

The History of Military Assistance for Domestic Natural Disasters: The Return to a Primary Role for the Department of Defense in the Twenty-First Century?

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Introduction

The primary responsibility of the U.S. military is to provide for the common defense of the United States.¹ The traditional role of the military has been to fight wars and conduct combat missions.² The Department of Defense (DOD) is responsible for providing a standing military needed to deter war and maintain the security of the nation.³ In furtherance of providing for the common defense and at the direction of Congress⁴ or the Commander-in-Chief,⁵ a properly trained and equipped military can act quickly and move massive amounts of personnel and equipment to a troubled area, as was the case in Operations Desert Shield and Desert Storm.⁶ It is not a surprise that the inherent military chain of command and the structure of functional specialized units within the military are ideal “for the kinds of tasks which emerge during natural disasters.”⁷ The media has increased public awareness of the military’s demonstrated “capability for rapid response,”⁸ which has led to a greater interest in a bigger role for the military in non-combat missions.⁹ One of the most visible recent non-combat roles of the military was the provision of disaster relief assistance in the aftermath of Hurricane Katrina.¹⁰

For the most part, the after-action reports and formal in-depth assessments, which measure and assess the military’s role in handling the Hurricane Katrina disaster relief effort, will be forthcoming over the next few years.¹¹ It appears, however, that once again the military has not only demonstrated the capability to respond quickly to a natural disaster but also the ability to execute excellent consequence management.¹² The history of U.S. natural disasters is rich with examples of military assistance.¹³ A continued support role for the military in domestic natural disaster relief missions seems to be certain. What remains unclear, however, is whether the military should play a lead role in federal domestic disaster relief for the twenty-first century.

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¹ See U.S. CONST. art. I, § 8.

² See INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES FOR THE U.S. MILITARY IN THE POST-COLD WAR ERA 5 (James Graham ed., 1993) [hereinafter INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES].

³ See U.S. DEP’T OF DEFENSE, DIR. 5100.1, FUNCTIONS OF THE DEPARTMENT OF DEFENSE AND ITS MAJOR COMPONENTS (1 Aug. 1998) [hereinafter DOD DIR. 5100.1].

⁴ See U.S. CONST. art. I, § 8.

⁵ See *id.* art. II, § 2.

⁶ See generally U.S. Transportation Command, United States Transportation Command: A Short History (Apr. 2005), <http://www.transcom.mil/history/history.cfm>.

⁷ William Anderson, *Social Structure and the Role of the Military in Natural Disaster*, 53 SOC. & SOC. RES.: AN INT’L J. 242, 244 (1969).

⁸ *Id.* at 244.

⁹ See generally Robert Burns, *Military May Play Bigger Relief Role*, PHILLYBURBS.COM, Sept. 17, 2005, available at <http://www.phillyburbs.com/pb-dyn/news/1-09172005-542866.html>; Tucker Carlson, *Military Relief in Disasters: Should Troops Be More Involved in All Natural Disaster Relief?*, MSNBC, Oct. 3, 2005, available at <http://www.msnbc.msn.com/id/9518835/>.

¹⁰ See generally Lolita Baldor, *Military Launches Hurricane Rescue Relief*, SFGATE.COM, Sept. 25, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2005/09/25/national/a153512D95.DTL>.

¹¹ See generally Pam Zubeck, *NorthCom Official Lists Katrina Lessons*, COLORADO SPRINGS GAZ., Oct. 22, 2005.

¹² See generally Burns, *supra* note 9; Carlson, *supra* note 9.

¹³ See generally GAINES M. FOSTER, CENTER OF MILITARY HISTORY, U.S. ARMY, THE DEMANDS OF HUMANITY: ARMY MEDICAL DISASTER RELIEF (1983).

Defining Military Domestic Operations

The role of the military in domestic operations can encompass many scenarios outside the traditional combat role.¹⁴ If the traditional role of the military is to fight the nation's wars, then non-traditional military roles must include the long-standing practice of domestic operations.¹⁵ Therefore, it is important to define and narrow the subject parameters of this article since domestic operations is a broad term and includes many topics.

As the name suggests, domestic operations are limited to the fifty geographical United States.¹⁶ Generally, domestic operations for the military are termed Military Assistance to Civilian Authorities (MACA) missions¹⁷ and include the following: support for domestic civil disasters (natural and man-made), civil disturbances, counterterrorism operations, sensitive support operations (which include radiological accidents and weapons of mass destruction (WMD) incidents and terrorist incidents involving chemical and biological agents), and counter-drug operations.¹⁸

Until recently, the Secretary of the Army, as the executive agent of the Secretary of Defense for civil emergencies, was responsible for MACA missions.¹⁹ However, this responsibility was transferred in 2003 to the Assistant Secretary of Defense for Homeland Defense.²⁰ The Assistant Secretary of Defense for Homeland Defense is specifically charged with executing consequence management. Consequence management is defined as "those essential services and activities required to manage and mitigate problems resulting from disasters and catastrophes. Such services and activities may include transportation, communication, public works and engineering, fire fighting, information planning, mass care, resources support, health and medical services, urban search and rescue, hazardous materials, foods and energy."²¹

Although it exceeds the scope of this article, domestic operations may also include military support to law enforcement—Military Support to Civilian Authorities.²² Direct federal military support to civilian law enforcement is limited by the Posse Comitatus Act of 1878²³ (and by the DOD²⁴) and is otherwise illegal unless specifically authorized by Congress or the U.S. Constitution.²⁵ This article, however, will focus exclusively on those domestic operations that do not include or contain a primary or supporting law enforcement role by the military.

Additionally, it is necessary to distinguish between federal military forces and state military forces when discussing domestic operations. Generally, the federal military includes those forces in a federal active duty status.²⁶ For purposes of military domestic operations, federal active duty forces are distinguished from military forces that are performing *state* active duty missions and who are not on federal active duty status.²⁷ It is important to recognize that not all disaster response missions by the military necessarily include a federal response since most states depend on their respective National Guard units, acting in a state military status,²⁸ to respond to state and local emergencies.²⁹ For purposes of this article, unless otherwise noted, the term "military" will refer only to those military forces in a federal active duty status.

¹⁴ See generally CENTER FOR LAW AND MILITARY OPERATIONS (CLAMO), THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, 1 DOMESTIC OPERATIONAL LAW (DOPLAW) HANDBOOK FOR JUDGE ADVOCATES 1-8 (2005) [hereinafter CLAMO, DOPLAW].

¹⁵ See INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 4.

¹⁶ See CLAMO, DOPLAW, *supra* note 14, at 1.

¹⁷ See U.S. DEP'T OF DEFENSE, DIR. 3025.15, MILITARY ASSISTANCE TO CIVILIAN AUTHORITIES (18 Feb. 1997) [hereinafter 1997 DOD DIR. 3025.15].

¹⁸ See *id.*

¹⁹ See *id.* para. 4.7.5.5.

²⁰ See Message, 141916Z May 03, Joint Staff Washington DC//JDOMS//, subject: Transfer of the Army Director of Military Support Mission to the Joint Staff [hereinafter Transfer Military Support Mission Message] (on file with author).

²¹ 1997 DOD DIR. 3025.15, *supra* note 17, para. E2.1.5.

²² See U.S. DEP'T OF DEFENSE, DIR. 3025.1, MILITARY SUPPORT TO CIVILIAN AUTHORITIES (15 Jan. 1993) [hereinafter 1993 DOD DIR. 3025.1].

²³ See 18 U.S.C. § 1385 (2000).

²⁴ See U.S. DEP'T OF DEFENSE, DIR. 5525.5, DOD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS (15 Jan. 1986) [hereinafter DOD DIR. 5525.5].

²⁵ See 18 U.S.C. § 1385.

²⁶ See 10 U.S.C. § 101.

²⁷ See generally 32 U.S.C. § 101 (defining active duty for National Guard forces).

²⁸ See *id.*

²⁹ See RONALD SORTOR, RAND ARROYO CENTER, ARMY FORCES FOR OPERATIONS OTHER THAN WAR 21 (1997).

The History of Military Assistance

Natural disaster relief includes responding with assistance to the hazards associated with earthquakes, hurricanes, flood or dam failure, tornados, and fires.³⁰ Military assistance and support play an important role in the DOD's mission. For example, in fiscal year 1999, there were 283 instances of military support to civil authorities.³¹ Such a large and active military participation in domestic disaster assistance, however, was not always the case. The following examples of domestic natural disasters illustrate the major historical instances of military assistance to civilian authorities in the overall development of domestic disaster history.

