# Civilian Surge

## Key to Complex Operations

### A Preliminary Report

PWH Note:

Introduction excerpt &Chapter 11 ONLY

*Edited by* Hans Binnendijk and Patrick M. Cronin

The National Defense University December 2008

Edited by Hans Binnendijk and Patrick M. Cronin

*The United States needs to develop the capacity to conduct complex operations that require close civil-military planning and cooperation in the field. This study is comprehensive review of this national need and examines how the need can best be met.*

*Its main conclusion is that current efforts to build a civilian response capacity for complex operations are unfinished and that the Obama administration needs to dedicate additional attention, including new legislation and resources, to complete the task. It recommends what civilian capacity to build, how much of it is needed, and how to manage and organize it.*

---



Preliminary Report, December 2008.

## Executive Summary (Intro)

The United States today manifestly lacks adequate civilian capacity to conduct complex operations—those operations that require close civil-military planning and cooperation in the field.

> *The definition of complex operations has changed over time—sometimes including combat, sometimes excluding it, sometimes encompassing disaster relief, sometimes not, and usually focusing only on missions overseas. For example, the Center for Complex Operations Website states that "stability operations, counterinsurgency and irregular warfare [are] collectively called 'complex operations.'" This book adopts a more* ***expansive definition that includes humanitarian assistance and disaster relief, at home and abroad.***

Examples of complex operations abound and include operations for stabilization and reconstruction (S&R), humanitarian and disaster relief, and irregular warfare and counterinsurgency. Troubled operations in places like Iraq, Afghanistan, and New Orleans underscore that point. Former Chairman of the Joint Chiefs of Staff General Peter Pace and Secretary of Defense Robert Gates both focused attention on this need and transferred defense dollars into civilian programs. The 2006 Quadrennial Defense Review dedicated a chapter to "building partner capacity." At least two-dozen recent studies document aspects of the civilian capacity problem and recommend remedies. Various directives and statutes have been issued in the past few years that begin to provide partial solutions. And yet there has been no comprehensive review of all elements of this national need. This book is intended to fill that gap. Its main conclusion is that current efforts to build a civilian response capacity for complex operations are unfinished and that the Obama administration needs to dedicate additional attention and resources to complete the task.

**Chapter 11** reminds us that homeland security events, such as the response to Hurricane Katrina and management of the consequences of a major terrorist attack, are also complex operations that require collaboration and skill sets similar to those needed in overseas operations. DOD will likely never be the lead agency in the homeland, given constitutional and legal constraints. Issues of state sovereignty and the unique relationship between a governor and a state's National Guard—in other than Title 10 status—preclude a traditional command and control relationship, even within the uniformed community. Add Federal/state/local/tribal, and even private-sector entities to the mix, and complexity goes off the chart. Nonetheless, the synergies between homeland and overseas complex operations need better development to take full advantage of the similarities.

# Contents

# Chapter 11. Complex Operations in the Homeland

*By* Bernd "Bear" McConnell and Kristine Shelstad

## Introduction

It's different overseas. Generally, the U.S. Government has the luxury of looking at a problem, a mission, from a National or Federal, top-down point of view. The Ambassador and country team, the Combatant Commander and his staff … each has relative control over the U.S. assets in that country or region. For the most, part long-standing diplomatic protocols with the countries within their sphere of influence ease our operations, whether in response to a disaster or otherwise. Save for some difficultto-pin-down NGOs, the construct a U.S. team overseas encounters is relatively hierarchical—at least from a U.S. perspective.

Not so in the homeland. The internal U.S. organization is decidedly non-hierarchical, with mayors who don't work for governors and governors who don't work for the President. Thousands of local, state, Federal, and private-sector organizations have a role to play in securing, stabilizing and reconstructing our Nation. Here, all emergencies are local and the civilians are always in charge. The homeland galaxy is rich with capabilities but poor in cohesion—no one organization has the requisite authority or manpower to harness and employ all the potential.

Enormous capacity exists at local and state level, often not coherently accounted for and more often not well funded. Even more capacity resides in the private sector, as corporations such as Wal-Mart and Fed-Ex set the standard for supply and logistics, and the Southern Baptist Convention is premier in mass feeding operations. Local, national and international NGOs operate independently throughout the country. Despite attempts to put a framework (the National Response Framework) around all this capability, there is no common picture that encompasses all national assets.

The shock of the 9/11 attacks led the U.S. government to turn inward and look at domestic operations through the lens of terrorism. We established the Department of Homeland Security (DHS) to bring together the disparate interagency elements that had apparently failed to prevent this horrific attack. We established U.S. Northern Command (NORTHCOM)—the first "homeland" command since George Washington's Continental Army— to bring together DOD elements with homeland defense and security equities.

