

Homeland Security and Homeland Defense: America's New Paradigm

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National Policy on Domestic Deployment of Military Forces

The United States Constitution divides authority over the military between the president, in his role as Commander in Chief,¹ and the Congress, which has the authority to “raise and support Armies ... provide and maintain a navy, ... and make Rules for the Government and Regulation of the land and naval forces.”² After the devastating terrorist attacks against the United States on September 11, 2001, U.S. President George W. Bush reaffirmed that “The United States government has no more important mission than protecting the homeland from future attacks.”³ The *National Strategy for Homeland Security* outlines the policy of the United States to achieve this goal.⁴ It defines homeland security as “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”⁵ Further evidence of the U.S. government’s commitment to this mission can be found in statements made by senior Department of Defense leadership: “Protecting the United States homeland from attack is the highest priority of the Department of Defense.”⁶

The U.S. Department of Defense (DoD) has developed a homeland “defense-in-depth” strategy for covering all defense domains.⁷ A key element of this strategy is addressing threats at the earliest possible opportunity and as far away from our domestic shores as possible. The strategy acknowledges there will be times and instances when military forces will be employed domestically. These instances can be broken down into three rather broad categories of employment:

1. *Lead*: The Department of Defense conducts military missions to deter, prevent, and defeat attacks on the United States, its population, and its defense-critical infra-

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¹ *The Constitution of the United States of America*, Article II, Section 2.

² *Ibid.*, Article 1, Section 8.

³ George W. Bush, “Letter from the President of the United States to the American People,” transmitted as part of *The National Strategy for Homeland Security*, 16 July 2002; available at <http://www.whitehouse.gov/homeland/book/>.

⁴ *The National Strategy for Homeland Security*, 16 July 2002.

⁵ *Ibid.*, 2.

⁶ Donald H. Rumsfeld, United States Secretary of Defense, “Message to U.S. Forces and Department of Defense Civilians,” 12 September 2001.

⁷ United States Department of Defense, “The Military Strategy for Homeland Defense and Civil Support,” June 24, 2005.

structure.⁸ Flying combat air patrols to ensure airspace security as well as maintaining physical security around military installations and defense-critical infrastructure are examples where the department, always guided by civilian leadership, exercises leadership.

2. *Support*: At the direction of the president or the secretary of defense, the DoD provides defense support to civil authorities in order to prevent terrorist incidents or manage the consequence of an attack or a disaster. Support is often requested when the DoD has unique capabilities to contribute, or when civilian responders are overwhelmed.⁹
3. *Enable*: Efforts to share capabilities and expertise with domestic agencies and international partners reinforce the DoD's leadership and support activities. At home, the department works to improve civilian capabilities for homeland security by lending expertise and sharing relevant technology. For example, the DoD is sharing training and simulation technologies with the Department of Homeland Security, as well as unmanned aerial vehicle technologies with federal law enforcement organizations responsible for surveillance along the nation's borders.¹⁰

Legal Authority for Employment

Within civilian communities in the United States, the primary responsibility for protecting life and property and maintaining law and order is vested in state and local governments. Generally, federal military forces are employed to enforce civil law and order only when circumstances arise that are beyond the control of state and local authorities. The basic policy reflects the Founding Fathers' hesitation to raise a standing army, and their desire to render the military subordinate to civilian authority. The basic policy is rooted in the Constitution and laws of the United States, and allows for exceptions only under extreme, emergency conditions.¹¹

Exceptions to the restrictions on the use of federal armed forces to assist state and local civil authorities are also grounded in the Constitution, in the same article that provides the basis for federal legislation allowing military assistance.¹² The president has a constitutional duty to see that the laws of the United States are faithfully executed.¹³

Just as there are legal authorities and exceptions allowing for the domestic use of the military, there are legal restrictions on its use as well. Principal among these is the Posse Comitatus Act.¹⁴ The law was enacted in 1878, primarily as a result of the mili-

⁸ Ibid., 14.

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Constitution of the United States*, Article II.

¹² Ibid.

¹³ Ibid.

