CHAPTER 23

Recent Developments in U.S. Homeland Security Policies and Their Implications for the Management of Extreme Events[1]

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SUMMARY

The terrorist attacks of September 11, 2001 have resulted in profound changes in the U.S. policy system. The federal government has responded to the events of 9/11 and to the ongoing terrorist threat by passing new laws, creating the Department of Homeland Security, issuing presidential directives, developing new preparedness and crisis management programs, and reorganizing and redirecting existing programs. Among the effects of these actions are a decrease in emphasis on preparedness and response for natural and technological disasters; an increase in the role of law enforcement agencies and the military in the management of domestic emergencies, accompanied by a decline in the importance and influence of the emergency management profession; and an increase in the importance of "special purpose" initiatives that have the potential for interfering with efforts to develop comprehensive, integrated, all-hazards approaches to managing extreme events.

[1] *Author's note:* This paper was originally written for the First International Conference on Urban Disaster Reduction, which was held in Kobe, Japan in January of 2005. Among the key arguments made in the paper was that homeland security policies implemented since the terrorist attacks of September 11, 2001 have been detrimental to U.S. disaster response capabilities. That was before Hurricane Katrina, an event that demonstrated that the U.S. intergovernmental system is incapable of managing catastrophic disaster events. Rather than requesting a complete rewrite of the paper, the editors have elected to publish it in its original form. However, additional comments related to Katrina and other recent developments have been added in brackets at appropriate places in the text.

INTRODUCTION

Under certain conditions, disasters can serve as "focusing events" that lead to the development of new legislation, policies, and practices (Birkland, 1997; Rubin & Renda-Tenali, 2000). In the United States, disasters that have led directly or indirectly to significant policy changes include the 1984 Bhopal, India chemical disaster, which influenced the passage of Title III of the Superfund Amendment and Reauthorization Act in 1986; the 1989 Exxon Valdez oil spill, to which the 1990 Oil Pollution Act was a partial response; and earthquakes in California, including the 1933 Long Beach event, which led to the passage of the Field Act.

The September 11 disaster has had far-reaching effects spanning a wide range of policy domains, including policies on waging war and adherence to the laws of war; policies toward international bodies such as the United Nations; policies on civil liberties, privacy, and surveillance; immigration law, border security, and the rights of noncitizens. With respect to laws, policies, and procedures affecting domestic preparedness, response, and "consequence management" for extreme events of all types, September 11 was the ultimate focusing event. While other U.S. disasters have led to significant institutional realignments and new laws and policies, none has brought about changes of comparable scope and scale. This chapter discusses and contrasts new crisis-relevant policy and programmatic initiatives with pre-9/11 arrangements, and assesses the likely consequences of these changes.

THE POST-SEPTEMBER 11 POLICY LANDSCAPE

The Department of Homeland Security

The creation of the Department of Homeland Security (DHS) was perhaps the most visible policy response to the events of September 11. The government reorganization that accompanied the formation of DHS was the largest in U.S. history since President Truman created the Department of Defense in 1947, incorporating all or part of 22 federal agencies, 40 different federal entities, and approximately 180,000 employees.

The reorganization merged together agencies (or parts of agencies) with very diverse organizational structures, missions, and cultures, and, importantly, diverse ideas about the management of domestic threats and emergencies. In the emergency management arena, the overall effect of the reorganization has been to expand the role of defense- and law enforcement-oriented agencies concerned exclusively with terrorism while curtailing the role and decreasing the prestige of entities with all-hazards emergency management responsibilities. The Federal Emergency Management Agency (FEMA), which was formerly an independent agency within the executive branch of government whose director had de facto cabinet status, was incorporated into DHS as lead agency for emergency preparedness and response. FEMA, which is the only agency within DHS that is charged specifically with reducing the losses associated with non-terrorism-related disasters, has lost significant visibility and financial and human resources in the reorganization. As a small agency within a massive bureaucracy, its activities are now overshadowed by much larger and better-funded entities within DHS. Indicative of this shift, much of the responsibility, authority, and budget for preparedness for terrorism events, which might logically have been assigned to FEMA, are now channeled to the Office for Domestic Preparedness (ODP), an entity that was transferred into DHS from the Department of Justice. ODP has taken on many and varied responsibilities, including overseeing preparedness

assessments on a city-by-city basis, training, planning, exercises, and the provision of grants to local agencies. ODP manages a number of important DHS programs, including the Urban Area Security Initiative, the Homeland Security Grant Program, and the Metropolitan Medical Response System, which was transferred from FEMA. Unlike FEMA's director, the director of ODP is confirmed by the United States Senate, which is yet another indication of the relative importance of this office.