The devastation of hurricane Katrina led the U.S. Government to again examine its ability to provide coordinated, interagency, and intergovernmental support to its citizens. The storm and its aftermath caused a shift in priority from solely terrorist (man-made) events to a more all-hazards approach. The uncoordinated Federal, state, and local responses exposed dangerous seams, which led to recommendations for more Presidential authority to deploy Federal assets to "assist" governors. This seemed for a time to signal a more robust—perhaps leading—role for the military in domestic operations during a catastrophic event.

DHS's initial focus on terrorism, and its decidedly law enforcement-centric leadership, left the department ill-prepared to shift toward natural disasters and response-based action. The debate as to whether DHS should be a law enforcement or an all hazards organization was reflected in the 2007 version of the National Security Strategy, which promoted a more all-hazards view of homelandsecurity. FEMA's place within DHS was questioned, and a major reorganization ensued that placed FEMA more firmly in preparedness and planning roles vice purely a response role.

In the years following the 9/11 attacks, NORTHCOM held that homeland defense—read, DOD in the lead—was its paramount mission and that defense support to civil authorities—DOD in support— was secondary. In fact, the NORTHCOM mission statement relegated civil support to a parenthetical "after the semi-colon" status. Katrina and the lessons observed caused NORTHCOM's pendulum to swing toward civil support. The mission statement evolved, giving civil support equal relevance. The need to anticipate was added, codifying the Katrina-inspired imperative to "lean forward" during hurricanes, floods, wildfires, and other emerging disasters.

Our national capacity sounds and is enviable. We can bring enormous resources to bear on the Nation's planning and response needs. However, we continue to struggle to build the right structures and establish efficient processes that will facilitate unity of effort. In 2008, the now 6-year-old Department of Homeland Security states they will

"lead the unified national effort to secure America … prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation … ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce." NORTHCOM "anticipates and conducts Homeland Defense and Civil Support operations within the assigned area of responsibility to defend, protect, and secure the United States and its interests."

Setting the Department of Justice (DOJ) and other Federal agencies aside for the moment, DOD and DHS will be the key Federal actors in planning for and conducting complex operations in the homeland, but the processes to do so are still stove-piped. While separate organizations (one for "security" and one for "defense") may have had merit early on, the separation creates confusion today with respect to roles and missions. DOD is better funded, better manned, better equipped, and has an inherent planning culture—which all leads to the tendency for the military side to get ahead of the civilian side. It's not difficult to imagine scenarios in which DOD/NORTHCOM reacts because it can, not necessarily because it should. There is a history of this overseas, as hastily trained military teams take on roles previously reserved for seasoned State Department, Justice, Commerce or Agriculture specialists, or the ubiquitous NGOs.

## Section 1. Reorganizing for Homeland Security

### Department of Homeland Security and United States Northern Command

In June 2002 President Bush announced he would build a new department that would have primary responsibility for "Homeland Security." The President felt that America needed a unified structure to fuse the homeland security related information, operations and authorities that had previously been dispersed throughout 100 government organizations. This effort was the most sweeping change to government structure since the Department of Defense was created in 1947.

Merging 22 disparate organizations, their missions, cultures, payroll systems…a daunting task that posed a huge challenge to our change-hating Washington establishment. DHS's goal was to provide one department whose primary mission is to protect the homeland, borders, ports and critical infrastructure, synthesize homeland security intelligence, coordinate communications with state and local governments as well with the enormity of the private sector protect against bioterrorism/weapons of mass destruction and manage Federal emergency response.

The first DHS organizational attempt tried to forge nearly impossible alliances while suffering from turf battles, unclear powers and contradictory laws and Presidential directives. From the start, overlapbetween DOD and DOJ equities muddied the goals and missions for the new organization. Critics lamented that the organization was given the responsibility for securing our homeland without having the requisite powers to do so— the initial structure did not include an intelligence capability and did not effectively address how the new DHS would interface with the military and with the FBI. Many of these issues were cleared up in the 2003 second-stage review, to include building policy function and intelligence capabilities and re-vamping FEMA to re-assume its previous preparedness role.

NORTHCOM faces a challenge unique among combatant commands; it must plan and conduct missions within the constraining legal framework placed upon the military domestically and must do so within the historical tension between state and Federal entities. 50 states and territories fall within NORTHCOM's AOR, but there are numerous state, local, and private-sector organizations that have primary responsibility for the people and places NORTHCOM may be called on to protect.

