

# Foreign Consequence Management

## Legal Deskbook

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The contents of this Deskbook are not to be considered as official positions, policies, or decisions of the U.S. Government. The information contained herein is not doctrine. The Deskbook is designed to serve as a working reference. The Defense Threat Reduction Agency Office of the General Counsel welcomes and solicits suggestions and contributions of relevant foreign consequence management materials



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## **Disclaimer**

This publication is designed as a research tool for lawyers responding to weapons of mass destruction accidents or incidents of terrorism on foreign soil. Although this Deskbook contains a multitude of legal authorities, there are new laws, regulations, and policy guidance being promulgated continuously in this area. Therefore, documents/authorities in this Deskbook may be superseded in whole or in part at any time. Accordingly, this Deskbook should not be used as the sole source of research, but should serve only as a research aid.

This Deskbook is not a formally coordinated United States Government document. Consequently, the contents of this Deskbook are not to be construed as official positions, policies or decisions of the United States Government. This Deskbook is solely the product of this workshop group for use by the Federal Departments and Agencies, as deemed appropriate.

## **Introduction**

In December 2003, the Defense Threat Reduction Agency (DTRA) released the *Domestic WMD Incident Management Legal Deskbook* for distribution to Federal attorneys responsible for responding to WMD events on U.S. soil. Following widespread praise for the Domestic Deskbook, the Combat Support Enterprise and the Advanced Systems and Concepts Office (ASCO) at DTRA agreed to fund, and the Office of the General Counsel agreed to manage, the production of the *Foreign Consequence Management Legal Deskbook*. To assist in the publication of this Deskbook, DTRA/ASCO awarded a contract to Science Applications International Corporation (SAIC).

On September 27-28, 2005, the DTRA Office of the General Counsel sponsored a one and a half-day workshop in Italy for all U.S. Federal attorneys, as well as international attorneys, who may be involved in responding to a host nation request for assistance with a chemical, biological, radiological, nuclear, and/or high-yield explosive (CBRNE) event. Thirty-three Federal and international attorneys from various U.S. Federal departments and agencies and international organizations participated in this initial workshop. The presentations and discussions that took place at the Workshop provided invaluable material for this Deskbook.

In February 2006, the DTRA Office of the General Counsel held a follow-up workshop in McLean, Virginia. The primary goal of the second Workshop was to obtain the perspectives of various legal experts in the field of foreign consequence management (FCM) and to address specifically the draft text of the Deskbook. The presentations and the discussions of the two Workshops provided an excellent resource in improving the Deskbook's accuracy and usefulness.

The purpose of the Deskbook is to identify legal authorities available to U.S. departments and agencies responding to a CBRNE event on foreign soil. The Deskbook consists of twelve major chapters and appendices, including two country-specific studies, organized as follows:

- Chapter One: Overview
- Chapter Two: Military Support for Foreign Consequence Management
- Chapter Three: USG and International Response Structures and Authorities
- Chapter Four: Liability and Fiscal Law
- Chapter Five: Medical, Evacuation, and Environmental Issues
- Chapter Six: Law Enforcement
- Chapter Seven: Standardization of Assistance
- Chapter Eight: Communications during FCM
- COUNTRY STUDY: U.S. Support for FCM in Italy
- COUNTRY STUDY: U.S. Support for FCM in the Philippines
- Appendix A: Acronyms
- Appendix B: FCM Resources
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- Appendix D: Model Memorandum of Agreement
- Appendix E: References

The Deskbook was edited by the DTRA General Counsel, Kevin Flanagan, and Associate General Counsels G.R. Gillette and Erik Dodson. Publication of the Deskbook was managed by G.R. Gillette, as were the Workshops.

Organized for easy reference, each Chapter is prefaced by a table of contents and by a table of seminal authorities and other references intended to provide a snapshot of the legal authorities and other references applicable to the subject matter being addressed. These are followed by analyses of the applicable authorities and references. In addition, the electronic version of the Deskbook contains the full text of citations referenced within each Chapter, as well as other relevant authorities and references collected over the life of this project.

Five cabinet-level Departments, various Federal agencies and international organizations, the Government of Italy, and numerous U.S. and international participants have contributed to the publication of this Deskbook. Without the hard work, dedication and significant contributions of the following individuals this Deskbook would not have been possible:

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In summary, it is the hope of each of the above-named individuals that this Deskbook will serve as a valuable resource.



## Chapter One - Overview

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**Table 1-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
<b>Presidential Documents</b>		
<a href="#">Executive Order (Exec. Order) No. 12656</a>	Various Federal Agencies	Assigns emergency preparedness responsibilities to Federal agencies, including for emergencies overseas
<a href="#">Exec. Order No. 12966</a>	DoD, DOS	Specifies conditions under which DoD may provide foreign disaster assistance
<b>United States Code</b>		
<a href="#">22 U.S.C. § 2151, et seq., Foreign Assistance Act</a>	Various Federal agencies	Authorizes foreign humanitarian and disaster assistance by the U.S. Federal government
<b>Agency Directives/Instructions/Manuals</b>		
<a href="#">Department of Defense Directive (DoDD) 3025.15</a>	DoD Components	Discusses military support to consequence management
<a href="#">Department of Defense Instruction (DoDI) 2000.18</a>		CBRNE emergency response guidelines for DoD installations
<a href="#">DoDI 2000.21</a>		Policy and responsibilities for DoD support to USG FCM operations
<a href="#">Joint Publication (Pub.) 3-40</a>		Joint doctrine for combating weapons of mass destruction
<a href="#">Foreign Consequence Management Planning Guide</a>		Provides guidance for planning DoD's role in FCM operations
<a href="#">Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B</a>		Provides the standing rules of engagement/rules for the use of force to the military services
<a href="#">CJCSI 3214.01B</a>		Instructions regarding military support for foreign consequence management
<a href="#">USAID Automated Directives System (ADS) 530</a>	USAID	Provides international emergency planning guidance for USAID missions abroad
<b>Related Literature</b>		
<a href="#">Government Accountability Office (GAO)-02-1021</a>	DOS	Discusses DOS programs to combat terrorism abroad

## 1. Defining FCM

Currently, multiple definitions of foreign consequence management (FCM) are used by United States Government (USG) departments and agencies. The main divergences in FCM definitions concern the types of incidents that are considered FCM and the location of the incident.

Regarding the types of incidents, the Department of State (DOS) definition of FCM includes:

- Any international event involving contamination from a chemical, biological, radiological, or nuclear source that has the potential of creating catastrophic human casualties;
- Any release that threatens to overwhelm existing host nation (HN) response capabilities and prompts a request for immediate international assistance; and
- Responding to, managing, and mitigating the effects of a CBRN event where the host nation government always retains the lead responsibility for the response.<sup>1</sup>

The phrase, “any release,” should be read to limit the DOS definition of FCM to chemical, biological, radiological, or nuclear (CBRN) events, and to exclude events involving high-yield explosives. When a high-yield explosive event prompts a foreign government to request assistance from the United States, DOS generally responds through the U.S. Agency for International Development (USAID), Office of U.S. Foreign Disaster Assistance (OFDA) in the same way it would respond to a natural disaster. If an incident involves CBRN, on the other hand, DOS most likely will respond through its FCM Program Office.<sup>2</sup> Other USG departments and agencies, such as the Department of Health and Human Services (HHS) and Department of Energy (DOE), provide very specific support for overseas incidents, *i.e.*, biological and radiological/nuclear assistance respectively, and do not use the overarching term of FCM to describe these activities.

The Department of Defense (DoD) defines FCM in slightly different ways in its operational regulations and guidance documents, but clearly DoD includes high-yield explosive incidents as a triggering event. Department of Defense Instruction (DoDI) 2000.21 defines FCM as: “assistance provided by the USG to an HN to mitigate the effects of a deliberate or inadvertent CBRNE [chemical, biological, radiological, nuclear, or high-yield explosive] attack or event and to restore essential operations and services.”<sup>3</sup> Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3214.01B defines FCM in virtually identical terms and refers to CBRNE incidents.<sup>4</sup>

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<sup>1</sup> Department of State, Foreign Consequence Management Program website, <http://www.state.gov/t/pm/iso/c7957.htm> (last visited Aug. 23, 2006).

<sup>2</sup> *Id.* See also USAID, Disaster Assistance website, [http://www.usaid.gov/our\\_work/humanitarian\\_assistance/disaster\\_assistance/](http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/) (last visited Apr. 17, 2006).

<sup>3</sup> Department of Defense Instruction (DoDI) 2000.21, Foreign Consequence Management, E2.1.4, Mar. 10, 2006. See also CJCSI 3214.01B, Military Support to Foreign Consequence Management, para. 6, Mar. 31 2006.

<sup>4</sup> Specifically, CJCSI 3214.01B defines FCM as: “assistance provided by the USG to an HN to mitigate the effects of a deliberate or inadvertent CBRNE attack or event and restore essential government services.” *supra* note 3. Joint Pub. 3-40, Joint Doctrine for Combating Weapons of Mass Destruction, Jul. 8, 2004; Joint Pub. 1-02, DoD Dictionary of Military and Associated Terms, Aug. 31, 2005. The definition of WMD in Joint Publication 3-40 and in the DoD Dictionary includes high-yield explosives as well. Joint Publication 2-01 defines WMD as: “Weapons

While DoDI 2000.18 defines FCM in different terms, it also includes “E” events: “Those efforts that comprise interagency assistance overseas to respond and mitigate damage occurring from a CBRNE incident.”<sup>5</sup>

USG FCM definitions also diverge regarding the location of events. DOS, for example, does not specifically distinguish the location of the incident in its definition of FCM, other than requiring the incident to be an “international” event. On the other hand, DoD excludes certain overseas localities from its FCM definition. Both agencies agree that FCM excludes response to incidents within the continental United States (CONUS), Alaska, Hawaii, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.<sup>6</sup> For DoD, FCM does not include response to an incident limited to a DoD military installation outside the continental United States (OCONUS).<sup>7</sup> However, such an incident may become an FCM scenario if a foreign nation is affected.<sup>8</sup> DoD also excludes from FCM the response to an incident resulting from “U.S. military operations in a foreign country where the DOS does not have an established presence.”<sup>9</sup> The State Department FCM definition does not appear to distinguish between events in countries where it does or does not have a presence. Additionally, it appears that the State Department would consider a CBRN incident occurring on an overseas U.S. military base to be an FCM event, even if its effects were limited to the installation. Further, under the DOS definition, if contamination from a CBRN incident on a CONUS military base spreads, *e.g.*, to Canada or Mexico, it could be considered an FCM event by the State Department. Hence, the determination whether an incident is an FCM event will likely require consideration of both initial location of the incident and its effects.<sup>10</sup>

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that are capable of a high order of destruction and/or of being used in such a manner as to destroy large numbers of people. Weapons of mass destruction can be high explosives or nuclear, biological, chemical, and radiological weapons, but exclude the means of transporting or propelling the weapon where such means is a separable and divisible part of the weapon. Also called WMD. ” A CBRNE event is defined as “An emergency resulting from the deliberate or unintentional, release of nuclear, biological, radiological, or toxic or poisonous chemical materials, or the detonation of a high-yield explosive. Also called CBRNE incidents.” Whenever this Deskbook refers to a FCM event, it will use this DoD definition of a CBRNE incident.

<sup>5</sup> DoDI 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive Emergency Response Guidelines, Dec. 4, 2002

<sup>6</sup> DoD Directive (DoDD) 3025.15, Military Assistance to Civil Authorities, Feb. 18, 1997, is the military guidance for support to civil authorities for domestic incidents.

<sup>7</sup> DoDI 2000.21, *supra* note 3. This FCM exclusion for CBRNE events with effects limited to a DoD installation/facility depends on whether DoD retains primary CBRNE – CM responsibility for the affected overseas DoD installation or facility “under relevant international agreement or arrangements in accordance with DoDI 2000.18 [DoD Instruction 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive Emergency Response Guidelines, Dec. 4, 2002 (which generally applies to domestic DoD installations)].” *See also* Joint Pub. 3-41, Chemical, Biological, Radiological, Nuclear and High-Yield Explosives Consequence Management, Oct. 2, 2006, which notes that DoDI 2000.18 provides the applicable guidance for a CBRNE event overseas when its effects are limited to a DoD installation for which DoD has primary CBRNE-response responsibility. *See also* the discussion, *infra*, Chapter 2 on legal issues raised concerning ownership and control of U.S. military installations abroad.

<sup>8</sup> CJCSI 3214.01B, *supra* note 3.

<sup>9</sup> DoDI 2000.21, *supra* note 3. *See also* CJCSI 3214.01B, *supra* note 3. CJCSI 3214.01B specifies that its provisions do not apply to “CBRNE response operations that are a direct result of US military operations.”

<sup>10</sup> This Deskbook will generally use the term “CBRNE” as such events could result in FCM response activities by DoD and other U.S. agencies. Only CBRN events are to be considered whenever DOS FCM response activities or processes are mentioned.

While these different definitions should not be overlooked, there are common elements in virtually all current USG FCM definitions. For instance, most USG departments and agencies agree that:

- The host nation has primary responsibility for responding to a CBRNE event within its territory;
- FCM involves actions taken to respond to, and mitigate the effects of CBRNE events that affect foreign soil; and,
- Unless otherwise directed by the President, the State Department is the lead U.S. Federal agency responsible for coordinating the overall U.S. government response to a request for assistance (RFA) from the host nation after a CBRN incident.<sup>11</sup>

Both DoD and DOS exclude all-hazards response from their definitions of FCM. Thus, assistance provided in the event of a natural disaster or other non-CBRNE (or non-CBRN for DOS) situation causing a humanitarian crisis is not considered FCM. By not including “all hazards,” these FCM definitions raise a question concerning the distinction between FCM and humanitarian assistance.

In limiting the DOS FCM definition to events involving CBRN and in providing different response mechanisms for natural disasters and non-CBRN events, the State Department clearly distinguishes its FCM response procedures from humanitarian assistance. DoD, however, specifically includes FCM as a subset of humanitarian assistance.<sup>12</sup> Under DoD policies, FCM may include “traditional foreign disaster relief efforts” such as providing rescue services and food, shelter, medical, and logistics support, as well as efforts that might be unique to an FCM environment, (*e.g.* decontamination and handling hazardous materials).<sup>13</sup> Thus, the nature of response activities may be blurred at the operational level for DoD forces. Clearly, most overseas CBRNE incidents that result in the United States providing foreign assistance, whether on or off a military installation, will likely require U.S. and other organizations to do things that are traditionally characterized as humanitarian assistance. The real distinction lies in the processes used by the United States to provide the requested assistance, which laws apply, and how those activities are funded. Where applicable, the chapters of this Deskbook highlight the

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<sup>11</sup> DoDI 2000.21, *supra* note 3; National Security Presidential Directive 17/Homeland Security Presidential Directive 4 (NSPD17/HSPD4), National Strategy to Combat Weapons of Mass Destruction, Dec. 11, 2002 (unclassified version available at <http://www.fas.org/irp/offdocs/nspd/nspd-17.html>). *See also* Executive Order No. 12656, Assignment of Emergency Preparedness Responsibilities, Nov. 18, 1988. As noted in DoDI 200.21, section 4.2, DoD may be directed by the President to serve as the lead federal agency (LFA), however, this Deskbook will assume an FCM response with DOS as the LFA, unless otherwise specified. While the phrase “LFA” has generally been eliminated from domestic CM documents and plans, *e.g.*, the National Response Plan, which generally refers instead to “Coordinating” or “Primary” Federal Agencies, “LFA” continues to apply to FCM events. *See* U.S. Department of Homeland Security, National Response Plan, Dec. 2004, *and* DoDI 2000.21.

<sup>12</sup> Joint Pub 3-07.06, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, Aug. 15, 2001.

<sup>13</sup> CJCSI 3214.01B *supra* note 3.

overlaps and differences between the USG FCM and humanitarian assistance response processes, laws, and activities.<sup>14</sup>

## **2. Overview of the USG Response Process**

In the event of a CBRNE incident affecting foreign territory, U.S. legal authorities provide the necessary authority for the President to respond with many types of assistance, including military, logistical, and medical. The two major laws which govern U.S. response to foreign CBRNE incidents are the International Disaster Assistance section of the Foreign Assistance Act (FAA),<sup>15</sup> and the military humanitarian response authorities set forth in Title 10 of the U.S. Code. In addition to the authorizing legislation, various restrictions on U.S. foreign aid should be considered before any response or assistance is provided. **Chapter 3** provides additional discussion of the U.S. authorities that apply to FCM response.

### **2.1 Roles and Responsibilities of Host Nation and U.S. Agencies**

#### *Host Nation Responsibility and DOS as the Lead U.S. Federal Agency (LFA)*

As noted, the host nation (HN) is primarily responsible for consequence management when a CBRNE incident occurs within its territory. As also noted and as discussed in more detail below, unless the President directs otherwise, DOS has been designated as the Lead U.S. Federal Agency (LFA) in responding to requests for FCM assistance from a foreign government.<sup>16</sup>

In its role as the LFA, DOS is responsible for coordinating the overall USG response to an FCM event. In that capacity, it can request assistance from any other USG agency, but it may not task another agency. Under no circumstances will the State Department assert command and control over any U.S. military forces. On the other hand, approval by the State Department/U.S. Ambassador in the pertinent country is required, in most instances, before U.S. military forces can engage in any FCM response activities.

Upon a request for assistance that has been approved by the State Department, other USG Federal agencies will be asked to determine if they can provide the requested support. Their

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<sup>14</sup> See discussion *infra*, e.g., Chapter 3, Sections 1 and 4 (respectively, Federal guidance to the Secretaries of the military departments with regard to humanitarian assistance and the type of humanitarian assistance provided by international organizations and non-governmental responders); Chapter 2, Section 3 (the military Joint Publication for foreign humanitarian assistance (FHA)); Chapter 5, Section 3 (legal guidance for the treatment of internally displaced persons (IDP) and refugees in a crisis); Chapter 6, Section 2 (humanitarian assistance provided by international organizations and non-governmental responders); Chapter 7, Section 2 (guidance for the funding of military FCM operations); Chapter 7, Section 3.1 (applicability of international agreements on customs facilitation in the event of an FCM or humanitarian disaster); and Chapter 8, Section 3 (the applicability of international human rights law and humanitarian law to the treatment of victims should a crisis occur).

<sup>15</sup> 22 U.S.C. § 2151 *et seq.* (2005).

<sup>16</sup> DoDI 2000.21, *supra* note 3; NSPD17/HSPD 4, *supra* note 10. As discussed in footnote 10, while the use of “Lead Federal Agency/LFA” has generally been eliminated for domestic WMD events and natural disasters, it continues to apply to FCM incidents.

assistance would likely be sought via a formal request from the State Department Executive Secretary to the executive secretaries of the various departments and agencies involved. If the USG is a causative factor of a CBRNE incident, *e.g.*, a terrorist attack targeting the U.S. military overseas, the USG may determine that it has a special responsibility to respond and may offer consequence management support prior to a formal HN RFA.<sup>17</sup> When DOS submits a request for FCM support to DoD, it generally must be approved by the Secretary of Defense before DoD can provide the needed assistance.<sup>18</sup> As stated in a key U.S. strategy document,

The Secretary of State is the principal Federal officer responsible for international terrorist incidents that take place outside the U.S. territory, including United States support for foreign consequence management and coordinates, as appropriate, with heads of other Federal departments and agencies, to effectively accomplish this mission. When requested by the Secretary of State, and approved by the Secretary of Defense, the Department of Defense will support United States foreign consequence management operations, as appropriate.<sup>19</sup>

**Table 1-2** below sets out the FCM roles and responsibilities of relevant USG agencies.

Table 1-2. Roles and Responsibilities of USG Agencies in FCM

USG Support to Foreign Consequence Management <sup>20</sup>	
Lead/Coordinating Agency	Roles/Responsibilities
Department of State (DOS)	Provides overall foreign policy coordination in the formulation and execution of continuity of government and other national security emergency preparedness activities that affect foreign relations; includes coordinating USG engagement with foreign governments and international organizations regarding consequence management planning, FCM response and capacity building.
Supporting Agencies	Roles/Responsibilities
National Security Council (NSC)	Assists DOS in coordinating the interagency FCM response and support; develops guidance policy for responding USG agencies.
Department of Defense (DoD)	At the direction of the President, or when requested by the Department of State in response to a request of the host government, and at the approval of the Secretary of Defense, DoD provides disaster assistance outside the United States to respond to a CBRNE incident. DoD forces may also respond when it is necessary to prevent loss of lives or pursuant to the commander's immediate response authority <sup>21</sup> . The President

<sup>17</sup> Presentation, Office of the Assistant Secretary of Defense, Special Operations/Low-Intensity Conflict, *Foreign Consequence Management*, Aug. 16, 2005.

<sup>18</sup> DoDI 2000.21, *supra* note 3.