Disaster Relief Missions Prior to the Twentieth Century

Initially, during the early years of the nation, the federal government's response to provide disaster relief to states was limited.³² The federal government was small in size, and many viewed federal disaster relief as a "dangerous exercise of power," unauthorized by the Constitution.³³ Most Presidents turned down state requests for federal aid in keeping with the philosophy of the time that "maintenance of order within the nation belongs primarily to state and local authorities, and only ultimately to the central government."³⁴ The prevalent political view also considered a large standing army as dangerous.³⁵ As authors Sam Sarkesian and Robert Connor note,

[t]he historical aversion to standing armies evolving from the revolutionary period and the cautions expressed by the Founding Fathers about the dangers of large standing armies are deeply rooted in the American psyche. When faced with major conflicts, the US military, composed of a small number of regulars, was expanded by the influx of citizen-soldiers. These episodic surges of the US military were quickly followed by demobilization and reduction of the military.³⁶

Because the early standing peacetime Army was small and widely disbursed, even if the Army had the ability to offer assistance, there was no rapid transportation to "dispatch troops to the scene of a calamity in time to be of real help."³⁷ When the Army was called upon to fulfill a domestic operations role, generally the role was limited to suppressing domestic disorders³⁸ (which was ultimately limited in 1878 with the passing of the Posse Comitatus Act³⁹). Congressional support to enact relief authorization did not begin in earnest until after the Civil War.⁴⁰ One of the first congressional acts authorizing the military to assist in a non-combat or law enforcement role was in the form of civil works. Congress tasked the Army Corps of Engineers (ACE) to survey and improve the navigation of the Ohio and Mississippi Rivers in 1824.⁴¹

Despite the lack of an active, direct role in domestic disaster assistance early in the nineteenth century, the military contributed indirectly in disaster planning. During the War of 1812, the Army began to record daily weather.⁴² The act of

³⁰ See FEDERAL EMERGENCY MANAGEMENT AGENCY, STATE AND LOCAL GUIDE (101) FOR ALL-HAZARD EMERGENCY OPERATIONS PLANNING (1996).

³¹ See UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN AND RANKING MEMBER, SUBCOMMITTEE ON MILITARY PERSONNEL, COMMITTEE ON ARMED SERVICES, U.S. SENATE, MILITARY PERSONNEL: FULL EXTENT OF SUPPORT TO CIVIL AUTHORITIES UNKNOWN BUT UNLIKELY TO ADVERSELY IMPACT RETENTION 7 (Jan. 2001) [hereinafter U.S. GAO REPORT FULL EXTENT OF SUPPORT].

³² See FOSTER, *supra* note 13, at 7 (opining that the small size of the federal government and lack of a means discouraged federal disaster assistance).

³³ *Id.* at 8.

³⁴ U.S. ARMY WAR COLLEGE & U.S. ARMY MILITARY HISTORY INSTITUTE, THE CONSTITUTION AND THE U.S. ARMY 37 (1988) [hereinafter CONSTITUTION AND U.S. ARMY].

³⁵ See SAMUEL HUNTINGTON, THE SOLDIER AND THE STATE: THE THEORY AND POLITICS OF CIVIL-MILITARY RELATIONS 144 (1957).

³⁶ SAM SARKESIAN & ROBERT CONNOR, JR., THE U.S. MILITARY PROFESSION INTO THE TWENTY-FIRST CENTURY: WAR, PEACE AND POLITICS 79 (1999).

³⁷ FOSTER, *supra* note 13, at 7.

³⁸ See generally ROBERT W. COAKLEY, THE ROLE OF FEDERAL MILITARY FORCES IN DOMESTIC DISORDERS 1789-1878 (1988).

³⁹ See 18 U.S.C. § 1385 (2000). Some early examples in U.S. history when federal military forces were used to support domestic operations include President George Washington's use of federal forces to suppress the Whiskey Rebellion in 1794 and President John Adams's use of federal forces to quell the Fries Rebellion in 1798. See CONSTITUTION AND U.S. ARMY, *supra* note 34, at 36.

⁴⁰ See FOSTER, *supra* note 13, at 12.

⁴¹ See WILLIAM W. EPLEY, CENTER FOR MILITARY HISTORY, U.S. ARMY, ROLES AND MISSIONS OF THE UNITED STATES ARMY 87 (1991).

⁴² See HURRICANE! COPING WITH DISASTER: PROGRESS AND CHALLENGES SINCE GALVESTON, 1900, at 40 (Robert Simpson, ed., 2003) [hereinafter HURRICANE!].

tracking weather was initially recognized for its military value but later served as the basis for the establishment and development of the weather services by the U.S. Army Signal Services in 1870.⁴³

After the Civil War, the military, especially the Army, found itself with an increased role in civil matters.⁴⁴ Post-Civil War occupation by federal troops in the south generated several federal assistance programs administered by the military, most notably the Freedmen's Bureau.⁴⁵ The Bureau of Refugees, Freedmen, and Abandoned Property Act of 1865 created The Freedmen's Bureau, and the War Department was responsible for "supervise[ing] all relief and educational activities relating to refugees and freedmen, including issuing rations, clothing and medicine."⁴⁶ As federal aid to domestic disasters increased after the Civil War, Congress became more "depende[nt] on the Army"⁴⁷ to administer disaster relief.

[The U.S. Army] still maintained more of a presence throughout the nation than did any other federal agency. In addition, it held stockpiles of rations, clothing, and tentage—the staples of government grants to victims of disasters. Even when it did not have stores on hand, the Army—again more than any other government agency—had [an] established purchasing and transportation system. Finally, the military chain of command facilitated quick response. Once the Army had undertaken the task of relief in a few instances, its role became so fixed that Congress rarely questioned its use during the remainder of the century.⁴⁸

Another post-civil war example of military domestic assistance occurred after the Great Fire of Chicago on 8 October 1871.⁴⁹ In a telegram on 9 October 1871, Lieutenant General (LTG) P. H. Sheridan reported to Secretary of War W. W. Belknap, "[t]he city of Chicago is almost utterly destroyed by fire."⁵⁰ Calling it a "national calamity,"⁵¹ LTG Sheridan requested and the government provided "rations from St. Louis, tents from Jeffersonville, and two companies of infantry from Omaha"⁵² to accommodate the estimated 100,000 homeless.⁵³

Overall, the U.S. Army assisted in over seventeen domestic relief operations associated with fires, epidemics, floods, storms, tornadoes, and a locust plague between 1868 and 1898,⁵⁴ including disaster relief for a massive earthquake that destroyed most of Charleston, South Carolina in August of 1886.⁵⁵ The ACE undertook its first formal disaster relief mission during the Mississippi Flood of 1882 when it supported the Army Quartermaster Corps' efforts to rescue people and property.⁵⁶ The ACE also played a critical role in responding to the Johnstown, Pennsylvania flood of 1889.⁵⁷

⁴³ See *id.* at 40 (explaining the nation's first advisory on a tropical weather system was issued in 1873 by this service, and in 1890, Congress transferred the weather function to the Department of Agriculture, becoming a civilian service known as the Weather Bureau).

⁴⁴ See COAKLEY, *supra* note 38, at 268.

⁴⁵ See FOSTER, *supra* note 13, at 13.

⁴⁶ See Freedmen's Bureau Online, <http://freedmensbureau.com/> (last visited Oct. 2, 2006).

⁴⁷ FOSTER, *supra* note 13, at 15 (explaining why the U.S. Army was the agency of preference in oversight of domestic disaster relief).

⁴⁸ *Id.* at 16.

⁴⁹ See Report Made By Lieutenant General P. H. Sheridan of The Conditions of Affairs in The City of Chicago Occasioned by The Great Fire of Oct. 8th and 9th, 1871, <http://www.chicagohs.org/FIRE/rescue/military.html> (last visited Oct. 2, 2006).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *id.*

⁵⁴ See FOSTER, *supra* note 13, at 16 (listing the following examples: the Chicago fire (1871); yellow fever epidemics in Memphis and Shreveport (1873); locust plague in the Southwest (1874-75); storms in Texas and Mississippi (1880); flood along the Missouri River (1881); flood along the Ohio River (1884); the Johnstown flood and Seattle fire (1889); drought in Oklahoma (1890); forest fires in Missouri (1894); and tornadoes in St. Louis (1896).

⁵⁵ See generally Avery Parker, South Carolina Genealogy, History of Charleston, <http://www.southcarolinagenealogy.org/2005/09/20/history-of-charleston/> (last visited Oct. 2, 2006).

⁵⁶ See U.S. Army Corps of Engineers, The Corps' Response to Natural Disasters, <http://www.hq.usace.army.mil/history/brief2.htm> (last visited Oct. 2, 2006).

⁵⁷ See *id.*

During these relief operations, the War Department typically received funds from Congress and detailed the Army to purchase and deliver the relief supplies to the disaster area.⁵⁸ By the end of the nineteenth century, the U.S. military was firmly embedded in domestic disaster relief missions, and the Army became the “primary agent for disaster relief.”⁵⁹

Disaster Relief Missions in the First Half of the Twentieth Century

At the beginning of the twentieth century, a new sense of federal government activism in disaster assistance and relief operations replaced the reluctance that was once so prevalent during the early nineteenth century.⁶⁰ This change may be explained, in part, because of the shift from an agrarian nation to an industrial metropolitan nation and the subsequent emergence of a society with a “greater sense of interdependence.”⁶¹

Even the once constitutionally-cautious Congress was prepared to expand the role of federal disaster relief not only at home but also overseas.⁶² As Congress became more tolerant of supporting disaster assistance, a new sense of an affirmative obligation to provide disaster assistance domestically and abroad characterized the nature of how the federal government was prepared to address disaster assistance.⁶³ In 1902, Congress approved \$200,000 for emergency relief to the West Indian islands of Martinique and St. Vincent after several volcano eruptions killed almost 1350 people and created severe food shortages.⁶⁴ President Theodore Roosevelt directed the War Department to assist in the delivery of the supplies and both the Army and the Navy helped to oversee the relief mission.⁶⁵ Additionally, Congress chartered the Red Cross in 1905 to “maintain a system of domestic and international disaster relief,”⁶⁶ as acceptance of federal disaster relief assistance became the norm.