NORTHCOM's AOR includes air, land and sea of the continental United States and Alaska while U.S. Pacific Command maintains defense responsibility for Hawaii and Pacific territories. U.S. Southern Command takes responsibility for Puerto Rico and U.S. Virgin Islands' defense, although NORTHCOM will be involved in a DSCA scenario. NORTHCOM's AOR includes Canada, Mexico and the Islands of Turks and Caicos; the command manages theater security cooperation programs with these important international partners.

Originating documents and study pieces related to NORTHCOM stand-up called for the organization to be composed of approximately 500 personnel with significant National Guard staffing to facilitate collaboration with states and their National Guards. The original working group recommended that fully fifty percent of the NORTHCOM staff be National Guard officers as they would bring familiarity with state-led domestic issues and solutions. The original concept also recognized the Command must work in concert with existing agencies, the

FBI and FEMA most notably, and with the newly emerging Department of Homeland Security. The initial planning team recognized the new combatant command needed to be innovative and flexible enough to address the unique interagency and intergovernmental challenges facing a homeland command.

The Nation's Governors, while understanding the need to respond strongly to attacks on the nation, viewed NORTHCOM establishment with some trepidation. Congressional testimony from both Governors and from National Guard leaders recommended NORTHCOM be sensitive to sovereignty issues associated with deploying Active-duty troops within state boundaries and recommended using the National Guard under state authority as the best solution to bridge this gap.

NORTHCOM is headquartered at Peterson Air Force Base in Colorado Springs. The Commander of NORTHCOM is dual-hatted as the Commander of the North American Aerospace Defense Command (NORAD). NORAD is the United States-Canadian bi-national command with responsibilities including Aerospace Warning, Aerospace Defense and the newly-established Maritime Warning mission. NORAD and NORTHCOM staff functions, save the respective Operations Directorates, are merged. NORAD and NORTHCOM share an integrated operations center at Peterson Air Force base that provides land, air, space, missile warning, maritime and cyber domain awareness.

Government directives recognize that NORTHCOM will very rarely, if ever, be the lead Federal Agency. The National Response Plan (NRP) and its recently released successor, the National Response Framework (NRF) enumerate lead agency responsibility per each of the Emergency Support Functions or ESFs. DOD has lead in none, though supporting in all.

NORTHCOM has evolved, but not to the extent envisioned in the literature. None the less, our natural uniformed partners in Homeland Defense and Security, the U.S. Coast Guard and the National Guard, have 22 and 43 billets at NORTHCOM respectively, including a U.S.CG flag officer as deputy operations officer. At this writing, the current Chief of NGB has been proposed as the NC Deputy Commander and the incoming NC operations officer is a Guardsman. The Commander of a NORTHCOM subordinate element, Joint Task Force-Civil Support, is a National Guard General Officer and there are three General Officers assigned to NORTHCOM elements as drilling reservists— two as advisors to the Commander and one as to the Army component, ARNORTH.

NORAD and NORTHCOM (N-NC) enjoy the largest interagency presence of any COCOM—about 60 individuals representing over 40 non N-NC organizations are resident in the commands. Another 20— not all Federal—have pre-identified representatives on call in the immediate area. These are powerful representations, demonstrating a national commitment to our homeland.

### What's in a Name? Homeland Defense versus Homeland Security

The July 1997 version of the National Strategy for Homeland Security defines "Homeland Security" as a "concerted national effort to prevent terrorist attacks within the United States, and minimize the damage and recover from attacks that do occur." This definition was retained in the post-Katrina 2007 version of the National Strategy, but the new strategy clearly recognizes the need for our National security priorities to reflect that catastrophic natural and man-made disasters—not just terrorist events— have serious implications for homeland security.

The Department of Homeland Security is charged with coordinating this concerted national effort across Federal agencies, throughout intergovernmental layers and with non-government and private-sector entities. The Department of Defense's role in Homeland Security is detailed in Joint Publication 3-26 which states that the "Armed Forces of the United States support the National Strategy for Homeland security through two distinct but interrelated mission areas—homeland defense and civil support, which is subsequently reflected in NORTHCOM's mission statement. The publication further delineates homeland defense and civil support as sub-elements of the overall "Homeland Security" umbrella.

Homeland Defense, as a supporting pillar of homeland security, is "the protection of U.S. sovereignty, territory, domestic population and critical infrastructure against external threats and aggression or other threats as directed by the President." The Department of Defense is the lead agency for Homeland Defense activities underneath the larger Homeland Security umbrella. The definition recognizes that "external" threats may manifest from internal sources so the definition allows the flexibility for the President to use DOD internally if he/she feels the homeland

defense definition has been met.

