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Military Support to Civilian Authorities: An Assessment of the Response to Hurricane Katrina

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Immediately after Hurricane Katrina struck, criticism began about how slow the federal response was. However, response timelines from other, similar natural disasters show that the military arrived at least at its typical speed. There are three lessons that one can learn from this response.

First, the creation of the Department of Homeland Security (DHS) and Northern Command (NORTHCOM) did not slow or complicate the response.

Second, while the Department of Defense (DOD) has an adequate response mechanism for normal disasters, it is not adequately organized and prepared to respond to catastrophic disasters.

Third, the Defense Department should restructure the National Guard so that it can respond more effectively to catastrophic disasters.

Catastrophic disasters are of a different magnitude. State and local resources are usually destroyed or exhausted immediately, and the authorities may have difficulty determining or communicating their needs. In this situation, federal resources are needed immediately in unprecedented amounts, despite possible difficulties. Currently, the United States is incapable of this type of response.

How the “Normal” Disaster System Works

The United States has a tiered disaster response. Local leaders request state resources when they have exhausted their own. In turn, states ask the federal government for aid when their means are exceeded. Under the current system, state and local

Talking Points

- The creation of the Department of Homeland Security and the Northern Command did not hinder response during Hurricane Katrina, but better coordination among all the moving parts was clearly needed.
- The United States does not have a comprehensive, all-hazards national system to respond to catastrophic events.
- Although the Defense Department has an adequate response mechanism for normal disasters, the military is not adequately organized and prepared to respond to catastrophic disasters.
- The Defense Department should use the Quadrennial Defense Review to determine the right force size for response to catastrophic disasters and should restructure the National Guard so it can provide effective support to civilians in catastrophes.

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authorities already have the ability to communicate their requirements to the federal government clearly and manage an effective short-term response.

In the majority of disasters, state and local governments have sufficient resources to respond to the crisis for the first few hours and days while national resources are requested, gathered, and deployed. Deploying federal resources to an area usually takes days, especially in situations such as hurricanes. This is because prepositioned assets must be kept far enough away from the hurricane's likely path so that they will not be destroyed or need to be rescued themselves.

The Pentagon's Role

Homeland Security Presidential Directive 5 gives the Secretary of Defense responsibility for providing military support to civil authorities when the President directs him to do so and when such actions would be: 1) consistent with military readiness, 2) legal, and 3) appropriate.¹ Typically, this means that the Defense Department provides civil support when local, state, and other federal resources have been overwhelmed and the federal agency responding to the disaster requests assistance. The Office of the Assistant Secretary of Defense for Homeland Defense has supervisory responsibility for the civil support mission and for coordinating with DHS. NORTHCOM has operational responsibility, which it usually fulfills by creating a joint task force.

DOD's civil support roles take three forms:

- "Military Support to Civil Authorities [MSCA] generally consists of support during natural disasters, special security events...and man-

made incidents...which have evoked a presidential or state emergency declaration."

- "Military Support to Civilian Law Enforcement Agencies consists of support provided to a Lead Federal Agency...for activities such as counterterrorism and counterdrug operations and may include provision of equipment, training, or expert advice."
- "Military Assistance for Civil Disturbances occurs when the President employs the armed forces to suppress insurrections, riots, or to assist the states in maintaining law and order. In these situations, the Lead Federal Agency supported by DOD is the Department of Justice."²

In catastrophic response, the Defense Department provides MSCA with National Guard and military personnel and assets.

The National Guard's Roles

The National Guard is unique in that it is neither a purely federal nor purely state organization. It can operate as either type of organization or at times with aspects of both. It is this flexibility that makes the National Guard so useful in responding to catastrophic events.³ Typically, the National Guard operates under the direction of state and territorial governors. If there is a disaster or civil disorder, a governor can order the Guard to "state active duty." In this capacity,

National Guard personnel operate under the control of their governor, are paid according to state law, can perform typical disaster relief tasks and are not subject to the restrictions of the Posse Comitatus Act (that is, they can perform law enforcement functions).⁴

States usually have agreements with other nearby states that permit National Guard units