<sup>19</sup> White House, Biodefense for the 21<sup>st</sup> Century, Apr. 28, 2004.

<sup>20</sup> Exec. Order No. 12656, *supra* note 10.

<sup>21</sup> Exec. Order No. 12966, Foreign Disaster Assistance, Jul. 14, 1995 (stating that the Secretary of Defense will only provide foreign disaster assistance: 1) at the direction of the President; 2) with the concurrence of the Secretary of State; or 3) in emergency situations in order to save lives). Additionally, Exec. Order No. 12656 states that the DoD

USG Support to Foreign Consequence Management <sup>20</sup>	
	can designate DoD as the LFA for FCM response. <sup>22</sup>
Department of Justice (DOJ)/Federal Bureau of Investigation (FBI)	Lead responsibility for investigating terrorist incidents directed at U.S. citizens or institutions abroad <sup>23</sup>
Department of Transportation (DOT)	Supports the United States activities in transportation-related international (including NATO and allied) civil emergency preparedness planning and related activities
USAID/Office of Foreign Disaster Assistance (OFDA)	May respond based on a 'disaster declaration' by the U.S. ambassador in the affected state(s). Coordinates and supports U.S. humanitarian relief and rehabilitation activities overseas following natural disasters. This may include support during incidents involving weapons of mass destruction, among others
Department of Agriculture (DOA)	Supports and represents the United States interests in agriculture-related international civil emergency preparedness planning and related activities
Department of Commerce (DOC)	Assists and supports in the formulation and execution of economic measures affecting other nations
Department of Energy (DOE)	Conducts international liaison activities pertaining to international nuclear safety and nonproliferation; develops plans and capabilities for identification, analysis, damage assessment, and mitigation of WMD hazards
Department of Health and Human Services (HHS)	Develops plans and procedures for assistance to United States citizens or others evacuated from overseas areas
Centers for Disease Control and Prevention (CDC)	Identifies, diagnoses, and recommends treatment guidelines for the health consequences of terrorist events <sup>24</sup>
Environmental Protection Agency (EPA)	Advises the heads of Federal departments and agencies regarding procedures for assuring compliance with environmental restrictions and for expeditious review of requests for essential waivers
Department of Homeland Security (DHS) / Federal Emergency Management Agency (FEMA)	Assists in the coordination, formulation and implementation of United States policy for NATO and other allied civil emergency planning

### *Summary of the USG Foreign Consequence Management Response Process*

When a significant FCM incident occurs, the host nation government will determine whether internal resources are capable of managing the incident, and to ascertain the types of specialized assistance that might be needed. Once those determinations are made:

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provides support and plans for protection, evacuation and repatriation of U.S. citizens overseas as well as contingency and post-emergency plans, and intergovernmental military agreements that will affect U.S. national security. *Id.*, at § 502. Immediate response is discussed in more detail in **Chapter 2**.

<sup>22</sup> DoDI 2000.21, section 4.2, *supra* note 3, at Section 4.2.

<sup>23</sup> Presidential Decision Directive (PDD)/NSC 39, Counter Terrorism Policy (Jun. 21, 1995); PDD 62, Protection Against Unconventional Threats to the Homeland and Americans Overseas (May 22, 1998); Omnibus Security and Antiterrorism Act of 1986, as amended, Pub. L. 99-399, 100 Stat. 853, Aug. 27, 1986.

<sup>24</sup> CDC, "Protecting Health for Life," the State of the CDC, Fiscal Year 2004, *available at* <http://www.cdc.gov/cdc.pdf>.



1. The host nation may notify the local U.S. Embassy and request help, or
2. It may directly notify the U.S. State Department in Washington D.C., with a request for assistance (RFA), or
3. FCM assistance may be needed immediately to save lives and a HN request is made directly to DoD forces in the vicinity. This immediate response situation is an exception to the general procedures set forth in this chapter and is discussed at length in **Chapter 2**.<sup>25</sup>

It is likely that the U.S. Embassy and the relevant DoD geographic combatant command (COCOM) will gain initial situational awareness through the news media and other sources. If a formal RFA is made to the U.S. Embassy, the Ambassador/Chief of Mission (COM)<sup>26</sup> will notify the U.S. State Department's Operations Center, associated Regional Bureau/Country Desk Officers, and the Bureau of International Security and Nonproliferation's WMD Terrorism Office, Foreign Consequence Management Program in Washington, D.C.

In the event of a terrorist incident, a Foreign Emergency Support Team (FEST) and/or Consequence Management Support Team (CMST) could be deployed to assist the country team in coordinating the U.S. response. As noted in **Table 1-3**, DoD may be asked to provide a military representative to the FEST/CMST. In addition, if the FCM event is sufficiently large, the U.S. Ambassador may make a "disaster declaration," and the USAID/OFDA could then deploy a Disaster Assistance Response Team (DART), which "provides rapid response field presence to international disasters with specialists...[who] assist U.S. country teams and USAID missions with the management of USG response to disasters."<sup>27</sup>

**Appendix B** provides a detailed list of U.S. capabilities to support civilian operations in a CBRNE environment, including capabilities of U.S. military organizations.

As previously noted for the Department of Defense, Foreign Consequence Management is a subset of the many types of response activities that fall under the broad umbrella of Foreign Humanitarian Assistance.<sup>28</sup> Given DoD assets, capabilities and plans for handling FCM response missions, there is a good chance that DoD will be asked to provide support for the USG

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<sup>25</sup> This request for immediate assistance could come from a local or regional government entity. As noted in the discussion of immediate response in **Chapter 2**, there is no requirement that such a request come from the national government.

<sup>26</sup> "The Chief of Mission -- with the title of Ambassador, Minister, or Charge d'Affaires -- and the Deputy Chief of Mission are responsible for and head the mission's "country team" of U.S. Government personnel." US DEPARTMENT OF STATE 95/05/26 Fact Sheet: US Dept. of State: Structure and Organization *available at* [http://dosfan.lib.uic.edu/ERC/about/fact\\_sheets/950526str.html](http://dosfan.lib.uic.edu/ERC/about/fact_sheets/950526str.html). "Ambassador" and "COM" will be used interchangeably throughout this Deskbook.

<sup>27</sup> USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide for Disaster Assessment and Response, version 3.0, ch. III, para.11, Sept. 2005. For example, the DART was recently deployed to Pakistan after an earthquake to: assess humanitarian needs, assist with the targeting and coordination of U.S. Government assistance in conjunction with USAID/Pakistan, and provide technical assistance as required. The humanitarian relief operations have focused on the provision of shelter, relief supplies, health facilities, water and sanitation sources, and logistics operations. USAID Disaster Assistance, [http://www.usaid.gov/our\\_work/humanitarian\\_assistance/disaster\\_assistance/](http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/). (last visited on Nov 10, 2006).

<sup>28</sup> Joint Pub 3-07.06, *supra* note 11.

FCM efforts. Moreover, DoD forces may be the closest USG assets to an incident. Based in part on a recognition that DoD forces may be able to provide essential support very rapidly, as well as offer the best way for the U.S. to provide the greatest amount of support after a truly overwhelming event,<sup>29</sup> DoD is authorized to engage in certain FCM response activities almost immediately and in ways that differ from the general practice described in this section. These authorities, which are generally limited to matters of life and death, are discussed in greater detail in **Chapter 2**.

It should be expected that the appropriate geographic COCOM (i.e., the one which has responsibility for U.S. military operations in the country in which the incident occurred) will begin coordination with the country team at the U.S. embassy in the affected country soon after a significant FCM event occurs. That COCOM would likely dispatch an assessment team to work with the U.S. Embassy to assess the situation, identify potential support requirements, and begin the flow of information to the responsible COCOM via its emergency operations center (EOC). In most instances, that EOC would ensure that the information is forwarded to the National Military Command Center (NMCC). Meanwhile, DOS will work with the National Security Council (NSC) to coordinate interagency deliberations to: 1) assess requests for U.S. assistance, 2) identify the specific support to be provided and the agencies that will provide that support, and 3) develop the initial guidance required for responding organizations.<sup>30</sup> This process may take between 4 to 6 hours, but a decision to deploy the FEST could occur within 30 minutes of the event and it could be airborne within 4 hours. More time (i.e., up to a few additional hours) would probably be needed to deploy a CMST.

Following interagency coordination, the NSC will provide guidance to the executive departments and other organizations to initiate the formal USG response. The U.S. Embassy, possibly augmented by the FEST/CMST, will begin to increase coordination with the host nation for the specific support that the United States will provide to the HN, and to finalize logistics, transportation, and any needed legal negotiations between the USG and HN. DoD and other Federal departments will assess the requests for support that have been forwarded to them pursuant to the process described in this chapter, issue appropriate orders for, and coordinate the movement of requested and approved resources. DoD will identify command relationships and the supporting command will coordinate the provision of identified military resources.

Each Embassy has an Emergency Action Committee (EAC) to develop the Embassy's crises management strategy.<sup>31</sup> As part of this effort, potential requirements, host nation government

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<sup>29</sup> DoDI 2000.21, *supra* note 3. "DoD recognizes that USG FCM operations may involve military assets and that these assets may be the earliest and largest USG contribution."

<sup>30</sup> DOS, Foreign Consequence Management Program Briefing, FCM Legal Deskbook Workshop I, Sept. 27, 2005. For any FCM event serious enough to generate a request for U.S. assistance, it is very likely that the HN will also request help from other countries and international organizations. One element that will be considered by the USG in FCM response planning is whether the requested support can be provided by another entity.

<sup>31</sup> Overseas Security Advisory Council, Emergency Planning Guidelines for American Businesses Abroad, Chapter II, p. 3, June 1, 2005, *available at*: [http://www.osac.gov/About/publications/Emergency\\_Planning\\_Guidelines\\_for\\_American\\_Businesses\\_Abroad.doc](http://www.osac.gov/About/publications/Emergency_Planning_Guidelines_for_American_Businesses_Abroad.doc). (last visited Nov. 10, 2006);

requests for assistance, and a coordinated U.S. response will be developed for the NSC and the U.S. Ambassador's approval, and formally offered to the HN government.<sup>32</sup> As more information becomes available, DOS will coordinate with DoD and other interagency counterparts to develop a comprehensive interagency consequence management plan for the specific requests for assistance. This plan will be coordinated among U.S. interagency responders by DOS and the NSC in Washington, D.C. and at the U.S. Embassy through the FEST WMD coordinator or by the CMST Team Leader, depending upon which is deployed.

It will take time for the U.S. interagency to make a response determination, to coordinate the approved U.S. government response effort, and to deploy the approved forces and equipment. The coordination process and delivery of response assets could reasonably take up to 48 hours.

In the host nation, the appropriate geographic COCOM will also liaise with the U.S. Embassy to develop coordination relationships with the FEST or CMST (if it has been deployed to the U.S. Embassy), and command and control relationships with the host nation's response management element. If a Joint Task Force-Consequence Management (JTF-CM) Headquarters has been deployed, it will be included in this coordination and liaison. If neither the CMST nor the FEST deploys and the U.S. military responds based upon a DOS request or, *e.g.*, pursuant to immediate response authority, then the COCOM will likely coordinate military support with the EAC.

**Table 1-3. Roles and Responsibilities of FCM Teams**

Roles and Responsibilities of FCM Teams			
	Composition	Activation	Capability
Consequence Management Support Team (CMST)	Subject matter experts from DOS and USG agencies; DOD support as required; <sup>33</sup> Chemical, biological, and radiological and/or nuclear experts. <sup>34</sup> 7-10 members	Deployed after an incident occurs and led by DOS. <sup>35</sup> DOD provides support to CMST upon approval of the Secretary of Defense. <sup>36</sup>	24/7 consequence management; provides situation assessments and response requirements for overall planning and operational coordination of USG response; <sup>37</sup> advises COM on CM issues and may serve as COM's designated coordinator of USG accident response. <sup>38</sup>

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Joint Staff Operations Directorate, J33 Special Operations Division, Foreign Consequence Management Planning Guide, Section III B, Sept. 2000.

<sup>32</sup> The information regarding the interagency coordination of the U.S. FCM response is largely based on operational anecdotes, and not from actual documentation, as it is not captured or has not been found in DOS or other guidance.

<sup>33</sup> DoDI 2000.21, *supra* note 3.

<sup>34</sup> DoD 3150.8-M, Nuclear Weapon Accident Response Procedures (NARP), Feb. 22, 2005.

<sup>35</sup> DoDI 2000.21 *supra* note 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

Foreign Emergency Response Team (FEST)	A DOS Foreign Service Officer as team leader, other DOS members and a tailored combination of specialists from other departments and agencies. <sup>39</sup> Number of members based on event.	Activated after a terrorist incident and deployed upon request of the U.S. Ambassador. DoD provides support to CMST upon approval of the Secretary of Defense. <sup>40</sup>	24/7 crisis and consequence management assistance; provides additional secure communications and selected expertise to augment Embassy staff. <sup>41</sup>
Disaster Assistance Response Team (DART) <sup>42</sup>	USAID; Representatives from various USG agencies; USAID military liaisons.	USAID/OFDA's Director along with U.S. Ambassador or COM in country can deploy a DART based on magnitude and severity of disaster.	Manages USG field activities and assess effectiveness of overall humanitarian response (including USG-funded activities). Provides information and programming support.

Generally, the U.S. government undergoes five operational phases upon receipt of a request for assistance:

**Phase I – Assessment:** Phase I includes those actions required of the U.S. government to conduct situation assessment and preparation, including the timely and accurate assessment of the CBRNE situation, the preparation for deployment and the deployment of select advance elements. These assessment teams may consist of specialists from USAID/OFDA, HHS, DOE the Department of Justice (DOJ), and the Department of Homeland Security (DHS), the Environmental Protection Agency (EPA), or CONUS-based DoD resources. The coordination of U.S. response assets will be led by the U.S. Ambassador with assistance from his EAC<sup>43</sup> and the FEST WMD Coordinator or CMST Leader upon their arrival. The geographic COCOM, as required, may deploy in-theater CBRNE assessment, detection, and identification survey teams. The COCOM may also deploy an advance liaison team. U.S. government and military representatives will also conduct situation and requirements assessments, such as determining if the response will be affected by host nation and/or third country status of forces agreements (SOFAs). At the request of the HN, additional requirements such as medical support, displaced person assistance, incident site protection/security, public affairs, transportation/logistics, etc. and the availability of assets and resources, both in-country and out may be offered. Other issues that will need to be addressed during this phase involve assessing the probability of civil unrest as a result of the crisis, identifying if the HN has a national response plan, determining which host nation government agency has the lead, and ascertaining if any in-country U.S. assets are available to support the response.

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<sup>39</sup> DOS, Foreign Emergency Response Team, website, <http://www.state.gov/s/ct/rls/fs/2002/13045.htm#4>, (last visited Jun. 8, 2006).

<sup>40</sup> DoDI 2000.21, *supra* note 3.

<sup>41</sup> *Id.*

<sup>42</sup> USAID, USAID/DCHA Office of U.S. Foreign Disaster Assistance, *Guidance for Disaster Planning and Response*, (2006).

<sup>43</sup> USAID, Major Function Series 500-Management Services, ADS 530-Emergency Planning Overseas, Section 530.3.2, Apr. 5, 2004; Government Accounting Office, *Combating Terrorism: Department of State Programs to Combat Terrorism Abroad*, GAO-02-1021, Sept. 6, 2002.

If required during Phase I, a dedicated communication link will be established between the COCOM and the U.S. Embassy to coordinate initial U.S. military logistics, transportation, surveillance requirements, as well as any special/critical requirements such as search and rescue or security. At this time, plans will also be established, setting the criteria for U.S. military disengagement.

Another important issue during initial response operations is efficient and well-planned public affairs guidance. The U.S. Embassy will designate a spokesperson to coordinate with U.S. government and host nation representatives, as well as provide media guidance to the appropriate Public Affairs Office (PAO). The PAO and its representatives will begin the initial identification of potentially unintended consequences from the incident, both militarily and politically. Phase I ends when the nature and scope of the CBRNE situation and initial response force requirements have been defined.

**Phase II – Movement of Resources:** Phase II consists of moving response resources into the HN. While these resources are en route, the assessment and coordination with HN government agencies is ongoing and shapes the mission and priorities of the U.S. response teams prior to their arrival. For DoD, Phase II begins with the Secretary of Defense-approved execute order, establishing formal command relationships between supported and supporting commanders and defining mission parameters. This order serves as the formal authority for the deployment of U.S. military forces in the host nation. Potential organizational and operational mismatches between the responding U.S. forces and HN and standard unit configurations must be identified at this time. External technical support assets should be identified, and technical units from the United States, *e.g.*, the Consequence Management Advisory Team (CMAT) and the Joint Technical Augmentation Cell (JTAC), to support operations may be requested. Integration, staging and initial forward movement will begin, as well as establishment of U.S. military operations centers. From these centers, multilateral and bilateral agreements, local laws, SOFAs and other agreements should be reviewed. Media guidance may be revised. Requirements for U.S. military integration into humanitarian relief operations should be identified and support for ongoing relief efforts coordinated.

During Phase II, follow-on support requirements will need to be identified and U.S. liaison with the host nation's responders will be established. Though coordination is normally provided by the host nation, assistance may be requested to coordinate with non-governmental organizations (NGOs), international organizations (IOs), the regional military center, civil-military command centers, humanitarian assistance coordination centers, and third-country responders. Plans should be established for coordination with the host nation's security agencies and for liaison with other responders on the scene. Phase II ends when U.S. response elements have completed movement to the designated in-country location and supporting locations.

**Phase III – Arrival of Assistance:** Phase III begins with the arrival of requested U.S. government assistance, to include DoD assets/units, at the incident location and supporting locations. Further/follow-on assistance coordination and communication regarding the evolving situation between the HN government's crisis management organization and U.S. Embassy continues. Additional U.S. assets may arrive, based on the incident's severity and host nation requirements. Response actions must be prioritized, while advisement continues, in order to

isolate the incident area and maintain orderly, effective response. Deployed team leaders will begin to finalize planning for the transition of assistance to the host nation and civilian agencies, and should identify the necessary or minimum conditions to initiate transition to other, non-U.S. agencies. Phase III ends with the determination that USG support is no longer required by HN authorities. Media coverage will also need to be continuously monitored to ensure that accurate information is being presented and to maintain situational awareness.

**Phase IV – Transition:** Although planning for transition of FCM begins as soon as practical following the initial response, Phase IV begins with the formal implementation of the transition plan for specific tasks and responsibilities that have been undertaken by USG agencies. During Phase IV and the transition from U.S. government assistance to the host nation and/or other agencies, U.S. response resources will disengage as goals are met and in coordination with the host nation government, the U.S. Embassy, and other allied or United Nations personnel. Follow-on support must be identified and prepared, while close media monitoring is accomplished for smooth transition.

**Phase V – Redeployment:** Phase V begins with the redeployment of U.S. personnel involved in FCM operations and is complete when all personnel have returned to their previous location. With the culmination of operations, response forces should schedule a comprehensive after-action report, identifying any adjustments necessary to FCM plans and any long-term effects from HN support, *e.g.*, costs (both dollar amounts and opportunities lost or gained) and sources of funding for the operation. Select capabilities may remain to assist, as necessary, with other USG, HN, and/or IO or NGO teams still working the incident.