Our strategies recognize, in theory, that Homeland Security, Homeland Defense and Civil support are not separate functions, but rather a continuum. When the new Department of Homeland Security was being developed, the Department of Defense was extremely wary that domestic military operations would be subjugated to the new department. While initial stand-up studies for NORTHCOM did not shy away from the term "Homeland Security," subsequent documentation tended to discount the term, preferring instead to emphasize that Homeland Defense was something separate from Homeland Security. Much was made of the distinction between the two terms, perhaps to preserve separate funding streams, and the very stove-pipes that DHS and NORTHCOM had been born to deconstruct were actually semantically cemented.

The definition of Homeland Defense includes the caveat that Homeland Defense (DOD in the Lead) can include not only protection against external threats and aggression, but also "other threats as directed by the President." It is this caveat that opens a seam of ambiguity that causes redundancy and/or conflict between DHS, DOJ, ONDI and DOD as the lines between Defense and Security blur inthe homeland. Some feel interdepartmental redundancy and overlap is actually preferable to prevent gaps in the government's ability to detect, deter and response to terrorist attacks. Unfortunately it also blurs the command and control lines and complicates the Civil-Military interface as multiple agencies, including DOD, work the same issues seemingly in parallel rather than in an integrated fashion.

With no clear boundary between Homeland Defense and Homeland Security, DOD and other agencies will continue to juggle lead-agency responsibilities and will continue to struggle with the very different command and control cultures of DOD and its interagency partners. Some studies, such as the CSIS report "Managing the Next Catastrophe: Ready or not?," have called for a clear statement that DOD will *never* take the lead in the homeland, unless the threat is such that only the military can effectively deal with it.

### The National Guard—Bridging the Tension between State and Federal Entities

Hurricane Katrina brought issues of state sovereignty to the forefront. The current Federal response system did not allow for pro-active coordination so that Governors could efficiently request Federal support without also appearing to have failed in the eyes of their constituents. There were no coordinated state-Federal plans that truly delineated what each level of government was capable of providing during a catastrophic event. This Federal-state and civil-military national discourse has played out in commissions, reports, and think-tank pieces devoted to addressing these issues. Recent Commission on the National Guard and Reserve and Center for Strategic and International Studies reports have emphasized the need for Governors and their National Guards to be vital players in domestic planning and response.

The Constitution, and its clear statement that Governors have all powers not specifically reserved for the President, is perhaps the singular issue making operations in the homeland a unique endeavor. The CNGR commission has suggested a Council of Governors be appointed to advise the Department of Defense, while the Chief of the National Guard Bureau was recently elevated to the rank of 4-star General and appointed as advisor to the Secretary of Defense. These developments, among others, demonstrate the growing gubernatorial voice in domestic civil-military operations.

Operations in the homeland are inherently non-hierarchical. Governors are bound by Federal laws and by strings attached to Federal funding, but for the most part states are fairly independent actors. States that border Canada and Mexico have particularly interesting state-Federal issues to include long standing civil associations with their cross-border neighbors.

The National Strategy for Homeland Defense highlights the key role the National Guard and its 450,000 members in over 3,300 communities plays in domestic operations acting as a bridge between state and Federal military forces. The Guard has moved from being a Strategic Reserve to an Operational Reserve, building new domestically oriented organizations to deal with the threat. Notably, each state has fielded a Weapons of Mass Destruction Civil Support Team or WMD-CST with the ability to rapidly assess a suspected Chemical, Biological, Radiological or Nuclear event.

At this writing, the National Guard is providing over 50 percent of the combat forces in Iraq; on any given day the Air and Army National Guard have over 50,000 airmen and soldiers deployed around the world. Each day in

America there are on average 7,000 Guardsmen employed under the Governor's control performing homeland defense and security missions. Guarding critical infrastructure, supporting Customs and Border Protection along our Southern border and supporting Law Enforcement in Counter-Drug efforts make up the bulk of this support. During natural disasters and emergencies, this support swells dramatically as Guardsmen are called up to support relief efforts. A Governor has authority to employ his or her National Guard troops, but can also call upon surrounding states to surge support. This is accomplished through the congressionally recognized Emergency Management Assistance Compact (EMAC) which allows states to provide mutual aid— Guard and/or other state assets. This is how 50,000 National Guardsmen were able to quickly deploy to Louisiana and Mississippi in Katrina's wake. EMAC is voluntary and may not be as effective in a national event such as a pandemic.