1. George W. Bush, "Management of Domestic Incidents," Homeland Security Presidential Directive HSPD-5, February 28, 2003, at www.fas.org/irp/offdocs/nspd/hspd-5.html (November 17, 2005).
2. Steve Bowman, Lawrence Kapp, and Amy Belasco, "Hurricane Katrina: DOD Disaster Response," *CRS Report for Congress*, September 19, 2005, p. 2. See also U.S. Department of Defense, *Homeland Security*, Joint Publication 3-26, August 2, 2005, p. ix, at www.dtic.mil/doctrine/jel/new_pubs/jp3_26.pdf (November 17, 2005).
3. For more information, see Major General Timothy J. Lowenberg, "The Role of the National Guard in National Defense and Homeland Security," *National Guard Association of the United States*, n.d., and Bowman *et al.*, "Hurricane Katrina," pp. 6-11.
4. Bowman *et al.*, "Hurricane Katrina," p. 7.

from states outside the affected area to assist when necessary. During Hurricane Katrina, the National Guard was initially called up for state active duty.

State governors can also activate and control National Guard units under 32 U.S. Code § 502(f), which gives governors the authority to activate National Guard personnel without their consent to train or complete missions in addition to annual or inactive duty training. Under Title 32 status, National Guard personnel receive federal pay and benefits as well as certain legal protections while under their governor's control. Again, the Posse Comitatus Act does not apply when the National Guard is used under Title 32. In an attempt to equalize pay and benefits for National Guard members participating in Hurricane Katrina relief operations, it is likely that the Secretary of Defense will retroactively convert the units from state active duty status to Title 32 status.

The third way that National Guard units can operate is under the control of the President in a purely federal status (Title 10 status):

In this federal status, National Guard personnel operate under the control of the President, receive federal pay and benefits, and can perform typical disaster relief tasks. However, in this status they generally are subject to the restrictions of the Posse Comitatus Act: that is, they cannot perform law enforcement functions unless expressly authorized by the Constitution or an act of Congress.⁵

Congress has provided a few such authorizations. They include the Insurrection Act⁶ and 10 U.S. Code. § 12406. The Insurrection Act permits the President to call up the National Guard to suppress an insurrection against a state government, at the state government's request or to enforce federal laws and suppress rebellion against U.S. authority. Under 10 U.S. Code § 12406, the President can use the National Guard in their federal status to suppress rebellion and execute U.S. laws. Troops were

not used under this status during the Hurricane Katrina response.

Defense Department and National Guard Responses in Previous Disasters

Although the response will never be as rapid as people would like, the Defense Department sent aid to Katrina victims at speeds similar to what it has done in the past. States are able to preposition—or at least immediately call—National Guard troops to state active duty, while it typically takes the Defense Department a few days to move personnel and assets into an area. Depending on the severity and how the President describes the event, National Guard units' status may be changed or more members called up under Title 32 as time progresses.

For instance, in 2004, when Hurricane Ivan became the third hurricane to hit Florida and the Gulf Coast in five weeks, it took two days for the Army to activate its 24-hour crisis action team (September 18, 2004). National Guard troops had been prepositioned on September 9, 2004 (two weeks before landfall), and the Alabama governor deployed them the same day as the hurricane made landfall.

In 1992, the Pentagon also faced criticism for its slow response to Hurricane Andrew. Early in the morning on August 24, 1992, the Category 4 hurricane struck south Florida. That same day 2,000 National Guard troops were deployed, and the Florida governor requested engineers from the Army Reserve. (This request was denied because he had not called out the National Guard engineers first.) Also on August 24, the Coast Guard Reserve was called up and given 48 hours to report for duty. Three days later, the first Army troops arrived. On August 29, 6,000 Army troops and 1,000 Marines arrived to aid in rescue operations. In response to criticism of its dilatory response, the Pentagon responded that it could have delivered aid on August 24, but did not because civilian leaders had not yet ordered a large-scale federal response, which they did on August 27.

5. *Ibid.*, p. 9

6. 10 U.S. Code §§ 331–335.