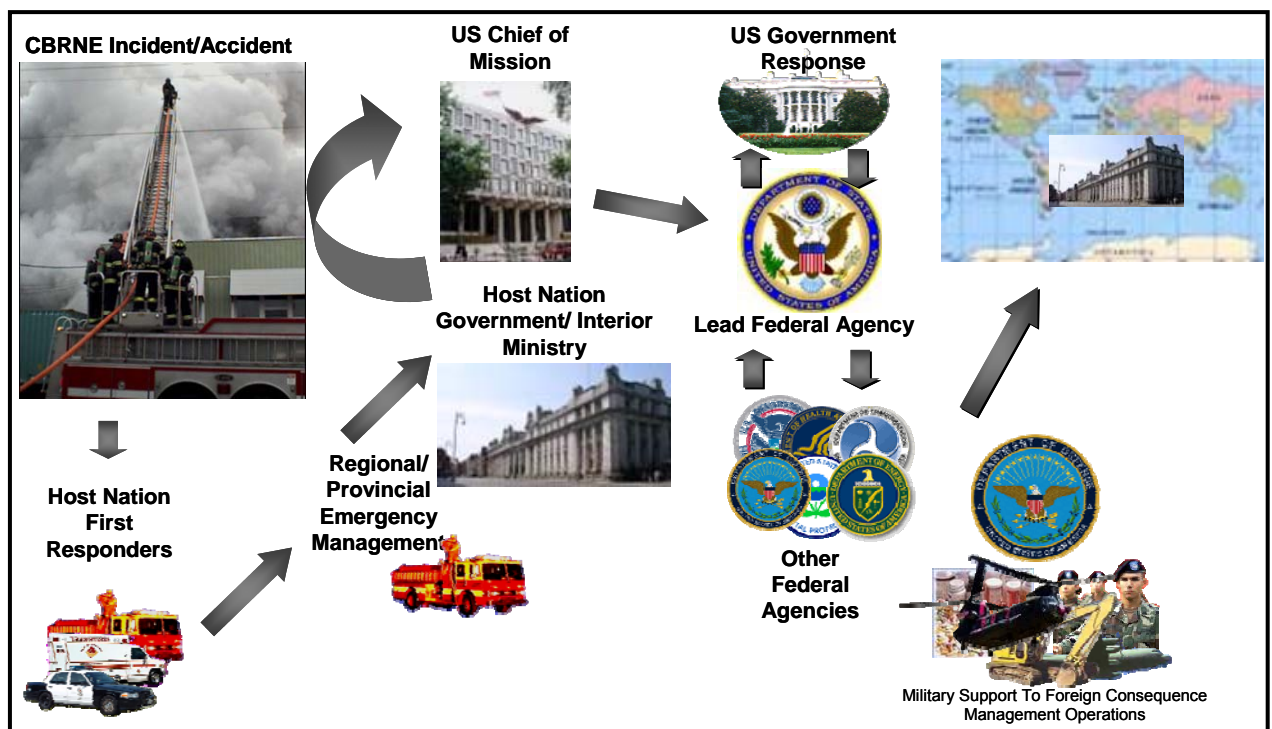


Figure 1-1. USG FCM Process

## Chapter Two - Military Support for Foreign Consequence Management

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**Table 2-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
Presidential Documents		
<a href="#">Exec. Order No. 12114, as amended</a>	Various Federal Agencies	Sets out responsibilities for consideration of the environmental effects of major Federal actions abroad
<a href="#">Exec. Order No. 12333, as amended</a>		Sets out responsibilities and procedures for intelligence activities
<a href="#">Exec. Order No. 12966</a>		Specifies conditions under which DoD may provide foreign disaster assistance
<a href="#">Exec. Order No. 13139</a>		States USG policy to provide military personnel with appropriate health protection during military operations
<a href="#">PDD 39</a>		States U.S. counterterrorism policy; designates DOS as Lead Federal Agency (LFA) for FCM with support roles for other Federal agencies
United States Code		
<a href="#">10 U.S.C. §§ 2341-2350, NATO Mutual Support Act</a>	DoD	Authorizes the Secretary of Defense to enter into acquisition and cross-servicing agreements
<a href="#">22 U.S.C. § 2151 et seq., Foreign Assistance Act</a>	Various Federal Agencies	Authorizes foreign humanitarian and disaster assistance of the U.S. Federal government
<a href="#">22 U.S.C. § 4801, et seq., Diplomatic Security Act</a>	Various Federal Agencies	Provides for security of USG personnel and government operations abroad
Code of Federal Regulations		
<a href="#">32 CFR 151</a>	DoD Components	Status of forces policy and information
Agency Directives/Instructions/Manuals		
<a href="#">Secretary of Defense Memorandum re: CBRNE – CM Responsibilities (4/2000)</a>	DoD Components	Assigns consequence management responsibilities within the DoD
<a href="#">Secretary of Defense Memorandum re: Civilian Oversight (5/2001)</a>		Assigns responsibilities for the civilian oversight of DoD combating terrorism and consequence management activities
<a href="#">DoDD 2000.12</a>		Outlines the DoD force protection and anti-terrorism program
<a href="#">DoDD 2010.8</a>		Provides DoD policy for logistic support for NATO countries
<a href="#">DoDD 2010.9</a>		Guidance on the authority provided to commanders under acquisition and cross-servicing agreements
<a href="#">DoDD 3025.1</a>		Policy for military support to civilian authorities
<a href="#">DoDD 3025.15</a>		Discusses military support to consequence management
<a href="#">DoDD 3150.5</a>		Provides procedures for responding to IND incidents
<a href="#">DoDD 5100.46</a>		Regulates DoD foreign disaster relief efforts
<a href="#">DoDD 5525.5</a>		Policy for military cooperation with law enforcement officials
<a href="#">DoDD 6050.7</a>		Internal procedures for addressing environmental effects of DoD actions abroad
<a href="#">DoDD 6200.2</a>		Outlines policy and regulations for use of investigational new drugs for treating DoD personnel
<a href="#">DoDD 6200.3</a>		Policy to protect installations, facilities, and personnel in the event of a public health emergency
<a href="#">DoDD 6205.3</a>		Policy, responsibilities, and procedures for immunization of DoD personnel against biological warfare agents
<a href="#">DoDD 6420.1</a>		Policy for organization and conduct of medical intelligence activities under the Armed Forces Medical Intelligence Center
<a href="#">DoDD 6490.2</a>		Policy and responsibilities for medical surveillance of deployed personnel
<a href="#">DoDI 2000.18</a>		CBRNE emergency response guidelines for DoD installations
<a href="#">DoDI 2000.21</a>		Policy and responsibilities for DoD support to USG FCM operations

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">DoDI 4715.8</a>		Addresses environmental remediation of DoD activities overseas
<a href="#">DoDI 6490.3</a>		Implementation and application of joint medical surveillance for deployments
<a href="#">DoD Manual 3150.8-M</a>		Policy and procedures for response to a nuclear accident
<a href="#">DoD Regulation 5240.1-R</a>		Procedures governing DoD intelligence activities that affect U.S. persons
<a href="#">Joint Pub. 1-02</a>		Dictionary of military and associated terms
<a href="#">Joint Pub. 3-07.5</a>		Joint tactics, techniques, and procedures for noncombatant evacuations
<a href="#">Joint Pub. 3-07.6</a>		Describes DoD tactics, techniques, and procedures for the provision of foreign humanitarian assistance
<a href="#">Joint Pub. 3-08</a>		Procedures and guidance for interagency coordination during joint operations
<a href="#">Joint Pub. 3-11</a>		Joint doctrine for operations in an NBC environment
<a href="#">Joint Pub. 3-16</a>		Joint procedures for multinational operations
<a href="#">Joint Pub. 3-40</a>		Joint doctrine for combating weapons of mass destruction
<a href="#">Joint Pub. 3-41</a>		Guidance for CBRNE consequence management
<a href="#">Joint Pub. 3-57</a>		Doctrine and procedures for civil-military operations
<a href="#">Joint Pub. 4-08</a>		Joint doctrine for logistical support for multilateral operations
<a href="#">Joint Pub. 5-0</a>		Joint doctrine and procedures for planning joint operations
<a href="#">MCM 0006-02</a>		Provides updates procedures from the CJCS for deployment health surveillance and readiness
<a href="#">CJCS CONPLAN 0400-96</a>		Joint Staff policy for the counterproliferation of weapons of mass destruction
<a href="#">CJCSI 2120.01</a>		Policies and procedures for activities in accordance with acquisition and cross-servicing agreements
<a href="#">CJCSI 3121.01B</a>		Provides the standing rules of engagement/rules for the use of force to the military services
<a href="#">CJCSI 3214.01B</a>		Instructions regarding military support to foreign consequence management
<a href="#">FM 3-11.21/MCRP 3-37.2C/NTTP 3-11.24/AFTTP (I) 3-2.37</a>		Multi-service tactics, techniques and procedures for NBC aspects of consequence management
<a href="#">FM 3-100.4/MCRP 4-11B</a>		Outlines environmental considerations for military operations
<a href="#">Air Force Manual 32-4004</a>		Procedures for responding to emergency operations
<a href="#">DA Pam 50-5</a>		Guidance for nuclear accident or incident response and assistance operations
<a href="#">DA Pam 50-6</a>		Guidance for chemical accident or incident response and assistance operations
<a href="#">MCRP 3-33B (coordinating draft)</a>		Guidance for foreign humanitarian assistance and consequence management operations
<a href="#">USAREUR Reg. 190-16</a>		Policy and procedures for installation access control for U.S. military installations
<a href="#">Joint DOS, DOE and DoD Memorandum of Understanding (MOU)</a>	DoD, DOE, DOS	Responsibilities and procedures for responding to malevolent nuclear threats outside U.S. territory and possessions
<a href="#">Joint Federal Bureau of Investigation, DOE and DoD Agreement</a>	DoD, DOE, FBI	Responsibilities and procedures for response to improvised nuclear device incidents
<a href="#">MOU Between DOS and the DoD</a>	DoD, DOS	Responsibilities for security of DoD elements and personnel in foreign areas
<b>Federal Plans and Strategies</b>		
<a href="#">National Security Strategy</a>	Various Federal Agencies	Lays out the administration strategy for the security of the United States

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">National Military Strategy of the United States</a>	DoD Components	Outlines the strategic direction of US military forces
<a href="#">NSPD 17/HSPD 4</a>	Various Federal Agencies	National strategy to combat WMD, including consequence management support to foreign countries
International Agreements/Arrangements		
<a href="#">TIAS 12666, NATO SOFA</a>	US and Other Parties	Status of forces agreement between the NATO countries
<a href="#">TIAS 12317</a>	US and Other Parties	Agreement between the US and Italy regarding use of installations and infrastructure by US forces in Italy
<a href="#">U.S. – Italy MOU Concerning the Use of Installations/Infrastructure in Italy by U.S. forces</a>	United States, Italy	Describes the overall use of installations/infrastructure in Italy by U.S. forces and provides a model technical agreement for us in negotiation provisions for specific installations
<a href="#">Acquisition and Cross Servicing Agreement (US-IT-02) between the DoD of the United States of America and the Italian Ministry of Defense</a>		Establishes basic terms, conditions, and procedures to facilitate the reciprocal provision of logistic support, supplies, and services

## 1. Introduction

Effective consequence management capabilities are vital to the mission of the U.S. Armed Forces. The *National Military Strategy of the United States* emphasizes the importance of these capabilities in the aftermath of a terrorist attack to mitigate the effects of the incident.<sup>1</sup> According to the *National Security Strategy of the United States*, countering the proliferation of weapons of mass destruction (WMD) must include:

. . . improved protection to mitigate the consequences of WMD use. We aim to convince our adversaries that they cannot achieve their goals with WMD, and thus deter and dissuade them from attempting to use or even acquire these weapons in the first place.<sup>2</sup>

As noted in **Chapter 1**, Department of Defense Instruction (DoDI) 2000.21, defines foreign consequence management (FCM) as “assistance provided by the U.S. Government (USG) to an HN (host nation) to mitigate the effects of a deliberate or inadvertent chemical, biological, radiological, nuclear, or high-yield explosive (CBRNE) attack or event and to restore essential operations and services.”<sup>3</sup> This recently released instruction, as well as Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3214.01B, *Military Support to Foreign Consequence Management Operations*, updates Department of Defense (DoD) foreign consequence management (FCM) guidance. Other FCM guidance is provided in the newly revised Joint Publication 3-41, *Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive Consequence Management*.<sup>4</sup> The U.S. legal authorities and some of the funding statutes for FCM assistance, including DoD response activities, are discussed at length in **Chapter 3**. Fiscal law and liability issues that can affect the DoD support for a FCM response are covered in **Chapter 4**.

## 2. Activating Military Support for FCM

DoD support to FCM operations primarily involves providing requested specialized assistance in response to a CBRNE incident abroad. There are several avenues for DoD FCM support:

1. In response to a request for assistance (RFA) from the HN that is sent through the Lead Federal Agency (LFA – the Department of State (DOS)) in the form of an Executive

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<sup>1</sup> Chairman of the Joint Chiefs of Staff (CJCS), *National Military Strategy of the United States of America*, 2004; see also CJCS Concept of Operation Plan (CONPLAN) 0400-96, *Counterproliferation of Weapons of Mass Destruction*, Sept. 2003 (Document is Classified).

<sup>2</sup> The White House, *National Security Strategy of the United States*, p. 18, Mar. 2006, available at <http://www.whitehouse.gov/nsc/nss/2006/>.

<sup>3</sup> Department of Defense Instruction (DoDI) 2000.21, *Foreign Consequence Management*, E2.1.4, Mar. 10, 2006.

<sup>4</sup> See also DoDD 5100.46, *Foreign Disaster Relief*, Dec. 4, 1975, providing DoD policy for responding to a “foreign disaster,” which includes both an act of nature and an act of man, making it applicable to a CBRNE event overseas.

Secretary memorandum and approved by the Secretary of Defense, discussed in **section 2.1** below.<sup>5</sup>

2. A proactive offer from the U.S. and/or as directed by the President, discussed in **section 2.2** below.<sup>6</sup>
3. Immediate response to save lives, which is discussed in detail in **section 2.3** of this chapter.<sup>7</sup>
4. Pursuant to commander's authority, *e.g.*: as needed to ensure the safety of his own personnel; pursuant to installation agreements with the Host Nation; or via acquisition and cross-servicing agreements (ACSAs), discussed in **section 2.4** of this chapter.

Generally, these types of FCM support fall into one of the different scenarios that would give rise to DoD forces providing FCM assistance noted in **Table 2-2**. Decision-makers should consider the various legal issues and authorities pertaining to the type of incident and support that may be provided by the military based on these different avenues and types of FCM activities.

Essential DoD FCM support and assistance services and activities may include: detection, identification, and survey; security; decontamination; medical services; urban search and rescue support; food, shelter, and water; and strategic lift. Support provided likely will vary with the type of event as noted in the **Table 2-2** below. After rendering support, military forces return to their previous military posture.<sup>8</sup>

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<sup>5</sup> A proactive U.S. offer of assistance to friends and allies in accordance with developing national Strategies or in response to an incident in which the USG is causative factor may also prompt DoD FCM support. Offering support, vice having support be requested, is unlikely to alter FCM operations within DoD.

<sup>6</sup> Exec. Order No. 12966, Foreign Disaster Assistance, Jul. 14, 1995. Specific DoD FCM actions under this circumstance will be dependent on the orders provided by the President.

<sup>7</sup> *Id.* See also, DoDI 2000.21, *supra* note 3. U.S. military commanders may respond as necessary to save lives when “imminently serious conditions resulting from any foreign emergency or attack require immediate action.”

<sup>8</sup> Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3214.01B, Military Support to Foreign Consequence Management, Mar. 31, 2006.

Table 2-2. DoD FCM Post-Event Assistance

Case	Type	Description	Possibilities
1	Immediate Response	Commander's immediate actions to save lives	Emergency services, medical assistance
2	Commander's authority	Commander's discretion to provide resources to his own personnel	Assessment teams, enhanced security, logistics support
3	Proactive U.S.G. offer by LFA	Offers of assistance to friends and allies IAW developing national strategies	Medical assistance, transportation, food/water
4	Host nation or LFA request	HN or LFA is overwhelmed or requires a specialized capability	Unique CBRN capabilities, transportation

## 2.1 Requests for Assistance and Presidential Direction

In most situations, DoD will provide support for FCM operations after a RFA from the affected nation has been forwarded by the State Department and approved by the Secretary of Defense. As described in **Chapter 1**, such assistance generally will be a component of an overall USG response coordinated by the State Department as the LFA.<sup>9</sup> DoD policy provides that FCM support should be limited to the short term and designed to bring the situation to a point where the HN and other agencies can fully manage the situation. CJCSI 3214.01B, *Military Support to Foreign Consequence Management*, applies to all DoD activities dealing with FCM operations.<sup>10</sup> Generally, all DoD FCM support in the affected country will first be coordinated with the U.S. Ambassador/Chief of Mission, with certain narrow exceptions such as immediate response (even in such circumstances, DOS concurrence should be sought as soon as possible).<sup>11</sup>

After receiving a HN request for USG assistance, DOS will determine if DoD support is needed, and if so, the request will be forwarded for approval by the Secretary of Defense.<sup>12</sup> The Chief of Mission (COM)<sup>13</sup> at the U.S. Embassy will coordinate with the HN and will forward HN RFAs via the State Department to DoD. The National Military Command Center (NMCC), which

<sup>9</sup> Exec. Order No. 12966, *supra* note 6.

<sup>10</sup> CJCSI 3214.01B, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> FM 3-11.21/MCRP 3-37.2C/NTTP 3-11.24/AFTTP (I) 3-2.37, Multi-Service Tactics Techniques and Procedures for Nuclear, Biological, and Chemical Aspects of Consequence Management, ch. 4, Section 4.b, Dec. 2001.

<sup>13</sup> The COM is usually the U.S. Ambassador, unless otherwise designated.

supports the planning and execution of joint operations, is responsible for communicating with non-DoD organizations to facilitate inter-service support and response to FCM incidents.<sup>14</sup>

As discussed in **Chapter 1**, a U.S. military representative may be a part of the Foreign Emergency Support Team (FEST) and/or Consequence Management Support Team (CMST) deployed to the pertinent U.S. Embassy.<sup>15</sup> In addition, the responsible combatant command (COCOM) will, in most instances, establish a method of liaising directly with the Emergency Action Committee (EAC) at the local U.S. Embassy, which can be done via the DoD representative on the FEST/CMST. Once a DoD response team has been deployed to an incident, that team will take direction from the DoD senior representative who will coordinate DoD activities in the pertinent country with the State Department as the LFA. Because the LFA coordinates the overall USG response, DOS also coordinates with non-DoD response agencies.

## 2.2 Proactive Offers of Assistance/Direction of the President

As previously noted, the President can direct that the USG make an offer of assistance after a FCM event and can also designate DoD as the LFA for a particular FCM incident.<sup>16</sup> The President is authorized to provide immediate military assistance to a foreign country or international organization pursuant to the Foreign Assistance Act if the emergency requirements cannot be met by any other law.<sup>17</sup> The President may, but is not required to, make a finding that the emergency actions are in the national interest of the United States, but the Congressional notification requirements of 22 U.S.C. § 2411 must be observed.<sup>18</sup> Even in such an instance, U.S. response forces should coordinate their actions closely with DOS and the U.S. Embassy.<sup>19</sup>

## 2.3 Immediate Response

As noted, when a foreign government requests FCM assistance, Executive Order 12966 authorizes the military to provide support with the concurrence of the Secretary of State. Additionally, in emergency situations where there is insufficient time to consult with DOS, military commanders may unilaterally provide assistance to save human lives.<sup>20</sup> Executive Order 12966, however, does not specify whether these provisions apply only to situations where a RFA is made, nor does it discuss jurisdictional questions such as if the incident occurs on or off a military installation. The provisions in DoD guidance for foreign disaster assistance allow a military commander at the immediate scene of a foreign disaster to provide “prompt relief

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<sup>14</sup> See CJCSI 3280.01A, National Military Command Center, Oct. 12, 2003, for additional information on NMCC (Document classified SECRET).

<sup>15</sup> DoDD 5100.46, *supra* note 4. See also Exec. Order No. 12966, *supra* note 6, which authorizes DoD to provide assistance at the direction of the President. See **Chapter 1** for a detailed discussion of the deployable teams.

<sup>16</sup> CJCSI 3214.01B, *supra* note 8.

<sup>17</sup> 22 U.S.C. § 2318(a)(1), (2005).

<sup>18</sup> *Id.* at § 2318(a)(1) permits the President to provide immediate military article, services, and education and training in an unforeseen emergency up to a maximum dollar amount of US\$100 million in a fiscal year. § 2318(a)(2) authorizes the President to render various forms of international disaster assistance, among other things, through any Federal agency upon certifying to Congress that it is in the national interest.

<sup>19</sup> 22 U.S.C. § 2318 (2005); nothing in this section indicates that the U.S. military would not have to continue to coordinate with the State Department during assistance efforts occurring under this authority. See also, P.B. Collins, Combined Support Force 536 Staff Judge Advocate After Action Report 5800/17, for descriptions of DoD coordination with DOS in USG response to the December 2004 tsunami [hereinafter Tsunami AAR].

<sup>20</sup> Exec. Order No. 12966, *supra* note 6.

operations when time is of the essence and when humanitarian considerations make it advisable to do so.” The commander is required to report at once the action taken and request guidance in accordance with the provisions of the directive.<sup>21</sup>

The DoD definition of immediate response states:

...when imminently serious conditions resulting from any foreign emergency or attack require immediate action, military commanders may respond as may be necessary to save lives. When such compelling conditions exist and time does not permit prior approval from higher headquarters, commanders or officials acting under this ‘immediate response authority’ may take necessary action to respond according to E.O. 12966.<sup>22</sup>

In noting that local military commanders can take action to save lives in cases of “imminently serious conditions” that result from “any foreign emergency or attack,” DoDI 2000.21 appears to authorize the use of immediate response authority outside military installations overseas. CJCSI 3214.01B also apparently does so by, *e.g.*, referring to “requests from authorities” in authorizing immediate response by U.S. military forces in FCM situations. Accordingly, should time constraints inhibit the ability of military commanders to secure approval from DOS and their higher headquarters, they may respond under their immediate response authority to a FCM RFA from local authorities prior to obtaining such approval. They then must “advise higher headquarters [of the immediate response actions taken] by the most expeditious means available, and seek approval or additional authorizations [e.g., notify the State Department] as needed.”<sup>23</sup>

In dealing with the effects of an FCM response on a military installation, it appears that DoD Instruction 2000.18 expands immediate response authority on a DoD installation overseas beyond saving lives to also include preventing human suffering and mitigating great property damage.<sup>24</sup> However, it is clear that, except for situations limited to a DoD installation overseas, immediate response is only allowed when such is required to save lives after an FCM event.<sup>25</sup>

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<sup>21</sup> DoDD 5100.46, *supra* note 4.

