In its Defensive Actions at Home section, the NMS states, "During emergencies the Armed Forces may provide military support to civil authorities in mitigating the consequences of an attack or other catastrophic event when civilian responders are overwhelmed. Military responses under these conditions require a streamlined chain of command that integrates the unique capabilities of active and reserve military components and civilian responders."⁴¹ This passage includes some of the ambiguous terminology referred to at the beginning of this chapter, i.e., military responses. In that this is the national military strategy, it applies to federal military only and not the National Guard unless it is in Title 10 status.

E. STRATEGY FOR HOMELAND DEFENSE AND CIVIL SUPPORT, JUNE 2005

This document provides key definitions that shape the DoD approach to civil support. The authors write carefully to provide a coherent strategy but employ some

⁴⁰ U.S. Department of Defense, *National Defense Strategy of the United States of America*, (Washington, DC: 2005), 9-10, <http://www.defenselink.mil/news/Mar2005/d20050318nds2.pdf> (accessed August 22, 2006).

⁴¹ Joint Chiefs of Staff, *National Military Strategy of the United States of America*, (Washington, DC: 2004), 9, [http://www.defenselink.mil/news/Mar2005/d20050318nms.pdf#search=%22national%20military%20strate](http://www.defenselink.mil/news/Mar2005/d20050318nms.pdf#search=%22national%20military%20strategy%20of%20the%20United%20States%20of%20America%22)gy%20of%20the%20United%20States%20of%20America%22 (accessed August 22, 2006).

broad terms because their office lacks the specific legal authority to speak for or to direct the sovereign states and territories' National Guard. As such, it creates a zone of ambiguity by defining DoD ends without providing clear authorized ways to achieve them. This strategy came out only months before Hurricane Katrina struck the United States

The strategy makes it clear that DoD recognizes DHS as the lead federal agency in preparing for, responding to and recovering from major domestic disasters. It defines defense support of civil authorities, often referred to as civil support, as DoD support, including Federal military forces, the Department's career civilian and contractor personnel, and DoD agency and component assets, for domestic emergencies. DoD provides defense support of civil authorities only when directed to do so by the President or Secretary of Defense. As written, this definition of civil support does not include the National Guard unless the President places it in Title 10 status.⁴²

The strategy states the President will direct DoD to provide substantial support to civil authorities in the event of major catastrophes and DoD will plan, practice, and carefully integrate their civil support into the national response. USNORTHCOM is responsible for planning, organizing, and executing homeland defense and civil support missions within the continental United States, Alaska, and territorial waters. It goes on to say, "This Strategy reflects a Total Force approach to homeland defense missions, incorporating the capabilities of Active Duty, National Guard, and Reserve forces... Forces must also be prepared to conduct the full spectrum of domestic civil support missions when directed by the President or the Secretary of Defense to do so."⁴³ The authors word this section very carefully. As part of the DoD reserve forces, the National Guard is obligated to train for its homeland defense mission. However, the President and Secretary of Defense can only direct it when it is in Title 10 status, so the instruction for the civil support mission is more of an expressed desire rather than an authoritative directive for the National Guard.

⁴² U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*, (Washington, DC: 2005), 5-6, <http://www.defenselink.mil/news/Jun2005/d20050630homeland.pdf#search=%22strategy%20for%20homeland%20defense%20and%20civil%20support%22> (accessed August 22, 2006).

⁴³ *Ibid.*, 35.

The strategy calls for focused reliance upon the reserve component. “Homeland defense and civil support are Total Force responsibilities. However, the nation needs to focus particular attention on better using the competencies of National Guard and Reserve component organizations. The National Guard is particularly well suited for civil support missions. As with other Reserve components, the National Guard is forward deployed in 3,200 communities through the nation. In addition, it is readily accessible in State Active Duty and Title 32 status, routinely exercised with local law enforcement, first responders, and the remainder of the Total Force, and experienced in supporting neighboring communities in times of crisis.”⁴⁴ The authors’ carefully chosen wording creates the sense of a coherent strategy. Its admonishment that the nation focus on the National Guard’s competencies is because DoD does not have the authority to do so. Although the National Guard is forward deployed, it only falls under the command of the President when he places it in Title 10 status. Otherwise, it is an asset of the state or territorial governor.

This strategy commits DoD to maintain a ready, capable, and agile command and control structure, along with competently trained forces, to assist civilian authorities with catastrophic incident response. In this context, it is referring to the active duty forces only, not the National Guard.

F. THE UNIFIED COMMAND PLAN (UCP) 04, MARCH 1, 2005

The President provides his instructions to the combatant commanders in the UCP. In it, he establishes the combatant commanders’ missions, responsibilities and force structure as well as their geographic areas of responsibility and functions. It directs that the combatant commander will have command of all forces operating in his geographic area of operations except as otherwise directed. Furthermore, the combatant command shall exercise command authority over all commands and forces assigned to his command. USNORTHCOM is one of the exceptions. USNORTHCOM does not have command of all DoD forces in its area of responsibility because the area includes the continental United States and Alaska, home for the preponderance of DoD’s Title 10 forces. Instead, USNORTHCOM commands only those forces the Secretary of Defense assigns to it for military operations. USNORTHCOM will not command any portion of

⁴⁴ U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*, 35.

the National Guard unless the President places units in Title 10 status as the National Guard of the United States and the Secretary of Defense assigns those units to USNORTHCOM.

The UCP directs combatant commanders to plan for and execute military operations as directed in support of the National Military Strategy. Commanders will certify the readiness of assigned headquarters staffs designated to perform as a joint task force (JTF). Combatant commanders provide the single point of contact on military matters within their assigned areas of responsibility, excluding the United States for the reason above.

The UCP assigns USNORTHCOM its area of responsibility as the continental United States and Alaska, Canada and Mexico. It instructs the USNORTHCOM commander to provide civil support and other assistance to U.S. civil authorities as directed.⁴⁵ All of the UCP addresses Title 10 forces only and not the National Guard.

G. FORCES FOR UNIFIED COMMANDS, FY 2006 (U)

This document provides the Secretary of Defense's direction to the Secretaries of the Military Departments for assigning forces to the combatant commands. Paragraph 3, Authorities of Combatant Commanders and Responsibilities of Assigned Units, contains helpful language. It states "coordinating authority may be established via a memorandum of agreement between Title 10 and non-federalized (e.g., Title 32) National Guard forces to promote unity of effort. The commander or individual has the authority to require consultation between the agencies involved but does not have the authority to compel agreement."⁴⁶ Although the Secretary does not address this language to the USNORTHCOM commander, at least it gives the commander license to coordinate with the non-federalized National Guard.

H. QUADRENNIAL DEFENSE REVIEW REPORT, FEBRUARY 6, 2006

This report contains a narrative review of DoD's recent accomplishments. U.S. forces responded to natural disasters at home. In the wake of Hurricane Katrina, prepositioned forces arrived in neighborhoods of Gulf Coast communities within four

⁴⁵ White House, *Unified Command Plan 2004* (Washington, DC: 2005), 1-10.

⁴⁶ U.S. Department of Defense, *Forces for Unified Commands FY 2006 (U)* (Washington, DC: 2005), II-4.

hours after the storm hit, to assist rescue efforts. More than 50,000 National Guard personnel deployed to the disaster zone. Active forces added an additional 22,000. DoD's response to Hurricane Katrina and other civil support operations provided valuable lessons for improving force integration and command and control in large, complex interagency operations. As the authors wrote this, it appears DoD takes credit for the National Guard's work even though the National Guard served in Title 32 status and was not part of DoD for the operation.