The military continued its role in disaster relief and was called upon almost immediately at the beginning of the twentieth century. In September 1900, a deadly hurricane destroyed most of the city of Galveston, Texas and the military provided disaster relief.⁶⁷ In 1906, both the Navy⁶⁸ and the Army⁶⁹ responded with assistance⁷⁰ following the earthquake and subsequent fire that devastated San Francisco, California.⁷¹ Even when the Army offered to relinquish control to the newly chartered Red Cross, the Red Cross director on the scene declined, explaining later that “[t]he Army had the organization, the

⁵⁸ See FOSTER, *supra* note 13, at 17.

⁵⁹ *Id.* at 22.

⁶⁰ *See id.* at 50.

⁶¹ *Id.* at 53 (suggesting the growing concentrations of population in the cities, crowded building practices, and mass communications and transportation all helped create the need for interdependence between local, state, and federal officials).

⁶² *See id.*

⁶³ *See id.* at 50.

⁶⁴ *See id.* at 49.

⁶⁵ *See id.*

⁶⁶ American Red Cross, Museum—Explore Our History, A Brief History of the American Red Cross, <http://www.redcross.org/museum/history/brief.asp> (last visited Oct. 2, 2006).

⁶⁷ *See generally* Suburban Emergency Management Project, *Why the 1900 Galveston Hurricane Was Not a Disaster*, Sept. 25, 2005, available at http://www.semp.us/biots/biot_269.html.

⁶⁸ *See generally* Letter from Commander Charles J. Badger, U.S. Navy, to the Commander-in-Chief, Pacific Squadron (May 31, 1906), available at <http://www.sfmuseum.net/quake/navy.html> (detailing plans to dispatch the U.S. Flagship Chicago, the U.S.S. Boston and U.S.S. Princeton to San Francisco to aid in the disaster relief).

⁶⁹ *See generally* Frederick Funston, *How the Army Worked to Save San Francisco*, COSMOPOLITAN MAG., July 1906, <http://www.sfmuseum.net/1906/cosmo.html>. For a more detailed account of Army relief efforts see National Park Service U.S. Dep’t of the Interior, Relief Efforts, Presidio of San Francisco, at <http://www.nps.gov/prsf/history/1906eq/relief.htm> (last visited Oct. 2, 2006).

⁷⁰ Upon witnessing the destruction first-hand, the acting commander of Division of the Pacific, Brigadier General Frederick Funston, mobilized his troops without a request from any local or state official and without any federal direction or authorization. *See* FOSTER, *supra* note 13, at 55 (citing ADOLPHUS W. GREELY, EARTHQUAKE IN CALIFORNIA, APR. 18, 1906: SPECIAL REPORT OF MAJ[OR] GEN[ERAL] ADOLPHUS W. GREELY, U.S.A. COMMANDING THE PACIFIC DIVISION, ON THE RELIEF OPERATIONS CONDUCTED BY THE MILITARY AUTHORITIES OF THE UNITED STATES AT SAN FRANCISCO AND OTHER POINTS WITH ACCOMPANYING DOCUMENTS 5-6 (1906)).

⁷¹ *See Earthquake and Fire: San Francisco in Ruins*, CALL-CHRON.-EXAMINER, Apr. 19, 1906, available at <http://www.sfmuseum.net/1906/callchronex.html>.

equipment, the trained officers and men for dealing with the situation, and no one else had it or could create it except at enormous expense, and with inevitable waste.”⁷²

In April 1908, tornados swept through several southern states, and the destruction and subsequent flooding resulted in nearly 33,000 homeless.⁷³ After Congress appropriated \$250,000 in disaster relief funds and charged the War Department with administering the issuance of supplies, the Chief of Staff decided the appropriated funding could be spent for medical relief as well.⁷⁴ As a result, both Navy and Army personnel helped establish relief hospitals in Hattiesburg, Mississippi, and medical doctors and supplies were brought in from as far as St. Louis and Washington, DC.⁷⁵ For the first time in a disaster operation, the Navy constructed a tent hospital that “boasted electricity, water pipes, water closets, operating tents, dining tents, and five patient tents, all connected by boardwalks.”⁷⁶

Flooding along the Mississippi River in 1912 was so massive that in some locations it covered land up to sixty miles wide.⁷⁷ President William Taft looked to the War Department as the only organization with adequate resources to respond immediately.⁷⁸ The Army assisted in the rescue of stranded people and livestock and delivered food, tents, and clothing. More than in previous floods, however, “the Army also participated in the erection of refugee centers.”⁷⁹ President Taft convinced the War Department to act without congressional authority and later convinced Congress to ratify the action and appropriate \$1,240,000 to reimburse the Army’s costs.⁸⁰

In some instances, the Army responded without explicit presidential or congressional authorization or approval. Consider, for example, the assistance provided after the March 1913 tornados, which severely damaged Omaha, Nebraska.⁸¹ The post commander of Fort Omaha, who had served during the 1906 San Francisco earthquake, ordered direct immediate assistance to the city of Omaha and opened the post supplies and hospital for disaster relief.⁸² Apparently, the local community who wrote the War Department commending “most highly the quick response of [the post commander]”⁸³ overlooked any concerns about the propriety of dispatching federal troops and unauthorized disbursement of military supplies in an emergency.

The same week of the Omaha tornadoes, extensive flooding along the Dayton and Ohio rivers prompted President Woodrow Wilson to direct the Secretary of War, Lindley Garrison, to render military assistance.⁸⁴ When Secretary Garrison voiced concerns as to the legality to act without congressional approval (despite a longstanding practice of military disaster assistance *without* prior congressional approval), President Wilson directed the assistance nonetheless.⁸⁵

Whether Secretary Garrison’s concerns signaled an emerging change in national politics or simply his own conscience, the War Department issued *Special Regulation Sixty-Seven*⁸⁶ in 1917 which, among other things, addressed disaster assistance by the military without the approval of Congress as, “not contemplated . . . unless the overruling demands of

⁷² FOSTER, *supra* note 13, at 60.

⁷³ *See id.* at 66.

⁷⁴ *See id.*

⁷⁵ *See id.* at 67.

⁷⁶ *Id.* at 68.

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ *Id.* at 69. While some of the refugee centers had Army commanders, typically, the Army would erect the camps and turn the camp administration over to the National Guard or Red Cross. *See id.* at 69 (citing Memo for the Chief of Staff by Quartermaster General, 8 Apr. 12, file 1897542, Record Group 94, NA; James E. Normoyle, *Flood Sufferers in the Mississippi and Ohio Valleys, Rep. of James E. Normoyle in Charge of Relief Operations, Apr., May, June, July, 1912* (Washington: GPO, 1913); *Flood Sufferers of the Mississippi River*, 1912, entry 31C, Record Group 192, WNRC; Bicknell, *Pioneering*, at 164).

⁸⁰ *See* FOSTER, *supra* note 13, at 68.

⁸¹ *See id.* at 72.

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *See id.* at 73.

⁸⁵ *See id.*

⁸⁶ *See id.* at 78.

humanity compel immediate action to prevent starvation and extreme suffering and local resources are clearly inadequate to cope with the situation.”⁸⁷

During World War I, the military was supporting the war effort in Europe while the nation experienced over 675,000 deaths attributed to the influenza epidemic of 1918 to 1919.⁸⁸ In the military’s absence, the Red Cross and the U.S. Public Health Service (PHS) rendered most of the relief.⁸⁹ Despite the severity of the influenza epidemic, the Red Cross and the PHS performed well during the crisis.⁹⁰ The emergence of both the Red Cross and the PHS as capable disaster management agencies during the military’s absence ultimately influenced the course of the military’s role in future disaster assistance.⁹¹

After World War I, the military “usher[ed] in a new era of civil-military relations.”⁹² The Navy undertook greater roles in providing international disaster assistance, and in 1923 the Secretary of the Navy “claimed that the Navy’s work in humanitarian causes justified its existence even if it never fired another shot.”⁹³ In 1924, *Army Regulation (AR) 500-60*⁹⁴ replaced *Special Regulation Sixty-Seven*⁹⁵ in an attempt to define the Army’s role in domestic disaster relief.⁹⁶ *Army Regulation 500-60* legitimized the Army’s “de facto . . . business of aiding civilian disaster victims.”⁹⁷ The newly created Army Air Corps⁹⁸ provided airplanes to deliver supplies and transport patients following a tornado in Texas in 1927.⁹⁹ Just when the military seemed to be settling into a defined post-World War I role in disaster assistance, however, the nature of disaster relief response management was about to enter a transitional period.¹⁰⁰

In 1927, extensive flooding in the Mississippi Valley caused several states to seek federal disaster assistance.¹⁰¹ Breaking precedence, President Calvin Coolidge appointed then Secretary of Commerce Herbert Hoover to oversee federal relief.¹⁰² Secretary Hoover chaired a committee of department heads and for the first time “a civilian official and the Red Cross directed relief operations, not the War Department and its corps area commanders.”¹⁰³ For the most part, the Army played the part of supply agent and loaned over \$2.6 million dollars in equipment, most of which was never returned.¹⁰⁴ When the Red Cross refused to be held accountable for the property, the War Department had to seek a supplemental appropriation from Congress to cover some of the costs of the relief operation.¹⁰⁵ Thereafter, the Army’s participation in

⁸⁷ *Id.* This regulation appears to be the precursor to *Department of Defense Directive 3025.1*, which allows military commanders immediate response authority to save lives, prevent human suffering, or mitigate great property damage when such conditions exist and time does not permit prior approval. *See* 1993 DOD DIR. 3025.1, *supra* note 22, para. 4.5.