¹⁴ Title 18, *United States Code*, Section 1385 (hereafter Posse Comitatus Act).

tary presence in the South during Reconstruction following the U.S. Civil War.¹⁵ Congress' intent in passing the act was to prevent direct military involvement in civilian law enforcement duties without congressional or constitutional authorization. For many years, the Posse Comitatus Act remained obscure and all but forgotten. In the early part of the twentieth century, local officials used U.S. Army troops to break strikes, prevent labor meetings, stifle political dissent, and arrest or detain workers without the right of habeas corpus.¹⁶

In 1956, the act was incorporated into Title 18 of the United States Code, Section 1385, and amended to include the newly formed U.S. Air Force. An attempt was made to subject the navy to the act in 1975, but the bill died in committee. It is a matter of Department of Defense policy, however, that the act applies equally to naval forces. The Posse Comitatus Act does apply to members of the military reserves who are on active duty or active duty for training. Members of the National Guard are only subject to the act when they are in federal service. Similarly, the act does not apply to the Coast Guard in peacetime, unless the Coast Guard is brought under the control of the Secretary of the Navy.

Historical Precedents

Post-war: 1945–1990

The Civil Defense Program

Soon after the end of World War II and the Soviet acquisition of nuclear weapons, the United States recognized a new vulnerability and acted accordingly. A comprehensive program of civil defense was designed to address the survival of individual Americans in the event of a massive Soviet nuclear attack. This single, monolithic state threat was dealt with through a combination of deterrence (via massive nuclear retaliation) and an active civil defense program at all levels of domestic government. The military's strategic nuclear forces had the mission to detect and retaliate in the event of a Soviet nuclear attack. In his 1963 budget request to Congress, President Kennedy transferred the responsibility for the civil defense program to the Department of Defense, with the intent of more closely integrating offensive and defensive activities.¹⁷ The program was driven and funded by the federal government, but was implemented at the state and local level with voluntary individual participation. In addition to funding salaries of state civil defense officials and national scientific research, under most plans the military was used to provide equipment and training for shelter evacuation programs. Support

¹⁵ Matthew C. Hammond, "The Posse Comitatus Act: A Principle in Need of Renewal," *Washington University Law Quarterly* 75, no. 2 (1997): 953-954; *Domestic Operational Law (DOPLAW) Handbook for Judge Advocates* (Charlottesville, VA: Center for Law and Military Operations, 2001), 8.

¹⁶ Gary Felicetti and John Luce, "The Posse Comitatus Act: Liberation from the Lawyers," *Parameters* 34, no. 3 (Autumn 2004): 100–101.

¹⁷ Amanda J. Dory, "Civil Security, Americans, and the Challenge of Homeland Security," *CSIS Report* (September 2003): 12.

for civil defense programs declined in succeeding administrations, due in part to the political climate of *détente*, and in part to improvements to satellite reconnaissance that resulted in earlier warning of impending attacks.

Civil Rights, Civil Disturbance, and Insurrection

Article II of the Constitution gives the President of the United States the inherent authority to protect the property and functionality of the federal government when state and local officials can not or will not. In Title 10 of the United States Code, Section 332 (the Insurrection Act), Congress gave the president the authority to commit the military to enforce federal laws.¹⁸ In addition, the president may call into federal service the National Guard units of any state and use the armed forces as he considers necessary to enforce those laws or to suppress a rebellion.¹⁹ The provisions of this law were used to enforce public school desegregation in Arkansas in 1957 and in Alabama in 1963.²⁰ The same provisions were used to send in troops to help quell civil rights protests in Mississippi in 1962 and in Alabama in 1963.²¹

In addition to the civil rights movement that swept the nation in the late 1950s and early 1960s, the nation's protracted involvement in South East Asia during this period led to countless anti-war demonstrations. In several instances the military was used to help restore or maintain order in the nation's capital, Washington D.C.

Post-Cold War: 1991–2001

Support for Operations against Drug Trafficking

In 1981, Congress passed Chapter 18 of Title 10, entitled "Military Cooperation with Civilian Law Enforcement Officials."²² This act, with its subsequent amendments and a series of Congressional mandates, enabled the Department of Defense to assume an increasingly active role in supporting domestic civil law enforcement agencies to fight the flow of illegal narcotics into and through the United States. In addition to passing specific statutory authorities for providing counter-trafficking support, Congress has annually appropriated specific funds to the DoD to provide such support.²³

¹⁸ Title 10, *United States Code*, Section 331-335 (hereafter the Insurrection Act) (July 29, 1861).

¹⁹ Title 10, *United States Code*, Section 332 (Use of Militia and Armed Forces to Enforce Federal Authority).