The section titled Operations Lessons Learned notes recent operations demonstrate the critical importance of organizing to work with and through others. The operations "underscore the importance of adopting a more indirect approach to achieve common objectives...at home it includes other Federal agencies and state and local governments."⁴⁷

The section titled Achieving Unity of Effort includes direction on complex interagency operations at in the United States. It states unified interagency efforts are important and that DoD must work as part of a unified interagency effort with the Department of Homeland Security and other federal, state and local agencies to address threats to the U.S. homeland. In addition, the response to Hurricane Katrina vividly illustrated the need for DoD to support other agencies in the context of complex interagency operations at home. It commits DoD to, at the request of the Department of Homeland Security, organize and sponsor homeland defense tabletop exercises, in which senior leaders from civilian and military agencies practice responses to disaster scenarios. It is not clear whether this would include the National Guard in the training audience or not.⁴⁸

The Quadrennial Defense Review Report contains a section on "Operationalizing the Strategy." It observes that capabilities to mitigate attacks on the U.S. homeland may also play a role in responding to natural disasters, as the response to Hurricane Katrina demonstrated. The ultimate goal is to develop the capacity of other agencies and state and local governments to respond to domestic incidents so that they will be sufficient to

⁴⁷ U.S. Department of Defense, *Quadrennial Defense Review Report*, 17.

⁴⁸ *Ibid.*, 87.

perform their assigned responsibilities with minimal reliance on U.S. military support. To that end, DoD will develop concepts of operations to leverage its strengths in areas such as planning, training and command and control, in support of its interagency homeland security partners. The reference to U.S. military support does not include the National Guard except when it is in Title 10 status. DoD could demonstrate its commitment to this strategy by resourcing the National Guard's capability for civil support when it is not in Title 10 status.

In the "Support" section, the report notes that at the direction of the President or the Secretary of Defense, DoD supports civil authorities as a part of a comprehensive national response to recover from a disaster. DoD's substantial humanitarian contributions to relief efforts in the aftermaths of Hurricanes Katrina and Rita fall into this category. In the future, should other catastrophes overwhelm civilian capacity, DHS may call upon DoD to respond rapidly with additional resources as part of an overall U.S. Government effort.

In the "Enable" section the report commits DoD to work with DHS and with state and local governments to improve homeland security capabilities and cooperation. It notes the need for "capabilities to manage the consequences of major catastrophic events" and suggests the need for "new or expanded authorities to improve access to Guard and reserve forces for use in the event of a man-made or natural disaster."⁴⁹ This refers to an expedited means for the President to mobilize, involuntarily if necessary, National Guard forces in Title 10 status for civil support operations.

I. NATIONAL RESPONSE PLAN, DECEMBER 15, 2004 WITH CHANGE

Per Homeland Security Presidential Directive/HSPD-5 direction, the NRP combined all of the federal emergency plans into an integrated, all-hazards approach to domestic incident management. It sought to unify the domestic emergency management by improving coordination at the federal, state and local levels. DHS thoroughly staffed and coordinated the NRP before thirty federal department secretaries, administrators and directors, and two non-governmental organization presidents signed it and it went into effect. The civil support portions for the federal military model the practices of the pre-existing Federal Response Plan and incorporate only minor changes.

⁴⁹ U.S. Department of Defense, *Quadrennial Defense Review Report*, 27.

The NRP outlines roles and responsibilities. It says that as a state's chief executive, the governor is responsible for the public safety and welfare of the people of the state or territory. Also, "The Governor is the Commander-in-Chief of State military forces (National Guard when in state active duty or Title 32 Status and the authorized State militias)."⁵⁰ This language is exact and accurate.

The NRP notes DoD has significant resources that may be available to support the federal response to an Incident of National Significance. It recognizes the authority of the Secretary of Defense includes authorizing "Defense Support of Civil Authorities for domestic incidents as directed by the President or when consistent with military readiness operations and appropriate under the circumstances and the law. The Secretary of Defense retains command of military forces under DSCA, as with all other situations and operations."⁵¹ The NRP includes the definition of defense support of civil authorities as DoD support provided by federal military forces, DoD civilians and contract personnel, and DoD agencies and components, in response to requests for assistance during domestic incidents to include terrorist threats or attacks, major disasters, and other emergencies.⁵²

It observes that concepts of "command" and "unity of command" have distinct legal and cultural meanings for military forces and operations. For military forces, command runs from the President to the Secretary of Defense to the commander of the combatant command to the commander of the forces. The "Unified Command" concept utilized by civil authorities is distinct from the military chain of command. The NRP repeats that the Secretary of Defense retains command of military forces providing civil support.⁵³ All of these references in the DoD section could have been clearer if the authors had included "federal" before the word "military." In general, it is clear that DoD controls the Title 10 forces only.

The NRP clearly and accurately captures the command relationship between the federal military forces and the National Guard not in federal status. Based on the

⁵⁰ U.S. Department of Homeland Security, *National Response Plan*, 8.

⁵¹ *Ibid.*, 10.

⁵² *Ibid.*, 41.

⁵³ *Ibid.*, 10.

magnitude, type of incident and anticipated level of resource involvement, the supported combatant commander may utilize a Joint Task Force (JTF) to command federal (Title 10) military activities in support of the incident. The collocation of the JTF command and control element does not replace the requirement for a Defense Coordinating Officer as a part of the Joint Field Office coordination staff and it will not coordinate requests for assistance for DoD. A JTF commander exercises operational control of all allocated DoD resources (excluding U.S. Army Corps of Engineers resources, National Guard forces operating in state active duty or Title 32 status). The NRP also notes correctly that Army and Air National Guard Forces, i.e., National Guard forces employed under state active duty or Title 32 status, are providing support to the governor of their state or territory and are not part of federal military response efforts.⁵⁴

J. HOMELAND SECURITY PRESIDENTIAL DIRECTIVE/HSPD-5, MANAGEMENT OF DOMESTIC INCIDENTS, FEBRUARY 28, 2003

HSPD-5 names the Secretary of DHS as the Principal Federal Official for domestic incident management. It directs him to prepare the NRP. It preserves the authority of the Secretary of Defense over DoD and as well as the chain of command for military forces to the President as the Commander in Chief. It directs the Secretary of Defense to provide military support for civil authorities for domestic incidents as the President directs or when consistent with military readiness and law. The Secretary of Defense retains command of military forces providing civil support.⁵⁵ “Military forces” in this context refers to federal military forces, not state military forces.

K. HOMELAND SECURITY PRESIDENTIAL DIRECTIVE/HSPD-8, NATIONAL PREPAREDNESS, DECEMBER 17, 2003

This is a companion to HSPD-5. It describes the way federal departments and agencies will prepare for a response to a domestic incident. It tasks DoD to provide information describing the organizations and functions of DoD that may provide support to civil authorities during a domestic crisis.⁵⁶ This direction includes Title 10 forces only.

⁵⁴ U.S. Department of Homeland Security, *National Response Plan*, 42.

⁵⁵ White House, *Homeland Security Presidential Directive/HSPD-8*, (Washington, DC: 2003), <http://www.whitehouse.gov/news/releases/2003/12/print/20031217-6.html> (accessed July 2, 2006).