⁸⁸ *See* FOSTER *supra* note 13, at 99.

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² HUNTINGTON, *supra* note 35, at 282.

⁹³ *Id.* at 285.

⁹⁴ *See id.* at 104 (listing the complete title of AR 500-60 as *Employment of Troops: Relief Work by the War Dep’t, in Cases of Flood, Earthquake, or Other Great Catastrophe* and included the same immediate response authority as contained in *Special Regulation Sixty-Seven*).

⁹⁵ *See* FOSTER, *supra* note 13, at 78.

⁹⁶ *See id.*

⁹⁷ *Id.* at 77.

⁹⁸ *See* Air Corps Development 1919-1935 Era, United States Air Force Museum, at www.nationalmuseum.af.mil/factsheets/factsheet.asp?id=724 (last visited Jan. 24, 2007).

⁹⁹ *See* FOSTER *supra* note 13, at 109.

¹⁰⁰ *See generally id.* at 99-126.

¹⁰¹ *See id.* at 110.

¹⁰² *See id.*

¹⁰³ *Id.* at 111.

¹⁰⁴ *See id.* at 112.

¹⁰⁵ *See id.* at 113.

disaster relief was limited to engineer support or distribution of supplies.¹⁰⁶ For approximately the next ten years, the military's continued to experience difficulty receiving reimbursement or funding for military assistance in disaster relief.¹⁰⁷

By 1929, the frequent practice of the Red Cross and other agencies to use military supplies without reimbursement created serious shortages of "items held for war reserve."¹⁰⁸ Despite attempts for reimbursement by the Secretary of War, Congress provided no reimbursement appropriations, thus prompting then Army Chief of Staff General Douglas MacArthur to conclude that both President Herbert Hoover and Congress would not support the practice of loaning Army supplies for disaster assistance without any assurance of reimbursement.¹⁰⁹ Adopting "a strict observance of the law regarding the use of public property,"¹¹⁰ the War Department issued a directive to corps area commanders directing that no supplies were to be dispensed without prior approval from the War Department, and only after the borrowing agency promised to reimburse the Army for such items.¹¹¹ The only exception was in the event a disaster required immediate response authority as outlined in *AR 500-60*.¹¹² In the years thereafter, the Army continued disaster assistance only when immediate response required military intervention and "then quickly withdrew when other agencies could take charge."¹¹³

By May 1938, relations between the Red Cross and the military began to improve and the Army revised *AR 500-60* to reflect that the American Red Cross was "the nation's primary disaster relief agency, though [the Army's] corps area commanders retained the prerogative of committing Army personnel and resources."¹¹⁴ Even the problem of funding or reimbursement to the military for disaster assistance appeared to improve when President Franklin Roosevelt authorized reimbursement to the War Department for several flooding assistance missions during 1936 and 1937.¹¹⁵

By the end of the 1930's, the nation had departed from the path of relying solely upon the military for disaster relief management.¹¹⁶ Although the military served a lead role in providing domestic disaster assistance from the post-Civil War era to the post-World War I era, by end of the 1920's the Army had been relieved by the Red Cross and the respective state National Guards to provide the "first line of defense in disaster."¹¹⁷ A senior Army official outlined the Army's role in domestic disaster relief as follows: "the Army should remain only so long as necessary. As soon as possible, civilian authorities must take control."¹¹⁸ The military continued to play a significant role in domestic disaster assistance for the rest of the twentieth century, although it served in a secondary support role to civilian authorities.

During the 1940's, the military provided limited assistance to domestic disasters.¹¹⁹ This was due, in part, to the transition of control from the military to the Red Cross and other federal agencies charged with domestic disaster assistance during the years following World War I. Additionally, the United States entry into World War II also limited military assistance to domestic disasters. Wartime technology during World War II, however, contributed indirectly to disaster relief planning.¹²⁰ One example of wartime technology that later contributed to disaster planning and assistance is the first aircraft flight into the eye of a hurricane in 1943 by Colonel Joseph B. Duckworth.¹²¹ After several more flights, both the Army Air Corps (later the Air Force) and the Navy began "a formal program of daily reconnaissance of Atlantic hurricanes,"¹²² which

¹⁰⁶ See *id.* at 114.

¹⁰⁷ See *id.* at 115.

¹⁰⁸ *Id.*

¹⁰⁹ See *id.*

¹¹⁰ *Id.* at 116.

¹¹¹ See *id.*

¹¹² See *id.* at 117.

¹¹³ *Id.*

¹¹⁴ *Id.* at 121.

¹¹⁵ See *id.* (noting that the reimbursement would come from other economic relief funds).

¹¹⁶ See *id.* at 123.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 122 (referencing a 1938 letter from Major General George Moseley, Commander 4th Corps Area, to civilian relief officials in Tennessee).

¹¹⁹ See *id.* at 127.

¹²⁰ See HURRICANE!, *supra* note 42, at 51.

¹²¹ See *id.* at 53. The flight was actually unauthorized and later characterized by Colonel Duckworth as "a lark to satisfy my curiosity." *Id.*

¹²² *Id.*

helped understand and improve predictions of hurricanes.¹²³ Another example is the development of radio detection and ranging (commonly known as RADAR).¹²⁴ The use of RADAR continues today as a necessary tool for weather research, warning, and relief operations.¹²⁵

Changing Disaster Relief Assistance and Management

After World War II, the nation had grown to expect federal government aid for domestic disasters.¹²⁶ With the military no longer a lead agency in domestic disaster response, Congress actively created “a civilian bureaucracy to coordinate [continuing federal disaster assistance].”¹²⁷ These emerging civilian agencies changed how the nation managed domestic disaster relief assistance.

The Emergence of Civilian Agencies

The first significant act to create civilian coordination of federal disaster assistance occurred in 1947 with the enactment of the Surplus Property Law.¹²⁸ The Surplus Property Law created a Federal Works Administrator and empowered the Administrator with the ability to use all federal agencies and departments to cooperate in disaster assistance and to use surplus property held by the War Assets Administrator.¹²⁹ Twice in the immediate years after 1947, however, Congress had to authorize supplementary appropriations, prompting many to call for new legislation.¹³⁰ Accordingly, Congress responded with the Federal Disaster Relief Act of 1950.¹³¹

*Federal Disaster Relief Act of 1950*¹³²

The Federal Disaster Relief Act of 1950¹³³ was a comprehensive domestic disaster plan intended to fund and coordinate all federal disaster relief efforts.¹³⁴ The Act allowed the President to declare major disaster areas authorized for federal relief “in the cases of flood, fire, hurricane earthquake, drought, and storm.”¹³⁵ In granting this authority to the President, the Act provided an automatic federal response without Congress having to act.¹³⁶ Initially, President Harry Truman assigned federal disaster relief responsibilities to the Housing and Home Finance Agency, but he later reassigned federal disaster relief responsibilities to the Federal Civil Defense Administration.¹³⁷ By 1961, the Office of Emergency Planning assumed this responsibility.¹³⁸

Additionally, the Federal Disaster Relief Act of 1950¹³⁹ designated the Red Cross and the Public Health Service as the federal agencies to respond in the event of a major disaster and empowered increasing responsibilities on state organizations,

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *See generally id.*

¹²⁶ *See* FOSTER, *supra* note 13, at 127.

¹²⁷ *Id.*

¹²⁸ *See id.* at 132.

¹²⁹ *See id.*

¹³⁰ *See id.* at 133 (presumably because the Surplus Property Law was not adequately funded).

¹³¹ *See* Federal Disaster Relief Act of 1950, Pub. L. No. 81-875, 64 Stat. 1109 (1950).

¹³² *See id.*

¹³³ *See id.*

¹³⁴ *See* FOSTER, *supra* note 13, at 133.

¹³⁵ TED STEINBERG, ACTS OF GOD: THE UNNATURAL HISTORY OF NATURAL DISASTER IN AMERICA 181 (2000).

¹³⁶ *See* FOSTER, *supra* note 13, at 133.

¹³⁷ *See id.*

¹³⁸ *See id.* at 134.