### The Department of Defense—Adjusting to the Reality of Operations in the Homeland … and "War" on the Home Front

The Department of Defense role in domestic operations has always been problematic. No one Assistant Secretary of Defense was responsible for the domestic area and DOD had largely abdicated the domestic operations missions to the Army. In fall 2002, Congress established the Assistant Secretary of Defense for Homeland Defense, under the Undersecretary of Policy, with the principal policy responsibility for DOD's homeland defense activities. The ASD (HD) was to coordinate with the Chairman, Joint Chiefs of Staff to develop the policies and recommendations that would enable homeland defense and defense support of civil authorities and to coordinate DOD domestic preparedness and crisis management functions. The ASD (HD) was recognized as having a special relationship with the homeland Combatant Command—NORTHCOM—in guiding COCOM planning and execution within the politically sensitive domestic arena. There is contention over the bounds of the term "supervision" in operational rather than policy matters.

ASD (HD) has the unique responsibility to deal with the complex interagency and intergovernmental partners with which domestic DOD operations must be coordinated. During its first year, this new Assistant Secretary was subsequently given oversight of Defense Critical Infrastructure and Defense Industrial Base activities in the homeland. In 2005, the office gained the responsibility for coordinating DOD's assistance counter threats from nuclear, radiological, biological, chemical and high yield explosives.

The office was reorganized and expanded again in 2006 with its transformation to the Assistant Secretary of Defense for Homeland Defense and America's Security Affairs (ASD HD/ASA). This change gave the relatively new office responsibility for Military policy in the entire Western Hemisphere.

### The Spectrum of Civil-Military Cooperation in the Homeland at the National Level

The Homeland Security Council and the National Security Council guide civil-military coordination policies and national agendas. Given the similar focus for each of these entities, many officials and reports have called for their merger—as bi-furcated homeland vice international security policies do not serve the country well. At present, there is no single strong interagency coordination body within the Federal Government; the President cannot easily compel collaboration and each department level organization functions relatively independently.

The promise of NORTHCOM was to provide "one-stop shopping" for Homeland Defense and Civil Support operations—essentially one operational-level organization for Federal and other civil organizations to coordinate with the so-called active or Title 10 military forces. In the NORTHCOM headquarters, the Joint Interagency Coordination Group (JIACG) provides the Command and staff with the "rest of the story" in planning and response.

The JIACG provides a framework to integrate interagency partners into planning and exercises. Resident agency representatives from 40 organizations live and work at Peterson Air Force base and provide the subject matter expertise needed to inform NORTHCOM's operational planning. Twenty more local organizations contributed as needed. These representatives provide context for military planning to ensure military capabilities are applied in the most effective manner. NORTHCOM's Interagency Coordination Directorate facilitates this process and ensures two-way information flow between NORTHCOM and its vital security and defense partners.

During steady state operations, the representatives that make up the JIACG team contribute to planning efforts through writing interagency annexes to each NORTHCOM plan. These annexes provide basic contingency operations guidance regarding the interagency cooperation required to successfully accomplish the plan. It is

essential that NORTHCOM military planners fully understand interagency partner capabilities and limitations at the local, state and national levels so as to accurately plan for the military support that might be required in the various planning scenarios. NORTHCOM planners and partners typically form interagency working groups to address specific sectors or requirements or to update particular NORTHCOM or interagency plans.

JIACG members ensure that NORTHCOM plans are consistent and coordinated with those of their parent organizations to ensure unity of effort during steady state and response operations. Conversely, NORTHCOM planners often augment Federal and state partners in their planning efforts. For example, NORTHCOM planners have participated in FEMA-led hurricane planning efforts, particularly in the area of evacuation and search and rescue operations.

Deliberate planning efforts are augmented by strong interagency situational awareness in the NORAD and NORTHCOM Command Center (N2C2). The N2C2 maintains contact with interagency operations centers such as the National Operations Center (NOC), which is the DHS 24/7 year-round center to monitor the nation's security. N2C2 personnel provide information to the commander and staff as emergency situations develop. If an emergency situation warrants, the JIACG will transition to the Interagency Coordination Group (ICG) and falls in on a pre-configured interagency watch center to provide intensive interagency perspective and information-sharing during an exercise or contingency.

ICG members reach back to their agency headquarters and into their agency representatives in the field to ensure subject matter expertise is resident in the command. The ICG works as a Civil-Military team to accomplish a running estimate, an interagency assessment that both informs the Commanders' decision making process and provides our interagency partners with insight into the military process.

In addition to Federal interagency partnerships, it's imperative that NORTHCOM understand the vast private sector and the capabilities that business, academic, faith-based, volunteer and non-government organizations bring to the homeland mix. NORTHCOM's Interagency Coordination Directorate, working with DHS, has developed a private sector coordination program designed to ensure the Command's planning and response operations are fully supportive of those being conducted by the private sector.