<sup>22</sup> DoDI 2000.21, *supra* note 3.

<sup>23</sup> CJCSI 3214.01B, *supra* note 8.

<sup>24</sup> DoDI 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear and High-Yield Explosive Emergency Response Guidelines, E2.1.18, Dec. 4, 2002. This instruction notes that it applies to events on U.S. installations worldwide.

<sup>25</sup> It is worth noting that military commanders may utilize their immediate response authority off the installation in domestic situations to do more than save lives. Under DoD Directive 3025.1, Military Support to Civil Authorities, Jan. 15, 1993, and Joint Publication 3-07.7, Domestic Support Operations, Jul. 1, 1993, commanders may take immediate response actions to “save lives, prevent human suffering, or mitigate great property damage.” The narrower approach for non-domestic situations may reflect considerations regarding the basis under international law for immediate response and host nation laws that could affect immediate response actions on foreign territory. Legal advisors should carefully consider the authority for immediate response and HN legal implications under the specific circumstances that apply. For example, various foreign nations have complex legal approaches to the duties and liabilities that may attach when an individual engages in “Good Samaritan” types of activities. *See, e.g.*, Jan M. Smits, “The Good Samaritan in European Private Law -- The Perils of Principles without a Programme and a Programme for the Future, May 2000, available at <http://arno.unimaas.nl/show.cgi?fid=3773>



In addition, DoDI 2000.14 states that actions taken to combat terrorism in foreign nations must comply with Status of Forces Agreements (SOFA) and any additional agreements. DoDI 2000.14 also reinforces that the immediate response activities are the lone exceptions to the requirement that any DoD FCM response activities need to be first coordinated with the State Department:

All reactions to incidents of a political nature (*e.g.*, terrorist acts against U.S. assets) in foreign countries, except those where the immediate application of force by local security forces is warranted and can terminate the incident, will be coordinated with the U.S. Embassy and the host nation, as appropriate.<sup>26</sup>

Even when it appears justified, there are additional restrictions that can affect the support the U.S. military can provide under immediate response authority, such as how long immediate response activities can be conducted. No limits have been set *a priori* on the duration of immediate response because each situation will be fact-specific, but it is reasonable to assume that such operations are expected to be short-lived.<sup>27</sup> Other issues include the ability of COCOMs to plan for immediate response operations, in particular regarding forward deploying assets. Recent guidance seems to address this issue, providing that:

When it appears the HN will request or accept FCM assistance from the USG, and it appears that the Department of Defense will be requested and authorized to provide any of the assistance, Geographic Combatant Commanders (GCCs) shall undertake planning efforts to ensure the rapid execution of time-sensitive mitigation efforts as part of USG FCM operations.<sup>28</sup>

Additionally, while the U.S. military may utilize operations and maintenance (“O&M”) funds to provide supplies and pay for support to foreign governments or militaries in an immediate response/emergency situation, reimbursement of funds used for actions taken under a commander’s immediate response authority is not guaranteed.<sup>29</sup>

Given the above constraints and requirements regarding the use of immediate response authority in FCM situations, caution should be exercised and immediate response only used when the host nation is incapable of doing what is needed to avoid the loss of life. “Commanders must exercise extreme caution if electing to deploy under the auspices of an immediate response;’ and should

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<sup>26</sup> Department of Defense Instruction (DoDI) 2000.14, DoD Combating Terrorism Program Procedures, Jun. 15, 1994.

<sup>27</sup> Response to a biological attack may require a longer term commitment of USG resources depending on the consequence management activities necessary to control, treat, and/or eradicate the impacts of the biological agent.

<sup>28</sup> DoDI 2000.21, *supra* note 3.

<sup>29</sup> Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, Aug. 15, 2001. Such O & M funds are generally not available for a long-term relief effort. Overseas Humanitarian, Disaster and Civic Aid (OHDACA) funding, which can be supplemented by Congress as needed, would most likely provide the money needed for DoD FCM activities of any duration. *See* Fiscal Year 2005 Budget Estimates, Overseas Humanitarian, Disaster, and Civic Aid, DoD Security Cooperation Agency, Feb. 2004, for a brief description of the purposes of OHDACA funding for DoD, *available at* [http://www.defenselink.mil/comptroller/defbudget/fy2005/budget\\_justification/pdfs/operation/Volume\\_1\\_-\\_DW\\_Justification/OHDACA\\_FY05\\_PB.pdf](http://www.defenselink.mil/comptroller/defbudget/fy2005/budget_justification/pdfs/operation/Volume_1_-_DW_Justification/OHDACA_FY05_PB.pdf)

‘Ensure that immediate-response deployment authority is used as a last resort.’<sup>30</sup> Likewise, legal advisors should carefully consider all the restrictions on immediate response in the FCM context in advising military commanders who are contemplating taking immediate response actions.

## 2.4 Logistics Support and Acquisition and Cross-Servicing Agreements (ACSA) and Installation Agreements

Logistics support provided by U.S. military installations abroad to their respective HN can greatly benefit HN response efforts to a CBRNE incident. Logistical support arrangements or ACSAs may allow the U.S. military to provide FCM logistics support, supplies, and services<sup>31</sup> to the HN’s military.<sup>32</sup> This is generally done on a reimbursement basis, without the need for a formal RFA or direct involvement of the State Department, presenting a flexible alternative in providing FCM logistics support. DoD should nevertheless always apprise DOS regarding assistance provided to a HN pursuant to an ACSA after a CBRNE event to avoid duplication of efforts, etc.

Title 10 of the U.S. Code authorizes DoD to acquire and provide logistics support, supplies, and services, *e.g.*, food, fuel, transportation, ammunition, equipment, and technical assistance, from/to eligible foreign entities on a reimbursable basis.<sup>33</sup> Under this authority, the U.S. military is party to numerous ACSAs, and these agreements may provide a mechanism to assist a HN requesting FCM support.<sup>34</sup>

DoD policy for ACSAs, found in DoD Directive 2010.9, provides the requirements, restrictions, and responsibilities for entering into an acquisition or transfer of support supplies or services

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<sup>30</sup> FM 3-11.21/MCRP 3-37.2C/NTTP 3-11.24/AFTTP (I) 3-2.37, Multi-Service Tactics Techniques and Procedures for Nuclear, Biological, and Chemical Aspects of Consequence Management, ch. 4, Section 4.b, Dec. 2001.

<sup>31</sup> CJCSI 2120.01, Acquisition and Cross-Servicing Agreements, Apr. 28, 2004. CJCSI 2120.01 provides specific policy guidance to the COCOMs and Defense agencies for the use of ACSAs. Under the cross-servicing authority, the Secretary of Defense may enter into a “cross-servicing agreement with authorized countries and IOs for the reciprocal provision of LSSS [logistics support, supplies, and services] with the military forces of that country or international organization.”

<sup>32</sup> ACSA can be used “for unforeseen circumstances or exigencies in which one of the Parties may have a need of logistic support, supplies, and services...” CJCSI 2120.01, *supra* note 31. DoDD 2010.9 and CJCSI 2120.01 provide guidance to DoD components regarding the implementation of ACSAs. Those who may place or accept orders will vary from agreement to agreement and are listed in the given ACSA, which includes their contact information. Those individuals should be contacted with any questions on how to get ACSA support. As of 2003, the United States currently has about 76 ACSAs in place with countries and IOs nationwide. International Armaments Cooperation Handbook, Nov. 8, 2004; available online at <http://www.acq.osd.mil/ic/iac%20handbook%202004.pdf>

Acquisition and Cross-Servicing Agreements (ACSAs) Frequently Asked Questions may be found online at [http://www.acq.osd.mil/dpap\\_archive/Docs/FAQs%20--%20ASCA%20International.doc](http://www.acq.osd.mil/dpap_archive/Docs/FAQs%20--%20ASCA%20International.doc)

<sup>33</sup> Cooperative Agreements with NATO Allies and Other Countries, 10 U.S.C. § 2341-2350, (2005).

<sup>34</sup> Coordination between the DoD and DOS is necessary in order to enter into a cross-servicing agreement to conclude reciprocal agreements with foreign countries and regional and international organizations for the provision of logistics, support, supplies and services.

agreement with approved nations or organizations.<sup>35</sup> DoD Directive 2010.8 provides specific DoD policy regarding ACSA logistical support for NATO countries.<sup>36</sup>

The Secretary of Defense usually delegates to the Combatant Commander the authority to negotiate such agreements, which “are used for contingencies, peacekeeping operations, unforeseen emergencies, or exercises to correct logistic deficiencies that cannot be adequately corrected by national means.”<sup>37</sup> The support received or provided is reimbursed pursuant to the terms of the pertinent ACSA.<sup>38</sup> For example, the ACSA between the DoD and Italian Ministry of Defense applies to the “reciprocal provision of logistic support, supplies, and services between the military forces of one Party by the other Party in return for either cash payment or the reciprocal provision of logistic support, supplies, and services to the military forces of the other Party.”<sup>39</sup>

ACSA program commencement requires two documents to be completed prior to services being delivered. The first of these is the actual ACSA agreement setting out “the principles and provisions for effecting required support, but [which does] not bind either party to any particular monetary value or number of transactions.”<sup>40</sup> Included within the ACSA agreement is an Implementing Arrangement (IA) that outlines billing procedures and identifies Points of Contact (POCs) for all parties, but which also does not financially commit either party. The second required document is an Order or Support Request document which is a financially binding form determined by the ACSA agreement and/or IA.<sup>41</sup>

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<sup>35</sup> DoDD 2010.9, Acquisition and Cross-Servicing Agreements, Apr. 28, 2003. *See also* CJCSI 2120.01, *supra* note 31 (defining LSSS). Restrictions on the type of support that may be provided under an ACSA generally focus on equipment, such as weapons systems or arms that are controlled by U.S. export laws.

<sup>36</sup> DoD Directive 2010.8 states that while “each nation is responsible for the logistic support of its own forces, the United States encourages mutual provision of such support among NATO nations.” DoDD 2010.8, Department of Defense Policy for NATO Logistics, Dec. 12, 1986. Mutual logistics support includes cross-servicing agreements, as discussed above, cooperative logistics, HN support, and combined logistics support. In addition, the 1980 NATO Mutual Support Act (NMSA) allows the Secretary of Defense to negotiate with NATO members on issues dealing with logistical support and materials. Since its inception, NMSA “has since been amended...to include: adding eligibility for non-NATO nationals and international organizations; removing geographic restriction to allow worldwide use; ...waiving dollar ceilings for humanitarian or disaster assistance operations.” NMSA may be useful during FCM operations when arranging for the quick transfer of supplies and equipment to a disaster area.

<sup>37</sup> Joint Pub. 1-02, Department of Defense Dictionary of Military and Associated Terms, Apr. 12, 2001..

<sup>38</sup> ACSA programs allow the U.S. military to provide assistance to an ACSA HN military recipient provided that one of three possible reciprocal arrangements is in place: cash reimbursement, replacement in kind (RIK), or exchange of equal value (EVE). Joint Pub. 4-08, Joint Doctrine for Logistic Support of Multinational Operations, Sep. 25, 2002. It is important to note that a, “... transaction not repaid using RIK or EVE reverts to a cash-only basis after a year. A year may seem a significant lead time, but it is reasonable for contingency support where a provision of spare parts one day may not be repaid with security services, for example, until four months later.” R . Hayden Hurst, *Acquisition and Cross Servicing Agreements: The First Words in International Logistics Support*, Jan.-Feb. 2005, *available at* [http://www.dau.mil/pubs/dam/01\\_02\\_2005/hurst-jf05.pdf](http://www.dau.mil/pubs/dam/01_02_2005/hurst-jf05.pdf).

<sup>39</sup> Acquisition and Cross Servicing Agreement (US-IT-02) between the Department of Defense of the United States of America and the Italian Ministry of Defense, Apr. 15, 2001.

<sup>40</sup> International Armaments Cooperation Handbook, November 8, 2004; *available at* <http://www.acq.osd.mil/ic/iac%20handbook%202004.pdf>

<sup>41</sup> *Id*

DoD Directive 2010.8 notes the importance of HN support in ACSAs with NATO countries, to help ensure the “flow of materiel to support deployed forces in emergency agreements, follow-on arrangements and joint planning for logistics lines of communication.” Other areas that these agreements address include: intra-theater transportation; materiel handling; equipment decontamination services; communication services and equipment; medical services and equipment, all of which may impact FCM operations.

The United States may find itself providing FCM assistance through another mechanism – installation-level mutual assistance agreements. DoD policy encourages the use of such agreements to help ensure the safety and security of military personnel and their families who work and often live on military installations.<sup>42</sup> U.S. military components based overseas often have mutual assistance agreements in place with local governments of the HN that address a variety of areas. These memoranda of agreement (MOA) or memoranda of understanding (MOU) may provide avenues for U.S. forces and to provide some basic assistance to HN entities in a FCM event without a formal request for assistance from the national government through the U.S. Embassy/DOS. For example, a request may be submitted under such a MOU/MOA to an installation commander from the HN’s state-level government, *e.g.*, a *Länder* in Germany, which is a fairly autonomous entity that may not want to submit such requests through the German Foreign Ministry to the U.S. State Department. In addition, because of close working relationships built over many years, a local or regional government entity may request FCM assistance directly from a local U.S. installation commander instead of the Chief of Mission or DOS. In determining whether and how to provide the requested assistance through such local level agreements, or if the appropriate response is to refer the requestor to the U.S. Embassy, military commanders should consult with their legal advisors in considering such issues as:

- the risk to human life;
- the need for a coordinated U.S. response;
- DOS’s role in coordinating that response as the LFA;
- funding issues; and
- the extent of the commander’s authority to independently provide support pursuant to the agreement.

**Section 4** of this chapter also discusses installation-level mutual assistance agreements.

### **3. DoD Response Operations, Requirements and Capabilities**

While there may be several ways in which DoD support to FCM operations may be initiated, similar factors obtain in each instance of FCM response. For instance, in a CBRNE setting, planners and responders must take into account the type of incident, environmental concerns, use of force, intelligence requirements, and requirements for force protection. The sections below explore these areas.

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<sup>42</sup> DoDI 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear and High-Yield Explosive Emergency Response Guidelines, Enclosure 2, Section 2.1.2.1., and Enclosure 3, Sections 3.2.3.6. – 8. Dec. 4, 2002,

### 3.1 Responsible DoD Organizations

As detailed in the *USG Foreign Consequence Management Response Overview* discussion in **Chapter 1**, U.S. military FCM response, aside from an immediate response, will include five phases: 1) assessment and preparation; 2) deployment; 3) assistance to HN authorities; 4) transition to HN or other agencies; and 5) redeployment. Principal actors in DoD FCM response are: the Assistant Secretary of Defense, Global Security Affairs (ASD(GSA));<sup>43</sup> the Chairman of the Joint Chiefs of Staff; the Secretaries of the Military Departments; the geographic combatant commanders; the Commanders, U.S. Strategic Command (USSTRATCOM) and U.S. Joint Forces Command (USJFCOM); and the Director of the Defense Threat Reduction Agency. **Figure 2-1**<sup>44</sup> depicts the DoD FCM process and includes various elements of DoD response resources, which are described in **Appendix B**.

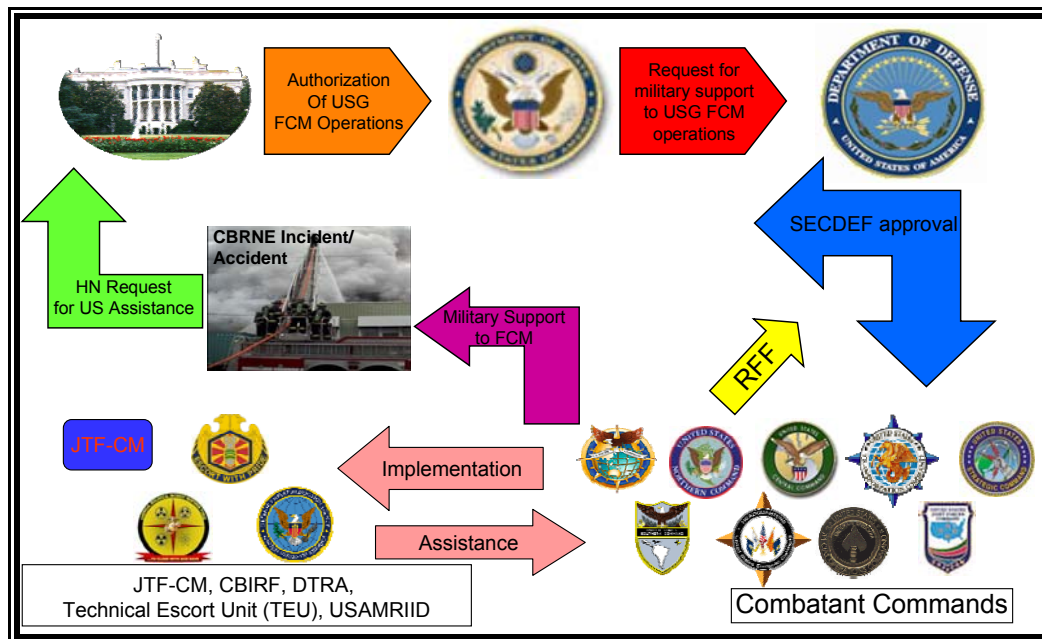


Figure 2-1. DoD FCM Process

DoD Directive 5100.46 assigns responsibilities within DoD for carrying out foreign disaster assistance. While DoDD 5100.46 assigns the Assistant Secretary of Defense, International Security Affairs (ASD(ISA)) responsibility for determining what action the DoD will take in

<sup>43</sup> DoD reorganization originally transferred responsibilities for FCM from the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC)) to the Office of the Assistant Secretary of Defense for International Security Policy (ASD(ISP)). Principal Deputy Under Secretary of Defense Memorandum, "Policy Functions Consolidation," Apr. 3, 2006. This change is reflected in Joint Pub. 3-41, Chemical, Biological, Radiological, Nuclear and High-Yield Explosives Consequence Management, 2 October 2006, Chapter III, Section 2.c. p. III-3. However, the DoD reorganization in December 2006 disestablished ASD(ISP), and created the Office of the Assistant Secretary of Defense for Global Security Affairs (ASD(GSA)). Under Secretary of Defense for Policy Info Memo, "Reorganization of the Office of the Under Secretary of Defense for Policy (OUSD(P))," Dec. 13, 2006.

<sup>44</sup> Presentation, Office of the Assistant Secretary of Defense, Special Operations/Low-Intensity Conflict, *Foreign Consequence Management*, Aug. 16, 2005 [hereinafter SO/LIC Presentation].

response to a State Department request for support for “foreign disaster assistance” in general (to include riot, violence, civil strife, explosion, fire, or an epidemic),<sup>45</sup> ASD(GSA) has recently been designated the lead office for DoD foreign consequence management operations.<sup>46</sup>

Each COCOM is tasked to develop FCM plans for their area of responsibility.<sup>47</sup> DoD regulations and directives require that commanders preparing to respond to an FCM event consider the following factors in assessing whether to provide support: legality, lethality, risk, readiness, appropriateness, and cost.<sup>48</sup> Ongoing U.S. military operations will take precedence over FCM operations. U.S. military forces providing any type of response must also develop a definitive scope of the assistance required in order to help avoid the phenomenon described by the U.S. military as *mission creep*. DoD doctrine emphasizes the U.S. military role in FCM operations is to *assist* the efforts of the HN responding entities.<sup>49</sup> Often, military sources of assistance are viewed as a vast supply of relief, and this can affect not only the efforts of the HN, but also the ability of the assisting parties to transition the situation to the HN authorities and to avoid unauthorized or unnecessary financial burdens. Provision of USG, and specifically DoD, assistance is not intended to diminish the HN government’s responsibilities for mitigating the effects of a CBRNE incident. Additionally, since there is no command relationship between the USG, UN agencies, NGOs, IOs, HN elements, and allied or coalition governments, clearly defined roles and relationships will help avoid infringements on sovereignty and other jurisdictional issues including law enforcement coordination, such as criminal investigations, handling of civilian detainees and preservation of evidence.

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<sup>45</sup> Joint Pub. 1-02, *supra* note 37, (defining “foreign disaster”).

<sup>46</sup> While DoDI 2000.21, which provides DoD policy for those foreign disaster response operations that are categorized as “consequence management,” designates ASD(SO/LIC) as the lead DoD office for many FCM responsibilities, as noted, ASD(GSA) has been assigned FCM oversight pursuant to recent DoD reorganizations. *See supra* note 43, referencing recent DoD organizational changes related to FCM responsibilities.