⁵⁶ White House, *Homeland Security Presidential Directive/HSPD-5*, (Washington, DC: 2003), <http://www.whitehouse.gov/news/releases/2003/02/print/20030228-9.html>.

L. SUMMARY

The strategy for civil support purports to be one of focused reliance on the National Guard and reserves. However, there is no effective way to compel the National Guard to adopt this strategy. USNORTHCOM is responsible for planning the Title 10 part of the mission only. There is no directive to the USNORTHCOM commander to plan for the National Guard's participation in civil support operations unless they are in Title 10 status. The "Forces For" document authorizes the commander to exercise coordinating authority with the National Guard in Title 32 status and to direct subordinate commanders to do the same. All of the policy documents contemplate separate chains of command for the National Guard and Title 10 forces unless the National Guard is in Title 10 status.

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VI. JOINT MILITARY DOCTRINE

The military refers to its policy as doctrine. Joint publications contain the military doctrine. This chapter reviews joint military doctrine as it applies to civil support following domestic catastrophic events.

A. JOINT PUBLICATION 0-2, UNIFIED ACTION ARMED FORCES

This publication provides doctrine and military guidance governing unified direction of forces. It states unity of effort requires coordination among government departments and agencies. The Constitution, federal law and the national interest all influence national unified action. The Secretary of Defense is responsible to the President for national military unity of effort in creating, supporting and employing military capabilities.⁵⁷ A casual reading of this passage might lead one to conclude that the “national military” would include the National Guard in Title 32 and state active duty status. It does not.

Obtaining coordinated and integrated effort in an interagency operation is not the same as command and control of a military operation. Unity of effort results only through close continuous interagency coordination and cooperation. The publication defines coordinating authority is a consultation relationship between commanders, not an authority by which command may be exercised. However, coordinating authority is more applicable to planning than to operations.⁵⁸

B. JOINT PUBLICATION 3-07, JOINT DOCTRINE FOR MILITARY OPERATIONS OTHER THAN WAR

DoD classifies emergency support to civil authorities operations as Military Operations Other Than War, separate and distinct from war or combat operations. One of the main points the doctrine highlights is the primacy of political objectives. It states, “political objectives drive Military Operations Other Than War at every level from strategic to tactical.” Military personnel should understand the political objectives. It

⁵⁷ Joint Staff, *Joint Publication 0-2, Unified Action Armed Forces (UNAAF)*, I-3.

⁵⁸ *Ibid.*, I-11 - III-12.

admonishes commanders to be aware of changes in the political objective that may warrant a change in military operations.⁵⁹

Unity of effort is one of the principles for Military Operations Other Than War. The joint doctrine states it is derived from the principle of war, unity of command, but notes achieving unity of effort is complicated by varying views of the objective. Commanders must rely heavily on consensus building to achieve unity of effort. Command arrangements among partners may be less well defined and not include full command authority. In these circumstances, commanders must establish procedures for liaison and coordination to achieve unity of effort.⁶⁰

C. JOINT PUBLICATION 3-26, HOMELAND SECURITY

This publication contains the doctrine that applies to DoD’s role in homeland defense and civil support operations. The publication describes the relationship of homeland defense to homeland security using this familiar diagram.

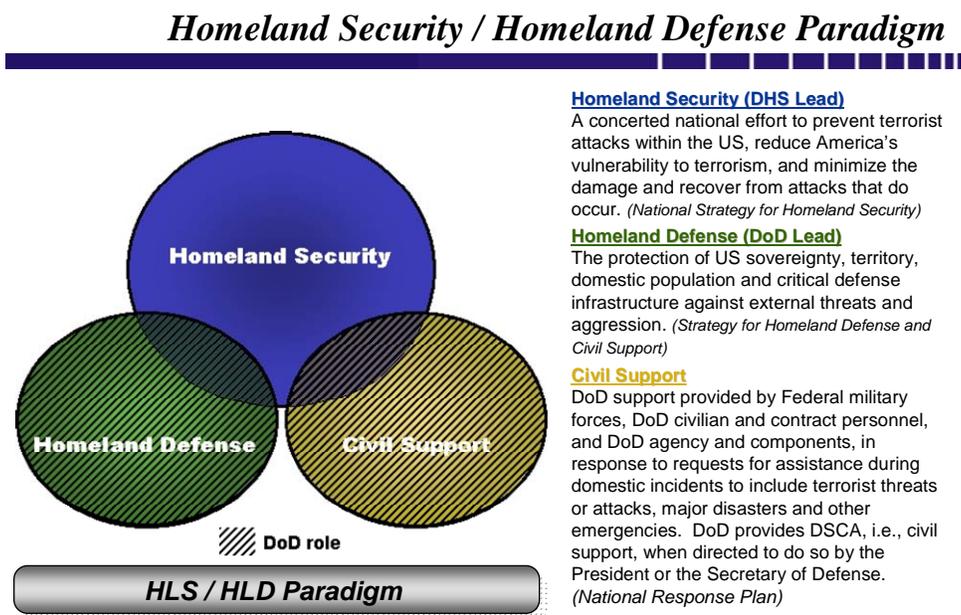


Figure 2. Homeland Security / Homeland Defense Paradigm⁶¹

⁵⁹ Joint Staff, *Joint Publication 3-07, Joint Doctrine for Military Operations Other than War* (Washington, DC: U.S. Department of Defense, 1995), I-2, http://www.dtic.mil/doctrine/jel/new_pubs/jp3_07.pdf (accessed August 21, 2006).

⁶⁰ Ibid., I-2.

⁶¹ After Figure I-3, Relationship of Emergency Preparedness to Homeland Security Mission Areas, Joint Staff, *Joint Publication 3-26, Homeland Security* (Washington, DC: U.S. Department of Defense, 2005), I-4, http://www.dtic.mil/doctrine/jel/new_pubs/jp3_26.pdf (accessed August 21, 2006).

Homeland defense is the primary responsibility of DoD. For homeland defense activities, DoD acts as the lead federal agency and other agencies provide required support. For homeland security activities, DHS has the primary responsibility and other agencies, including DoD, provide required support. For the area shown as Civil Support, DHS has the primary responsibility and acts as the principal or lead federal agency. DoD provides requested support when the President directs it.

With respect to command and control, regardless of whether DoD is conducting homeland defense or civil support operations, military forces will remain under the control of the established Title 10, Title 32 or state active duty military chain of command. The Secretary of Defense will retain control of assigned Title 10 military forces providing civil support. As the designated command for overall command and control of DoD support to civil authorities within its area of responsibility, USNORTHCOM embodies the principles of unity of effort and unity of command.⁶² The policy anticipates the National Guard will remain in state active duty or Title 32 status, and recognizes the advantages associated with those statuses, most notably no Posse Comitatus Act restraints. It describes the combined response of Title 10, Title 32 and / or state active duty forces employed in response to incidents.⁶³

D. SUMMARY

The joint doctrine for civil support is appropriate and helpful. The tendency for military officers is to view all operations from the perspective of their military experience and training. Because that experience usually centers on combat operations for active duty officers, they automatically look for familiar operational paradigms to apply. This leads them to seek unity of command rather than unity of effort. However, there are important differences between combat operations and operations other than war. The joint doctrine captures these differences. The problem lies in knowing, understanding and applying the appropriate doctrine.

The doctrine for civil support emphasizes unity of effort but acknowledges that achieving it is challenging, especially in operations involving interagency actions. For

⁶² Joint Staff, *Joint Publication 3-26, Homeland Security*, II-7.