²⁰ Executive Order Number 10,730, 22 *Federal Register* 7,628 (24 September 1957); Executive Order Number 11,118, 28 *Federal Register* 9,863 (10 September 1963).

²¹ Executive Order Number 11,053, 27 *Federal Register* 9,681 (30 September 1962); Executive Order Number 11,111, 28 *Federal Register* 5,709 (11 June 1963).

²² Title 10, *United States Code*, Subtitle A, Part I, Chapter 18 (Military Support for Civilian Law Enforcement Agencies).

²³ In 2001, Congress appropriated \$869 million for DoD support for counter-trafficking operations. This amount has continuously grown. See the National Defense Appropriations Act of 2001, Public law 106-259.

As part of the U.S. Defense Authorization Act of 1991,²⁴ Congress designated the Department of Defense as the single lead agency for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States.²⁵ Section 1206 of the same act stated that the “Secretary of Defense shall direct that the armed forces, to the maximum extent practicable, shall conduct military training exercises in drug interdiction areas.” Many of the military activities provided under Section 1004 of this act fall into the category of logistics support operations: procuring and maintaining equipment; providing transportation to personnel and equipment; and providing communication support. National Guard forces have become a critical part of military support to civilian law enforcement agencies in the counter-drug effort.²⁶

California Riots

In May 1992, after an unpopular ruling in the trial of police officer accused of beating an African-American motorist, Rodney King, civil unrest, arson, looting, and riots broke out in Los Angeles, California. Governor Pete Wilson requested federal military support from President George H. W. Bush to assist with restoring law and order in the city.²⁷ Governor Wilson advised President Bush and the U.S. Attorney General that the violence in Los Angeles exceeded the capabilities of available law enforcement resources, including National Guard forces that had been called to duty by the Governor on 1 May 1992. President Bush ordered the federalization of the California National Guard and the deployment of soldiers of the Army’s 7th Infantry Division from Fort Ord, California, as well as Marines from Camp Pendleton, California, to assist in restoring order in Los Angeles.²⁸

Post-9/11

Airports

On 27 September 2001, President Bush asked the governors of the states to deploy the National Guard at more than 420 civilian airports around the country. Governors and their adjutant generals responded, and deployed over 9,110 Army and Air National Guard personnel to supplement civilian law enforcement and security forces. Their deployment lasted for a period of six months. During that time, the Transportation Security Administration was created, and subsequently assumed the responsibility for passenger screening, and later the screening of checked baggage. The physical presence of uniformed military in U.S. airports provided the traveling public reassurance that their government would go to extraordinary lengths to ensure their security. It should be noted that the National Guard personnel remained under the command and control of

²⁴ The National Defense Authorization Act of 1991–1992, Public Law 101-189.

²⁵ *Ibid.*, Section 1563.

²⁶ Title 32, *United States Code*, Section 112(a).

²⁷ Proclamation Number 6,427, *57 Federal Register* 19,359 (5 May 1992).

²⁸ Executive Order Number 12,804, *57 Federal Register* 19,361 (5 May 1992).

their respective governors and adjutant generals, but that their deployment was paid for by the federal government.²⁹

Anthrax

In the fall of 2001, while the nation was in the grips of managing the consequences of the September 11 terrorist attacks, additional attacks occurred. Rather than using force to hijack a commercial airliner to kill innocent civilian non-combatants, these terrorists—who are as yet unknown—used the United States Postal Service to distribute a deadly anthrax virus to news media outlets around the country, and to two United States senators in Washington, D.C. Thirty-nine individuals developed anthrax infections, and five of those died from inhalation anthrax.³⁰ When anthrax-laden letters were discovered in the Hart Senate Office Building, next to the United States Capitol, the United States Marine Corps' Chemical/Biological Incident Response Force was called in to conduct agent detection and identification as well as limited decontamination. During this event, and a subsequent anthrax threat on Capitol Hill, CBIRF provided assistance to federal and District of Columbia authorities, including the U.S. Capitol Police, the Federal Bureau of Investigation, the Environmental Protection Agency, the Federal Emergency Management Agency, D.C. Metro Police, and the Emergency Management Office.