¹³⁹ *See* Federal Disaster Relief of 1950, Pub. L. No. 81-875, 64 Stat. 1109 (1950).

such as the state National Guard and local civil defense.¹⁴⁰ As a result, “the civilian relief bureaucracy rarely had to request regular Army assistance.”¹⁴¹ On those rare occasions when the military was utilized, the Act also provided several mechanisms to reimburse the military for supplies in support of disaster relief.¹⁴²

While the Red Cross and other federal, state, and local agencies were the primary disaster relief organizations, the Army was still the primary military service¹⁴³ for military disaster relief assistance.¹⁴⁴ Accordingly, the Army assigned command responsibility for providing disaster assistance to the newly created Continental Army Command.¹⁴⁵

Even though civilian relief agencies were finding less need for reliance on the military after the Federal Disaster Relief Act of 1950,¹⁴⁶ the emergence of the military helicopter in the 1950s offered an additional asset for disaster relief, and Army helicopters participated in at least two disaster relief missions in the late 1950s.¹⁴⁷ The practice of using helicopters as air ambulances in the Korean War proved to be a valuable resource for domestic disasters.¹⁴⁸

When Hurricane Camille slammed into the Gulf Coast in 1969, it became clear quickly that civilian agencies would be overwhelmed. Accordingly, the DOD contributed over 16,500 personnel and provided helicopters, assisted in rescue missions, helped clear and reopen debris covered roads, and donated much needed food, water and medical supplies.¹⁴⁹ Additionally, Army aviators flew over 600 medical evacuation missions.¹⁵⁰

Congress continued to reshape the civilian relief establishment, and in 1969 renamed the Office of Emergency Planning the Office of Emergency Preparedness (OEP).¹⁵¹ In 1973, President Richard Nixon created a new agency to assume responsibility for the federal government in disaster relief by “transferr[ing] relief operations from OEP to the Department of Housing and Urban Development . . . [and creating] the Federal Disaster Assistance Administration.”¹⁵² Shortly thereafter, Congress passed the Federal Disaster Relief Act of 1974.¹⁵³

*Federal Disaster Relief Act of 1974*¹⁵⁴

The Federal Disaster Relief Act of 1974 continued to build upon the Federal Disaster Relief Act of 1950¹⁵⁵ and firmly established the process of Presidential disaster declarations. However, after hazards “associated with nuclear power plants and the transportation of hazardous substances were added to natural disasters, more than 100 federal agencies were involved

¹⁴⁰ See FOSTER, *supra* note 13, at 134.

¹⁴¹ *Id.* at 136.

¹⁴² See *id.* at 134 (explaining that in the event the President *did not* declare a major disaster, the military was reimbursed directly from the Red Cross for any supplies the Red Cross obtained from the military. In the event the President *did* declare a major disaster, the military’s costs were refunded from specific disaster relief funds.).

¹⁴³ See National Security Act of 1947, Pub. L. No. 80-253, 61 Stat. 495 (1947). The DOD was established on 26 July 1947 to coordinate the activities of all of the U.S. military services and replaced the War Department.

¹⁴⁴ See FOSTER, *supra* note 13, at 135.

¹⁴⁵ See U.S. DEP’T OF DEFENSE, DIR. 3025.1, RESPONSIBILITIES FOR CIVIL DEFENSE AND OTHER DOMESTIC EMERGENCIES (14 July 1956).

¹⁴⁶ See Federal Disaster Relief of 1950, Pub. L. No. 81-875, 64 Stat. 1109 (1950).

¹⁴⁷ See William Vance, *Disaster and Emergency Relief Operations*, 4 U.S. ARMY AVIATION DIG. 26, 26-27 (Mar. 1958).

¹⁴⁸ See FOSTER, *supra* note 13, at 136 (detailing the role of Army helicopters as ambulances to evacuate victims of a flood along the Rio Grande River in Texas in 1954, as well as deliver supplies to stranded individuals).

¹⁴⁹ See ROGER A. PIELKE, JR., CHANTAL SIMONPIETRI, & JENNIFER OXELSON, HURRICANE CAMILLE PROJECT REP., THIRTY YEARS AFTER HURRICANE CAMILLE: LESSONS LEARNED, LESSONS LOST (1999), http://sciencepolicy.colorado.edu/about_us/meet_us/roger_pielke/camille/report.html.

¹⁵⁰ See FOSTER, *supra* note 13, at 141.

¹⁵¹ See *id.* at 143.

¹⁵² *Id.*

¹⁵³ See Federal Disaster Relief Act of 1974, Pub. L. No. 93-288, 88 Stat. 143 (1974).

¹⁵⁴ See *id.*

¹⁵⁵ See Federal Disaster Relief of 1950, Pub. L. No. 81-875, 64 Stat. 1109 (1950).

in some aspect of disasters, hazards and emergencies.”¹⁵⁶ While the government intended the Disaster Relief Act of 1974¹⁵⁷ to provide assistance to states and localities that were overwhelmed by disasters, management of federal disaster relief efforts actually became more complex, thereby creating the need for a single central federal agency.¹⁵⁸ As a result, in 1979 President Jimmy Carter created the Federal Emergency Management Agency (FEMA),¹⁵⁹ and Congress amended the Federal Disaster Relief Act of 1974.¹⁶⁰

Federal Emergency Management Agency and the Robert T. Stafford Disaster Relief Act of 1979

In 1979, President Jimmy Carter issued Executive Order 12,148,¹⁶¹ which created FEMA. The Federal Disaster Assistance Administration (formerly within the Department of Housing and Urban Development) was transferred, along with other agencies,¹⁶² and consolidated under FEMA.¹⁶³ Additionally, Congress passed an amendment to the Federal Disaster Relief Act of 1974,¹⁶⁴ which renamed the amended act the Robert T. Stafford Disaster Relief Act of 1979 (Stafford Act).¹⁶⁵ The creation of FEMA and the amendments to the Stafford Act were attempts to improve the federal government’s disaster response. The Stafford Act continues to be a current source of authority in federal disaster relief assistance.

The Stafford Act redefined major disasters as “natural catastrophes (hurricane, tornado, tsunami, earthquake, volcanic eruption, and others) and, regardless of cause, a fire, flood or explosion.”¹⁶⁶ Additionally, the Stafford Act distinguished between a major disaster and emergency.¹⁶⁷ Once a major disaster or emergency declaration has been made, federal resources may be provided under the control and coordination of FEMA.¹⁶⁸ Military participation in support of domestic disasters under the Stafford Act include the following: “debris removal and road clearance, search and rescue, emergency medical care and shelter, provision of food, water, and other essential needs, dissemination of public information and assistance regarding health and safety measures, and the provision of technical advice to state and local governments on disaster management and control.”¹⁶⁹ Additionally, the Stafford Act also authorized the following specific types of assistance: disaster housing assistance,¹⁷⁰ individual and family grants,¹⁷¹ small business administration disaster loans,¹⁷² farm service agency loans,¹⁷³ unemployment assistance,¹⁷⁴ food commodities,¹⁷⁵ legal services,¹⁷⁶ and crisis counseling.¹⁷⁷

¹⁵⁶ Federal Emergency Management Agency, About FEMA, FEMA History, <http://www.fema.gov/about/history.shtm> (last visited Oct. 5, 2006) [hereinafter FEMA Directors].

¹⁵⁷ See Federal Disaster Relief Act of 1974.

¹⁵⁸ See FEMA Directors, *supra* note 156.

¹⁵⁹ See KEITH BEA, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS, FEMA AND DISASTER RELIEF I (1998).

¹⁶⁰ See Federal Disaster Relief Act of 1974.

¹⁶¹ See Exec. Order No. 12,148, 44 Fed. Reg. 43,239 (July 20, 1979).

¹⁶² The Federal Emergency Management Agency also assumed the responsibilities of the Federal Insurance Administration, the National Fire Prevention and Control Administration, the National Weather Service Community Preparedness Program, the Federal Preparedness Agency of the General Services Administration and Civil Defense. See FEMA Directors, *supra* note 156.

¹⁶³ See Exec. Order No. 12,148.

¹⁶⁴ See Federal Disaster Relief Act of 1974.

¹⁶⁵ See 42 U.S.C. § 5121 (2000).

¹⁶⁶ BEA, *supra* note 159, at 9.

¹⁶⁷ Major disaster designations provide for more federal assistance than an emergency. See *id.*

¹⁶⁸ See *id.* at 10.

¹⁶⁹ JENNIFER ELSEA ET AL., CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS, THE USE OF FEDERAL TROOPS FOR DISASTER ASSISTANCE: LEGAL ISSUES 4 (2005).

¹⁷⁰ See 42 U.S.C. § 5174.

¹⁷¹ See *id.* § 5178.

¹⁷² See 15 U.S.C. § 636.

¹⁷³ See 7 U.S.C. § 1961.

¹⁷⁴ See 42 U.S.C. § 5177.

¹⁷⁵ See *id.* § 5179.

¹⁷⁶ See *id.* § 5182.