Since ODP had its origins in the Department of Justice, it is not surprising that it defines domestic preparedness primarily in terms of law enforcement functions. For example, ODP's "Preparedness Guidelines for Homeland Security" (DHS 2003) give priority to police and other public safety agencies. One effect of ODP involvement has been to institutionalize a system of terrorism prevention and management that is largely separate from the existing emergency management system. Another has been to increase direct "top-down" oversight of local preparedness activities on a scale that had not existed prior to 9/11.

The decline in FEMA's prestige and influence in the wake of 9/11 has caused great concern among U.S. emergency management experts. Testifying before the U.S. Congress in March, 2004, former FEMA director James Lee Witt warned that the nation's ability to respond to disasters of all types has been weakened by some post-September 11 agency realignments. In written testimony regarding the loss of cabinet status for the FEMA director and the current position of FEMA within DHS, Witt stated that "I assure you that we could not have been as responsive and effective during disasters as we were during my tenure as FEMA director, had there been layers of federal bureaucracy between myself and the White House" (Witt, 2004). [In the aftermath of Hurricane Katrina, questions have again arisen regarding whether FEMA's poor performance during the catastrophe was related to its status within the DHS bureaucracy. Other questions have centered on whether FEMA and other DHS officials have the qualifications to perform their job-related duties.]

As a consequence of the increased flow of resources into law enforcement agencies and counterterrorism programs from ODP and other sources, preparedness for natural and technological disasters has assumed far less importance on the public policy agenda. Moreover, as agencies based on command-and-control principles assume greater importance in local preparedness efforts, the influence of organizations that focus on hazards other than terrorism and that operate in a broadly inclusive fashion and on the basis of coordination, rather than control, has waned.

At the same time, questions exist regarding the power and influence of DHS vis-à-vis other more-established federal entities, including the Pentagon and the Department of Justice. These tensions were evident in the summer of 2004, when Attorney General John Ashcroft, rather than Homeland Security Secretary Tom Ridge, released information indicating a heightened terrorism threat against major financial institutions.

Mirroring shifts at the federal government level, law enforcement agencies are increasingly assuming influential positions in homeland preparedness at the local government level, in some cases supplanting local emergency management organizations. Some emergency management professionals have criticized this trend as potentially weakening community crisis management programs, rather than strengthening them. Jerome Hauer of George Washington University, the former director of the New York City Mayor's Office of Emergency Management, has been publicly critical of the manner in which the city has reorganized its crisis management functions in the wake of 9/11. In an opinion piece in the *New York Times*, Hauer faulted New York's current mayor, Michael Bloomberg, for increasingly placing authority for managing emergencies in the hands of the police department—an agency that according to Hauer has historically been weak with respect to interagency coordination and disaster

preparedness—while diminishing the role of the more inclusive Office of Emergency Management (Hauer, 2004).

Presidential Homeland Security Directives and Resulting Actions

Direct presidential action is also transforming the U.S. crisis management policy system, most notably through a series of homeland security presidential directives (HSPDs) that have been issued since 9/11. The two directives that are most relevant for extreme event management are HSPD-5, "Management of Domestic Incidents," and HSPD-8, "National Preparedness." The stated aim of HSPD-5 was to improve the nation's capacity to respond to domestic disasters by creating a single, comprehensive incident management system. To this end, HSPD-5 mandated the development of a "concept of operations" for disasters that would incorporate all levels of government as well as crisis and consequence management functions within one unifying management framework. The Secretary of Homeland Security was given responsibility for implementing HSPD-5 by developing a National Response Plan (NRP) and a National Incident Management System (NIMS). Under this directive, all federal agencies were required to adopt NIMS and to make its adoption a requirement for other governmental entities receiving federal assistance. HSPD-8, "National Preparedness," gives the Secretary of Homeland Security broad authority in establishing a "national preparedness goal" and implementing programs to improve "prevention, response, and recovery" operations.[2] Although the directive explicitly calls for actions that address all hazards within a risk-based framework, its major focus is on preparedness for terrorism-related events. Similarly, while HSPD-8 is intended to address issues related to preparedness, a broad term that is generally conceptualized as an integrative and comprehensive process, the directive is mainly concerned with training and equipping emergency response agencies.