Borders

Prior to the creation of the Department of Homeland Security, securing the nations' borders was a responsibility shared by the Immigration and Naturalization Service, the U.S. Border Patrol—both of which were part of the Department of Justice—and the U.S. Customs Service, which was part of the Department of Treasury. In February 2002, through a cooperative arrangement between the Departments of Defense, Justice, and Treasury, the DoD mobilized, trained, and deployed National Guard personnel to assist in border operations. Missions included cargo inspections, traffic management, terrain and trend analysis, and limited flights of fixed and rotary wing aircraft to provide basic observation flights over remote portions of the U.S. border with Canada. Unlike the deployment to provide airport security mentioned above, where National Guard personnel remained under the command and control of their respective state governors and adjutant generals, for this mission National Guard personnel were mobilized and brought into federal service. The rationale behind that decision was debated at the senior levels of government, with the prevailing thought being that border security is the responsibility of the federal government, and that it cannot be delegated to individual states. Once mobilized and trained, personnel were detailed to provide technical assistance and support to the Border Patrol, Customs, and the Immigration and Naturalization Service. Because they were performing a support function rather than enforcing laws, there was no violation of the Posse Comitatus Act.

²⁹ This duty status is authorized by Title 32, *United States Code*, Section 525(f).

³⁰ Barbara Hatch Rosenberg, "Analysis of the Anthrax Attacks," *Federation of American Scientists* (22 September 2002).

Types and Capabilities of Forces

Active Military Forces

The primary mission of the military is to fight and win the nation's wars.³¹ The Department of Defense will sometimes be called upon to assist civilian authorities with active duty military forces. Domestic laws, presidential directives, executive orders, departmental directives, and service regulations provide the framework for and set limits on the domestic use of military forces. Virtually any active duty unit or individual of any branch of the armed forces can be deployed domestically, under the proper authority. In testimony before Congress, the Secretary of Defense described four categories or circumstances in which the DoD will use military forces domestically:

- *Extraordinary*: When the nation is under attack, including by terrorist use of weapons of mass destruction, local and state officials may not be equipped to identify and repel the adversary;
- *Emergency*: During disasters or emergencies, the DoD will deploy troops domestically when directed to support local and state officials who are overwhelmed, or when there is an identified capability that is unique to the military;
- *Temporary*: Forms of temporary support provided by the military to civil authorities include support during "National Special Security Events" (NSSE) or other support to law enforcement. Recent well known NSSEs include the 2002 Winter Olympic Games in Salt Lake City, Utah; the 2004 G-8 Summit in Sea Island, Georgia; the 2004 Political Conventions in Boston, Massachusetts and New York, New York; and the 2005 Presidential Inauguration in Washington, DC;
- *Routine*: Traditional military missions, including maritime interdiction and air-space security.

Each of these circumstances is discussed separately below. Whenever the deployment of active duty forces is contemplated for a domestic mission, critical consideration must be given to the impact on training and readiness for core DoD missions.

Reserve Component Forces

Army and Air National Guard

The National Guard has a unique dual mission that consists of both *federal* and *state* roles. For state missions, the governor, through the state adjutant general, commands National Guard forces. The governor can call the National Guard into action during local or statewide emergencies, such as storms, fires, earthquakes, or civil disturbances.³²

In addition, the president of the United States can activate the National Guard for participation in federal missions. Examples of federal activations include Guard units

³¹ Henry H. Shelton, General, United States Army and Chairman of the Joint Chiefs of Staff, *Joint Vision 2020* (Washington, D.C.: U.S. Government Printing Office, June 2000).

³² National Guard Bureau Web Site, <http://www.ngb.army.mil/about> (accessed December 2004).

deployed to Bosnia and Kosovo for stabilization operations, and units deployed to the Middle East and other locations in the war on terrorism. When federalized, Guard units are commanded by the combatant commander of the theater in which they are operating.

Army, Marine, Navy and Air Force Reserve

Each of the services maintains a federal reserve force whose mission is to provide trained and ready personnel and units with the critical capabilities necessary to support national strategy during peacetime, contingency situations, and war. The reserves are a key element in the multi-component unit force, training with active-duty and National Guard units to ensure that all three components work as a fully integrated team.³³ The reserve forces consist of the ready reserve, the standby reserve, the inactive reserve, and the retired reserve.

Other

The United States Army Corps of Engineers

The Army Corps of Engineers is made up of approximately 34,600 civilian and 650 military men and women. These military and civilian engineers, scientists, and other specialists plan, design, build, and operate water resources and other public works projects for both the military and the interagency community. Much of their work involves inland waterway navigation, flood control, environmental protection, and disaster response.³⁴

The United States Coast Guard

The Coast Guard is one of the country's five armed services. In times of peace, they now operate as part of the Department of Homeland Security, serving as the nation's front-line agency for enforcing laws at sea, protecting the nation's coastline and ports, and conducting life-saving operations. In times of war, or on direction of the president, the Coast Guard serves under the Navy Department.