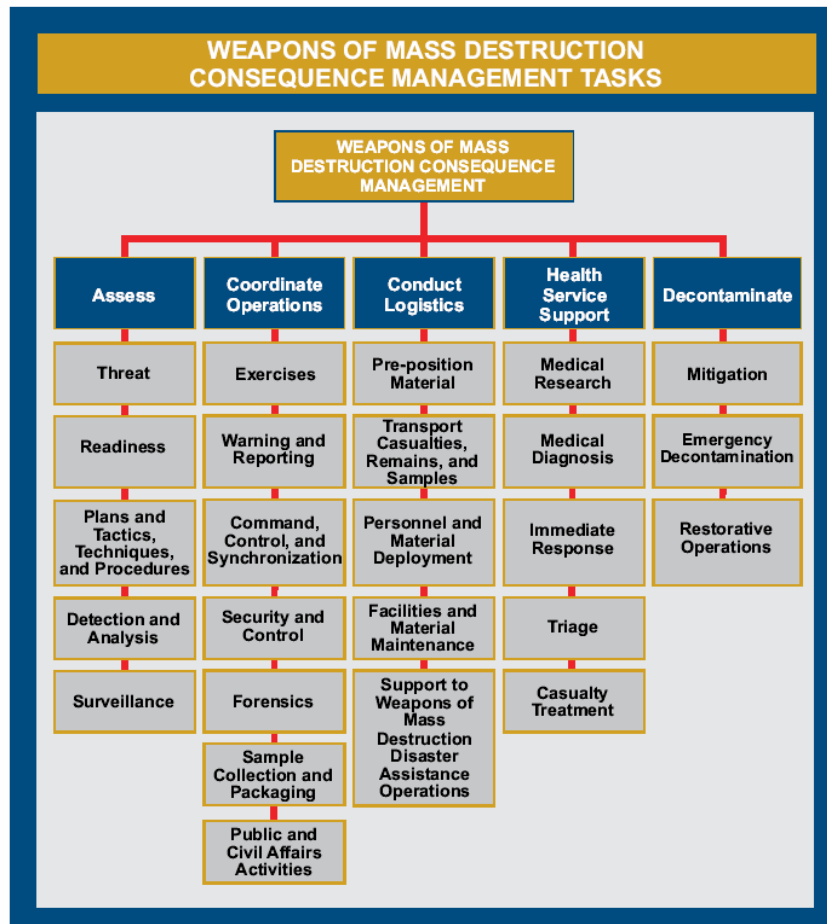
<sup>47</sup> DoDI 2000.21, *supra* note 3. *See also* CJCSI 3214.01B, *supra* note 8.

<sup>48</sup> SO/LIC Presentation, *supra* note 44.

<sup>49</sup> Joint Pub. 3-40, Joint Doctrine for Combating Weapons of Mass Destruction, Jul. 8, 2004.

The DoD Joint Publication (Joint Pub. 3-07.6) addressing foreign humanitarian assistance (FHA) covers laws, policy, roles, responsibilities, and interagency coordination for providing humanitarian assistance to “relieve or reduce the results of natural or manmade disasters or other endemic conditions.”<sup>50</sup> This publication states: “FHA provided by U.S. forces is generally limited in scope and duration. The assistance is designed to supplement or complement the efforts of the HN civil authorities or agencies that have primary responsibility.” It goes on to provide specific procedures for training, planning, response, and coordination for assistance. Joint Publication 3-40 sets forth the principles to “plan for and conduct operations for combating

Figure 2-2. WMD CM Tasks



WMD and their means of delivery” and “provides guidance on joint and multinational operations and interagency coordination” in response to such events.<sup>51</sup> Joint Pub. 3-07.6 also assigns “framework tasks” to the U.S. military, which include “Assess, Coordinate Operations, Conduct Logistics, Health Service Support, and Decontaminate.” **Figure 2-2** outlines the activities that comprise each of these tasks.<sup>52</sup> Additional joint doctrine, discussed further in later chapters, addresses interagency coordination, operations in nuclear, biological and chemical (NBC) environments, multinational operations, and civil-military operations.<sup>53</sup>

<sup>50</sup> Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, ch. IV, Section 16b, Aug. 15, 2001.

<sup>51</sup> Joint Pub. 3-40, *supra* note 49. *See also* Joint Pub. 3-11, Joint Doctrine for Operations in Nuclear, Biological, and Chemical (NBC) Environments, Jul. 11, 2000; Joint Pub. 3-16, Joint Doctrine for Multinational Operations, Apr. 5, 2000.

<sup>52</sup> Joint Pub. 3-40, *supra* note 49.

<sup>53</sup> Joint Pub. 3-08, Interagency Coordination during Joint Operations (Vols I and II), Oct. 9, 1996; Joint Pub. 3-11, Joint Doctrine for Operations in Nuclear, Biological, and Chemical (NBC) Environments, Jul. 11, 2000; Joint Pub. 3-16, Joint Doctrine for Multinational Operations, Apr. 5, 2000; Joint Pub. 3-57, Joint Doctrine for Civil-Military Operations, Feb. 8, 2001. *See also* Joint Pub. 3-07.5, JTTP for Noncombatant Evacuation Procedures, Sept. 30, 1997; Joint Pub. 5-0, Doctrine for Planning Joint Operations, Apr. 13, 1995.

In accordance with the overarching guidance provided by DoD, each branch of the U.S. Military Service has issued regulations providing procedures for response to CBRNE events. These regulations range from publications dictating joint tactics, techniques, and procedures (JTTP) for operations and COCOM regulations, to guidance specific to each military branch.<sup>54</sup>

### 3.2 Incident-Specific Authorities

High-level DoD guidance sets out responsibilities and assistance procedures for certain types of CBRNE incidents. In addition, DoD and the Services have promulgated incident-specific operational tactics, techniques, and procedures. In general, however, procedures and responsibilities for responding to CBRNE incidents on foreign territory are consistent with the overarching DoD FCM guidance set forth in DoDI 2000.21 and CJCSI 3214.01B. These publications also reiterate that DOS generally will coordinate the USG response to FCM incidents.

DoD Directive 3150.5, *DoD Response to Improvised Nuclear Device (IND) Incidents*, implements the “Joint Department of State, Department of Energy and DoD Memorandum of Understanding for Responding to Malevolent Nuclear Threats Outside U.S. Territory and Possessions,” that lays out procedures for response to IND incidents.<sup>55</sup> The directive appoints ASD(ISA) as the DoD Executive Agent for IND response policy and to provide guidance to the military Services and DoD Agencies.

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<sup>54</sup> See, e.g., MCRP 3-33B, Foreign Humanitarian Assistance and Consequence Management Operations, Coordinating Draft, Jun. 14, 2000; Air Force Manual 32-4004, Emergency Response Operations, Dec. 1, 1995; Air Force Manual 32-4013, Hazardous Material Emergency Planning and Response Guide, Aug. 1, 1997; Army Reg. 40-13, Medical Support – Nuclear/Chemical Accidents and Incidents, Feb. 1, 1985; DA Pamphlet 50-5, Nuclear Accident or Incident Response and Assistance (NAIRA) Operations, Mar. 20, 2002; DA Pamphlet 50-6, Chemical Accident or Incident Response and Assistance (CAIRA) Operations, Mar. 26, 2003.

<sup>55</sup> See “Joint Department of State, Department of Energy and DoD Memorandum of Understanding for Responding to Malevolent Nuclear Threats Outside U.S. Territory and Possessions,” Jan. 28, 1982; “Joint Federal Bureau of Investigation, Department of Energy and Department of Defense Agreement for Response to Improvised Nuclear Device Incidents,” Feb. 27, 1980.



U.S. nuclear weapons accidents<sup>56</sup> or incidents<sup>57</sup> in foreign territory may also raise FCM considerations. DoD Manual 3150.8-M, *Nuclear Weapons Accident Response Procedures (NARP)*, currently under revision, provides guidance regarding nuclear weapons accident response activities both domestically and outside the continental United States. Nuclear weapons accidents and incidents overseas will need to be handled in close coordination with the HN. Often, bilateral agreements may be in place outlining response procedures.<sup>58</sup> Additionally, while DoD resources may make up the bulk of the response at the accident site, the HN has primary responsibility for responding to the accident or incident and the DOS will serve as the LFA for coordinating the U.S. response. Therefore, while the current NARP manual outlines five phases of the U.S. response to a nuclear weapons accident/incident overseas, the HN is responsible for managing the overall response. Consequently, DoD components must work closely with DOS and U.S. Embassy in planning and executing U.S. nuclear weapons accident response operations in close coordination with the HN.

Various joint publications and Service-level manuals and regulations provide commanders with specific guidance on operational planning and tactics, such as medical support, logistics, training, and specific protective measures for troops in nuclear, chemical or biological environments.<sup>59</sup> Joint and Service publications do not alter the FCM request for assistance process or responsibilities as laid out in DoD directives and instructions and Joint Staff instructions. For instance, Army Field Manual 8-10-7 addresses medical support to NBC incidents and provides planning considerations for command and control of health service support, including patient estimates, availability of support, etc. This regulation also addresses management of contaminated facilities and describes the different levels of health service support that may be

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<sup>56</sup> DoD Nuclear Weapon Accident Response Procedures (NARP) Manual defines a Nuclear Weapons Accident as:  
An unexpected event involving nuclear weapons or radiological nuclear weapon components that results in an unauthorized launching, firing, or use by U.S. forces or U.S. supported allied forces; nuclear detonation; non-nuclear detonation or burning of nuclear weapon or radiological component; radioactive contamination; seizure, theft, loss or destruction of a nuclear weapons or radiological component; public hazard.

DoD Manual 3150.8-M, *Nuclear Weapon Accident Response Procedures (NARP) Manual*, Section E2.1.3, Feb. 22, 2005 (currently under review by the Nuclear Weapons Accident Response Steering Group).

<sup>57</sup> DoD Manual 3150.8-M defines a Nuclear Weapon Incident as:

An unexpected event involving a nuclear weapon, facility, or component resulting in any of the following, but not constituting a nuclear weapon(s) accident: An increase in the possibility of explosion or radioactive contamination; Errors committed in assembling, testing, loading, or transporting equipment or the malfunctioning of equipment and materiel which might lead to an unintentional operation of all or part of the weapon arming or firing sequence which, in turn, might lead to a substantial change in yield, or increased dud probability; Any act of God, unfavorable environment, or condition resulting in damage to the weapon, facility, or component.

*Id.* at Section E2.1.4

<sup>58</sup> One example of this is the newly formalized Netherlands – U.S. Standard Operations Group (NUSOG). NUSOG was formalized in August 2005 for the purpose of facilitating appropriate coordination of response efforts in the event of an accident or incident on Netherlands territory involving a U.S. nuclear weapon.

<sup>59</sup> See Joint Pub. 3-11, *Joint Doctrine for Operations in Nuclear, Biological, and Chemical (NBC) Environments*, Jul. 11, 2000; Joint Pub. 3-41, *Chemical, Biological, Radiological, Nuclear, and High Yield Explosive Consequence Management*, Oct. 2, 2006; Army Field Manual 8-10-7, *Health Service Support in a Nuclear Biological or Chemical Environment*, Oct. 2002; Army Reg. 40-13, *Medical Support – Nuclear/Chemical Accidents and Incidents*, Feb. 1, 1985; Department of the Army (DA) Pamphlet 50-6, *Chemical Accident or Incident Response and Assistance (CAIRA) Operations*, Mar. 26, 2003.

necessary depending on the extent of the incident.<sup>60</sup> Army Regulation 40-13 outlines the mission of the Emergency Medical Team (EMT), which provides both medical treatment and evacuations assistance for a nuclear or chemical incident/accident. It includes provisions for EMT training, clothing and equipment, and assigns their operational control.<sup>61</sup> Other pertinent doctrine for military operations in chemical and biological environments relates more closely to force protection and is discussed in **section 3.5** below.

### 3.3 Environmental Concerns

Generally, Executive Order 12114 requires every Federal agency to develop and implement procedures for considering the environmental effects abroad of their actions. Unless an exception applies, DoD forces must develop environmental impact statements, environmental studies and reviews of environmental issues for major USG actions outside the United States, including in the global commons.<sup>62</sup> In most instances where the United States is providing assistance in response to a request from a foreign government, either the disaster and emergency relief actions<sup>63</sup> or the “participating nation” exceptions will apply. As such, no further action would be required under the DoDD 6050.7 or other regulations implementing Executive Order 12114.<sup>64</sup> Other exceptions may also apply *e.g.*, the national security exception set out in DoDD 6050.7, Enclosure 2, section E2.3.3.1.4. However, some of these exemptions require the military leader take an affirmative step to gain a variance from the formal documentation requirements.<sup>65</sup>

While most, if not all, DoD FCM operations would appear to qualify for an exemption/exception, legal advisors to the commander of such forces should review the pertinent executive order, regulations and directives to ensure no environmental legal issues distract from mission execution.<sup>66</sup> **Chapter 5** highlights bilateral and international agreements that also may

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<sup>60</sup> Army Field Manual 8-10-7, *supra* note 59.

<sup>61</sup> Army Reg. 40-13, *supra* note 59.

<sup>62</sup> Exec. Order No. 12114, Environmental Effects Abroad of Major Federal Actions, Jan. 4, 1979.

<sup>63</sup> DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, Enclosure 2, Section E.2.3.3.1., Mar. 5, 2004,

<sup>64</sup> Grimes, Maj. Derek I., Rawcliffe, Maj. John, Smith, Cpt. Jeannine, Operational Law Handbook, Judge Advocate General’s School, International and Operational Law Dept., at ch. 10, p. 229, (2006), *available at* [http://www.au.af.mil/au/awc/awcgate/law/oplaw\\_hdbk.pdf](http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf). *See also*, DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, Mar. 5, 2004. For example, under the participating nation exception, the unified commander may simply approve the operation plan that integrates the exception into its environmental consideration appendix.

<sup>65</sup> *Id.*, at ch. 10, p. 228.

<sup>66</sup> DoDI 4715.8, Environmental Remediation for DoD Activities Overseas, para. 2.1, Feb. 2, 1998. FM 3-100.4, Environmental Considerations in Military Operations, Jun. 15, 2000. For example, DoDI 4715.8 addresses environmental remediation of DoD activities overseas and provides policy and procedures for DoD components to remedy known environmental contamination caused by DoD activities outside the United States. DoDI 4715.8 applies to, “[r]emediation of environmental contamination on DoD facilities or installations outside the United States, including DoD activities on host-nation installations or facilities,” as well as remediation of environmental contamination, “caused by current DoD operations... that occur off a DoD installation or facility outside and the United States.” DoDI 4715.8 accepts DoD operations connected with relief operations, hostility, security assistance programs, and peacekeeping operations. Service-level guidance attempts to implement environmental strategies of the U.S. Army (USA) and Marine Corps (USMC). For instance, FM 3-100.4 emphasizes the importance of environmental protection to security in general and outlines the environmental strategies of the Army and the Marine Corps. The manual guides the Army and the USMC in integrating environmental considerations into all

play a role regarding environmental concerns that could result from DoD support to FCM. It should be noted that other USG agencies responding to a FCM event may be subject to U.S. environmental regulations, as is discussed in more detail in **Chapter 5, section 4.1**.

### 3.4 Rules on the Use of Force / Rules of Engagement (RUF/ROE)

Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B outlines the DoD Standing Rules of Engagement (SROE) and Standing Rules for the Use of force (SRUF) for U.S. forces that are the starting point for commanders to use in developing the specific RUF/ROE for the military units responding to a CBRNE incident.<sup>67</sup> Under the applicability guidance set out in CJCSI 3121.01B, it initially appears that because FCM incidents, by their nature, occur overseas, SROE should be applied.<sup>68</sup> However, this Instruction states that SRUF applies to DoD forces performing “law enforcement and security duties” at DoD installations located abroad (and in the U.S.), as well as to military units conducting “official DOD security functions” off-installation anywhere in the world.<sup>69</sup>

In responding to a CBRNE event abroad, commanders, at all levels, have the inherent right and obligation to defend their units and other U.S. forces at all times against a “hostile act or demonstrated hostile intent.”<sup>70</sup> This right to defend and the ROE/RUF to be applied must be considered, however, in light of the specific threat, the Law of Armed Conflict, and applicable international and Host Nation laws.<sup>71</sup>

Enclosure A of CJCSI 3121.01B details SROE policy and provides implementation guidance for the application of force for mission accomplishment and the exercise of self-defense. Combatant commanders may augment SROE by implementing supplemental measures or submitting supplemental measures to the Secretary of Defense for approval. Commanders must also notify the Secretary of Defense of restrictions placed on approved ROE/RUF.<sup>72</sup>

Enclosure A of CJCSI 3121.01B also addresses SROE for U.S. forces operating with multinational forces. U.S. forces under the operational control or tactical control of a multinational force will follow the ROE of the multinational force for mission accomplishment if authorized by the Secretary of Defense. Any inconsistencies between the multinational ROE and U.S. ROE will be submitted through the chain of command for resolution. Prior to resolution, U.S. forces will follow U.S. ROE. Additionally, U.S. forces will remain bound by international agreements to which the United States is a party regardless of whether the other members of the multinational force are party to the agreements. However, international agreements, *e.g.*,

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aspects of military activities and provides an overview of the pertinent international treaties and regulations that should be considered during operations planning.

<sup>67</sup> CJCSI 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces, Jun. 13, 2005. This includes “the use of force to preclude or impede the mission and/or duties of US forces, including the recovery of personnel or vital USG property.”

<sup>68</sup> *Id.*, at para 3.a.

<sup>69</sup> *Id.*, at para 3.b.

<sup>70</sup> *Id.*, at para 6, b.1.

<sup>71</sup> *Id.*, at para 3, a.

<sup>72</sup> CJCSI 3121.01B, *supra* note 67. CJCSI 3121.01B, encl. I, app. A, provides a confidential list of specific supplemental measures that require Secretary of Defense approval.

SOFAs, “may never be interpreted to limit U.S. forces right of self-defense.”<sup>73</sup> Self-defense, specifically unit self-defense, can be extended to, and includes persons, vessels or aircraft receiving emergency assistance from U.S. aircraft or vessels.

Enclosure G of CJCSI 3121.01B addresses SROE/SRUF for noncombatant evacuation operations (NEO). The NEO mission is to “protect and evacuate U.S. nationals and other designated person upon order of the [Secretary of Defense].”<sup>74</sup> For NEO operations, the U.S. military force is restricted to that force necessary to provide successfully for the defense of evacuees and mission completion. Unit commanders will tailor their NEO planning based on the conditions of the evacuation site which determines the NEO operational environment.<sup>75</sup>

### 3.5 Force Protection

A foreign nation has the “principal responsibility” for defending U.S. persons and property within its territory.<sup>76</sup> Within the USG, the Department of State is ultimately responsible, through the COM, for the safety and protection of all U.S. personnel overseas who are not directly assigned to a COCOM.<sup>77</sup> However, in recognition of the fact that it may in some cases make more sense to assign the security of all military personnel in a particular country to a geographic combatant commander, regardless of their duty assignment, the State Department and DoD signed a MOU allowing COMs and geographic combatant commanders to make country-by-country arrangements to transfer responsibilities for security of personnel to the combatant commander.<sup>78</sup> Within the DoD itself, the Office of the Assistant Secretary of Defense, Special Operations and Low Intensity Conflict (ASD(SO/LIC)) is responsible for oversight and supervision of DoD anti-terrorism programs and policies.<sup>79</sup> Those programs and policies must be followed during FCM operations.

DoD FCM guidance requires geographic combatant commanders to retain “overall responsibility for force protection” for their area of responsibility (AOR) during FCM operations.<sup>80</sup> The DoD’s force protection and anti-terrorism (AT) policies are discussed in DoD Directive 2000.12, which addresses “defensive measures to reduce the vulnerability of individuals and property to terrorist acts, including limited response and containment by local military forces.”<sup>81</sup> DoD Directive 2000.12 applies to, among others, DoD military personnel; DoD installations and facilities; DoD-owned, leased, or managed infrastructure and assets critical to mission

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<sup>73</sup> *Id.*, at encl. A, Section 1.

<sup>74</sup> *Id.*, at encl. G, Section 1.

<sup>75</sup> *Id.*, at encl. G, Section 3. There are three NEO operational environments, the details of which are classified CONFIDENTIAL.

<sup>76</sup> *Id.*, at encl. A, Section 4.

<sup>77</sup> 22 U.S.C. § 4802 (2005); DoDD 2000.12, DoD Antiterrorism (AT) Program, Aug. 18, 2003.

<sup>78</sup> U.S. Department of State Foreign Affairs Handbook, Volume 2, Handbook 2 – Post Management Operations, Section 2 FAH-2 H-16.4 (available at <http://foia.state.gov/masterdocs/02FAH02/02FAH020110.PDF>) referencing the Memorandum of Understanding between the Department of State and the Department of Defense for Security of DoD Elements and Personnel in Foreign Areas.