⁶³ *Ibid.*, IV-1 – IV-4.

combat or war operations, unity of command is a guiding principle. Doctrine changes the principle to unity of effort for military operations other than war.

Specific joint doctrine addressing command and control for civil support operations following catastrophic events does not exist. Existing doctrine recognizes USNORTHCOM will exercise command and control over the Title 10 forces and assets in civil support operations. It goes on to state the National Guard will usually operate under the control of the governor. While it recognizes the separate chains of command for federal and state military forces, doctrine is silent on how to achieve unity of effort between USNORTHCOM and the National Guard operating in state status during civil support operations.

VII. COMMAND AND CONTROL OPTIONS

There are three basic alternatives available to establish the command and control (C2) architecture for the military involved in civil support operations following catastrophic events. One is to federalize all of the military forces and place them subordinate to a Title 10 commander. A second option is to place a commanding officer into dual Title 10 and Title 32 status so that he commands both the federal military and the National Guard in Title 32 and state active duty status. Lastly, there is the parallel C2 structure with the Title 10 federal chain of command up to the President, and the Title 32 and state active duty National Guard chain of command up to the governor. Each C2 construct has its relative strengths and weaknesses. This chapter describes the options with analysis of their advantages and disadvantages. An analysis of the stakeholders and their interests completes the chapter.

A. DEFINITION

Command and Control: The exercise of authority and direction by a properly designated commander over assigned and attached forces on the accomplishment of the mission. Command and Control functions are performed through an arrangement of personnel, equipment, communications, facilities and procedures employed by a commander in planning, directing, coordinating and controlling forces and operations in the accomplishment of the mission.⁶⁴

B. C2 OPTIONS

1. Option 1. Consolidate Command and Control of All Military Under One Commander

The United States goes to war abroad under this traditional C2 model. It places the deploying National Guard in Title 10 status, which makes it subordinate to the President, the Secretary of Defense and the combatant commander, and severs the chain of command relationship with its state governor.

⁶⁴ Joint Staff, *Joint Publication 0-2, Unified Action Armed Forces (UNAAF)*, GL-6.



Domestic Title 10 Command

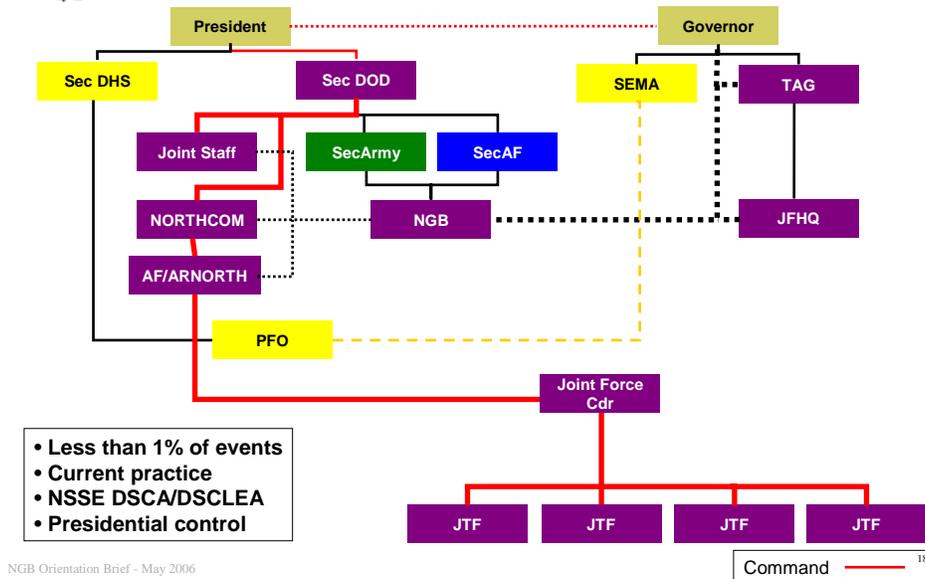


Figure 3. Domestic Title 10 Command⁶⁵

The President has not employed this extreme solution recently for domestic civil support. In fact, there are legal hurdles that could make it difficult if not impossible to use following a catastrophic event. Title 10 U.S.C. 12304(b) specifies the federal government cannot call up the National Guard in Title 10 status to assist “in time of a serious natural or manmade disaster, accident or catastrophe.” The President could circumvent this prohibition by invoking the Insurrection Act, but there are significant legal and political ramifications should he choose to do so.

a. Advantages

This C2 architecture creates unity of command by placing all military under one commander subordinate to the Secretary of Defense and President. The President could use it to standardize military civil support response procedures across state lines for regional conformity. It provides the tightest control for the President through DoD. By taking this strong action, it unambiguously puts the President in charge and telegraphs the seriousness of the situation to the American people.

⁶⁵ National Guard Bureau, *NGB Orientation Brief*, (Washington, DC, May 2006), 18.

b. Disadvantages

Unless the governor requests this action, the President is essentially relieving the sovereign state's commander in chief. The governor could consider it a federal invasion of his sovereign state. This action removes the state military assets from the governor, eliminating his capability to conduct or participate in military operations. Without political concurrence and support at the national and state levels, there would likely be considerable political consequences and perhaps legal challenges. Once the National Guard is in Title 10 status, the Posse Comitatus Act (PCA) could significantly reduce its utility for use in law enforcement. Simply invoking a law whose name is the Insurrection Act suggests a government in crisis, whether accurate or not. This could shake the confidence of the American public. In addition, it might embolden enemies to take hostile actions while the government, by its own declaration, is unstable.

c. Considerations

This model could be applicable when a catastrophe destroys or incapacitates the state or territory's leadership. If social order does not exist and the state governments cannot restore it, the federal government may have to step in.⁶⁶ If the President invokes the Insurrection Act, the PCA limitations can be overcome.

The President should consider it when uniformity of military response is required over a multi-state region. For example, if there were a multi-state catastrophe such as the New Madrid earthquake or pandemic influenza scenarios that required a standard military response across the states, this construct could ensure it.

2. Option 2. Establish a Dual Status Commander

With the authorization of the President and consent of the governor, Title 32 U.S.C. 325 allows a National Guard unit commanding officer to be in federal service without giving up his state National Guard status. This has the potential to create a single commander who can command Title 10 forces for the President, and Title 32 and state active duty National Guardsmen for the governor. Only the commander is in this dual status; the military forces are not. This means PCA restrictions still apply to the Title 10 forces, but not the state active duty and Title 32 forces. DoD has employed this dual

⁶⁶ Major General Terry Scherling, (Director of the Joint Staff, National Guard Bureau), interview with the author, Washington, DC, June 23, 2006.

status C2 arrangement four times, i.e., the Republican and Democratic National Party Conventions, the G8 Summit meeting, and Operation Winter Freeze.