### Essential Partnership—The Private Sector and International Partners

The private sector does plan and will respond. Perhaps most important from a Homeland Defense and Security standpoint, fully 85 percent of all critical infrastructure in the United States is owned and operated by private-sector entities. Defense industrial base, critical telecommunications nodes, oil and gas pipelines all represent terrorist targets and are essential to the continued operation of our Nation's business. DHS reaches out to private-sector entities through its Private Sector Office, its Office of Community and Faith Based Initiatives, and FEMA's volunteer organizations liaison team.

Katrina highlighted the need to include the private sector in the National Response Framework. Private-sector organizations are essential in critical infrastructure systems and in rapidly restoring commercial activities in order to mitigate the effects of natural or man-made disasters. Planning collaboratively with business and not-for-profit healthcare and power generation owners and operators is critical. Non-government, volunteer and faith-based organizations perform essential feeding, sheltering and other support services that alleviate suffering.

The next great disaster could very well manifest itself along one of our borders, equally affecting both the United States and our neighbors in Canada or Mexico. Civil-Military relations take on an added dimension when applied cross border. While Canada and the United States enjoy a strong cooperative bi-national relationship, the relationship with Mexico is ore problematic. Yet, the United States-Mexico border has a higher threat for both man-made and natural incidents and disasters. It's imperative that civil security and emergency response organizations on both sides of the border proactively collaborate to protect the citizens of both nations.

NORTHCOM exercises theater security cooperation programs (i.e., military to military relationships) with both Canada and Mexico. Recently the command has developed cooperative Mexico emergency management engagement opportunities with FEMA, the Environmental Protection Agency (EPA), the U.S. Geologic Service (U.S.GS) and other civil organizations. The goal is to knit together military and civil planners and responders to ensure unity of effort between civil, military and international partners.

## Section 2. Legal Constraints on Operations in the Homeland

The U.S. military has historically shied away from operating domestically—both as a matter of law and a matter of culture. While all DOD elements would agree that defending the homeland is job one, DOD is much more comfortable accomplishing that defense from a distance, talking on enemies overseas.

The Constitution provides that states are primarily responsible for the welfare of their residents. Specific legislative prohibitions such as the Posse Comitatus Act of 1878,[1] the Insurrection Act of 1807,[2] the Economy Act of 1933,[3] and the Stafford Act[4] place strict limits on the Federal military's domestic operations.

The Posse Comitatus Act states in its entirety, "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force[5] as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both." Today the Act is understood to prohibit Title 10 U.S. Military personnel from conducting domestic law enforcement and to preclude domestic elected officials from using the military to achieve their own personal aims. The term *posse comitatus* reflects historical American mistrust of the Federal military borne of the experience of British troops forcing colonists to provide food and lodging and, eventually, British troops (i.e., "Federal" troops) being used to try to quell the American revolution. The law is now interpreted as applying only to Title 10 troops and does not prohibit a Governor from employing his state's militia," or National Guard, in essential law enforcement activities. Posse comitatus discussions are often accompanied by Insurrection Act discussions; as the Insurrection Act details the conditions under which the Federal Government *is* allowed to use Federal forces domestically—in limited circumstances and "only for the purpose of putting down rebellions or enforcing constitutional rights if state authorities fail to do so."

An interesting conundrum arises from the interaction of the Posse Comitatus Act and the Insurrection Act—their application virtually precludes the use of Title 10 Active-duty and Reserve forces during natural or man-made disasters, unless such disasters rise to a level that somehow fits the definition of putting down rebellions or enforcing constitutional rights. Post Katrina, the National Defense Authorization Act of 2007 amended the Insurrection Act to give the President the authority to commit both Federal and National Guard troops not only to quell rebellions and ensure constitutional rights, but also to handle more broadly defined emergencies, such as natural disasters and terrorist attacks. While the impetus behind this change was altruistic—ensuring Title 10 Active-duty and Reserve Forces are available to the nation more quickly during disasters—the change was vehemently opposed by Governors. State chief executive officers held that the change afforded too much authority to the President. A subsequent "all Governors" appeal forced the repeal of the 2007 provision.

---

1 A useful summary of the Posse Comitatus Act is provided in Eric V. Larson and John E. Peters, *Preparing the U.S. Army for Homeland Security: Concepts, Issues, and Options* (Santa Monica: RAND, 2001), available at <http://www.rand.org/pubs/monograph_reports/MR1251/MR125 1 .AppD.pdf>.