In calling for the development of a new national response plan, HSPD-5 seemingly ignored the fact that the United States already had a plan for coordinating the federal response to major disasters. The existing Federal Response Plan, which had been developed in the late 1980s and adopted in the early 1990s, had proven effective for coordinating federal resources in a number of major national emergencies, including the 9/11 attacks. At the time the new plan was mandated, the United States had an internationally recognized emergency management structure in place that was compatible with its system of "shared governance." While the NRP did not supplant that framework, it did make several important modifications. Under the NRP, the primary responsibility for managing domestic crises now rests with the Secretary of Homeland Security. The plan also contains language strongly suggesting that the federal government will in the future assume more responsibility for directly managing some crises, which significantly modifies "shared governance" policies that assign disaster management responsibility first to local authorities in affected jurisdictional areas. [The NRP was officially released in December of 2004. Katrina provided the first test of its use in a very large-scale disaster event. Questions remain about the extent to which responding entities, including DHS itself, understood their roles and responsibilities under the plan. Future research will reveal the extent to which new plans and procedures created confusion, rather than intergovernmental, cohesion, during the response to Hurricane Katrina.]

[2] Interestingly, HSPD-8 defines "prevention" as "activities undertaken by the first responder community during the early stages of an incident to reduce the likelihood or consequences of threatened or actual terrorist acts." The directive does not discuss the concept of mitigation.

In mandating NIMS, the plan also institutionalizes the Incident Command System (ICS) as the preferred organizational structure for managing disasters for all levels of government and within all organizations that play (or wish to play) a role in disaster response activities. While numerous U.S. jurisdictions and organizations already use ICS, this directive may nevertheless have problematic consequences. Some critics fault ICS for overly emphasizing command-and-control principles; they also question the wisdom of mandating one particular management framework for the many and diverse organizations that respond to disasters. Emergency management policy expert William Waugh observes that ICS "was created utilizing management concepts and theories that are now more than 30 years old" (Waugh, 1999) and that current management theory places much less emphasis on the command-and-control philosophy on which ICS is based. Waugh also notes that ICS is far more compatible, both structurally and culturally, with command-oriented organizations like police and fire departments than with the structures and cultures of the many other types of agencies and groups that play key roles in responding to disasters but that do not operate according to hierarchical principles. In his view and that of other critics, top-down management models like ICS (and now NIMS) are particularly ill suited to the distinctive challenges disasters present, which call for flexibility, improvisation, collaborative decision-making, and organizational adaptability. The danger is that in mandating a single, standardized management approach that is familiar mainly to command-and-control agencies, the NRP will stifle the capacity to improvise and will exclude many entities and groups that can make critical contributions during extreme events.

More broadly, the push toward universal adoption of NIMS and ICS reflects the highly questionable assumption that once a consistent management structure is adopted, preparedness and response effectiveness will automatically improve. Such an assumption ignores the numerous other factors that contribute to effective disaster management, such as ongoing contacts among crisis-relevant agencies during non-disaster times, common understandings of community vulnerability and the likely consequences of extreme events, realistic training and exercises, and sound public education programs. [Hurricane Katrina revealed significant strategic weaknesses in the nation's approach to extreme events—weaknesses that go far beyond issues that NIMS and ICS can address. Katrina allowed for days of warning, and it was common knowledge within scientific and governmental circles that the impacts of a Category 4 storm striking the Gulf region would be catastrophic. It was also well understood that up to 300,000 poor residents would have extreme difficulty evacuating from the city of New Orleans. The Katrina response revealed massive and almost inconceivable failures in strategic planning.]