Despite the creation of FEMA and the enactment of the Stafford Act, however, criticism of civilian federal disaster relief management continued.¹⁷⁸ In late August and early September of 1992, several hurricane disasters caused FEMA to activate its newly created Federal Response Plan.¹⁷⁹ Unfortunately, state and local officials underestimated the damage and degree of federal assistance needed, and the delay in providing adequate assistance set “off a flurry of activity at the federal and state level to get federal assistance to those who needed it.”¹⁸⁰ Once federal assistance began, the military responded by providing thousands of personnel and millions of dollars in supplies and equipment.¹⁸¹ Frustration aimed at civilian leadership of FEMA was apparent when at least one official suggested that the military should, once again “take over Federal disaster activities.”¹⁸²

Ironically, despite the growth of civilian management of domestic disaster relief efforts, calls for the military to return to a management role in domestic disaster relief assistance continued. In 1993, shortly after Hurricane Andrew, criticism of FEMA prompted at least one legislative proposal for the DOD to resume control of federal disaster assistance.¹⁸³

[T]he Department of Defense is the Federal agency with the personnel, equipment, training, and organization to respond quickly to major disasters where mass care is required anywhere in the United States, and should be used to provide mass care whenever State, local or private relief organizations cannot adequately respond in a major disaster.¹⁸⁴

During post-cold war discussions of the U.S. military’s role, reference is made to “the superb contribution the military made to disaster relief as evidence of a new role for the U.S. armed forces.”¹⁸⁵ In more recent times, FEMA¹⁸⁶ was heavily criticized and blamed for mismanagement of federal response efforts associated with Hurricane Katrina in 2005.¹⁸⁷ Shortly after replacing the FEMA director, President George Bush suggested a change in the role of the military in domestic disaster assistance and called the military “the institution of our government most capable of massive logistical operations on a moments notice.”¹⁸⁸ While there can be no doubt of the successful contributions by civilian agencies in disaster relief response and planning since FEMA was created,¹⁸⁹ disaster management under civilian control has not escaped criticism.

¹⁷⁷ See *id.* § 5183.

¹⁷⁸ See KARL SCHNEIDER, THE INDUSTRIAL COLLEGE OF THE ARMED FORCES, DISASTER RELIEF—IS IT SPELLED F-E-M-A? 6 (1993).

¹⁷⁹ The Federal Response Plan detailed responsibilities to each federal agency in disaster response when state and local governments are overwhelmed. See *id.* at 7. The Federal Response Plan was later modified and changed in 2005 to the National Response Plan. See DEPARTMENT OF HOMELAND SECURITY, NATIONAL RESPONSE PLAN (2005) [hereafter DEP’T OF HOMELAND SECURITY, NRP]. As part of the National Response Plan, specific agencies are designated particular responsibilities called Emergency Support Function (ESF) in a proactive attempt to identify the resource best suited to contribute to the relief needs. The Department of Defense is the primary agency responsible for public works and engineering, and the support agency for all other ESFs. See *id.* at ESF #3-1.

¹⁸⁰ SCHNEIDER, *supra* note 178, at 8.

¹⁸¹ See *id.*

¹⁸² *Id.* at 9.

¹⁸³ See *id.* at 12.

¹⁸⁴ *Id.* at 18 (titled the Federal Catastrophic Disaster Response Act of 1993, this author has found no evidence of the proposed legislative enactment).

¹⁸⁵ INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 6.

¹⁸⁶ It should be noted that FEMA was placed under the control of the Department of Homeland Security in 2002. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

¹⁸⁷ See Peter Baker, *FEMA Director Replaced as Head of Relief Effort*, WASH. POST, Sept. 10, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090900795.html> (detailing criticism of FEMA’s response to Hurricane Katrina and how the civilian director was replaced by a military officer, Coast Guard Vice Admiral Thad Allen).

¹⁸⁸ *Historic [C]hanges [P]ossible in [M]ilitary’s [R]ole in [D]omestic [E]mergencies*, USA TODAY, Sept. 17, 2005, available at http://www.usatoday.com/news/nation/2005-09-17-katrina-military_x.htm. President Bush stopped short of offering what changes might be considered.

¹⁸⁹ See generally FEMA, FEMA History, <http://www.fema.gov/about/history.shtm> (last visited Jan. 24, 2007).

An important development for the military in disaster support was the passing of the Economy Act¹⁹⁰ on 13 September 1982. The Economy Act authorizes agency heads to obtain goods or services by an interagency agreement.¹⁹¹ The Act also provided funding authorization for the military to support other agencies and receive reimbursement of actual costs for the goods and services they provide.¹⁹² The serious shortages of military supplies and lack of congressional support to fund the military for domestic disaster relief assistance provided by the Army in the 1920's and 1930's¹⁹³ were clearly a concern of the past. For example, from 1995-1999 the Air Force provided twenty-six airlifts and was reimbursed \$378,205.¹⁹⁴

The U.S. Military in a Supporting Role

While disaster relief legislation has emerged over the past fifty years to establish and create civilian agencies as the primary federal disaster relief entities,¹⁹⁵ the military has experienced continued growth in the various levels of military command that oversee and coordinate military domestic disaster assistance.

Until recently, the Secretary of the Army was the DOD Executive Agent for disaster relief operations; however, the responsibility was transferred in 2003 to the Assistant Secretary of Defense for Homeland Defense.¹⁹⁶ The Joint Director of Military Support (JDOMS) is the agent that coordinates and monitors military domestic disaster relief assistance operations for the Assistant Secretary of Defense for Homeland Defense.¹⁹⁷ When properly directed by the President through the Assistant Secretary of Defense, the JDOMS must coordinate and monitor military support via several levels of military commands. The various levels of command participate to varying degree with some performing a direct role of support and others merely assisting to coordinate activities or simply falling within the chain of command.

United States Northern Command

In 2002, U.S. Northern Command (NORTHCOM) became the ninth unified command within the DOD.¹⁹⁸ In addition to homeland defense, NORTHCOM's mission is civil support, including military assistance in domestic disaster operations.¹⁹⁹ Northern Command helps coordinate military domestic disaster relief as directed by JDOMS while having few inherent assets and no direct command and control over combatant commanders.²⁰⁰ In helping coordinate military civil support, NORTHCOM operates through subordinate Joint Task Forces.²⁰¹ Separate and distinct from domestic disaster assistance, however, Joint Task Force Civil Support (JTF-CS) is a subordinate unit of NORTHCOM and is specifically charged with "provid[ing] temporary critical life support during a chemical, biological, radiological, nuclear or high-yield explosive (CBRNE) situation in the United States or its territories and possessions."²⁰² Despite this specific tasking, on at least one occasion JTF-CS supported a purely natural domestic disaster relief mission when it joined Hurricane Katrina relief efforts.²⁰³

¹⁹⁰ See Economy Act, Pub. L. No. 97-258, 96 Stat. 933 (1982).

¹⁹¹ See 31 U.S.C. § 1535 (2000).

¹⁹² See Economy Act, Pub. L. No. 97-258, 96 Stat. 933.

¹⁹³ See generally FOSTER, *supra* note 13, at 115.

¹⁹⁴ See U.S. GAO REPORT FULL EXTENT OF SUPPORT, *supra* note 31, at 14.

¹⁹⁵ See generally Exec. Order No. 12,148, 44 Fed. Reg. 43,239 (July 20, 1979); 42 U.S.C. § 5121 (2000).

¹⁹⁶ See Transfer Military Support Mission Message, *supra* note 20.

¹⁹⁷ See *id.*

¹⁹⁸ See U.S. Northern Command, About Us, http://www.northcom.mil/about_us/about_us.htm (last visited Oct. 6, 2006).

¹⁹⁹ See *id.* at http://www.northcom.mil/about_us/vision.htm.

²⁰⁰ See generally *id.* at http://www.northcom.mil/about_us/about_us.htm.

²⁰¹ See *id.*

²⁰² Joint Task Force Civil Support, JTF-CS, Unit Fact Sheet, <http://www.jtfc.northcom.mil/pages/factsheet.html> (last visited Oct. 6, 2006).

²⁰³ See Joint Task Force Civil Support, News, Joint Task Force Civil Support Joins Katrina Relief Effort (Sept. 1, 2005), <http://www.jtfc.northcom.mil/pages/news20050901.html>.

United States Joint Forces Command

United States Joint Forces Command (USJFCOM) is a consolidated unified command that integrates the military capabilities of the Army, Navy, Air Force, and Marines “to enhance a combatant commander’s capabilities to implement the president’s strategy.”²⁰⁴ One of nine combatant commands in the DOD,²⁰⁵ USJFCOM “direct[s], plan[s], coordinate[s], schedule[s], and control[s] the joint operations and inter-theater deployment of all USJFCOM forces,”²⁰⁶ including military assistance in domestic disasters.²⁰⁷ Component commands from each of the four services report to USJFCOM to provide troops and equipment.²⁰⁸ While each of the military services contributes equally, for purposes of illustrating the levels of military commands related to domestic disaster assistance, this article focuses on the Army component command of USJFCOM—U.S. Army Forces Command.