President Bush proposed a parallel to this C2 construct to Governor Blanco during the response to Hurricane Katrina. Title 32 U.S.C. 315 authorizes the President to permit a Regular Army (active duty) officer detailed to the National Guard to accept a commission in the National Guard without vacating his regular appointment. Shortly after Katrina struck, the administration proposed having Lieutenant General Honore, a Regular Army officer, receive a commission from Governor Blanco as a Louisiana National Guardsman. If adopted, Lieutenant General Honore could have commanded the Title 10 forces as an active duty officer and commanded the Title 32 forces as a Louisiana National Guardsman. Governor Blanco was concerned she would not have adequate control over her National Guard in this configuration and declined to accept the offer.⁶⁷

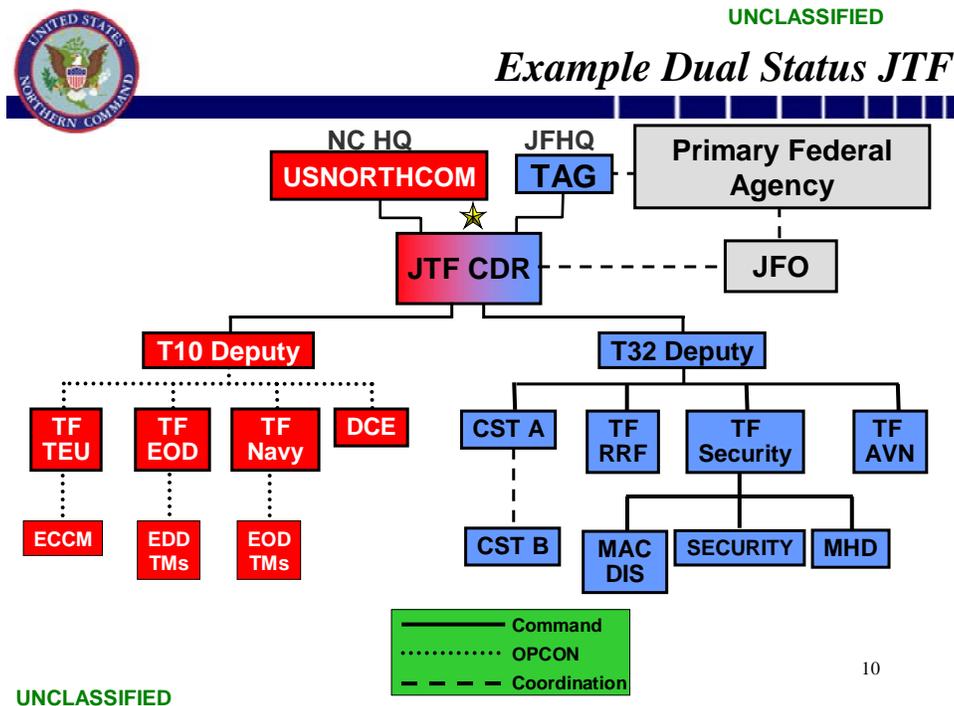


Figure 4. Dual Status Joint Task Force⁶⁸

⁶⁷ Burns, “McHale: Hurricane Response Could Have Been Better.”

⁶⁸ U.S. Northern Command, *State Engagement Briefing Command and Control (C2) Models* (Peterson AFB, CO: 2006), 10.

a. Advantages

This C2 construct puts one military commander over the Title 10 forces and over the state active duty and Title 32 forces, resulting in unity of command over the military. If the commander were a Guardsman, he would have familiarity with the governor, state staff, agencies, and emergency management procedures. PCA does not restrict state active duty and Title 32 forces from performing law enforcement activities.

b. Disadvantages

Having an officer answer to both the President and governor simultaneously may be asking too much of a commander engaged in high-intensity operations.⁶⁹ Although his military subordinates know he commands them, the dual status commander must obey two commanders-in-chief. If he receives conflicting guidance, not an unlikely scenario given the political nature of disaster response, he does not have any effective means to resolve the situation and is in an untenable position.⁷⁰

c. Considerations

Creating this dual status C2 architecture is not necessarily simple or quick. Most importantly, both the President and the governor must be willing to adopt the model. There is significant coordination and staff review that must occur within the state, National Guard Bureau, combatant command and DoD before the President and governor can sign a memorandum of agreement. All of this takes time to accomplish. If the agreement is not in place before the catastrophe occurs, its coordination may consume too much time while civil support operations must be in progress. In addition, even though there is one commander over all of the military, he still requires a staff to help him synchronize federal and state military operations. Either the Title 10 forces or the state National Guard will be working with a commander who is unfamiliar to and with them.

DoD has used this dual status construct in four planned events. Before the civil support operations, there were several months available to conduct planning, select qualified commanding officers, vet them, build and train their staffs, rehearse, exercise

⁶⁹ Admiral Timothy J. Keating, (Commander, United States Northern Command), interview with the author, Peterson AFB, CO, June 19, 2006.

⁷⁰ Chris Strohm, "Pentagon Backs Dual Leaders in Domestic Crises," *GOVEXEC.Com*, February 9, 2006, <http://www.govexec.com/dailyfed/0206/020906c1.htm> (accessed February 9, 2006).

and then execute the plan. When time is a constraint and the operations will be intense, this construct may not be appropriate.

It is interesting to note the shift in positions regarding the applicability of this model to civil support operations following a catastrophic event. During Hurricane Katrina, the Assistant Secretary of Defense for Homeland Defense, the Honorable Paul McHale, recommended this C2 structure to the President. The Chief, National Guard Bureau, Lieutenant General Steven Blum presented it to Governor Blanco on behalf of the administration. Shortly thereafter, Lieutenant General Blum recommended to the governor that she not accept it because it did nothing for her. In his testimony, Assistant Secretary McHale noted that in hindsight, he no longer thought it was an appropriate C2 model.⁷¹

3. Option 3. Parallel Title 10 and Title 32/State Active Duty Chains of Command

This is the standard C2 model employed during disasters. The chain of command for the Title 10 forces runs from the President through the Secretary of Defense and combatant commander to the active duty force commander. The chain of command for the state active duty and Title 32 National Guard runs from the governor through the Adjutant General to the state's task force commander. To achieve unity of effort, it relies on coordinating authority, i.e., authority to require consultation but not compel agreement, to synchronize military operations, rather than command authority.⁷²

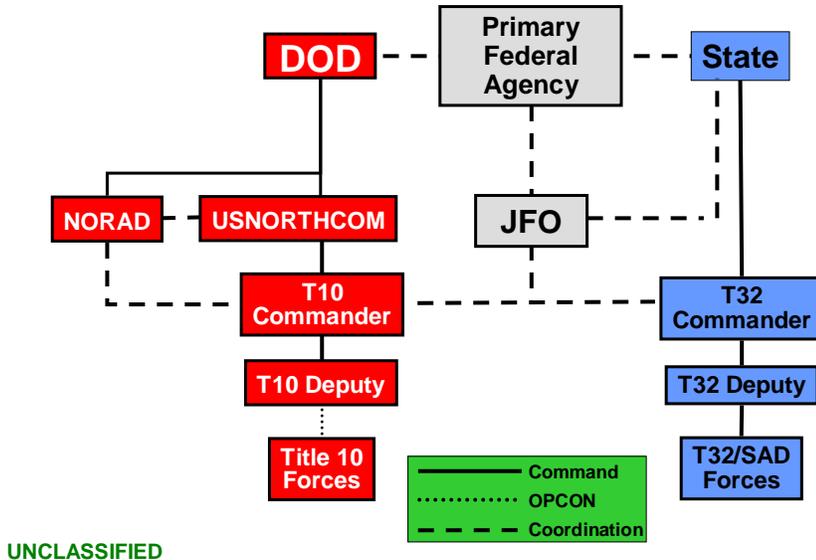
⁷¹ Pamela Hess, "Blanco 'Right' Not to Cede Control to Bush," *United Press International*, February 10, 2006.

⁷² Joint Staff, *Joint Publication 0-2, Unified Action Armed Forces (UNAAF)*, GL-6.