<sup>79</sup> Secretary of Defense Memorandum, “Civilian Oversight of DoD Combating Terrorism and Consequence Management Activities,” May 9, 2001.

<sup>80</sup> DoDI 2000.21, *supra* note 3.

<sup>81</sup> DoDD 2000.12, DoD Antiterrorism (AT) Program, Aug. 18, 2003.

accomplishment; and other DoD-owned, leased, or managed mission essential assets overseas and in the United States, its territories, and possessions.<sup>82</sup> Although FCM is not an element of AT, plans for terrorism consequence management preparedness and response measures, as well as plans for continuing essential military operations, are important adjuncts to an effective AT program.<sup>83</sup> **Chapter 5, section 2** will discuss in greater detail DoD force health protection issues for U.S. installations, as well as the vaccination of U.S. personnel.

### 3.6 Intelligence Collection and Sharing

Executive Order 12333 authorizes the DoD to establish and maintain military intelligence relationships and exchange programs with selected foreign defense establishments and IOs, and to ensure that these relationships and programs are in accordance with the policies set forth by the Directory of Central Intelligence (DCI).<sup>84</sup> The Under Secretary for Defense for Intelligence oversees the responsibilities of DoD intelligence components, including the Defense Intelligence Agency (DIA), National Geo-spatial Intelligence Agency (NGA), National Reconnaissance Office (NRO), and the intelligence offices of the Services,<sup>85</sup> the activities of which are guided by DoD Regulation 5240.1-R. The regulation lays out procedures governing activities that affect U.S. persons.<sup>86</sup>

Within the DoD, the Under Secretary of Defense for Intelligence provides “advice, coordination, and support on all intelligence, counterintelligence, and security aspects of DoD support to USG FCM operations.”<sup>87</sup> The Director for Intelligence (J-2) serves as the office of primary responsibility for Joint Staff coordination with the interagency intelligence community in support of FCM matters. J-2 provides the COCOMs and the Joint Staff with intelligence support to assist in planning, preparation, and execution of FCM operations. Each COCOM should have guidance in place to direct the dissemination of intelligence to commanders and deployed units. For instance, within the USEUCOM AOR, the Joint Analysis Center manages the dissemination of information to entities such as deployed units and JTFs.<sup>88</sup>

The DIA serves as the DoD agency for satisfying COCOM validated intelligence requirements, prioritizing requirements relative to other DoD requirements and producing tailored, finished foreign intelligence products to support the planning for and conducts of FCM operations. The DIA provides appropriate all-source intelligence support to DoD leadership and combatant commands and coordinates all DoD national-level intelligence activities for FCM, as well as maintaining liaison with non-DoD intelligence agencies. The DIA will be the point of contact for organizing and coordinating intelligence liaison activities (including foreign release oversight of shared intelligence information) with counterpart Services for FCM operations and will develop

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Exec. Order No. 12333, United States Intelligence Activities, as amended, Dec. 4, 1981.

<sup>85</sup> DoDI 2000.21, *supra* note 3.

<sup>86</sup> DoD 5240.1-R, Procedures Governing the Activities of U.S. Intelligence Components that Affect U.S. Persons, Dec. 1982.

<sup>87</sup> DoDI 2000.21, *supra* note 3.

<sup>88</sup> USEUCOM Directive 40-15, USEUCOM Intelligence Dissemination, Section C, Aug. 23, 2000.

and maintain an inventory of foreign military consequence management responsibilities within the DoD for incidents involving CBRNE incidents, as well as NBC defense capabilities.<sup>89</sup>

Additionally, within the DIA is the Armed Forces Medical Intelligence Center (AFMIC), which produces finished, all-source medical intelligence assessments, forecasts and databases on foreign military and civilian health care capabilities and trends; worldwide infectious disease risks; global environmental health risks; and, militarily significant life science issues, to include biotechnology and NBC medical defense advancements.<sup>90</sup> AFMIC is organized into a support division and two substantive divisions—the Epidemiology and Environmental Health Division and the Medical Capabilities Division. To support consequence management activities, the AFMIC maintains operational support personnel, on call 24 hours a day, in order to provide time-sensitive, finished medical intelligence to consumers at the national, departmental, or operational levels. AFMIC provides support to U.S. forces prior to troop deployment into foreign areas for combat, peacekeeping, or humanitarian operations. Its assessment of potential health threats allows the medical community to plan for the proper immunizations, prophylaxis, health care support, and medical personnel support required.<sup>91</sup>

### 3.7 DoD Role in FCM-Related Law Enforcement Activities

While a FCM incident that is determined to have been caused or sponsored by a Government entity might be considered an act of war, it is likely that in a terrorist attack using CBRNE, crimes were committed and a criminal investigation will occur. As will be discussed in **Chapter 6, sections 1.1 and 1.2**, various U.S. federal criminal laws pertaining to terrorism and the use of CBRNE have extraterritorial reach and can apply to actions by non-U.S. citizens committed overseas. The possible roles of DoD forces in assisting in criminal law enforcement activities and the applicable restrictions and limitations on such assistance are discussed in **Chapter 6, section 2**.

## 4. U.S. Military Installations Abroad

U.S. military installations abroad will often play a role in the U.S. response to a FCM event. The pertinent SOFA, installation MOUs, and arrangements with the HN regarding the ownership of the installation can all affect DoD response efforts, particularly if the FCM incident involves an installation where U.S. forces operate.

### 4.1 Status of Forces Agreements (SOFAs), Visiting Forces Agreements (VFAs) and Local Installation Agreements

The United States has entered into a multitude of SOFAs and VFAs for a variety of reasons. An important reason for entering into SOFAs/VFAs is to implement DoD's policy to "protect, to the maximum extent possible, the rights of U.S. personnel who may be subject to criminal trial by

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<sup>89</sup> *Id.*, at encl. A.

<sup>90</sup> DoDD 6420.1, Armed Forces Medical Intelligence Center (AFMIC), Oct. 9, 2004.

<sup>91</sup> *Id.*

foreign courts and imprisonment in foreign prisons.”<sup>92</sup> Usually a part of a military bases agreement or the vehicle for U.S. to conduct operations or training in a foreign country, SOFAs/VFAs often include provisions granting U.S. military forces the right to operate within the host country with attendant privileges. SOFAs/VFAs generally describe the legal status of U.S. military personnel, their dependents and contractors, as well as U.S. property in the territory of a friendly State. Among other things, most SOFAs/VFAs address civil and criminal jurisdiction and they often contain clauses giving U.S. forces immunity from prosecution or civil liability while conducting a foreign mission. The liability protections provided under SOFAs/VFAs are discussed in more detail in **Chapter 4**. Considering the relevant SOFA/VFA is necessary prior to the conduct of U.S. military FCM operations.

The United States currently has SOFAs with over 100 countries and one multilateral SOFA in place with North Atlantic Treaty Organization (NATO) allies.<sup>93</sup> The NATO SOFA addresses specific issues that may apply to FCM operations, *e.g.* travel, jurisdiction, and liability:

- Travel: the agreement states the entering forces are exempt from passport and visa regulations and immigration inspection, as well as the registration and control of aliens.<sup>94</sup> It also specifies the documents required for each member of the services.
- Criminal Jurisdiction: jurisdictional procedures are laid out in detail, including that the “sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdictions conferred on them by the law of the sending State over all persons subject to the military law of that State.”<sup>95</sup>
- Liability: both liability and claims are addressed, including damage to property, and DoD personnel covered by the SOFA are generally exempted from liability for any damage caused by the execution their duties.

The NATO SOFA remains in force in the event of hostilities to which the North Atlantic Treaty applies. This is important given the invocation of the NATO Treaty’s Article 5 collective self-defense provisions in response to the terrorist acts of September 11, 2001.<sup>96</sup> Should a major terrorist attack against another NATO member occur, it is likely that Article 5 could be used again and it is important to remember that this does not change the status of forces in NATO members.

In addition to SOFAs, United States military components based overseas often have agreements in place with the local government in the host nation for a variety of purposes. As discussed in **section 2.4** of this chapter, DoD Instruction 2000.18, Enclosure 3, specifically encourages commanders to develop mutual assistance agreements (using a MOU or a MOA) with the host nation to address CBRNE events on or near an installation.<sup>97</sup> Generally, for emergency

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<sup>92</sup> 32 CFR Part 151, (2005).

<sup>93</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces, Jun. 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 [hereinafter NATO SOFA]. Number of U.S. SOFAs obtained from USEUCOM international agreements database list.

<sup>94</sup> *Id.*, at NATO SOFA, art. III.

<sup>95</sup> *Id.*, at NATO SOFA, art. VII.

<sup>96</sup> NATO and the fight against terrorism, <http://www.nato.int/issues/terrorism/index.html> (last visited Feb. 16, 2006).

<sup>97</sup> DoDI 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear and High-Yield Explosive Emergency Response Guidelines, Enclosure 2, Section 2.1.2.1., and Enclosure 3, Sections 3.2.3.6. – 8,

management purposes, these agreements relate to mutual assistance in disasters and fire protection and outline specific procedures and the responsibilities of U.S. forces and the HN in such emergencies. While many of the existing agreements of this nature are not formalized international agreements that have been approved by DOS, their provisions may be useful when responding to an event near to or on U.S. installations. USEUCOM conducted a study to analyze the consequence management processes in the USEUCOM AOR with regard to a bioterrorist incident and found a need for MOAs between the United States and HNs' Ministry of Defense (MOD) and local communities. Accordingly, USEUCOM developed a draft MOA that can be used to facilitate mutual assistance after CBRNE events. See **Appendix D** for the text of the draft MOA.

#### 4.2 Ownership/Control of Military Installations Abroad

SOFAs are sometimes supplemented by implementing arrangements, installation-specific agreements, or access agreements. Some of these are relevant to the ability to respond to a CBRNE incident and will assist in analysis of when response efforts qualify as FCM for DoD purposes.<sup>98</sup> They may also help determine the roles and responsibilities of U.S. and HN responders and actors. The nature of U.S. property rights regarding the installation, *e.g.* ownership interest versus leasing, may directly affect response operations.<sup>99</sup>

For instance, in Italy, U.S. forces are generally assigned to Italian military installations with an Italian commander controlling the base. Furthermore, bases may include both U.S. and Italian personnel. Some U.S. organizations such as U.S. Army Southern European Task Force (SETAF), have Italian military officers embedded into their staff and integrated into the force structure. The "Shell Agreement" between the United States and Italy provides a template to be

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Dec. 4, 2002.

<sup>98</sup> Some examples affecting CBRNE response, drawn from the USEUCOM's Area of Responsibility (AOR), the geographical command with the most robust SOFA history, includes: the German NATO Supplementary Agreement of 1998, the approximately 50 treaties still in force today between the United States and Turkey aside from the NATO SOFA, and the 1980 Agreement for Cooperation on Defense and Economy (DECA). Agreement for Cooperation on Defense and Economy in accordance with articles II and III of the North Atlantic Treaty, Mar. 29, 1980, 32 U.S.T. 3323; TIAS 9901, (Supplemental Agreement 3 to this latter agreement addresses installation missions, command arrangements, security, property transfers, and a variety of related issues in a base rights agreement. This agreement provides for installation agreements and annexes to that supplementary agreement); the Spanish NATO SOFA supplement, Agreement on Defense Cooperation Between the United States and Spain (ADC), Dec. 1, 1988; Protocol of Amendment to that Agreement (2002 Protocol), Apr. 10, 2002. Article 8 of the 2002 Protocol notes that the competent authorities of both countries may establish rules governing applicable force protection measures and security procedures. Memorandum of Understanding Between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning Use of Installations/Infrastructure by U.S. Forces in Italy, with annexes, Feb. 2, 1995, TIAS 12317 [hereinafter Shell Agreement]. This agreement establishes a structure for consolidation into a single document all pertinent bilateral agreements for a particular installation or area, using a standard format and standard provisions in the form of a Model Technical Arrangement (TA).

<sup>99</sup> DoD's definition of FCM provides that FCM support does not include CBRNE incidents when their effects are fully contained on DoD installations and facilities overseas for which DoD retains primary CBRNE-CM responsibility under relevant international agreement or arrangements. DoDI 2000.21, *supra* note 3. See also CJCSI 3214.01B, *supra* note 8.



used in setting out the use of each installation by U.S. forces. The individual base agreements should state that the given installation is:

... placed under Italian Command. The functions of such command, which will be exercised by an Italian officer, will vary according to whether the installation is jointly used or used exclusively by the United States Armed Forces. The Italian Commander's jurisdiction extends throughout the installation over all the Italian personnel, military and civilian, assigned for whatever reason to the installation, and over the Italian land and infrastructure, equipment and materiel.<sup>100</sup>

Additionally, the Italian commander has free access to all areas of the installation. Meanwhile, the U.S commander has “full military command over U.S. personnel, equipment and operations.” The commander is required to “notify in advance the Italian Commander of all significant U.S. activities, with specific reference to the operational and training activity, to the movements of materiel, weapons and civilian/military personnel, and to any events/incidents that should occur.”<sup>101</sup> The Italian Commander is responsible for the security of the base, but the U.S. Commander “bears independent responsibility for the safety and security of his own personnel and equipment.” Given this arrangement, the question remains whether an event that takes place on and affects solely the installation will qualify as FCM. The arrangements on installation use with Italy demonstrate how HNs maintain an active interest in U.S. installations abroad and the fact that CBRNE responses on a U.S. military installation will likely include HN authorities.

In Germany, on the other hand, the United States has, in most cases, exclusive use of DoD military installations, but the installations are subject to various German laws and regulations. For example, Article 53 of the German supplementary agreement to the NATO SOFA notes that German law shall apply to the use of U.S. installations except when otherwise agreed or “as regards the organization, internal functioning and management of the force and its civilian component, the members thereof and their dependents, and other internal matters which have no foreseeable effect on the rights of third parties or on adjoining communities or the general public.”<sup>102</sup> Should an incident occur on a base and not affect the surrounding community, the base commander would maintain jurisdictional control when responding to the incident and it would not be considered FCM, though the foreign nation has the principal responsibility for defending U.S. persons and property within its territory.<sup>103</sup>

As noted above and in **Chapter 5, sections 1.1 and 1.2**, additional issues relating to a CBRNE incident on a military installation overseas may arise when considering the U.S. commander's authority to issue quarantine or vaccination orders as a force protection measure. For example, for a quarantine to be effective, it may need to apply to foreign nationals over whom the U.S. commander often has limited authority. FCM Exercises (discussed in the next session) that raise

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<sup>100</sup> Shell Agreement, *supra* note 99, Section 4.2. See also Bilateral Infrastructure Agreement (BIA) between the United States of America and Italy, Oct. 20, 1954.

<sup>101</sup> *Id.* See also, generally, U.S. Army in Europe (USAREUR) Reg. 190-16, Installation Access Control, Mar. 22, 2005.

<sup>102</sup> Arrangement regarding the application of Article 73 of the Supplementary Agreement of August 3, 1959 to the NATO Status of Forces Agreement, Mar. 27, 1998.

<sup>103</sup> CJCSI 3121.01B, *supra* note 67, at encl. A, para. 4(c)(1).

these issues may be useful in generating agreements that could develop useful solutions before an incident arises.

### 4.3 Exercises

Presidential Decision Directive 39 provides that the need for U.S. response components to develop effective capabilities for preventing and managing the consequence of terrorist use of CBRNE is a highest priority objective.<sup>104</sup> Additionally, one of the State Department's tasks set forth under NSPD 17 is to develop, review, influence, and bolster, comprehensive response coalitions and partnerships. This includes offering training and assistance in establishing consequence management capabilities to strategic allies. As part of this effort, the Federal Emergency Management Agency (FEMA) is working actively with NATO, Eastern European, and other countries to cooperate on emergency prevention and response.<sup>105</sup>

DoDI 2000.21 mandates that GCCs are to develop and exercise plans for FCM operations within their AOR. This includes procedures for coordinating with DOS as the LFA and conducting FCM exercises at least once every two years.<sup>106</sup> Joint Publication 3-40 further emphasizes the importance of training events to develop effective consequence management response efforts.<sup>107</sup> "One of the key lessons learned from the initial national-level first-responder exercise [TOPOFF 2000] was the need for synchronization of response assets....The scenario will be the same with an outside the continental United States event with the additional challenges of the potential language barrier and different chains of command."<sup>108</sup> Among other things, Joint Pub. 3-40 also notes that training should address the interoperability between law enforcement personnel and other responders to prevent "mitigation and evidence collection tasks from becoming mutually exclusive."<sup>109</sup>

NATO's Euro-Atlantic Disaster Response Coordination Centre (EADRCC) routinely organizes consequence management exercises which coordinate not only with other nations, but other organizations as well. *Joint Assistance Exercise 2005* was a chemical-biological and radiological (CBR)-consequence management field exercise organized in Ukraine by EADRCC in cooperation with the twelve Organization for the Prohibition of Chemical Weapons (OPCW) States Parties and the Security Service of Ukraine. More than 1,000 relief personnel from Ukraine and eleven European Atlantic Partnership Council countries participated to test and refine international cooperation procedures and to deliver emergency assistance, including

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<sup>104</sup> Unclassified Summary, Presidential Decision Directive/NSC 39, Counter Terrorism Policy, Jun. 21, 1995.

<sup>105</sup> See e.g., Protocol of Intentions between the Federal Emergency Management Agency and the State Crisis Management Agency of the Republic of Bulgaria on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response, U.S.- Bul., Jan. 24, 2000; Protocol of Intentions between the Federal Emergency Management Agency and the Ministry of Interior and Administration of the Republic of Poland on cooperation in Natural and Man-Made Technological Emergency Prevention and Response, U.S.- Pol., May 9, 2000; Protocol of Intentions between the Federal Emergency Management Agency and the Emergency Committee of the Republic of Kazakhstan on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response, U.S.- Kaz., Nov. 4, 1997.

<sup>106</sup> DoDI 2000.21, *supra* note 3.

<sup>107</sup> Joint Pub. 3-40, *supra* note 49.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*, at ch. V, para. 4(b).

chemical reconnaissance, decontamination measures, temporary evacuation, provision of life support to the affected population, delivery of medical care, specialized search and rescue activities, water purification and sampling and analysis activities.<sup>110</sup> Another example includes the 2004 NATO, Russia and partner countries exercise in Kaliningrad which tested capabilities to jointly respond to a disaster. The aim was to “examine existing national, regional and multinational arrangements for consequence management and response to a mass casualty and environmental disaster situation caused by a terrorist attack.”<sup>111</sup>

U.S. forces also frequently partake in bilateral exercises, such as the U.S. European Command Flexible Response FCM exercise and Exercise Lion Shake with Italy, which allow U.S. forces to train with local authorities and regularly work on integration and communication. These types of events, which include hospitals, police, and other emergency services, can provide a full year of joint training for U.S. forces and their HN counterparts and are invaluable in preparing to respond to FCM events. As the DoD agency responsible for integrating FCM program requirements across the COCOMs and DoD, the Defense Threat Reduction Agency (DTRA) plays a key role in supporting the planning, execution, and evaluation of FCM exercises worldwide. In this capacity, DTRA “enhances [U.S.] geographic combatant commanders... preparedness to respond to a major disasters resulting from accidents or intentional incidents involving...CBRNE materials.”<sup>112</sup>

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<sup>110</sup> NATO, Joint Assistance Exercise 2005, Ukraine-EADRCC-OPCW Day 1-9 October 2005, Oct. 17, 2005, <http://www.nato.int/eadrcc/2005/ukraine/jae2005/day1.html> (last visited Nov. 29, 2005).

<sup>111</sup> NATO, NATO-Russia disaster response exercise and seminar held in Kaliningrad, Jun. 2004, <http://www.nato.int/docu/update/2004/06-june/e0622b.htm> (last visited Nov. 29, 2005).

