Chapter Five

ENSURING CONSTITUTIONAL AUTHORITY:
CONTINUITY OF GOVERNMENT

The continuity of government (COG) task area of homeland security includes providing for the continuity and restoration of all levels of government—federal, state, and local. For a host of reasons the importance of COG is difficult to overstate:

- At the federal level, COG ensures the integrity of constitutional authority.
- At the state and local level, COG operations can facilitate the quick restoration of civilian authority and essential government functions and services. This can greatly reassure citizens and can minimize the risks that military support to consequence management activities is misperceived as an imposition of mar-

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1See Appendix A for a list of the Department of Defense Directives (DoDDs) relevant to continuity of government activities.
3Article IV, Section 4, of the Constitution seems to provide the constitutional authority for military activities in support of the state under conditions of domestic violence, terrorism, and the like:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The authors are grateful to RAND colleague Michael Hynes for bringing this to our attention.
tial law.\textsuperscript{4} It also can reduce the undesirable burdens that can be imposed on the military in attempting to carry out traditional civilian functions, ranging from law enforcement to garbage collection.

This chapter will argue that the concept of COG needs to be broadened in three important ways. First, where past COG planning has concentrated on actions that might mitigate the impact of a strategic nuclear missile strike aimed at decapitating federal civilian and military authority, we argue that other means of delivery and other WMD should be considered in planning. Second, we argue that Army and DoD COG operations also should address disruptions to state and local governments and should consider the range of actions that can facilitate restoration of civil authority in the wake of WMD attacks. Third, we argue that public and congressional sensitivities in this area need to be carefully considered in reviewing doctrine and standing public affairs guidance for Army activities in this area.

\section*{Threat and Risk Analyses}

\subsection*{Threats and Weapons}

The same threats described in Chapter Four probably apply in the COG task area: adversaries of the U.S. government, whether state, nonstate, or domestic actors. And the weapons they choose could range from small arms to WMD.\textsuperscript{5}

\subsection*{Targets}

The potential target set in COG activities are government facilities attacked by design or incidental casualties of a larger attack:

\begin{itemize}
  \item At the federal level, these could range from national icons, such as the White House, Capitol building, Supreme Court, or Federal
\end{itemize}

\textsuperscript{4}The reader is reminded of the criticism that resulted from the trial balloon of a potential “CINC Homeland Security,” described in Chapter Two; such risks can easily be avoided by remaining attentive to these latent concerns.

\textsuperscript{5}For example, in 1954, Puerto Rican nationalists attacked the floor of the U.S. House of Representatives with small arms.
Reserve Board, to headquarters of federal departments and agencies, to federal buildings nationwide. Of these, some targets already are known to be of long-standing interest to domestic groups.

Although the threats seem more remote, emergencies could disrupt COG at lower levels as well:

- Although such attacks seem less likely than attacks on federal facilities, at the state level, the governor’s offices and mansion and capital buildings housing state legislatures and their offices, as well as buildings housing state-level departments and agencies, could be targets.

- Still less likely are attacks on government offices at the local level, although city government buildings in the larger U.S. cities probably face a somewhat higher risk than the facilities of smaller localities.

Nevertheless, in a WMD attack, federal, state, or local government facilities might be destroyed or disrupted.

Available documentation suggests that the justifications for federal COG activities may have been adapted to address the recent changes in the threat environment and have shifted from an earlier focus on COG in the context of a nuclear exchange to continuity in a more diverse threat environment:

The changing threat environment of recent emergencies, including localized acts of nature, accidents, technological emergencies, and military or terrorist attack-related incidents, have shifted awareness to the need for COOP capabilities that enable agencies to continue their essential functions across a broad spectrum of emergencies. Also, the potential for terrorist use of weapons of mass destruction has emphasized the need to provide the President a capability [that] ensures continuity of essential government functions across the Federal Executive Branch. (FEMA, 1999d.)

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6For example, the Murrah building primarily housed federal offices.

7For example, the ATF and the IRS are seen as threats to liberty by domestic militias and tax foes.
PERFORMANCE MEASURES AND NOTIONAL PERFORMANCE LEVELS

A recent FEMA circular suggests a number of relevant performance measures in its discussion of the objectives and planning considerations for COG activities. Stated objectives include the following:

• Ensuring the continuous performance of an agency’s functions/operations during an emergency.
• Protecting essential facilities, equipment, records, and other assets.
• Reducing or mitigating disruptions to operations.
• Reducing loss of life, minimizing damage and losses.
• Achieving a timely and orderly recovery from an emergency and resumption of full service to customers.