The growing emphasis on terrorism readiness and ICS principles has led to a concomitant emphasis on "first responder" agencies and personnel. In current homeland security parlance, the term "first responder" refers to uniformed personnel (fire, police, and emergency services personnel) that arrive at the scene of a disaster. Missing from this discourse is a recognition that, as numerous studies indicate, ordinary citizens are the true "first responders" in all disasters. For example, in HSPD-8, a mere two sentences are devoted to the topic of citizen participation in preparedness activities. New policies and programs may thus leave vast reserves of talent and capability untapped in future extreme events. [Following Katrina, responding agencies treated stranded disaster victims in New Orleans as a problem population requiring strict policing, and there was little evidence of any efforts to engage the public in constructive ways in the emergency response. That the mass media also characterized victims as engaging in criminal behavior and even capital crimes further reinforced the notion that the disaster-stricken area needed to be under strict law enforcement and military control.]

REINFORCING PRE-SEPTEMBER 11 TRENDS: MILITARIZATION AND STOVEPIPES

Some trends that were already under way during the 1990s were greatly accelerated by the events of September 11. One such trend involves an extension of military authority in domestic emergencies. Since the end of the Cold War, military and intelligence institutions had been increasingly seeking new responsibilities in areas such as environmental monitoring and disaster management (Global Disaster Information Network, 1997). With the advent of the war on terror, and with enormous increases in available funding, the domestic missions of defense- and intelligence-related agencies have further expanded. With respect to defense activities, for example, prior to September 11, there was no U.S. military entity with a specific mission to coordinate military operations within U.S. borders. In 2002, the U.S. Northern Command (NORTHCOM) was created with the express mission of engaging in homeland defense. Although its responsibilities in the homeland defense area are quite broad, NORTHCOM's public communications also stress that it operates according to U.S. laws governing the provision of military assistance to civil authorities (MACA), which require that military entities operating within the United States do so only in support of decisions made by civil authorities. Nonetheless, the creation of NORTHCOM does represent a major policy shift regarding the role of the military in U.S. domestic affairs.

At the same time, terrorism-related concerns have led President's Bush administration to reevaluate U.S. laws such as the Posse Comitatus Act (PCA), which bars the military from carrying out domestic law enforcement functions. New interpretations of the PCA allow considerable latitude in the use of the military within the United States, not only in situations involving terrorism, but for a wide range of other purposes. Indeed, the domestic use of military resources in crises (and potential crises) of all types is becoming increasingly routine. For example, the military is involved in ongoing efforts to enhance border security, troops were used extensively to provide security for the 2002 Winter Olympics in Salt Lake City, military assets were employed in the hunt for the Washington area sniper, and the military played a major and highly visible role in the response to the 2004 Florida hurricanes. (Whether it was necessary to deploy troops to guard Home Depot stores and disaster assistance centers is another matter).

In the aftermath of the 9/11 attacks, the military is widely seen as having superior skills and technologies that can enhance the effectiveness of domestic crisis management—including the management of disasters. Its expertise is being called upon in areas such as the design and conduct of terrorism drills in U.S. communities, gaming and simulation, and surveillance. Former military officers are sought out by civil authorities and public safety agencies charged with homeland security responsibilities—again presumably for their superior knowledge and training—and military entities are being given responsibility for assessing domestic crisis preparedness programs (Healy, 2003). Homeland security terminology now includes the concept of the "domestic battlespace," a term that is applied both to terrorism-related emergencies and to disasters.

Federal and state military assets have long played a role in responding to disasters and other domestic crises, but with the recognition that the military would become involved only if "tasked" to do so under existing laws and policies. However, the position taken by the Bush administration—that the United States is now at war with terrorism and will be for the foreseeable future—has the potential for drastically expanding military participation within the nation's borders in a variety of activities that formerly were considered the domain of

civil authorities, including emergency management. This shift raises questions regarding the extent to which military culture, doctrine, and modes of operation are consistent with the crisis-related needs and requirements of a diverse civil society. War and domestic emergencies are not analogous, and new domestic military missions that conflate disaster response with battlefield operations could ultimately be detrimental to both. [In the aftermath of Hurricane Katrina, the military is once again being framed in political discourse as the only institution capable of managing major disasters. Calls for a greater militarization of disaster response, such as those made by President Bush, have generated extreme controversy. For example, many U.S. governors have rejected proposals for an expanded military role in disasters.]