<sup>112</sup> Fiscal Year 2005 Budget Estimates, Defense Threat Reduction Agency, February 2004, *available at* [http://www.dod.mil/comptroller/defbudget/fy2005/budget\\_justification/pdfs/operation/Volume\\_1\\_-\\_DW\\_Justification/DTRA\\_FY05\\_PB.pdf](http://www.dod.mil/comptroller/defbudget/fy2005/budget_justification/pdfs/operation/Volume_1_-_DW_Justification/DTRA_FY05_PB.pdf)

## Chapter Three – USG and International Response Structures and Authorities

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**Table 3-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
<b>Presidential Documents</b>		
<a href="#">Executive Order (Exec. Order) 12163</a>	DOS, USAID	Assigns foreign disaster assistance responsibilities to DOS and USAID
<a href="#">Exec. Order No. 12656</a>	Various Federal Agencies	Assigns emergency preparedness responsibilities to Federal agencies, including for emergencies overseas
<a href="#">Exec. Order No. 12938</a>	Various Federal Agencies	Declares a national emergency to deal with the threat of the proliferation of WMD
<a href="#">Exec. Order No. 12966</a>	DoD, DOS	Specifies conditions under which DoD may provide foreign disaster assistance
<a href="#">Exec. Order No. 13118</a>	DOS, USAID	Assigns foreign disaster assistance responsibilities to DOS and USAID
<a href="#">1983 National Security Decision Directive (Classified)</a>	DOS	Designates USAID the Special Coordinator for International Disaster Assistance
<a href="#">Presidential Decision Directive (PDD) 39</a>	Various Federal Agencies	States U.S. counterterrorism policy; designates DOS as Lead Federal Agency (LFA) for FCM with support roles for other Federal agencies
<a href="#">PDD 62</a>		Reaffirms PDD 39 crisis and consequence management LFAs for counterterrorism
<a href="#">Homeland Security Presidential Directive (HSPD) 10</a>		Describes the U.S. program for combating bioterrorism
<a href="#">National Security Presidential Directive (NSPD) 17 / HSPD 4</a>		Describes national strategy to combat WMD, including consequence management support to foreign countries
<a href="#">Presidential Determination No. 2001-31</a>	DOS	Authorized financial assistance to Pakistan as part of the national security interest of the United States
<a href="#">Presidential Determination No. 2002-02</a>		
<a href="#">Presidential Determination No. 2005-16</a>	DOS	Authorized financial assistance to the Asian countries affected by the 2004 tsunami as part of U.S. international assistance
<b>United States Code</b>		
<a href="#">10 U.S.C. § 123b; 10 U.S.C. § 712</a>	DoD	President's authority to increase military strength abroad
<a href="#">10 U.S.C. § 401, et seq.</a>	Military Services	Specifies conditions under which the military may provide foreign disaster assistance and other assistance outside the United States
<a href="#">10 U.S.C. § 2557</a>	DoD	The Secretary of Defense may make available excess non-lethal supplies for humanitarian relief
<a href="#">10 U.S.C. § 2808</a>	DoD	Provides Secretary of Defense and secretaries of military departments emergency military construction authority
<a href="#">22 U.S.C. § 2151, et seq., Foreign Assistance Act</a>	Various Federal agencies	Authorizes foreign humanitarian and disaster assistance of the U.S. Federal government
<a href="#">22 U.S.C. §§ 2715-2715b</a>	DOS	Details actions for DOS to take when disasters abroad affect Americans
<a href="#">22 U.S.C. § 5501 et seq.</a>	DOS	Instructions for DOS following terrorist incidents abroad
<a href="#">49 U.S.C. § 40101</a>	DOT	Grants complete or partial waivers from restrictions to air transportation of freight, mail, emergency medical supplies, personnel, or patients
<a href="#">50 U.S.C. § 1601, et seq., National Emergencies Act</a>	U.S. Government, Private Sector, States	Describes the President's authority to declare a national emergency
<a href="#">50 U.S.C. App. § 2401, et seq., Export Administration Act</a>	Various Federal Agencies	Describes export controls for defense articles
<b>Agency Directives/Instructions/Manuals</b>		
<a href="#">DoDD 1000.17</a>	DoD Components	Provides policy and responsibilities for detailing DoD personnel to duty outside the DoD

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">DoDD 3025.15</a>		Discusses military support to consequence management
<a href="#">DoDD 5100.46</a>		Regulates DoD foreign disaster relief efforts
<a href="#">DoDD 5230.11</a>		Regulates disclosure of classified military information to foreign governments and international organizations
<a href="#">Joint Publication (Joint Pub.) 3-07.6</a>		Describes DoD tactics, techniques and procedures for the provision of foreign humanitarian assistance
<a href="#">Joint Pub. 3-08</a>		Procedures and guidance for interagency coordination during joint operations
<a href="#">Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B</a>		Provides the standing rules of engagement/rules for the use of force to the military services
<a href="#">CJCSI 3214.01B</a>		Instructions regarding military support for foreign consequence management
Federal Plans and Strategies		
<a href="#">National Strategy for Combating Terrorism</a>	Various Federal Agencies	Support to host nations to prevent and respond to terrorism
<a href="#">National Strategy to Combat Weapons of Mass Destruction-NSPD 17/HSPD 4</a>		Describes national strategy to combat WMD, including consequence management support to foreign countries
International Agreements/Arrangements		
<a href="#">U.S. – Belarus Agreement Concerning Emergency Response and Prevention of Proliferation of Weapons of Mass Destruction</a>	United States, Belarus	Exemplary agreement establishes verifiable measures against proliferation and provides for emergency response capabilities
<a href="#">U.S. – Italy MOU Concerning the Use of Installations/Infrastructure in Italy by U.S. forces</a>	United States, Italy	Describes the overall use of installations/infrastructure in Italy by U.S. forces and provides a model technical agreement for use in negotiation provisions for specific installations
<a href="#">Assistance Convention</a>	U.S. Government other Signatory Countries	Requires international coordination and cooperation with the IAEA to render assistance in nuclear/radiological assistance
<a href="#">Chemical Weapons Convention</a>		States Parties have the right to request assistance and protection; States Parties are required to provide assistance and protection through the OPCW in the case of use or threat of use of chemical weapons in addition to any action the State Party may be taking bilaterally
<a href="#">Biological and Toxin Weapons Convention</a>		Requires States Parties to provide assistance in the case of biological weapons use
<a href="#">UN Doc A/59/766, International Convention for the Suppression of Acts of Nuclear Terrorism</a>	UN Member States	Criminalizes certain acts of radiological/nuclear terrorism, including use and threat of use
<a href="#">UNDAC Handbook</a>	UN	Serves as a reference guide for UNDAC team in responding to an emergency
<a href="#">NATO EAPC Project on the Non-Binding Guidelines and Minimum Standards</a>	NATO	Provides non-binding guidelines on enhancing preparedness and responding to CBRN incidents.
<a href="#">IAEA Emergency Notification and Assistance</a>	Parties to the Early Notification Convention and Assistance Convention	Contains information on how to invoke either Convention
<a href="#">IAEA Joint Radiation Emergency Management Plan</a>		Interagency framework for preparedness and response to an actual, potential, or perceived radiological incident
<a href="#">EU Council Decision 2001/792/EC</a>	EU Members	Establishes a community mechanism to facilitate reinforced cooperation in civil protection assistance interventions
<a href="#">ASEAN Joint Communiqué</a>	ASEAN Members	Enacts the Work Programme to combat transnational crime, including terrorism
<a href="#">OAS Inter-American Convention to Facilitate Disaster Assistance</a>	OAS Members	Describes mechanisms for increasing the efficiency and effectiveness of international disaster response

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">CDERA Response</a>	CDERA Members	Outlines provisions for assistance in response to disasters
<a href="#">OSCE REACT Programme</a>	OSCE Members	The Rapid Expert Assistance and Co-operation Teams (REACT) programme is designed to set new standards for the rapid recruitment and deployment of skilled personnel into current and future field operations
<a href="#">Joint Defense and Economic Cooperation Treaty Between The States Of The Arab League</a>	League of Arab States	Outlines the alliance between the members of the Arab League



## **1. USG Structures and Authorities**

### **1.1 Congressional Authority to Provide Foreign Assistance**

The Foreign Assistance Act of 1961 provides authorization for United States Government (USG) foreign aid programs. Unless Congress enacts some other enabling legislation, United States foreign consequence management (FCM) assistance would likely be provided under the authorities established in this act. For example, Section 2292 of the Foreign Assistance Act (FAA) authorizes the President “to furnish assistance to any foreign country, international organization, or private voluntary organization,” for international disaster relief and rehabilitation following natural as well as manmade disasters such as a chemical, biological, radiological, nuclear, or high-yield explosive (CBRNE) incident.<sup>1</sup> The types of assistance that may be provided under this section are not enumerated; however, assistance relating to disaster preparedness is expressly approved.

The FAA authorizes the President to appoint a Special Coordinator for International Disaster Assistance with the responsibility of promoting coordination among U.S. agencies as well as between the United States and other donors.<sup>2</sup> The Special Coordinator is also tasked with creating and updating contingency plans for providing disaster relief.

The President is granted “special authority” under 22 U.S.C. § 2318 to support the international disaster response mission of 22 U.S.C. § 2292. Specifically, 22 U.S.C. § 2318(a)(2) permits articles and services to be drawn down from any USG agency when the President reports that such actions are in the national interest of the United States and support “international disaster relief and rehabilitation” efforts carried out under Section 2292. The aggregate value of such articles and services must not exceed \$200 million, not more than \$75 million of which may be drawn from the resources of the Department of Defense (DoD).<sup>3</sup> Before the President exercises this authority, he must provide written justification to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate for the use of this special authority.<sup>4</sup> Additionally, the President must notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations of each House of Congress. The President recently invoked the special authority under 22 U.S.C. § 2318(a)(2) to provide defense articles and services for disaster relief assistance to countries affected by the 2004 Southeast Asia tsunami.<sup>5</sup> The relief was determined by the President to be in the national interest of the United States, demonstrating the flexibility of that term in the context of international disaster assistance.

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<sup>1</sup> Foreign Assistance Act, as amended, § 2292, 22 U.S.C. §§ 2151-2443 (2005). Several Executive Orders deal with the implementation of the FAA, the most prominent of which are Exec. Order No. 12163, Administration of Foreign Assistance and Related Functions, Sept. 28, 1979, as amended, and Exec. Order No. 13118, Implementation of the Foreign Affairs Reform and Restructuring Act of 1998, Mar. 31, 1999.

<sup>2</sup> 22 U.S.C. § 2292b (2005).

<sup>3</sup> 22 U.S.C. § 2318 (a) (2) (B) (2005).

<sup>4</sup> 22 U.S.C. § 2411 (2005).

<sup>5</sup> Presidential Determination No. 2005-16, *Provision of Emergency Disaster Relief Assistance to Twelve Countries Affected by the Asian Tsunami, including Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, of the Articles and Services*, Jan. 4, 2005.

The FAA affords the President further “emergency drawdown authority” to meet an emergency overseas.<sup>6</sup> Pursuant to 22 U.S.C. § 2318(a)(1), the President may provide defense articles and services, and military education and training, to a foreign country or international organization if the emergency requirements cannot be met by either the Arms Export Control Act<sup>7</sup> or any other law (to include 10 U.S.C. § 401, *et seq.*, which authorizes the President to direct the military to provide humanitarian and other assistance, and is discussed in greater detail below). Section 2318(a)(1) authorizes the President to draw down defense articles from the stocks of the Department of Defense items of a value not to exceed \$100 million for any fiscal year for immediate military assistance to a foreign State. The President need not make a finding that the emergency actions are in the national interest of the United States, but the notification requirements of 22 U.S.C. § 2411 must be observed. It is unclear whether this emergency drawdown authority may be used to support FCM response capacity. The manner in which the authority has been used suggests it may be relied on primarily for conflict situations.<sup>8</sup>

When providing foreign assistance, 22 U.S.C. § 2386 authorizes the employment of experts and consultants to perform the functions authorized by the FAA. When the President so directs, any agency of the USG may assign personnel to foreign governments under 22 U.S.C. § 2387, and International Organizations (IOs) under 22 U.S.C. § 2388. Sections 2389 and 2390 of Title 22 govern the status and terms of their respective assignments. The ability to detail personnel to IOs and foreign governments working on FCM issues could provide DoD, DOS, and other agencies a good option to provide support and facilitate coordination efforts before, during and following an FCM event.<sup>9</sup>

A broad authority derived from the FAA is granted under 22 U.S.C. § 2364. This section allows the President to authorize assistance without regard to “any provision of this Act,” or “any law relating to receipts and credits accruing to the United States,” when doing so is “important to the security interests of the United States.” The President must notify in writing the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate and provide a written policy justification for the authority to be exercised. The President utilized this authority to provide \$50 million to Pakistan in 2001 and again in 2002 with the intention of improving U.S. - Pakistan relations and assure U.S. national security after the September 11<sup>th</sup> terrorist attacks.<sup>10</sup> To facilitate providing disaster assistance, 22 U.S.C. § 2393 provides a waiver for laws governing contracting and the expending of USG funds whenever the President determines that such actions are in furtherance of the purposes of the FAA. **Chapter 4** provides additional details on FCM fiscal law authorities and issues.

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<sup>6</sup> The Foreign Assistance Act does not define “emergency.”

<sup>7</sup> 22 U.S.C. § 2715 *et seq.* (2005).

<sup>8</sup> Presidential Determination No. 2002-18, 67 Fed. Reg. 91 (May 10, 2002) (relying on the authority to provide military assistance to Afghanistan).

<sup>9</sup> See DoDD 1000.17, Detail of DoD Personnel to Duty Outside the Department of Defense, Feb. 27, 1997.

<sup>10</sup> Presidential Determination No. 2001-31, *Assistance for Pakistan*, 66 Fed. Reg. 51293 (Sept. 28, 2001); Presidential Determination No. 2002-02, *Assistance for Pakistan*, 66 Fed. Reg. 53503 (Sept. 28, 2001).

When major disasters and incidents abroad affect Americans, DOS is directed to take certain actions outlined in 22 U.S.C. §§ 2715-2715b.<sup>11</sup> Similar instructions relating specifically to DOS responsibilities following a terrorist incident abroad are found in 22 U.S.C. § 5501 *et seq.* Following a major foreign disaster or incident, DOS is tasked under 22 U.S.C. § 2715 with providing next-of-kin with all appropriate information on U.S. citizens affected by the incident. This is not a one time responsibility, but involves continued communication, frequent updating of information, and providing related services and assistance. Under 22 U.S.C. § 2715b, DOS is directed to promptly notify the next-of-kin of U.S. citizens who die abroad. Section 5503 reinforces this duty for victims of aviation disasters. Notification by DOS under 22 U.S.C. § 5503 is required even in the event that the families have already been notified by other entities. Section 2715, specifically applied to terrorist events abroad by 22 U.S.C. § 5507, directs DOS to liaise with foreign governments and U.S. air carriers concerning the preparation and transport of the remains of U.S. citizens who die abroad. These laws also address DOS preparations for major disasters, incidents, and terrorist events abroad. Section 5505 requires all consular officers to participate in disaster management training. The specialized training of “disaster specialists” for immediate deployment in a crisis is encouraged. Finally, under 22 U.S.C. § 5506, DOS is required to establish rules and guidelines concerning its responsibilities and procedures at an international disaster site.

## 1.2 Military Humanitarian and Other Assistance

As discussed above, the U.S. military and other Federal agencies may provide assistance to foreign governments under the authority of the FAA. In addition, under 10 U.S.C. § 401, the Secretaries of the military departments may provide humanitarian and civic assistance in conjunction with authorized military operations of the armed forces when such assistance is in the security interests of the United States and the country in which the military will carry out activities. Consistent with the State Department’s role as the Lead Federal Agency (LFA), no FCM assistance may be provided under this section unless approved by the Secretary of State or his/her designee.

In recognition of the vast logistical and technical potential of the armed forces, disaster assistance may also be provided under 10 U.S.C. § 404. This provision authorizes the President to direct the military to provide disaster assistance outside of the United States when it is necessary to prevent loss of life. The authority is consistent with the immediate response authority of U.S. military commanders discussed in **Chapter 2**. The assistance supplied under 10 U.S.C. § 404 may take the form of supplies, services, and transportation. No later than 48 hours after disaster assistance is first provided under this legislation, the President must report to Congress the details of the disaster, the personnel involved, the assistance to be provided, and the anticipated duration of the disaster assistance activities. When military assistance is provided under 10 U.S.C. § 404, DOS continues to serve as the LFA, as specifically noted in Executive Order 12656.<sup>12</sup>

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<sup>11</sup> 22 U.S.C. §§ 2715-2715b (2005).

<sup>12</sup> Exec. Order No. 12656, Assignment of Emergency Preparedness Responsibilities, Dec. 23, 1988.

Additional military FCM response assistance is available through Section 2557(a)(1) of Title 10 which authorizes the military to make excess non-lethal DoD supplies available for humanitarian relief purposes. Excess supplies made available under this section will be transferred to the Secretary of State, who shall be responsible for their distribution.<sup>13</sup>

As previously noted, Executive Order 12966 authorizes the military to respond to an FCM event either 1) at the direction of the President, 2) with the concurrence of the Secretary of State, or 3) on its own initiative to save human lives in emergency situations where there is insufficient time to consult with the Secretary of State.<sup>14</sup> The last authorization is analogous to the military's immediate response authority for domestic disasters.<sup>15</sup> However, DoD regulations require military commanders relying on their immediate response authority for FCM activities to notify higher headquarters, including the U.S. Ambassador/Chief of Mission, expeditiously, and seek approval or additional authorization as appropriate.<sup>16</sup> Immediate response authority is discussed in detail in **Chapter 2**.

### 1.3 Powers Available During a Declared National Emergency Relevant to FCM

Certain authorities relating to FCM are available only after the President has declared a national emergency in accordance with the National Emergencies Act.<sup>17</sup> DoD's activities are limited here to those authorities or powers specified in the national emergency proclamation or in an executive order. Though the President cannot declare a national emergency in a foreign country, he may declare a national emergency in the United States if a CBRNE incident is likely to have a deleterious domestic effect, such as the spread of disease or radioactivity across borders and into the United States. The full list of emergency powers available to the President upon declaration of a national emergency is extensive and many are more applicable to FCM activities than to domestic situations.<sup>18</sup> Examples of the FCM-centric powers include:

- Under 10 U.S.C. § 123b, the President is authorized to waive the statutory ceiling placed on the number of members of the armed forces who may be stationed abroad in any fiscal year. Additionally, the ceiling does not apply in the event of an attack on any North Atlantic Treaty Organization (NATO) member, Japan, the Republic of Korea, or any other U.S. ally. Furthermore, in accordance with 10 U.S.C. § 712, the President may

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<sup>13</sup> 10 U.S.C. § 2557(b) (2005).

<sup>14</sup> Exec. Order No. 12966, Foreign Disaster Assistance, Jul. 18, 1995.

<sup>15</sup> DoD Directive (DoDD) 3025.15, Military Assistance to Civil Authorities, Feb. 18, 1997; DoDD 3025.1, Military Support to Civil Authorities, Jan. 15, 1993; and Army Reg. 500-60, Disaster Relief, Aug. 1, 1981.

<sup>16</sup> Department of Defense Instruction (DoDI) 2000.21, Foreign Consequence Management, Mar. 10, 2006.. See also DoDD 5100.46, Foreign Disaster Relief, Section 4.3, Dec. 4, 1975.

<sup>17</sup> 50 U.S.C. § 1601 *et seq.* (2005). Research has uncovered no instance in which the President of the United States has declared a national emergency in response to a foreign CBRNE incident. Of interest, President Clinton in 1994 declared a national emergency due to the spread of WMD generally. See Exec. Order No. 12938, Proliferation of Weapons of Mass Destruction, Nov. 14, 1994. In any case, the National Emergencies Act does not limit emergencies to domestic circumstances, and it is conceivable that a national emergency may be declared in the event of a foreign WMD event (*e.g.*, one creating a pandemic or threat of serious harm to the U.S. environment). See HHS, *Pandemic Influenza Plan*, app. E: Legal Authorities, Nov. 2005, available at <http://www.hhs.gov/pandemicflu/plan/pdf/HHSPandemicInfluenzaPlan.pdf>.

<sup>18</sup> Congressional Research Service, *National Emergency Power*, RL31133 (Sept. 18, 2001).

detail members of the armed forces to any foreign country he deems advisable to assist in military matters.

- Section 2350j(e)(3)(A) of Title 10 of the U.S. Code allows the Secretary of Defense to carry out a military construction project financed by contributions from designated countries or regional organizations without prior explanation and justification to Congress if the project supports the U.S. armed forces.
- The Secretary of Defense and the Secretaries of the military departments, with Secretary of Defense authorization, in accordance with 10 U.S.C. § 2808(a), may: “without regard to any other provision of law” undertake military construction projects “not otherwise authorized by law” if necessary to support the use of the armed forces “in the event of a declaration of war or the declaration by the President of a national emergency under the National Emergencies Act that requires use of the armed forces.”<sup>19</sup>
- The Secretary of Transportation is authorized under 49 U.S.C. § 40101 to grant complete or partial waivers from restrictions that would otherwise apply regarding air transportation of freight, mail, emergency medical supplies, personnel, or patients.

#### 1.4 Impact of Statutory Foreign Aid Restrictions on FCM Operations

The FAA places certain restrictions on the countries to which aid authorized under the Act (and in some cases, any aid) may be provided.<sup>20</sup> These restrictions may generally be waived on U.S. national security grounds or to alleviate suffering resulting from a natural or man-made disaster. Many such waivers, however, require 15 days advance notification and that justification be provided to Congress before aid may begin. The following provisions, among others, require 15 day advanced notification to obtain a waiver:

- 22 U.S.C. § 2371, which prohibits assistance to governments supporting international terrorism;
- 22 U.S.C. § 2377, which requires the President to withhold all foreign assistance from countries that provide assistance to the governments of terrorist states; and
- 22 U.S.C. § 2378, which requires the President to withhold all foreign assistance from countries that provide lethal military equipment to the governments of terrorist states.