UNCLASSIFIED

Example Parallel Command Model



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Figure 5. Parallel Command Model⁷³

After Governor Blanco rejected the dual status option, this was the Hurricane Katrina C2 architecture for the civil support operations. Lieutenant General Honore commanded the Title 10 forces and Major General Landreneau, Adjutant General, State of Louisiana, retained command authority over the Louisiana National Guard. Major General Landreneau testified they achieved unity of effort through extensive use of liaison officers, as did Lieutenant General Honore, Lieutenant General Blum, Admiral Keating and Assistant Secretary McHale.⁷⁴

a. Advantages

This C2 model is the standard for civil support following major disasters. It is the one practiced most often, so would be the one most familiar before a catastrophic incident. Employing it does not require a shift from the standard procedure. It preserves the governor’s control over the National Guard and the President’s control over Title 10 military. Commanders have only one commander in chief giving them direction. The

⁷³ U.S. Northern Command, *State Engagement Briefing Command and Control (C2) Models*, 6.

⁷⁴ Donna Miles, "Leaders Assess Katrina Successes, Lessons Learned," *American Forces Press Service*, February 9, 2006.

PCA does not restrict the National Guard state active duty and Title 32 forces. The commanders will have their own staffs that they have worked with before. The construct is constitutionally sound and governor endorsed.

b. Disadvantages

It does not ensure unity of effort. The potential to work apart exists and there is no single authority to compel cooperation. It is a weak C2 relationship that relies on coordinating authority. By doctrine, that relationship is better suited to staff planning rather than operations.⁷⁵ There are no standardized joint organizations or procedures that facilitate cooperative synchronization between the federal and state forces. It does not provide a simple answer to the question, “who is in charge,” especially when things are not going well.

c. Considerations

This is the governor preferred C2 option and the one most familiar to the states. It is the standard C2 the National Response Plan contemplates and, therefore, it is the one most trained and practiced. It is politically the least controversial option. The

President should have compelling reasons to deviate from this standard model.

⁷⁵ Joint Staff, *Joint Publication 0-2, Unified Action Armed Forces (UNAAF)*, III-12 – III-13.

VIII. STAKEHOLDERS AND INTERESTS

This chapter identifies the stakeholders who have equity in the issue of the C2 relationship between USNORTHCOM and the National Guard in civil support operations following a catastrophe. The criteria for inclusion in this group of stakeholders are to have deep interests and concerns regarding the issue. These stakeholders have the power to disrupt a cooperative partnership, but not the power to compel participation or to ensure it is successful.

A. THE PRESIDENT

1. Interests

The President's interests include meeting his constitutional obligation to secure the nation as the commander in chief and to enforce the laws of the nation. He has an interest in the wellbeing of American citizens by ensuring an effective response following catastrophic events. As an elected official, he is sensitive to political implications of how he performs his duties.

2. Authority

As commander in chief, the President will decide the C2 structure for the Title 10 forces. He can make federal assistance, including Title 10 military forces, available following his disaster declaration, at the request of the governor. He can introduce federal forces into a state and federalize the National Guard without the consent of the governor by invoking the Insurrection Act.

B. GOVERNORS

1. Interests

As the states and territories' executives and militia commanders in chief, they have an interest in maintaining their sovereignty to include control over their National Guard. They will act to ensure the wellbeing of their citizens. The governors have an interest in bringing federal resources to their state or territory, especially if at no cost to the state. As directly elected public officials, they are sensitive to getting political credit and blame, and accountable to their electorate.

2. Authority

As the states and territories commanders in chief, they can call forth their National Guard. As leaders of sovereign states, they can refuse Title 10 forces unless the President invokes the Insurrection Act. They can order their National Guard to cooperate, or not, with Title 10 military leaders.

C. SECRETARY OF DEFENSE

1. Interests

The Secretary of Defense will focus on his homeland defense missions. He will minimize the involvement of Title 10 forces and the expenditure of DoD resources on any missions other than homeland defense. As the President directs, he will conduct civil support operations.

2. Authority

He will decide or recommend to the President the Title 10 C2 structure. He is the approval authority for National Guard Title 32 funding. He can influence the amount of resources going to the National Guard. The Secretary of Defense assigns Title 10 forces to USNORTHCOM for civil support operations.

D. COMMANDER, USNORTHCOM

1. Interests

He must maintain command of the Title 10 forces the Secretary of Defense assigns to him. His interest is in ensuring effective response in support of the lead federal agency. He needs to have situational awareness to anticipate missions for Title 10 forces and deliver timely response. He wants to achieve unity of effort for the civil response operation.

2. Authority

He must comply with lawful orders from the Secretary of Defense. He may coordinate with the National Guard in Title 32 status and he can direct subordinate commanders to coordinate with the National Guard. He has command authority, i.e., operational control, over assigned Title 10 forces.

E. CHIEF, NATIONAL GUARD BUREAU

1. Interests

His interest is in ensuring the readiness of the National Guard for its defense missions. To do so, he wants to ensure the National Guard gets the resources, i.e.,

personnel, funding and equipment, to be prepared to respond. He has an interest in maintaining situational awareness so he can orchestrate National Guard emergency management assistant compact support among the states.

2. Authority

Because he is the chief of a bureau, he does not have command authority over the National Guard when it is in state active duty or Title 32 status. He can act as a channel of communication from the federal level to the Adjutants General, but has no authority to direct the National Guard when it is working for the governors. He can invite cooperation and compliance with his guidance and initiatives by controlling the flow of resources to the National Guard.

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IX. THE USNORTHCOM PLAN

A. U.S. NORTHERN COMMAND CONCEPT PLAN 2501-05, DEFENSE SUPPORT OF CIVIL AUTHORITIES

The Joint Strategic Capabilities Plan 02, Change 1, March 2005, Regional Tasking 9, assigned USNORTHCOM the responsibility to prepare a functional plan for Defense Support of Civil Authorities operations. Later revisions to the DoD planning model directed the product to be a concept plan. Concept plans are operations plans in an abbreviated format that require expansion to convert them into an operation plan or operation order.

USNORTHCOM completed its Concept Plan 2501-05, Defense Support of Civil Authorities (CONPLAN 2501-05, DSCA) and published the final Secretary of Defense approved version on April 11, 2006. USNORTHCOM completed the plan after the headquarters participated in the Hurricane Katrina civil support operations. It applied the lessons learned from that catastrophic event civil support operation. This chapter reviews the plan with an eye toward the relationship between USNORTHCOM and the National Guard during civil support operations following catastrophic events.

In general, the plan addresses the Title 10, active duty components of DoD. The friendly forces paragraph lists the other combatant commands, components and supporting component commands, the military services, supporting defense agencies and the Department of Homeland Security. It includes the Reserve Components, i.e., the Army National Guard of the United States and Air Force National Guard of the United States, both Title 10 organizations. The plan names the National Guard Bureau as the activity that will coordinate with the National Guard and the states' Adjutants General. Specifically, the Bureau's role is assisting USNORTHCOM "in synchronizing and integrating federal and non-federal military operations to avoid duplication and achieve unity of effort."⁷⁶

The plan states USNORTHCOM provides civil support when directed by the President or Secretary of Defense, usually after the local, state and or the federal

⁷⁶ U.S. Northern Command, *Concept Plan 2501-05, Defense Support of Civil Authorities (DSCA)*, (Peterson AFB, CO: April 11, 2006), 8.

resources are overwhelmed. One of the major tasks for USNORTHCOM is to determine the appropriate command and control for DoD forces based on the size of the DoD response.⁷⁷ It leaves it to the reader to understand DoD in this context does not include the National Guard unless it is in Title 10 status.