The Coast Guard also maintains a reserve, similar to the reserves of the other services. In addition, the Coast Guard maintains an auxiliary as a nonmilitary organization, administered by the commandant under the direction of the Secretary of Homeland Security. In addition to the Coast Guard reserves, there are also private citizens who make up the Coast Guard Auxiliary who assist the commandant in performing peacetime Coast Guard functions.³⁵

Civil Air Patrol

The Civil Air Patrol (CAP) is a civilian auxiliary of the United States Air Force with more than 64,000 members. The CAP is organized into 52 separate wings, with 1,700 units. Their fleet consists of over 550 corporate-owned aircraft, and more than 4,000

³³ US Army Reserve Web Site, <http://www.armyreserve.army.mil/usar/mission/statement>.

³⁴ United States Army Corps of Engineers' Web Site, <http://www.usace.army.mil/>.

³⁵ United States Coast Guard Web Site, <http://www.uscg.mil/USCG.shtm>.

privately-owned aircraft. They conduct 95 percent of the nation's inland search and rescue missions, as well as providing aerial reconnaissance for homeland security, disaster-relief, and damage assessment. They are also called upon to transport time-sensitive medical materials.³⁶

State Defense Forces

Twenty-five states have official militias. They are usually convened by the adjutants general, who head the state military services, with the governor as commander in chief. Their members train as volunteers, and also perform emergency and community support services. Unlike the National Guard, no federal clearance is necessary for their formation, and they are obligated to serve on state active duty if so ordered by the governor.

National Response Plans and Programs

The National Response Plan (NRP) uses the foundation provided by the Homeland Security Act, Homeland Security Presidential Directive No. 5, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide a comprehensive, all-hazards approach to domestic incident management.³⁷ The NRP also establishes the coordinating structures, processes, and protocols required to integrate the specific statutory and policy authorities of various federal departments and agencies in a collective framework for action to include prevention, preparedness, response, and recovery activities.

The NRP incorporates relevant portions of and supersedes the following plans: the Federal Response Plan, United States Government Interagency Domestic Terrorism Concept of Operations Plan, and the Federal Radiological Emergency Response Plan. The NRP also establishes national-level coordinating structures, processes, and protocols that will be incorporated into certain existing federal interagency incident or hazard-specific plans, such as the National Oil and Hazardous Substances Pollution Contingency Plan. The NRP fully integrates emergency response and law enforcement elements into a single national strategy.

There are five key portions of the National Response Plan:

1. The *Base Plan* describes the structure and processes that constitute a national approach to domestic incident management designed to integrate the efforts and resources of federal, state, local, tribal, private sector, and nongovernmental organizations. The Base Plan includes planning assumptions, roles and responsibilities, the concept of operations, preparedness guidelines, and plan maintenance instructions.
2. The *Appendices* provide detailed supporting information, including acronyms, definitions, authorities, and a compendium of national interagency plans.

³⁶ Civil Air Patrol (United States Air Force Auxiliary) Web Site, <http://www.cap.gov/>.

³⁷ Title 42, *United States Code*, Section 5121, et seq. as amended (Robert T. Stafford Disaster Relief and Emergency Assistance Act).

3. *Emergency Support Functions (ESF) Annexes* detail the missions, policies, structures, and responsibilities of federal agencies for coordinating resources and providing programmatic support to states and other federal agencies or other jurisdictions and entities during what are referred to as “Incidents of National Significance.”
4. *Support Annexes* provide guidance and describe the functional processes and administrative requirements necessary to ensure efficient and effective implementation of NRP incident-management objectives. Support Annexes include: financial management, international coordination, logistics management, private-sector coordination, public affairs, science and technology, tribal relations, volunteer and donations management, and worker safety and health.
5. *Incident Annexes* address contingency or hazard situations requiring specialized application of the NRP. The Incident Annexes describe the missions, policies, responsibilities, and coordination processes that govern the interaction of public and private entities engaged in incident management and emergency response operations. These annexes address the following types of incidents: biological, catastrophic, cyber, food and agriculture, nuclear/radiological, oil and hazardous materials, and terrorism law enforcement and investigation.