These examples demonstrate the flexibility of the National Guard and its ability to respond quickly to disasters. They also show how clear communication and requests for aid must be received or else the Defense Department will not and, to some extent, cannot act.

Hurricane Katrina Response Timeline

Prior to Katrina's landfall in Louisiana on August 29, 2005, NORTHCOM began implementing alert and coordination procedures. In addition, the Defense Department assessed what resources would be needed and started deployment preparations. Most deployments began after President Bush declared a state of emergency on August 30 and an Incident of National Significance on August 31. (The National Response Plan and the Defense Department's Homeland Security Doctrine both expect the DOD to wait for such formal presidential pronouncements before acting.) NORTHCOM activated Joint Task Force-Katrina (JTF-Katrina) on August 30. By August 31, the Defense Department has started medical airlift operations and the USS *Bataan* had arrived off New Orleans. As the situation deteriorated, the DOD sent in additional active duty ground forces, including elements of the 82nd Airborne and 1st Cavalry, which arrived on September 5. A second amphibious assault ship and an aircraft carrier arrived on September 6. The Defense Department had 42,990 National Guard members, 17,417 active duty personnel, 20 ships, 360 helicopters, and 93 fixed-wing aircraft in the affected area by September 7.⁷

Creating a Defense Department Catastrophic Response Capability

Only during catastrophic events would state and local emergency responders become so overwhelmed that a large-scale military response would be needed. Hurricane Katrina demonstrates that the Defense Department has a way to go before it is

ready to be the primary responder in a catastrophe. For instance, Deputy Defense Secretary for Homeland Defense Paul McHale cited a lack of integration between National Guard plans and NORTHCOM plans. "The planning of NORTHCOM was first-rate but was not well known to the National Guard. The Joint Staff didn't have a grasp of the National Guard's plans."⁸ The Defense Department must first resolve the poor coordination between the National Guard and NORTHCOM and then reconfigure the National Guard for catastrophic response.⁹

Making catastrophic response a DOD mission is the right action to take. Federal agencies, state and local governments, and the private sector are unable to maintain the capacity and resources necessary for immediate catastrophic response. Asking them to do so would be counterproductive and ruinous. For example, asking hospitals to keep empty beds available is counterintuitive. However, the Defense Department has a need for such a capacity. For instance:

The Pentagon could use response forces for tasks directly related to its primary war-fighting jobs—such as theater support to civilian governments during a conflict, counterinsurgency missions, and postwar occupation—as well as homeland security.¹⁰

These units, as with all military forces, should be used only for matters of vital national interest. They could support major foreign operations and respond during catastrophic events in the United States. Furthermore, using the military in this way would neither violate the Posse Comitatus Act or other constitutional principles nor require altering any existing laws.

Because of its flexibility in working under state or federal control, the National Guard is the best choice to task with this mission. The Defense Department would need at least six divisional units

7. Press release, "U.S. Northern Command Support to Hurricane Katrina Disaster Relief," U.S. Northern Command, September 7, 2005, at www.northcom.mil/pdfs/303C9335-D38A-7DBA-4DF6EE51466C94BE.pdf (October 19, 2005).

8. Pam Zubeck, "NorthCom Official Lists Katrina Lessons," *The Gazette* (Colorado Springs), October 22, 2005.

9. The National Guard is still configured to serve as a reserve force in a World War III scenario against the Soviet Union.

10. Press release, "U.S. Northern Command Support to Hurricane Katrina Disaster Relief."

in order to have one always on active duty and ready for rapid response missions in the United States or abroad. Furthermore, the Air National Guard should be self-deployable and organized into self-contained units. The units should be sized so that there are always forces training, ready for deployment, and recovering from deployment. In addition, the active unit should belong to NORTHCOM, which can then use it for experimentation, training, and planning purposes. This would give NORTHCOM immediate access to troops in the case of a large-scale disaster and provide troops for training exercises. A National Guard that is prepared for a catastrophe would have robust medical, security, and critical infrastructure response units.