2 The Insurrection Act of 1807 is the set of laws that govern the President's ability to deploy troops within the United States to put down lawlessness, insurrection, and rebellion. The laws are chiefly contained in 10 U.S.C. § 331— 10 U.S.C. § 335.

3 The Economy Act Agreement for Purchasing Goods or Services permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency.

4 The Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, signed into law November 23, 1988 and amended as the Disaster Relief Act of 1974, PL 93-288, constitutes the statutory authority for most Federal disaster response activities especially as they pertain to FEMA and FEMA programs. See <http://www.fema.gov/about/stafact.shtm>.

5 The Air Force was added in 1956; the Navy and the Marine Corps are included by a DOD regulation.

Governors realize there is much capacity resident in Title 10 forces, both Active and Reserve, and actively seek ways to tap into that capacity to support state disaster response efforts. The Commission on the Guard and Reserve, after much discussion with state officials, recommended that Governors be afforded the ability to have operational control of Title 10 forces when those forces are activated for state-led disaster response. The classic unity of command argument was applied, as the commission asserted that unique or specific Title 10 capabilities should just be "chopped" to Governors when needed, rather than employ those Title 10 capabilities independently with a parallel command structure. This debate continues.

The Economy Act was originally enacted in 1933 as a means to balance budgets and reduce costs, but in the domestic operations arena it generally provides a means for one Federal agency to contract with another agency to accomplish specific tasks—on a reimbursable basis. It's this act that makes the military very expensive to use domestically. If, for example, FEMA requires support from DOD, such as aircraft or imagery, FEMA must reimburse DOD for all costs incurred. In most cases civilian, local, state, or other non-DOD Federal or private-sector resources are much less expensive. The result is that the military is often the "first responder of last resort" due to its cost. There is ongoing discussion to reimburse only incremental costs.

The Stafford Act, was designed to provide a system for providing Federal disaster assistance to state and local governments. Basically, it dictates that a Presidential Disaster Declaration prompts FEMA to coordinate material and financial assistance and gives FEMA the responsibility to coordinate government disaster relief efforts. Presidential declarations can take the form of major disasters, emergencies, fire suppression, defense emergency, and pre-declaration activities in anticipation of an impending disaster. Each type triggers specific funding ceilings, duration of support, and types of support (both military and civilian) that can be employed. The Stafford Act forms the basis of the National Response Framework, which fundamentally dictates DOD civil-military homeland response operations.

The National Response Framework (descendent of the National Response Plan) guides the National response by delineating response principles and defining participating organizations and their roles and missions. The principal of "tiered response" is a basic NRF tenet. It's generally accepted that emergencies are best handled by the lowest-level jurisdiction, such as city or county emergency responders, to speed appropriate response to those in need. In the civil-military arena, this first tier would include the concept of "immediate response" authority in which local military organizations— Active, National Guard, or Reserve—can be part of a short term "life and limb" effort. As the scope or specificity of the disaster grows, the state provides support to local governments, and Federal authorities provide support to states. To ensure unity of effort, the NRF delineates fifteen broad lanes of responsibility or "Emergency Support Functions" (ESFs); FEMA coordinates interagency support to local and state authorities through activating specific ESFs as needed. Each ESF is led by single agency but can call upon other supporting agencies, including DOD, to support that particular ESF mission. For example, ESF 8 is public health and medical services, led by the Department of Health and Human Services (DHHS) but DOD could be called upon to support DHHS in the area of mass fatality management. It's interesting to note that DOD is in the lead for only one ESF, public works, which is led by the civil side of the U.S. Army Corps of Engineers. DOD does, however, have a supporting role in all ESFs.

During "normal," steady state-operations, FEMA monitors and readies for response operations through their ten regional offices. In recent months, and in response to lessons learned from Katrina, FEMA has been making their regional response staffs more robust and empowering them to be more proactive in planning and more autonomous in response. DOD promotes the civil-military relationship at this regional level by stationing a defense coordination officer (DCO) and a small defense coordinating element (DCE) in each of the ten FEMA regions. These DCO/E teams build relationships with their FEMA counterparts that help DOD in general— and NORTHCOM in particular— anticipate potential DOD requirements under the NRF. U.S. Army North (ARNORTH), as the Joint Land Force Command under NORTHCOM, oversees the DCO/E teams during steady state operations.

In an emergent event, the National Guard under a governor's control may very well be the first DOD uniformed responder, but they can also be quickly joined by Active-duty forces under the command of local commanders. These commanders are authorized to provide immediate response in the event an emergency occurs in the vicinity of their bases. Generally, this support is in the immediate area, for a short duration and is for imminent life and limb emergency situations.