Protection of Critical Infrastructure

The vast majority of the nation’s critical infrastructure is under private, state, or local control. Likewise, most protection and preparedness efforts for critical infrastructure are being undertaken by state, local, and private-sector entities, without any federal involvement. The Department of Defense relies heavily on the private-sector defense industry that provides the majority of the equipment, materials, services, and weapons for the U.S. armed forces. Ensuring that military forces are properly equipped is critical to maintaining DoD power projection and homeland defense capabilities. In that regard, the president recently designated the Department of Defense as the agency of primary responsibility for the defense industrial base sector. This is just one of fifteen sectors of critical infrastructure that have been identified as needing protection in the “production industries” category in the Homeland Security Presidential Directive (HSPD) # 7 (Critical Infrastructure Identification, Prioritization, and Protection), signed December 17, 2003.

In this role, the DoD is responsible for national infrastructure protection activities for critical defense industries as set forth in Homeland Security Presidential Directive No. 7.³⁸ This includes:

- Collaborating with all relevant federal departments and agencies, state and local governments, and the private sector;

³⁸ Homeland Security Presidential Directive No. 7, *Critical Infrastructure Identification, Prioritization, and Protection* (17 December 2003).

- Conducting or facilitating vulnerability assessments of the defense industrial base;
- Encouraging protective risk-management strategies to prevent and mitigate the effect of attacks on the defense industrial base;
- Preventing the loss of critical assets that are single points of failure.

Border and Transportation Security

In addition to the National Guard support provided in commercial airports in 2001, the Department of Defense provided support to the Department of Homeland Security's Arizona Border Control Initiative in 2003 and 2004. This initiative was designed to strengthen control of the Arizona border in support of the detection, arrest, and prosecution of illegal cross-border traffic. The DoD authorized both Hunter and Hermes unmanned aerial vehicles to perform aerial surveillance for DHS in accordance with the Economy Act.³⁹ Existing DoD contracts were used to operate and maintain the aircraft that had been placed under the control of the Department of Homeland Security. No military personnel were employed in this operation, but missions were flown out of Libby Field on Fort Huachuca, Arizona, an active duty military installation.

Operation Winter Freeze

At the request of the Department of Homeland Security, the Department of Defense contributed to an interagency operation to deter, detect, and monitor transnational threats along the United States' northern border in the states of Vermont, New York, and New Hampshire. A joint task force composed of both active duty and National Guard personnel provided technical support and analysis to the Customs Bureau in the Swanton Sector. The support provided included aerial reconnaissance and non-intrusive chemical, biological, radiological, and nuclear screening and detection.

Domestic Counterterrorism

Because of the United States' conventional military superiority, potential enemies, hostile nations, terrorist groups, or criminal organizations are increasingly likely to attack the nation using unconventional means. The U.S. has established that terrorists who violate the law will be apprehended and tried, no matter where they hide and no matter how long it takes. The Department of Justice is the principal federal agency responsible for domestic counterterrorism, but the Department of Defense can provide support in accordance with existing authorizations and appropriations.

Catastrophic Threats

In the event of a catastrophic threat, it is likely that local and state medical assets will quickly become overwhelmed. The National Disaster Medical System (NDMS) is designed to provide a national capability to deliver quality medical care to victims. There

³⁹ Title 31, *United States Code*, Section 1535 (Economy Act) authorizes federal agencies to provide supplies, equipment, and materials on a reimbursable basis to other federal agencies.

are three components of NDMS, and the Department of Defense has a role in each. When requested, the DoD provides specialized deployable medical teams to disaster sites. When air evacuation is required from the affected area, the DoD coordinates and tracks patient movement. Finally, the DoD, along with the Department of Veterans' Affairs, monitors available hospital beds and staffs urgent care facilities.⁴⁰

Civil Support

Disaster Relief

Throughout the history of the United States, the Department of Defense (and its predecessor, the Department of War) has provided assistance to the victims of disasters.⁴¹ The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the primary legal authority for federal participation in domestic disaster relief efforts. Under the Stafford Act, the president may direct federal agencies, including the DoD, to provide personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of disaster relief.⁴² The DoD may be directed to provide disaster assistance in one of three different scenarios: a presidential declaration of a major disaster; a presidential order to perform emergency work essential for the preservation of life and property; or a presidential declaration of an emergency. Although there is no specific statutory authority to do so, the DoD established a commander's "immediate response" authority. This authority allows heads of military units to provide disaster relief when "imminently serious conditions resulting from any civil emergency or attack exist which requires immediate action to save lives, prevent human suffering, or mitigate great property damage."⁴³