The post-9/11 environment has also been marked by the acceleration of a second trend: the involvement of "special purpose" entities in crisis and consequence management activities. Such entities include Joint Terrorism Task Forces and Urban Area Security Initiative programs (UASI), which focus specifically on terrorism-related risks from a law enforcement perspective, and Metropolitan Medical Response Systems (MMRS), which were established to enhance the emergency response capacity of public health systems, particularly with respect to incidents involving weapons of mass destruction (WMDs). All three of these programs predated 9/11, but their importance, as well as their budgets, have grown as a consequence of the new war on terrorism.

This trend toward "special purpose" preparedness can also be seen in the proliferation of centers for public health preparedness in schools of public health across the nation. Again, some investment had been made in addressing public health needs related to terrorism and WMD prior to 9/11, but in the aftermath of the attacks, virtually every school of public health of any significance has launched initiatives in the homeland security area. While some centers have been funded by means of competitive grants from federal agencies, others have received funding through special legislative "earmarks." As a consequence of this rapid expansion, needed public health education and preparedness efforts are often poorly coordinated and isolated from broader community preparedness activities.

These programs and forms of funding were initiated in order to address serious gaps in response capability, notably challenges associated with intergovernmental collaboration on law enforcement issues and with inadequate public health emergency response resources. However, such initiatives also have other unintended consequences. They encourage collaboration and integration within sectors (e.g., law enforcement and public health), rather than across the diverse sectors that must be involved in responding to crises. They also promote specialized planning for particular types of emergencies. In other words, both in structure and in function, these increasingly influential entities contravene widely accepted principles of emergency management, which emphasize the importance of developing comprehensive, integrated preparedness and response networks and of all-hazards preparedness activities, rather than hazard-specific ones.

Many post-9/11 investigations have highlighted problems associated with "stovepiping," or the tendency for organizations and agencies to closely guard information, carry out their own specialized activities in isolation from one another, and resist efforts to encourage cross-agency collaboration. Indeed, DHS itself was created in order to overcome stovepipes, better integrate disparate agencies and programs, and improve information-sharing and cooperation. It is ironic, then, that some homeland security initiatives appear to be creating new stovepipes and reinforcing existing organizational and institutional barriers. For example, while diverse law enforcement agencies at different governmental levels may be making progress in working together on terrorism-related issues, the law enforcement sector itself may have little incentive to take an active role in broader cross-sectoral preparedness efforts. Rather

than promoting comprehensive preparedness for all potential threats—including disasters and terrorism—special-purpose initiatives encourage organizations to interact and plan within their own separate spheres and to focus on particular kinds of threats. Large infusions of funds into specialized programs only exacerbate the problem.

CONCLUSION

It is far too soon to speculate on longer-term impacts of new initiatives adopted in the wake of the tragic events of September 11. We may yet see a day when the United States declares victory in the war on terrorism and homeland security becomes less important on the national policy agenda. Or some future catastrophic disaster may bring about a reordering of national priorities. At this point, however, such possibilities seem remote. What does seem clear is that post-September 11 policies will very likely result in permanent and fundamental changes in the nation's approach to preparing for and responding to extreme events, including earthquakes and other disasters. Whether those changes reduce the vulnerability and enhance the resilience of the nation and its communities in the face of terrorism and other threats is a question that can only be addressed through future research.

[The Hurricane Katrina tragedy vividly illustrates the nation's lack of preparedness for catastrophic disaster events. Sadly, it is also now clear that failures to respond to Katrina will be matched or even exceeded by additional failures in the areas of short- and long-term recovery. The large death toll and the devastation wrought by Katrina were avoidable, but responsible parties were incapable of effective action. As of this writing, it is unclear whether Katrina will serve as a window of opportunity for advocates of disaster loss reduction, whether the disaster will further increase the role of military and law enforcement agencies in future disasters, and whether the Gulf Region will find the resources it needs to recover from Katrina in ways that enhance sustainability and resilience.]