U.S. Army Forces Command

United States Army Forces Command (FORSCOM) “trains, mobilizes, deploys, sustains, transforms, and reconstitutes conventional forces, providing relevant and ready land power to Combatant Commanders world wide in defense of the nation both at home and abroad.”²⁰⁹ As a Joint Force Land Component Command to NORTHCOM, FORSCOM trains and provides those forces and equipment in support of domestic disaster relief.²¹⁰ Included in the land forces under FORSCOM are the First and Fifth Continental United States Armies (CONUSA). Until recently, First United States Army supported all domestic disaster relief for the eastern United States and Fifth United States Army supported all domestic disaster relief missions for the western United States.²¹¹ A recent example of the employment of First Army in support of a domestic disaster assistance mission was Task Force Katrina.²¹² As part of the current Army transformation, all responsibility for domestic disaster assistance has been transferred to Fifth United States Army, which has been re-designated as U.S. Army North or ARNORTH.²¹³ The United States Army Forces Command, however, is not limited to only the CONUSAs for federal domestic disaster assistant missions and can utilize other land forces as may be required.

After a federal disaster or emergency declaration has been made and JDOMS directs the military to assist, a senior military representative is designated to facilitate the use of military personnel and equipment in support of a domestic disaster.²¹⁴ This senior military officer is called a Defense Coordinating Officer (DCO)²¹⁵ and is assigned to supplement a FEMA Joint Field Office.²¹⁶ Once a request is made for military assistance, the DCO is usually the first point of contact for civilian authorities seeking support from the military.²¹⁷

²⁰⁴ United States Joint Forces Command, About Us, <http://www.jfcom.mil/about/about1.htm> (last visited Oct. 6, 2006).

²⁰⁵ *See id.*

²⁰⁶ United States Joint Forces Command, Operations, Plans, Logistics and Engineering Directorate (J3/4), http://www.jfcom.mil/about/abt_j34.htm (last visited Oct. 6, 2006).

²⁰⁷ *See* United States Joint Forces Command, Military Assistance to Civilian Authorities, http://www.jfcom.mil/about/abt_msca.htm (last visited Oct. 6, 2006).

²⁰⁸ The component command for the Army is Forces Command, for the Marine Corps is Marine Forces Atlantic, for the Navy is U.S. Atlantic Fleet, and for the Air Force is Air Combat Command. *See* United States Joint Forces Command, Who Works for Us, <http://www.jfcom.mil/about/who.htm> (last visited Oct. 6, 2006).

²⁰⁹ U.S. Army Forces Command, Mission Statement, <http://www.forscom.army.mil/cgwelcome/Mission101804.htm> (last visited Oct. 6, 2006).

²¹⁰ *See id.*

²¹¹ *See* Fifth U.S. Army, Military Support to Civil Authorities (MSCA), <http://5tharmy.army.mil/5a/FifthArmy/about/MSCA.htm> (last visited Oct. 6, 2006).

²¹² *See* Association of the United States Army, *Joint Task Force Katrina Begins Setting up at Camp Shelby, Miss.*, Aug. 31, 2005, <http://www.ausa.org/web/pub/DeptHome.nsf/byid/CTON-6FUPLU> [hereafter AUSA, Joint Task Force Katrina].

²¹³ *See* Joint Task Force Civil Support, News, First Army takes over [M]obilization [N]ationwide (Jan. 18, 2006), <http://www.jtfc.northcom.mil/pages/news/20060118.html>.

²¹⁴ *See* DEPARTMENT OF HOMELAND SECURITY, NRP, *supra* note 179, at 42.

²¹⁵ *See id.*

²¹⁶ *See id.* at 28.

²¹⁷ *See id.*

The DCO, the senior federal DOD representative assigned to locally coordinate requests for military personnel, equipment, and support in domestic disaster relief missions, is part of a Defense Coordinating Element (DCE), which is comprised of a staff of key military officers who advise the DCO in responding with military support.²¹⁸ Additionally, the DCO exercises immediate response authority to act “to save lives, prevent human suffering, or mitigate great property damage,”²¹⁹ without prior approval.

The military has developed a sophisticated and intricate level of military command, control, and coordination for civil support and disaster assistance (and in the case of NORTHCOM, merely visibility oversight). While maintaining the status of a support role, the military has not only continued to keep pace with the growth and changes in federal civilian domestic disaster management but has retained its ability to resume a primary role in domestic disaster management.

The U.S. Military and Domestic Disaster Relief Assistance in the Twenty-First Century: Returning to a Primary Role?

*[A]fter the hurricanes in Florida and Hawaii many people hailed the superb contribution the military made to disaster relief as evidence of a ‘new role’ for the U.S. armed forces. Nothing could be more off the target. The U.S. military have regularly provided such relief in the past. . . . [i]n floods and blizzards and hurricanes it was the Army that was first on the spot with cots, blankets, and food. That has been the case throughout our history. It is hard to conceive of any non-military role for the U.S. military that does not have some precedent in U.S. history. Non-military functions of the armed forces are as American as apple pie.*²²⁰

The emergence of civilian management agencies in the past fifty-five years has resulted in a de jure support role for the military in federal domestic disaster assistance.²²¹ As this article has illustrated, however, the history of civilian management of domestic disasters has produced some mixed results. When civilian management fails, it is the military that seemingly charges in to take control in the aftermath of domestic disasters. The reality is that the military has returned to the de facto primary role in domestic disaster assistance that it once held during the latter part of the nineteenth and early part of the twentieth centuries.

The Military’s De Facto Role

During the birth of the nation, a small peacetime military and a strong belief in states’ rights and responsibilities prevented an active role of the federal government and the military in domestic disaster assistance. The military became the agency of choice for domestic disaster assistance following the Civil War when federal assistance began to emerge. During World War I and World War II, the military was called to perform its primary mission. Even during war, however, the military continued to contribute, if only indirectly, to disaster planning and response with advancements in technology and lessons learned. The advancement of civilian management agencies as the primary federal disaster relief entity over the past fifty years have produced mixed results. The Federal Emergency Management Agency has repeatedly come under criticism since its creation in 1979 and “on [more than one] occasion has been enveloped in controversy.”²²² Recently, at least one Senator remarked, “FEMA has become, to many people in America, and particularly the Gulf Coast, a joke, a four-letter word.”²²³

²¹⁸ See *id.*

²¹⁹ 1993 DOD DIR. 3025.1 *supra* note 22, para. 4.5.1.

²²⁰ INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 6 (quoting Samuel P. Huntington, keynote speaker on Non-Traditional Roles for the U.S. military).

²²¹ See 1993 DOD DIR. 3025.1 *supra* note 22, para. 4.1.3.

²²² BEA, *supra* note 159, at 1.

²²³ *Lawmakers Call for Overhauling FEMA*, JOURNAL STAR (Lincoln, NE), Feb. 19, 2006, available at <http://www.journalstar.com/articles/2006/02/19/nation/doc43f8fad40b7e2453654508.txt> (quoting Sen. Joseph Lieberman of Connecticut); see also UNITED STATES GENERAL ACCOUNTABILITY OFFICE, TESTIMONY BEFORE THE SENATE COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, EXPEDITED ASSISTANCE FOR VICTIMS OF HURRICANES KATRINA AND RITA, FEMA’S CONTROL WEAKNESSES EXPOSED THE GOVERNMENT TO SIGNIFICANT FRAUD AND ABUSE—STATEMENT OF GREGORY KUTZ,

Despite the best laid plans and preparation by civilian management and FEMA, when catastrophic natural disasters strike, it is the military that retains (and perhaps never really lost) an active primary role. Hurricane Katrina is a recent example. When most federal civilian agencies were criticized for a lack of response to Hurricane Katrina, the DOD and the Coast Guard were both credited for “lean[ing] forward in proactive efforts anticipating a major disaster.”²²⁴ As the military and the nation settle into the twenty-first century, the military’s return to a primary role of federal domestic disaster relief may become a reality.

Once, in the nation’s history, domestic disaster assistance received very little support from the federal government. However, the nature and role of the federal government’s responsibility in natural domestic disaster assistance has changed. Now, domestic disaster assistance is a billion dollar industry. During the 1990s, FEMA reported expenses totaled \$25.4 billion for declared disaster and emergencies.²²⁵ In 2003 alone, there were fifty-six declared disasters for which FEMA reports it expended a total of \$1.978 billion dollars.²²⁶ Major disaster declarations have grown from thirteen in 1953 to sixty-eight in 2004.²²⁷ Whether this growth is an indication of more awareness and response to disaster relief or an indication of a more serious global natural disaster development (e.g., effects of global warming) remains uncertain. It is significant to note, however, that the top ten natural disasters ranked by relief costs have all occurred since 1989.²²⁸

In response, the military continues to offer the supplies and personnel that have always made the military an attractive resource for emergency assistance.²²⁹ Military oversight and coordination of domestic disaster assistance continues to grow and now includes several levels of military command and control. Accordingly, during a recent congressional hearing, military leaders reported that the DOD response to Hurricane Katrina “was the largest, fastest deployment of military forces for a civil-support mission in U.S. history.”²³⁰

For disaster relief missions, the Army field manual for domestic disaster relief missions²³¹ lists twenty different forms of support that the Army may provide.²³² Military personnel assistance is provided in a wide range of military skills, to include weather observers, communication specialists, medics, engineers, pilots, rescuers, depot managers, cooks, and drivers.²³³ In addition to these military occupational specialties, the military has the logistics structure necessary to respond quickly to domestic disasters because of its foremost role as a modern fighting force. The military “has the premier capability for ground and helicopter transport, engineering and construction, water purification and distribution, medical care in austere environments and large, demanding logistics operations.”²³⁴ In making a case for military use in domestic disaster relief, the Institute for National and Strategic Studies stated that “it does not make sense to forego the tremendous capability of the armed forces. In fact, the talent and resources of the DOD and the armed forces are already being used extensively in non-combat roles that are perceived as in our national interest.”²³⁵

MANAGING DIRECTOR FORENSIC AUDITS AND SPECIAL INVESTIGATIONS (Feb. 13, 2005) (discussing significant flaws in FEMA’s management of disaster funds for victims of Hurricanes Katrina and Rita) (on file with author).