Support to Law Enforcement

As stated above, the Secretary of Defense may, in accordance with other applicable law, provide military assistance to federal, state, or local civil law enforcement officials. In addition to the Insurrection Act, specific statutory authority is granted for the protection of nuclear materials,⁴⁴ incidents of chemical and biological terrorism,⁴⁵ and in support to the United States Secret Service.⁴⁶

⁴⁰ See National Disaster Medical System Web Site, at <http://www.ndms.dhhs.gov>.

⁴¹ *United States Department of the Army Field Manual 100-19*, Domestic Support Operations (July 1993), 1-2. Page 1-2 of the reference FM addresses historic precedence of Army support to Disaster Assistance including the Chicago fire, the Johnstown flood, and the Charleston earthquake.

⁴² The Stafford Act.

⁴³ United States Department of Defense Directive 3025.1, "Military Support to Civil Authorities," Para 4.5 (15 January 1993).

⁴⁴ Title 18, *United States Code*, Section 831, criminalizes certain acts involving nuclear material and authorizes the Attorney General to request DoD assistance to enforce the prohibition.

⁴⁵ Title 50, *United States Code*, Section 2313 (Defense Against Weapons of Mass Destruction Act).

⁴⁶ Title 18, *United States Code*, Section 3056 (Presidential Protection Assistance Act of 1978).

Civil Disturbance

Title 10, Chapter 15 of the United States Code, entitled “Insurrection,” allows the use of federal forces to restore order during times of civil disturbance. Both the Department of Defense and the courts use one phrase, “civil disturbance,” to encompass the various situations allowing the use of military assistance under the Insurrection Act. Under this act, the president may commit federal forces to support a request from a governor, enforce federal authority, or to protect constitutional rights.⁴⁷ As the use of federal forces to quell civil disturbances is expressly authorized by statute, the proscriptions of the Posse Comitatus Act are inapplicable in these cases.⁴⁸ Historical examples of the use of federal forces under this authority have been detailed previously in this essay.

National Special Security Events

Numerous special events regularly receive security support from the Department of Defense or another element of the federal government. Some of these, such as the presidential nominating conventions, presidential inaugurations, international summits, and large sporting events like the Olympics warrant special support. At the request of individual governors, or upon direction of the president, the Secretary of Homeland Security may designate these events of great magnitude and national or international importance as National Special Security Events (NSSE).⁴⁹

Once designated, the event receives the full protection and incident-management capabilities of the federal government. The United States Secret Service leads the development and implementation of the comprehensive security planning effort. This effort includes coordinating with local and state authorities, as well as identifying federal capabilities to supplement but not supplant local resources. The Federal Bureau of Investigation serves as the lead agency for intelligence, federal criminal investigation, hostage rescue, and counterterrorism efforts. The Federal Emergency Management Agency is the lead agency for the planning and coordination of response to and recovery from terrorist attacks and other emergencies. Other federal departments and agencies, including the Department of Defense, provide a full range of resources to support the event based on their authorities and appropriations. For NSSEs, the DoD usually provides specialized technical support like explosive ordnance disposal technicians, explosive detector dog teams, and chemical, biological, radiological, and nuclear detection and response capabilities. Depending on the scope and magnitude of the event, the DoD may establish a joint task force to exercise command and control over DoD personnel providing support.

⁴⁷ Title 10, *United States Code*, Section 332, et seq. (Insurrection Act).

⁴⁸ Title 18, *United States Code*, Section 1385 (Posse Comitatus Act) makes it unlawful to use any part of the Army or Air Force in a civilian law enforcement capacity to execute local, state, or federal laws. The language of the act itself specifies that activities expressly authorized by the Constitution or by statute are exempt from the act’s restrictions.

⁴⁹ Presidential Decision Directive No. 62, “Protection Against Unconventional Threats to the Homeland and Americans Overseas” (22 May 1998).

Conclusion

The domestic deployment of military resources is neither new nor limited to the United States. The military has long provided assistance in cases of disaster, and has routinely provided support to state and territorial governors, occasionally administering governmental affairs until local governance was reestablished. Military personnel and their associated equipment, although organized to conduct combat operations, can be rapidly deployed domestically with proper authorization.