The plan's key assumptions mention the National Guard. First, the plan recognizes elements of the National Guard will be involved in almost all civil support operations. Second, the plan assumes the National Guard from both the impacted state and the National Guard forces deployed to the disaster area under emergency management assistance compacts will operate under the control of state authorities, i.e., in state active duty or Title 32 status.⁷⁸

When the DoD response is significant, the USNORTHCOM commander may establish or expand an existing Joint Task Force (JTF) with subordinate JTFs or appoint a Joint Force Land Component Commander to provide command and control of the DoD forces. The plan is silent on the command and control relationship with the National Guard because they are not part of the DoD response force.

The execution paragraph 3.c. (13) requests the Chief, National Guard Bureau:

- Provide daily situation reports on non-federalized National Guard activities in the USNORTHCOM joint operations area.
- Assist USNORTHCOM and subordinate headquarters with integrating and synchronizing federal and non-federal military planning, response, deployment and redeployment, and transition efforts.
- Coordinate, assist, and facilitate Joint Force Headquarters–State(s) in forming capability packages.
- Establish liaison with the USNORTHCOM regional task force/task force/joint task force to avoid on-site duplication of missions, to ensure unity of effort, and share a common operating picture.⁷⁹

Paragraph 5, Command and Control, of the basic plan addresses Command and Control. It recognizes there is a Joint Force Headquarters–State in each state and territory. When in Title 10 status, the National Guard forces will operate under the C2 of

⁷⁷ U.S. Northern Command, *Concept Plan 2501-05, Defense Support of Civil Authorities (DSCA)*, 12.

⁷⁸ *Ibid.*, 10.

⁷⁹ *Ibid.*, 25.

the USNORTHCOM commander. The plan correctly describes both alternatives of the dual status Title 32 and Title 10 commander as discussed in Chapter VII of this paper.⁸⁰

Annex J, Command Relationships, addresses civil support command relationships. Paragraph 1.b.(2) states the command relationships established in Annex J apply to all DoD personnel deployed to a civil support operation. Again, the plan relies on the reader to know this does not apply to the National Guard unless it is in Title 10 status. In general, the commander of USNORTHCOM will have operational control of the DoD civil support response forces.⁸¹

The Command Relationships Annex outlines three ways USNORTHCOM can structure its C2 to interact with other agencies and functions. The three ways are three tiers of response depending on the magnitude of the response: a Defense Coordinating Officer, a JTF commander, and functional commands. It notes this range does not depict every possible relationship the command can have with every potential civil support partner, but goes on to say, “A coordinating or C2 relationship can exist without explicit illustration in the Annex.”⁸² None of the schematics depicts the National Guard.

Paragraph 4 of the annex addresses the support and coordination relationships. Without identifying who will perform the task, the annex states “Coordinating authorities. Requirements will be identified during execution planning.” The most significant mention of the National Guard is in Paragraph 4.e., Coordination with the non-Federalized National Guard. “National Guard forces operating in a non-Federalized status operate under state control when performing civil support operations. USNORTHCOM will coordinate with the National Guard Bureau (NGB) as needed. NGB is the channel of communication between USNORTHCOM and the National Guard of the states.”⁸³

Appendix 17 to Annex C addresses Incidents of National Significance. It uses the HSPD-5 criteria as further defined in the National Response Plan to describe Incidents of

⁸⁰ U.S. Northern Command, *Concept Plan 2501-05, Defense Support of Civil Authorities (DSCA)*, 29-30.

⁸¹ *Ibid.*, J-2 – J-3.

⁸² *Ibid.*, J-3.

⁸³ *Ibid.*, J-8.

National Significance. Catastrophic incidents are included in the set of Incidents of National Significance. A catastrophic incident could result in sustained national impacts over a prolonged period. They almost immediately exceed resources normally available to the state, local and private sector authorities in the impacted areas. They significantly interrupt governmental operations and emergency services to such an extent that they could threaten national security.⁸⁴

This appendix notes the NRP defines catastrophic incidents as any natural or man-made incident, including terrorism, which results in extraordinary levels of mass casualties, damage or disruption severely affecting the population, infrastructure, environment, economy, national morale or government functions.

It lists some guiding principles for proactive federal response. One of the principles notes that the command's notification and full coordination with states will occur, but the coordination process must not delay or impede the rapid deployment and use of critical resources.⁸⁵

B. ANALYSIS

CONPLAN 2501-05 provides a thorough template for the active duty military and DoD agencies in civil support operations. USNORTHCOM's supporting and subordinate commands have the guidance they need to plan for civil support. However, the plan does not adequately address the relationship with the National Guard or describe how to coordinate operations with the National Guard.

In general, the USNORTHCOM planners treat the National Guard as state assets. As such, they barely acknowledge that the National Guard will be friendly military forces operating in the joint operations area. For standard disaster relief civil support operations, this approach may be adequate because the DoD response will be small. For catastrophic events, more specific planning guidance is required.

If the Hurricane Katrina response is at all indicative of future civil support operations following catastrophic events, the number of National Guard troops in the joint operations area may be several times larger than the number of active duty soldiers.

⁸⁴ U.S. Northern Command, *Concept Plan 2501-05, Defense Support of Civil Authorities (DSCA)*, C-17-2.

⁸⁵ *Ibid.*, C-17-3.

There will have to be some sort of effective coordinating relationship between the National Guard and the active duty forces. The challenge is that the highly variable catastrophic event conditions make it difficult to forecast the appropriate C2. Since the specific C2 solution cannot be prescribed, an outline of potential considerations and applicable triggers for each option would be helpful.

The USNORTHCOM planners noted the National Guard probably will be operating under state control and USNORTHCOM will coordinate with the NGB. Because of the sovereignty of the states and USNORTHCOM's status as the commanding headquarters for federal DoD forces only, this is about as far as the command can formally outline the coordination scheme. However, this approach will not be sufficient for large-scale civil support operations. While USNORTHCOM will depend on NGB for situational awareness, especially with respect to deploying National Guard forces under emergency management assistance compact, NGB currently does not have the resources, capability or fidelity of information to be the operational coordinating headquarters for joint operations within the states. Furthermore, because they are a bureau and not a command, they do not have the authority to order, direct, speak for or act on behalf of the National Guard who is in state active duty or Title 32 status.

The plan suggests the solution to this problem. USNORTHCOM will coordinate with NGB. The NGB will facilitate establishing the state National Guard and Title 10 forces operational coordinating mechanism in the state. Assuming the state National Guard agrees and cooperates, the concept has merit. The Title 10 force commander and the state National Guard force commander will synchronize and deconflict missions in the state to achieve unity of effort. There is some risk of uncoordinated liaison initiatives overlapping and resulting in conflict. The Title 10 JTF commander will be working in the state to establish the liaison mechanisms at the same time NGB is trying to set them up. Assigning one lead activity to coordinate the efforts or executing a plan that establishes sectors of responsibility for establishing liaison would reduce redundant initiatives and ensure everybody ends up with and understands the ultimate solution.