²²⁴ Letter from David Walker, Comptroller General of the United States, to The Honorable Thomas Davis, Chairman, Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, H.R., subject: Statement by Comptroller General David M. Walker on GAO’s Preliminary Observations Regarding Preparedness and Response to Hurricanes Katrina and Rita 4 (Feb. 1, 2006) (on file with author) [hereinafter Walker Letter].

²²⁵ See FEMA, FEMA Disaster Costs, 1990 to 1999, http://www.fema.gov/library/df_7.shtm (last visited Jan. 26, 2006) (website no longer contains the cited material, copy on file with author).

²²⁶ See FEMA, Disaster Expenditures, Jan. 1, 1990 to dec. 31, 2003, http://www.fema.gov/library/df_6.shtm (last visited Jan 26, 2006) (website no longer contains the cited material, copy on file with author).

²²⁷ See FEMA, Total Major Disaster Declarations, http://www.fema.gov/news/disaster_totals_annual.fema (last visited Jan. 26, 2006).

²²⁸ See FEMA, Top Ten Natural Disasters, Ranked by FEMA Relief Costs, http://www.fema.gov/library/df_8.shtm (last visited Jan. 26, 2006) [hereinafter FEMA, Top Ten Natural Disasters] (website no longer contains the cited material, copy on file with author).

²²⁹ See Anderson, *supra* note 7, at 244.

²³⁰ Sergeant. Sara Wood, *DoD Leaders Rep. on Hurricane Response*, U.S.A. AM. PRESS SERV., Nov. 10, 2005, available at <http://www.jtfc.northcom.mil/pages/news20051110.html>.

²³¹ See U.S. DEP’T OF ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS AND SUPPORT OPERATIONS (20 Feb. 2003).

²³² See *id.* at 3-07 (listing reconnaissance, command and control systems support, planning support, manpower support, supply and equipment, transportation, food preparation, water purification, mortuary affairs, laundry and shower, temporary shelter, health support, power generation, general engineering, security, restore law and order, search and rescue, traffic control, fire fighting, and to provide liaison).

²³³ See U.S. GAO REPORT FULL EXTENT OF SUPPORT, *supra* note 31, at 8.

²³⁴ SORTOR, *supra* note 29, at 21.

²³⁵ INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 93.

As noted earlier in this article, the primary responsibility of the U.S. military is to provide for the common defense of the United States²³⁶—to fight wars and conduct combat missions.²³⁷ The DOD is responsible for providing a standing military needed to deter war and protect the security of our country.²³⁸ Is the military's primary responsibility of preparing for and fighting our nation's wars inhibited by formally accepting the return to a primary role in federal domestic disaster relief management? That is, can the military carry the load of fighting the nation's wars while also providing disaster assistance relief when necessary?

Availability for War Fighting: Can the Military Carry the Load?

The military has already proven the ability to carry both loads. In the past three years, while conducting the Global War on Terrorism (GWOT) and spearheading Operations Enduring and Iraqi Freedom,²³⁹ the military assisted in the following domestic disasters relief operations: Hurricane Ivan (2004),²⁴⁰ Hurricane Charley (2004),²⁴¹ Hurricane Frances (2004),²⁴² Hurricane Jeanne (2004),²⁴³ and Hurricane Katrina (2005),²⁴⁴ all of which are listed in the top ten disasters ranked by FEMA.²⁴⁵ At the same time that the military was conducting operations in Afghanistan and Iraq in the fall of 2005, "military support to Hurricane Katrina-affected areas reflected an unprecedented domestic response of 70,000 personnel—far greater than in any other domestic disaster, including Hurricane Andrew. This response involved about 20,000 active duty troops and about 50,000 National Guard troops."²⁴⁶

Further, the concern of the military's ability to conduct all current missions, including disaster relief operations, was addressed in a 16 February 2005 report to Congress.²⁴⁷ The report concluded the military has been able to perform its assignments due to a large reliance upon reserve forces.²⁴⁸ The report also noted the current organizational transformation from a division to brigade structure by the Army as an advantage that should assist the diversity of roles by the military.²⁴⁹

Finally, there is recognition that domestic disaster relief assistance by the military can enhance overall combat readiness.²⁵⁰ The skills required to respond to domestic disasters are the "kinds of experiences [that] prepare troops for combat."²⁵¹ The aftermath of a natural disaster presents military commanders and servicemembers with real-life opportunities to apply the skills needed for their primary mission. In environments similar to combat or battlefields when triage decisions often mark the difference between life and death, the aftermath of a disaster calls upon careful coordination between functional specialized units. This task is extremely well-suited for the military.²⁵²

²³⁶ See U.S. CONST. art. I, § 8.

²³⁷ See INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 5.

²³⁸ See DOD DIR. 5100.1, *supra* note 3.

²³⁹ See Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001). On 14 September 2001 Congress passed legislation authorizing the President to use military force against those responsible for the attacks on 11 Sept. 2001 and which formed the legal basis for military force in *Operation Enduring Freedom* and *Operation Iraqi Freedom*. See *id.*

²⁴⁰ See FEMA, Top Ten Natural Disasters, *supra* note 228.

²⁴¹ See *id.*

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See AUSA Joint Task Force Katrina, *supra* note 213.

²⁴⁵ See FEMA, Top Ten Natural Disasters, *supra* note 228.

²⁴⁶ Walker Letter, *supra* note 224, at 5.

²⁴⁷ See LAWRENCE KAPP, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESSIONAL, OPERATIONS NOBLE EAGLE, ENDURING FREEDOM, AND IRAQI FREEDOM: QUESTIONS AND ANSWERS ABOUT U.S. MILITARY PERSONNEL, COMPENSATION, AND FORCE STRUCTURE 14 (2005).

²⁴⁸ See *id.* at 15. This report, however, cautioned against problems in retention if the current deployment tempo continued at its present rate over an extended period of time. *Id.*

²⁴⁹ See *id.* at 16 (describing the reorganization as creating units of actions).

²⁵⁰ See INSTITUTE FOR NATIONAL STRATEGIC STUDIES, NON-COMBAT ROLES, *supra* note 2, at 92.

²⁵¹ *Id.*

²⁵² See Anderson, *supra* note 7, at 244.

Conclusion

Overall, the demands of the military for non-traditional roles have grown and are expected to continue to grow.²⁵³ The military has a rich history of assisting in domestic disasters. Assisting in domestic disasters is simply the job the military is trained to do. The training, equipment, supplies, capabilities, experience, command structure, mobility and resources are all fine-tuned to work in the most dire of situations, namely on the battlefield. In many ways, the aftermath of a natural disaster is like a battlefield. It calls for an organization that has an infrastructure to move decisively and quickly, and for the personnel who have the skills, training and leadership to accomplish the task.

The preservation of human life and property are primary purposes of disaster relief. In many instances, the success of disaster relief assistance turns on how fast assistance assets and personnel can react to the disaster. The victims of natural disasters benefit from the capabilities of the military to manage and assist quickly in a disaster situation. In a major domestic disaster, it is not unreasonable to assert that the American public's expectation is that the military will save the day. The military also benefits from providing disaster assistance. The most notable benefit is the military's ability to practice and sharpen war-fighting skills by participating in and leading disaster relief efforts. In addition to building trust and confidence in the nation's military, the military also helps maintain its readiness level and the necessary skills to be successful in its primary war-fighting mission.

If history is a lesson for the future, then it is time to recognize the de facto return of the military as the primary domestic disaster assistance relief agency. Battle-proven in the role of disaster assistance with over one hundred years of active management and participation, the military has secured a solid victory on the battlefield of domestic disaster assistance relief. Even when relegated to a support role, the military has continued to keep pace with disaster assistance management.

Despite the growth of civilian management of domestic disaster assistance over the last fifty-five years, the results always seem to be the same following a catastrophic domestic disaster. First, the civilian management agency, namely FEMA, is heavily criticized. Next, the government attempts to correct deficiencies. Generally, these attempts are in the form of legislative proposals, budget increases, change of policy-making personnel, or better coordination between local, state, and federal disaster officials. Unfortunately, history suggests this repeating cycle has not and is not working. The time has come to accept and recognize that the military should be recognized as the primary agency to manage domestic disaster relief. The return of the military as the primary disaster assistance agency is a role well-suited and well-earned for the twenty-first century military.

²⁵³ See SORTOR, *supra* note 29, at 90.