Out of all catastrophic response areas, the United States is weakest in its ability to respond to a medical catastrophe (e.g., one with at least 200,000 casualties). The military's current field hospitals take days to weeks to deploy and set up. Not only is this medical support too small and slow for the task, it is also ill suited. The Defense Department needs a medical response capability that can handle thousands of casualties with little notice; deploy in hours; assess and convert existing structures, such as schools, into medical facilities; and deliver mass care to people where they are, rather than having to transport them to clinical facilities.

Ad hoc military responses to events such as large-scale terrorist attacks in civilian communities can be disastrous. The Pentagon should have an established response capability that involves specially trained and equipped personnel who can and have worked with civilian agencies. These troops would also be able to conduct counterinsurgency operations in urban terrain abroad.¹¹

As currently structured, the military is not designed to restore critical national infrastructure after a catastrophic event in the United States or overseas. However, it is a need that the DOD has already encountered. Attempts to fix Iraq's infrastructure after the war were poorly planned, cobbled-together attempts at reconstitution. Domestically, the means

to reconstitute critical infrastructure are present. A combination of the Defense Department's security assets, the Army Corps of Engineers' expertise in large-scale contracting under difficult conditions, and the Federal Emergency Management Agency's experience in conducting needs assessment and coordinating community recovery could provide an effective infrastructure protection and recovery force for catastrophic events, regardless of where they occur.

Role of the Private Sector

NORTHCOM and, more generally, the Defense Department also need to consider how to use the private sector in responding to catastrophic events. The DOD currently uses contractors to fulfill many of its responsibilities in post-conflict situations. The Pentagon should also consider where private sector entities can contribute to catastrophic response. For instance, during Hurricane Katrina, patient tracking during evacuations from medical facilities was a large problem. The Transportation Command is designed to use military evacuation protocols, but the civilian hospital patient records systems did not mesh well with the Transportation Command systems. In addition, civilian medical facilities also voiced privacy and liability concerns in sharing information (e.g., privacy violations under the Health Insurance Portability and Accountability Act). This is one area in which cooperation with the private sector could be very beneficial during the next catastrophe.

Determining the Right Force Mix

The Quadrennial Defense Review (QDR) is a congressionally mandated review, conducted every four years, of the Defense Department's forces, resources, and programs. It outlines a strategy for addressing critical issues such as budget and acquisition priorities, emerging threats, and Pentagon capabilities for the next 20 years. The 2005 Quadrennial Defense Review is a unique opportunity for the Pentagon in four ways. It is the first wartime QDR. It is the first time the Secretary of Defense has had the opportu-

11. The Reserve component could also be used as part of this force. See James Jay Carafano, Ph.D., "Foreign Disasters: Lessons for the Pentagon's Homeland Security Efforts," Heritage Foundation *Executive Memorandum* No. 979, at www.heritage.org/Research/HomelandDefense/em979.cfm.

nity to conduct a second QDR. It is also the first QDR undertaken when budgets are consistently growing, and the first QDR in the post-9/11 environment. During this review, Secretary Rumsfeld and his planners should determine how to structure the National Guard so that it can respond to catastrophic events. The recommended force size that comes out of this QDR should be sufficient to have one unit always on active duty and ready for immediate deployment. It should also allow for the constant and necessary rotation of troops preparing and training to respond to a contingency.

What Should Be Done

In preparation for the next catastrophic event, several changes should be made to the current system.

- The Pentagon should use the QDR to determine the appropriate force size for responding to a catastrophe. This will probably consist of approximately six division-sized National Guard units, which would allow for constant rotation of units through training, full readiness, and recovery from deployment.

- These dedicated National Guard forces should be placed under NORTHCOM control for rapid disaster response and training.
- The QDR should address ways in which the private sector can assist and what structures need to be in place so that response plans can work together effectively.

Conclusion

Hurricane Katrina was a test of the nation's preparedness for a catastrophic event, whether natural or manmade. The results of this test are troubling. Although the formation of DHS and NORTHCOM did not hinder the response, better coordination among all the moving parts was clearly needed. Furthermore, Hurricane Katrina highlighted the absence of a comprehensive, all-hazards national system to respond to catastrophic events and the fact that the military is not properly configured to provide aid during such catastrophes.

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