And planning considerations suggest that a viable COG capability

• must be maintained at a high level of readiness;
• must be capable of implementation both with and without warning;
• must be operational no later than 12 hours after activation;
• must maintain sustained operations for up to 30 days; and,
• should take maximum advantage of existing agency field infrastructures.

Generally speaking, then, the key performance measures for COG are the degree to which the consequences of emergencies can be mitigated and the speed with which government functions and services can be restored. Our recommendation is that in cases where civil government and services have been disrupted, that planning should aim to reestablish a sort of nominal or basic level of civil authority within 12 hours, as suggested by FEMA.8

8As in the discussion of performance levels for domestic preparedness activities, policymakers might set lower or higher performance criteria.
PROGRAM DESIGN ISSUES

Federal COG

According to press reporting, for many years the federal government had a robust COG program aimed at ensuring the survivability of constitutional authority in the event of a decapitating strike in a general nuclear exchange.\(^9\) Reporting now suggests that much, perhaps most, of this program has been discontinued.\(^10\)

Federal COG activities generally fall into the broader category of federal emergency management, overall policy guidance for which is provided in Executive Orders and other presidential policy documents, as well as FEMA circulars.\(^11\) As a matter of policy:\(^12\)

It is the policy of the United States to have in place a comprehensive and effective program to ensure continuity of essential Federal functions under all circumstances. As a baseline of preparedness for the full range of potential emergencies, all Federal agencies shall have in place a viable COOP capability which ensures the performance of their essential functions during any emergency or situation that may disrupt normal operations. (FEMA, 1999d.)

PDD 67 established FEMA as the Executive Agent for Executive Branch COG activities. Within FEMA, the Office of National Security Affairs is responsible for COG activities:

\(^9\)Weiner (1994) reports that approximately $8 billion was spent on COG activities over the 11 years up to 1994. Weiner reported that: “The Doomsday Project, as it was known, sought to create an unbreakable chain of command for military and civilian leaders that would withstand a six-month nuclear war, which was regarded as a plausible length for a controlled conflict.”

\(^10\)For example, Mount Weather, widely reported to have been a relocation site for national leaders in the event of a nuclear site, is now “a hub of emergency response activity providing FEMA and other government agencies space for offices, training, conferencing, operations, and storage.” See Weiner (1994) and FEMA, 2000a.

\(^11\)For example, Executive Order 12656, “Assignment of Emergency Preparedness Responsibilities, November 18, 1988; PDD 67, “Ensuring Constitutional Government and Continuity of Government Operations,” October 21, 1998; FEMA (1990); and FEMA (1999d). The following additional Executive Orders EOs (listed in the bibliography) also apply: 10222; 11179; 11795; 12127; 12148; 12241; 12472; and 12657.

\(^12\)At the federal level, the terms “continuity of government” (COG) and “continuity of operations” (COOP) are used somewhat interchangeably.
The Office of National Security Affairs coordinates activities in support of FEMA's roles and responsibilities in terrorism preparedness, planning, exercises and response, particularly those involving coordination among multiple program offices within FEMA and with other departments and agencies. It is also responsible for activities related to planning with regards to Continuity of Government (COG), Continuity of Operations (COOP), and Critical Infrastructure Protection (CIP).\(^\text{13}\)

The Federal Preparedness Circular on Federal Executive Branch Continuity of Operations describes the broad parameters of the federal COG program, which are applicable to all Executive Branch departments, agencies, and independent organizations. For example, FEMA identifies the following minimal elements of agency COG programs:\(^\text{14}\)

- Plans and procedures.
- Identification of essential functions.
- Delegations of authority.
- Orders of succession.
- Alternative facilities.
- Interoperable communications.
- Vital records and databases.
- Tests, training and exercises (FEMA, 1999d).

Federal departments and agencies are responsible for making their own COG preparations, consistency with the broad guidelines established by FEMA and higher authority.\(^\text{15}\)

COG planning generally envisions three distinct phases:

- Phase One: Activation and relocation (0-12 hours).

\(^{13}\)FEMA website, at http://www.fema.gov/about/nsa1113.htm.

\(^{14}\)We consider the continuity of higher headquarters operations in another section of this report.