C. RECOMMENDATIONS FOR USNORTHCOM C2 CONSIDERATIONS

The President will decide the C2 architecture for the Title 10 forces he directs to engage in civil support operations following a national catastrophe. The

USNORTHCOM commander may have the opportunity to provide recommendations on the C2 structure through the Secretary of Defense. A suggested list of considerations follows. The USNORTHCOM planners should write them into a tab to the Incidents of National Significance, Appendix 17 of Annex C. This will ensure the staff is aware of them and they are in the plan for future reference. The staff can collect the information the commander needs to assess the situation and form his recommendation.

The character of the catastrophe's nature and its impacts will shape the requirements for the C2 architecture. The commander should consider the following as he develops his recommendation.

- Politics. Civil support operations are inherently political. As the chief executive and commander in chief of his National Guard, the governor will almost certainly determine the duty status of the National Guard. The President will need compelling reasons to override the governor with respect to his National Guard.
- Effectiveness of response. If the states are capably handling their civil support mission, the commander should not be seeking to take them over. Instead, he should be looking for opportunities to reinforce and augment where there are capability shortfalls. Even if the state response is failing, the commander should assess whether additional command and control would positively influence the performance.
- Nature of the response and trend for the future. If there is a likelihood of lethal operations, the commander should recommend more positive C2. The scope, intensity and complexity of the operations may influence the C2. Certainly, they will influence the rank of the commander of the Title 10 forces.
- Requirement for regional uniformity of response. There may be civil support operations that span several states. If uniformity of the military civil support is important, it may require placing all of the forces in Title 10 status. There are significant legal challenges to overcome to make this a feasible course of action.
- Size and composition of the response force. It is unlikely the minority participant would C2 an operation absent other compelling factors.
- Planning time available. If it is a slowly developing catastrophe with planning time before it reaches its peak, the dual status C2 could be viable. If it is a no-notice, come-as-you-are operation, the dual status C2 probably would take too long to affect.

- Duration of the support. The Title 10 forces need to return to their defense mission as soon as the rest of the response community can assume the civil support mission. This includes the Title 10 role and participation in the C2 paradigm.
- Public expectation. The public needs to be able to understand and accept the C2. If it does not, the political aspect of the civil support operation can cause the situation to deteriorate.

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X. CONCLUSION AND THE WAY AHEAD

A. CONCLUSION

There is no single best USNORTHCOM and National Guard C2 architecture for all civil support operations following a catastrophic event. Events and circumstances will influence the President's decision on which to select as the best alternative. However, planners should not wait until the catastrophe occurs to begin considering which C2 architecture to select. One of the purposes of planning is to establish expectations and frameworks in advance of execution. Because the decision on how to achieve unity of result is so politically charged, it makes sense to establish and share the decision criteria in advance so the issues are understood by all stakeholders and there are no unexpected actions. Even though the C2 may vary, planners can reduce the zone of uncertainty by establishing the process to determine C2 architecture.

The baseline C2 structure should be the parallel Title 10 and Title 32 chains of command. This is the least contentious with the governors and almost all the strategy, policy and doctrine suggest this model. Its legal foundation is the Constitution. The parallel chain of command is the standard for major disaster civil support, so it is the scheme most familiar, trained to and practiced. It should be the default model. However, its success depends on cooperation to affect unity of effort. Remember, this is the model employed after Hurricane Katrina and that civil support operation demonstrated improvement is necessary. It is critical that the stakeholders establish, resource and exercise the coordinating procedures and organization so they are effective.

The situation and circumstances may require deviations from the base C2 model. Certainly, if the state governor requests the federal government to take over the National Guard, the President needs to be prepared to do so effectively. When the catastrophe destroys the states' leadership or they have lost control, it may be necessary for the President to have Congress declare an emergency and federalize the National Guard to place all the military under a Title 10 commander. He may achieve unity of effort through unity of command over the military. The President could invoke the Insurrection Act unilaterally, but that action carries some undesirable implications.

For catastrophes that develop slowly and evolve, or if there is adequate planning time before the catastrophe to have suitable agreements in place in advance of the event, political leaders should consider the Title 10 and Title 32 dual status commander C2 option. Both the President and the governor have to agree to the dual status model. They need enough time to select a qualified commanding officer and ensure he is mutually acceptable. The leaders need to either concur in advance with a memorandum of agreement appointing the commander or expeditiously staff, approve and sign one. It will require an exceptional commander to take conflicting guidance from two commanders in chief and resolve it.

Although the best C2 model will depend on the situation and conditions, this does not mean planners should wait for the next catastrophe and try to establish the C2 on the fly. As Hurricane Katrina civil support operations demonstrated, even when all stakeholders involved desperately want to deliver effective civil support it is extremely difficult. By its very nature, catastrophic civil support is politically-charged, complex, hard work. The challenges are significant and the consequences are severe. Lives depend on timely support. The requirement to perform is intense, and the nation is watching and evaluating the performance. Planners must address everything possible to mitigate those conditions. This includes the C2 considerations.

B. THE WAY AHEAD

The statutory and policy environment creates a fabric of overlapping, conflicting and ambiguous directives. However, even without clear authoritative direction to work together, the President, Congress and the American public have an expectation that the National Guard and Title 10 military will integrate their civil support efforts.

The way ahead is to form partnerships among the stakeholders, i.e., the governors, Chief, National Guard Bureau, USNORTHCOM, the Adjutants General and the state and territories' National Guard senior officers. Because there is no central official or commander who can provide the missing directive authority to compel cooperation, the partnership will have to serve the interests of the members to be effective and to keep the stakeholders at the table. The USNORTHCOM commander needs to convince the governors that he does not want to take over their National Guard or to take control of civil support operations. They need to understand he is sincere in wanting to respond to

their requests and to be there when they need Title 10 military assistance. During interviews, ADM Keating convinced the author that he is sincere in this regard and he is moving out in this direction. He stressed that C2 for civil support does not mean command and control. Instead, his objective is communication and coordination for unity of effort or unity of result.⁸⁶

After the commander gets the governors on board, he will need to have a general officer continue the effort at the Adjutant General and state National Guard senior officer level. The commander should seek assignment of a full-time National Guard brigadier general to the USNORTHCOM staff to undertake this important mission. As a one-star National Guard general officer, he will be senior enough to command the attention of the state National Guard and have the credibility of being one of their own. As a brigadier general in the USNORTHCOM headquarters, he would not be so senior as to threaten the active duty flag officers, but senior enough to gain access to the commander. Rather than place him in the command section, he should be in the USNORTHCOM J-3 Operations directorate as the civil support Division Chief.

The objective for the partnership is to develop a fully resourced standardized synchronization paradigm with supporting organizations that will facilitate unity of effort between the Title 10 forces and the National Guard. The Joint Force Headquarters–State may be the answer, but DoD must resource it and then test it. As an inducement for the states’ National Guard to participate, USNORTHCOM should become the combatant command advocate and proponent for the resourcing, i.e., funding, personnel and equipment, of the organization, especially if it will be in the National Guard. The requirement to synchronize operations cannot remain an unresourced requirement that falls too low in the Services’ priorities for them to resource. After resourcing the concept, it becomes a matter of exercising, rehearsing, evaluating and improving it. This is a natural growth of the USNORTHCOM civil support mission as the command matures.

A critical element is to develop a common understanding of the criteria that will determine which command and control architecture the President will employ. The idea

⁸⁶ Keating, interview, Peterson AFB, CO, June 19, 2006.

is to establish in plans what the expectations are so that surprises are few. As a principle of war, the intent is to employ surprise against your enemy, not your own team.

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