Some believe that the DOD only becomes involved when local and state capabilities are "overwhelmed"—a term that most elected officials do not appreciate. In reality, unique military capabilities can and should be employed immediately, and can complement a well-organized state response. In all likelihood, Army and Air National Guard will be employed under the governor's command before the JFO is established, and long before the DCO and other Title 10 forces arrive. Specific Title 10 capabilities can be employed at the governor's request; for example, when Minnesota's I-35 bridge collapsed into the Mississippi River, specialized Navy divers complemented local efforts immediately as salvage divers with unique skills not immediately available in the civilian community. In this event, the Department of Transportation was the lead Federal Agency.

It's obvious that there could be at least three different chains of command—all military, all in uniform—showing up at one disaster site: the state's National Guard under the Governor (and other states' National Guard forces under EMAC), the local troops under a base commander, and Active-duty forces under NORTHCOM. This can be very confusing to the civilian community as the differences in command and status are not readily apparent. During hurricane Katrina, for example, Texas, Louisiana, and Mississippi all called out their state National Guard under the command of their respective governors. When 40,000 EMAC-facilitated National Guard forces began flowing into the region, National Guard Task Forces in Louisiana and in Mississippi managed their reception and employment to fulfill the Governors needs.

The Federal response to hurricane Katrina was perceived as late-to-the-fight. State-Federal mistrust, lack of knowledge regarding process, and political agendas appeared to dictate the response. The media reported all the negative aspects. Still, over 70,000 DOD personnel (50,000 Guardsmen and 20,000 Active-duty and uncounted civilian employees) deployed to the scene quickly and in most cases were immediately useful. But in some cases the DOD response was not deconflicted either internally or among interagency partners, resulting in confusion and squandered resources.

We've talked a lot about response, but what about trying to preclude crisis, prevent attacks, and plan for that response? Under the overall goal of keeping the homeland secure, we have National Strategies for homeland security, homeland defense, information-sharing, combating terrorism, pandemic influenza … the list goes on and on. Through the National Response Framework we have a strategy for response, but until recently the nation has not had an integrated system to accomplish the planning necessary to implement these strategies and mitigate the effects of crises. In June 2008, DHS released a Draft Integrated Planning System (IPS) for Homeland Security with a stated purpose to "further enhance the preparedness of the United States by formally establishing a standard and comprehensive approach to national planning."

As this integrated system begins to develop at the National Level, states and regions are also organizing to accomplish integrated planning. One such effort drawn from local roots is the FEMA/OSD developed concept of a Task Force for Emergency Readiness (TFER). This concept would enable a core planner group at state level that would bring together state, National Guard, DHS, and private-sector expertise to specifically address a state's planning priorities. The interagency team would contribute to building integrated plans that address public, private, military, and civilian capabilities and concerns. Still in the concept phase, this team would be tailored to meet each state's needs and would report to the state emergency manager or other official as designated by the respective governors. It is envisioned that state TFERs would eventually provide a conduit to Federal response planning and response capabilities (both DHS and DOD), aid the development of regional planning coordination and response procedures and implement lessons learned across all levels of government.

## Conclusion and Findings

***In the Homeland, complex operations are impossible without collaboration.***

Collaboration is probably more important in the Homeland than anywhere else, and it must include the elements of the interagency—Federal and state—as well as international and private-sector actors— for-profit, not-for-profit, NGO, and academic.

***In the Homeland, DOD will never be in the lead.***

The distinction between Homeland Security and Homeland Defense is not helpful, is divisive, and should be eliminated.

***In the Homeland, the Constitutional roles of the President and the governors are clear—and lead to considerable executive tension.***

This is very evident in the relationship between Federal troops and the National Guard of the individual states. Short of Federalization, a single chain of command is essentially impossible. What might be possible and beneficial is a merger—partial perhaps, but better full—of NORTHCOM and the National Guard Bureau.

***In the Homeland, the actors need the same coordination and collaboration skills and mindsets we seek in complex operations overseas.***

This is true particularly with respect to interaction between government and non-government players. We believe this is the age of the JIATF—Joint Interagency Task Forces—led by a Federal Agency but comprising needed elements of other agencies, not just Federal and perhaps not just governmental. What the organization is called is not of consequence.

## A Final Word

*Stability operations* is a term and concept with some currency, at least within DOD. Most discount its applicability to the Homeland. That is a profound mistake, as students of Katrina can attest. The 54 independent nations—aka states and territories—that make up our Homeland provide all the challenges inherent in complex operations elsewhere.