\(^{15}\)For example, the U.S. Agency for International Development's COG plan is described at http://www.info.usaid.gov/pubs/ads/100/106.htm.
• Phase Two: Alternative facility operations (12 hours-termination).

• Phase Three: Reconstitution (termination and return to normal operations) (FEMA, 1999d).

Using these three phases to frame the potential Army roles in COG activities, it can be seen that the Army role could range from such general activities as securing relocation sites and providing assistance in relocating government operations and personnel, to more specialized activities, such as providing continuous secure communication capabilities and provisioning alternative operation sites.

While it appears that the federal programs may have successfully adapted to the new threat environment, the Army should review these programs to ensure that they adequately address the relevant threat scenarios and to determine what, if any, modifications might still be warranted. The Army also should review its own participation in these programs to ensure that it contributes where it has the greatest comparative advantages.16

**State and Local COG**

Some states and cities appear to have plans for COG that would be exercised in an emergency or disaster, and federal training is available.17 However, it is not at all clear the degree to which these state and local plans anticipate the possibility and nature of a military role in consequence management activities or the possibility that military forces temporarily might need to provide services normally provided by civilian authorities. As a result, three Army actions are suggested:

• First, the Army should establish that domestic preparedness planning assistance to states and localities also includes planning for the quick reestablishment of government authority at

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16According to Weiner (1994), the Army had a substantial role in the earlier COG program.

the state and local level and the restoration of key government services, whenever this is necessary. It is not clear to us whether this is explicitly covered in existing domestic preparedness training programs.18

• Second, it may be desirable for the Army to develop procedures, protocols, and doctrine for expediting the reestablishment of civilian authority at the state or local level when this is necessary and for making this a high priority in consequence management and reconstitution.19 As mentioned earlier, the sooner civilian authority is reestablished, the quicker that unfounded concerns about the military’s role will be resolved.

• Finally, education modules for leadership education programs and standing public affairs guidance should be developed to prepare Army officers for the close congressional, press, and public scrutiny (and potential) criticism that could accompany Army COG activities.20

BUDGETING ISSUES

If the threat of terrorism is of sufficient gravity to justify $10 billion in federal spending (about $1.4 billion of which is related to WMD terrorism) then, a fortiori it should be sufficient to justify some level of effort to ensure COG in the face of a determined adversary’s campaign of chemical, biological, radiological, or nuclear incidents directed against the nation’s constitutional leadership or against state or local governments. The Army should press to ascertain—

18For example, FEMA’s Emergency Management Institute (EMI) has a workshop called “Continuity of Operations (COOP): Workshop in Emergency Management.”

19We note that in the wake of disasters, the U.S. Army Corps of Engineers often has been tasked to establish and manage public works and other, normally civilian, services and to manage the transition back to civilian provision of these services.

20To be clear, we believe that as a practical matter the possibility of “usurpation” of civilian authority by the military in homeland security operations is infinitesimal. And even in cases where the military is asked temporarily to provide what are normally civilian services and functions, we believe that most victims would be more inclined to express gratitude than concern about larger civil-military issues. Nevertheless, we believe that the Army would do well to take some modest actions to minimize the potential that statements or actions are misinterpreted or lead to unnecessary criticism or micromanagement of homeland security response activities.
through the framework described earlier—whether the current funding levels are appropriate, given the current and emerging threats and risks.

**CONCLUSIONS**

This chapter has described the COG mission area and suggested, in general terms, the wide range of roles that the Army might assume in supporting these operations. The principal conclusions that emerge from the analysis are as follows.

First, because of the tremendous changes in the threat environment over the last decade and because of the evident changes to federal COG activities, the Army should seek to reacquaint itself with the program as it currently stands and to ensure that the current program is responsive to the emerging threat environment. Of greatest importance may be the shift from the threat of attack by nuclear missiles to a broader range of WMD attacks using less exotic, and potentially less easily detected, delivery means.

Second, the Army should ensure that planning with local and state governments for emergency and disaster preparedness also includes COG issues and that Army doctrinal, procedural, and other guidance is available to help commanders facilitate the continuity or restoration of civilian authority at the local and state level, just as guidance is available at the federal level.

Finally, because of the scrutiny given military activities in the CONUS, the Army must remain equally mindful of the contributions it can make to ensuring the COG at the local and state as well as the federal level. It should review its doctrine and other preparations to ensure its capacity to assist in restoring civilian authority at the earliest possible opportunity when it has been disrupted.