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<sup>19</sup> For instance, under Executive Order No. 12734, the President invoked 10 U.S.C § 2808 to provide additional authority to the DoD to respond to the threat to national security and foreign policy of the United States caused by the invasion of Kuwait by Iraq. Exec. Order No. 12734, Blocking Iraqi Government Property and Prohibiting Transactions with Iraq, Nov. 14, 1990. The President also invoked this authority after September 11, 2001 in Exec. Order No. 13235, National Emergency Construction Authority, Nov. 16, 2001. This authority was extended in 2002 and 2005.

<sup>20</sup> See generally, 22 U.S.C. § 2295a(b); 22 U.S.C. §§ 2370-2371; 22 U.S.C. § 2375; 22 U.S.C. §§ 2377- 2378 (2005).

However, the President is authorized to act without regard to the provisions of the FAA when it is in the national security interests of the United States, thus allowing him to bypass the 15 day advance notice requirement, allowing aid to flow much more quickly.<sup>21</sup>

FCM operations may involve the transfer of information or materials subject to U.S. export controls. The two major sources of U.S. export controls are the Arms Export Control Act,<sup>22</sup> as implemented by the International Traffic in Arms Regulations (ITAR),<sup>23</sup> and the Export Administration Act of 1979,<sup>24</sup> as implemented by the Export Administration Regulations (EAR).<sup>25</sup> The key component of ITAR is the U.S. Munitions List,<sup>26</sup> which identifies the defense articles, technical data, and services subject to export licensing requirements. Specifically exempted from the licensing requirements of ITAR are “exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.”<sup>27</sup> Whether or not such a transfer is permanent or temporary will also affect the licensing requirements;<sup>28</sup> however, this exemption appears to cover most, if not all, transfers by DoD FCM response personnel and forces which might take place in support of FCM operations.

The EAR's primary component is the Commerce Control List,<sup>29</sup> which identifies dual-use items subject to export controls. Medicines and medical supplies are exempted from these controls by 50 U.S.C. Appendix 2405(g). Other exceptions/exemptions are available for donated humanitarian supplies.<sup>30</sup> Part 740.11 of the EAR contains a general exception to the license requirements for “items consigned to and for the official use of any agency of the U.S. Government” and items “consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government.”<sup>31</sup> The list of “cooperating governments” includes two dozen countries.<sup>32</sup> Because the President ultimately determines which items appear on the export control lists,<sup>33</sup> or the circumstances for permitting license

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<sup>21</sup> 22 U.S.C. § 2364 (2005).

<sup>22</sup> 22 U.S.C. § 2778 (2005).

<sup>23</sup> 22 CFR Parts 120-129.10 (2005).

<sup>24</sup> 50 U.S.C. App. §§ 2401 – 2420 (2005), currently in force by virtue of Exec. Order No. 13222, Continuation of Export Control Regulations, 66 Fed. Reg. 44025, Aug. 22, 2001, and Notice of August 6, 2004, 68 Fed. Reg. 48763.

<sup>25</sup> 15 CFR Parts 730-774.2 (2005).

<sup>26</sup> 22 CFR Part 121 (2005).

<sup>27</sup> 22 U.S.C. § 2778(b)(2) (2005). The provision does not specify whether this provision also exempts the export from Congressional reporting requirements under the Arms Export Control Act.

<sup>28</sup> 22 CFR Part 126.4 (2005). The provision does not specify under what circumstances a government contractor may utilize the license exemptions.

<sup>29</sup> 15 CFR Part 774, Supplement No. 1 (Jan. 1, 2005).

<sup>30</sup> 50 U.S.C. Appendix 2405(g) (2005), 50 U.S.C. § 1702(b)(2) (2005); 15 CFR Part 740.12 (2005).

<sup>31</sup> 15 CFR Part 740.11 (2005) (defining “agencies” broadly to include “all civilian and military departments, branches, missions, government-owned corporations, and other agencies” of the USG and of the cooperating national government).

<sup>32</sup> 15 CFR Part 740, Supp. No. 1 (2006). Part 740.11 lists the following as additional “cooperating countries”: Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland and Taiwan. 15 CFR Part 740.11(3)(ii)(2006).

<sup>33</sup> For the Commerce Control List 50 U.S.C. §§ 2404(a)(1), 2405(a)(1), and 2406(a)(1) (2005). For the U.S. Munitions List *see* 22 U.S.C. § 2778(a).

exemptions, should emergency transfers of otherwise controlled items or information need to take place in order to support FCM operations, the President has the authority to alter the EAR. If it becomes expedient in the course of FCM operations to disclose classified military information to foreign governments or IOs, procedures for such disclosures are outlined in DoD Directive 5230.11.<sup>34</sup>

### 1.5 White House Guidance Related to FCM

The White House's *National Strategy to Combat Weapons of Mass Destruction* identifies as one of its three pillars “consequence management to respond to WMD use.” It emphasizes that the United States will be prepared to respond to WMD use “against our citizens, our military forces, and those of friends and allies,” and the United States “will develop and maintain the capability to reduce to the extent possible the potentially horrific consequences of WMD attacks at home and abroad.”<sup>35</sup> The *National Strategy for Combating Terrorism* characterizes the threat of WMD use by terrorists as a “clear and present danger.”<sup>36</sup> Recognizing that “solid plans, preparations, and immediate response remain key to mitigating acts of terrorism,” it states that “the U.S. will coordinate with host governments and regional partners to develop plans for alerting, containing, and, if necessary, repelling an attack in progress while ensuring adequate resources are available to mitigate the damage.”<sup>37</sup> National Security Presidential Directive (NSPD) 17/ Homeland Security Presidential Directive (HSPD) 4, a classified document implementing the strategy to combat WMD, states: “Department of State coordinates interagency efforts to work with our friends and allies to develop their own emergency preparedness and consequence management capabilities.” In addition, under NSPD 17/HSPD 4, DOS is responsible for developing comprehensive response partnerships abroad.<sup>38</sup>

Presidential Decision Directive (PDD)/NSC-39, states the U.S. policy on counterterrorism is “to deter, defeat, and respond vigorously to all terrorist attacks against U.S. citizens, or facilities,” wherever they occur.<sup>39</sup> It reiterates that DOS has been designated as the LFA in most instances for coordinating the U.S. response to incidents occurring on foreign soil that involve the use of CBRN materials. Among other things, it also directs the establishment of a rapidly deployable Foreign Emergency Support Team (FEST), “which will include elements for specific types of

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<sup>34</sup> DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations, Jun. 16, 1992.

<sup>35</sup> The White House, *National Strategy to Combat Weapons of Mass Destruction*, p. 2, Dec. 2002. The remaining pillars of the Strategy are counterproliferation to combat WMD use and strengthened nonproliferation to combat WMD proliferation.

<sup>36</sup> *Id.*

<sup>37</sup> The White House, *National Strategy for Combating Terrorism*, pp. 27-28, Feb. 2003.

<sup>38</sup> National Security Presidential Directive (NSPD) 17/Homeland Security Presidential Directive 4, National Strategy to Combat Weapons of Mass Destruction, Sept. 14, 2002 (Classified – an unclassified version is available at: <http://www.fas.org/irp/offdocs/nspd/nspd-17.html>).

<sup>39</sup> Presidential Decision Directive (PDD)/NSC-39, U.S. Policy on Counterterrorism, Jun. 21, 1995 (Unclassified synopsis). PDD 39 states that the DOS lead agency role does not encompass incidents occurring on U.S. flag vessels in international waters. PDD 62 established an office within the White House’s National Security Council to “oversee the broad variety of relevant policies and programs including such areas as counter-terrorism, protection of critical infrastructure, preparedness and consequence management for weapons of mass destruction.” See White House Press Release, PDD 62, Combating Terrorism, May 22, 1998.

incidents such as nuclear, chemical, and biological threats” to respond to foreign terrorist incidents. As discussed above, the FEST is now an important U.S. FCM resource.

Homeland Security Presidential Directive 10 (HSPD 10) sets out the policy of the United States regarding bioterrorism, which prioritizes strengthening U.S. defenses against biological weapons.<sup>40</sup> It specifies the pillars of the U.S. biodefense program as threat awareness, prevention and protection, surveillance and detection, and response and recovery. The latter includes such measures as mass casualty care, medical countermeasures, decontamination, and risk communication. Among other things, the directive outlines initiatives to strengthen the U.S. ability to provide mass care and decontaminate the site of a biological attack. The fact sheet for HSPD 10 highlights some of the efforts launched to manage the threat of biological weapon. These include strengthened intelligence and law enforcement capabilities to reduce the risk of a terrorist attack using biological weapons, expanded international coordination for bioterrorism, and strengthened biodetection capabilities of the military.

## **2. Mutual Assistance Agreements**

The United States has forged a number of bilateral disaster assistance/emergency response agreements. Some of these are stand-alone agreements; others are part of a broader SOFA with a HN. **Chapter 2** goes into further detail on Status of Forces and local installation agreements. This section will address some of the overarching international agreements relating to international assistance provided during nuclear/radiological, chemical, and biological events and exemplary bilateral and regional assistance agreements.

*The Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency* (Assistance Convention) provides a framework for international cooperation and coordination with the International Atomic Energy Agency (IAEA) to render assistance and support in response to nuclear or radiological incidents.<sup>41</sup> It requires notification to the IAEA of available resources for support, including personnel, equipment, and materials. The IAEA facilitates any requests for and provisions of assistance through information networks, supporting efforts and providing its services. In order to carryout its role, the IAEA has developed numerous plans for response to radiological events, including an Emergency Notification and Assistance Technical Operations Manual and a Joint Radiation Emergency Management Plan of the International Organizations. The manuals and other documents provide the framework and procedures for coordinating interagency and international response to radiological events. The IAEA has also developed a Code of Practice for the transboundary movement of radioactive waste which calls on each State to institute the steps necessary for the proper transportation and protection of such waste.

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<sup>40</sup> HSPD 10/NSPD 33, National Policy for Biodefense, Apr. 21, 2004, as summarized in the White House Fact Sheet: President Bush Signs Biodefense for the 21<sup>st</sup> Century, Apr. 28, 2004.

<sup>41</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Sept. 26, 1986, 25 ILM 1377 [hereinafter Assistance Convention]. The United States is a party to the Assistance Convention.



Provisions of the *Chemical Weapons Convention* (CWC) allow a State Party to request and obtain assistance and protection in the case of chemical weapons use or threat. Implemented by the intergovernmental Organisation for the Prohibition of Chemical Weapons (OPCW), the CWC entered into force in 1997 and, as of February 2006, has 176 States Parties. The object and purpose of this disarmament and non-proliferation treaty is to eliminate chemical weapons entirely by prohibiting, under any circumstances, the development, production, other acquisition, stockpiling, retention, transfer or use of chemical weapons, military preparations to use chemical weapons, use of riot control agents as a method of warfare, and assistance, encouragement or inducement in any way to engage in any of the prohibited activities.

To induce States to relinquish these weapons, Article X of the CWC provides that each State Party has the right to request and [subject to certain procedures] to receive assistance and protection against the use, or threat of use of chemical weapons if the State Party considers that: (a) chemical weapons have been used against it; (b) riot control agents have been used against it as a method of warfare; or (c) it is threatened by actions or activities of any State that are prohibited for States Parties under the Convention.<sup>42</sup>

“Assistance” is defined as the coordination and delivery to States Parties of protection against chemical weapons, including, *inter alia*, the following: detection equipment and alarm systems, protective equipment, decontamination equipment and decontaminants, medical antidotes and treatments, and advice on any of these protective measures. To give substance to the right of assistance, the CWC requires all States Parties to provide assistance through the OPCW by electing to take one or more of the following measures: (a) to contribute to the OPCW Voluntary Fund for Assistance; (b) to conclude agreements with the OPCW concerning the procurement, upon demand, of assistance; (c) to declare the kind of assistance it might provide in response to an appeal by the OPCW (the subsequent inability of the State to provide that assistance does not absolve it of its obligation to provide assistance).

When a request for assistance is received by the OPCW, the Convention requires the Director-General to inform the Executive Council and all States Parties (in particular those that have volunteered to deliver assistance in such a situation) about the request for assistance. The Director-General also initiates an investigation by an OPCW inspection team in order to provide a foundation for further action. In this context, the OPCW will dispatch an assistance coordination and assistance team (ACAT) to assist the host State Party with the assessment of the situation and the identification of any assistance needs it may have. ACAT may also facilitate the coordination of international assistance teams and equipment delivered in response to the request, if so decided by the host State Party. If there are victims of chemical weapons, the Director-General has authority to implement emergency measures of assistance directly. The OPCW Executive Council will review the situation, taking into account the results of the investigation, and may decide on supplementary assistance to be delivered.

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<sup>42</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, Jan. 13, 1993, S. Treaty Doc. No. 103-21 (1993), *reprinted in* 32 I.L.M. 800 [hereinafter CWC]. The United States is a party to the CWC.

Somewhat similarly, albeit without a Treaty Secretariat, the *Biological and Toxin Weapons Convention* (BTWC) articulates an obligation on States Parties and a formalized treaty mechanism to provide assistance in the event of the unlawful use of biological weapons. The BTWC bans the development, production, stockpiling, acquisition and retention of microbial or other biological agents or toxins, in types and in quantities that are not justified for prophylactic, protective or other peaceful purposes. It also bans weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. Article VII provides, “Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.”<sup>43</sup>

Other agreements relate to securing CBRNE weapons and materials as part of elimination procedures under arms control and nonproliferation treaties such as the *Agreement Concerning Emergency Response and the Prevention of Proliferation of Weapons of Mass Destruction, with Amendments and Extensions* [U.S. – Kazakhstan] (Oct. 22, 1992).<sup>44</sup> It is important to note the existence of such agreements as provisions in arms control and nonproliferation agreements may operate to impact the type, source and mode of assistance requested and provided in a CBRNE event that overwhelm the capabilities of a nation.

Multilateral agreements have been executed for nations to obtain assistance in the event of disasters, including CBRNE events. The *Tampere Convention*, which came into force in January 2005, obliges States Parties “to cooperate among themselves and with non-State entities and intergovernmental organizations... to facilitate the use of telecommunication resources for disaster mitigation and relief.”<sup>45</sup> International organizations also have entered into assistance agreements with nations, private voluntary organizations and non-governmental organizations.<sup>46</sup> For instance, the OPCW and States Parties may enter into agreements for the provision of assistance on request. Paragraph 2.2 of this section discusses in greater detail the role of IOs in FCM.

Many nations, including the United States, have executed regional and bilateral agreements to obtain and provide disaster assistance.<sup>47</sup> For instance, the Federal Emergency Management Agency (FEMA), which specializes in domestic disaster response, has signed agreements with various nations to provide training and technical assistance for disaster response preparedness,

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<sup>43</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Apr. 10, 1972, 26 U.S.T. 583; TIAS 8062; 1015 U.N.T.S. 163 [hereinafter BTWC]. The United States is a party to the BTWC.

<sup>44</sup> See, e.g., Agreement concerning emergency response and the prevention of proliferation of weapons of mass destruction, with amendments and extensions, U.S.- Kaz., Nov. 18, 1997, 1997 U.S.T. LEXIS 43.

<sup>45</sup> Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, Jun., 1998. The United States is a signatory of the Tampere Convention, but has not ratified it.

<sup>46</sup> See, e.g., Memorandum of Understanding between Islamic Republic of Iran and OPCW.

<sup>47</sup> See, e.g., ASEAN Agreement on Disaster Management and Emergency Response, Jul. 26, 2005.

response and recovery.<sup>48</sup> The United States has worked especially close with Canada, the neighboring nation with which it shares the world's longest common border, on developing agreements, plans and procedures for the provision of mutual emergency response assistance.<sup>49</sup> Agreements are also in place with several of the States of the former Soviet Union and others to provide emergency preparedness, response, and recovery assistance in the event of a man-made or natural technological emergency, for instance, in circumstances similar to the Chernobyl or Bhopal disasters.<sup>50</sup>

Mutual logistics support agreements and other military assistance agreements have been made between the defense agencies of the United States and foreign nations for the mutual provision of military advice, technical assistance, equipment and logistics support in the event of a disaster.<sup>51</sup> Knowledge of the existence and requirements of agreements with HNs covering topics ranging from search and rescue to customs facilitation support will be important to U.S. lawyers supporting FCM operations.

The State Department, under its authority as LFA and pursuant to NSPD 17/HSPD 4, is currently developing an approach to U.S. FCM activities based upon memorandums of understanding or other forms of agreement. This will tie U.S. offers of assistance to a commitment from the HN to provide appropriate immunities, privileges, and waivers of liability to USG agencies and personnel. Legal advisors should determine whether or not such agreements are in place when examining legal issues related to U.S. FCM response activities.

### **3. Sovereignty Issues**

A major concern in responding to an event on foreign soil is the necessity for the HN government to remain in control of the activities that are occurring within its borders, specifically, those efforts being performed by other nations or international groups. At the same time, an FCM event occurring on or near U.S. installations overseas, or targeted against U.S. forces, will most likely implicate various DoD regulations/directives to include Standing Rules

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<sup>48</sup> See, e.g., Protocol of Intentions between the Federal Emergency Management Agency and the Emergency Committee of the Republic of Kazakhstan on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response, U.S.- Kaz., Nov. 4, 1997.

<sup>49</sup> See, e.g., Memorandum of Understanding between the Department of Defense of the United States of America and the Department of National Defence of Canada Concerning Mutual Support, U.S.- Can., Oct. 21, 1999; Guidelines Concerning Cooperation on Chemical, Biological, Radiological, and Nuclear Counterterrorism Between the Government of Canada and the Government of the United States of America, U.S.- Can., May 26, 1999; Agreement Between the Government of the United States of America and the Government of Canada on Cooperation in Comprehensive Civil Emergency Planning and Management, U.S.- Can., Apr. 28, 1986.

<sup>50</sup> See, e.g., Memorandum of Understanding Between the Government of the United States of America and the Government of Ukraine on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response, U.S.- Ukr., Jun. 5, 2000, 2000 U.S.T LEXIS 37; Memorandum of Understanding on Cooperation in Natural and Man-Made Emergency Prevention and Response, U.S.- Ukr., Jul. 30, 1991, TIAS 11456.

<sup>51</sup> See, e.g., Mutual Logistics Support Agreement between the Department of Defense of the United States of America and the Department of National Defense of The Republic of the Philippines, U.S.- Phil., Nov. 21, 2002.

of Engagement (SROE) for U.S. forces,<sup>52</sup> and as noted, could involve violations of U.S. laws that have extra-territorial effect, as well as raising international agreement issues. Accordingly, commanders may be responding based upon U.S. authorities, and under U.S. regulations, even as they are subject to the HN's sovereign law, and they must consider applicable international law as well.

As noted, whatever the circumstances of the incident, and regardless of the U.S. authorities and regulations that may apply, the HN has primary responsibility for the initiation, organization, coordination, and execution of the response to a CBRNE event on its territory. This is true regardless of the level of additional help it requests. International agreements affirm this responsibility and require assisting nations to respect sovereignty. For instance the Assistance Convention, applicable in nuclear and radiological emergencies, provides specific requirements of both the HN and assisting nations that serve to maintain HN sovereignty.<sup>53</sup> The HN must “specify the scope and type of assistance required and, where practicable, provide the assisting party with such information as may be necessary for that party to determine the extent to which it is able to meet the request.” Even in situations where the HN is not able to provide this level of specificity, the HN and assisting states will “in consultation,” decide the scope and type of assistance required.<sup>54</sup>

The Assistance Convention requires States Parties to communicate to other parties their competent authorities and points of contact for making requests for, and accepting offers of assistance. The Assistance Convention also states that:

The overall direction, control, co-ordination and supervision of the assistance shall be the responsibility within its territory of the requesting State. The assisting party should, where the assistance involves personnel, designate in consultation with the requesting State, the person who should be in charge of and retain immediate operational supervision over the personnel and the equipment provided by it. The designated person should exercise such supervision in cooperation with the appropriate authorities of the requesting State.<sup>55</sup>

With sovereignty also comes the responsibility to provide local facilities and services to the assisting nations for the effective administration of the requested assistance. Host nations must also ensure the protection of personnel, equipment, and materials brought into its territory for the purposes of assistance. This could present issues when responding to an event in an underdeveloped or poorer nation, and could also present issues that must be considered during the planning phases of FCM response.

For CBRNE events that affect U.S. overseas installations or events that are targeted against U.S. forces, the concepts of self-defense and the authority of U.S. commanders or officials to respond to FCM events come into play. With regard to self-defense, commanders at all levels have the inherent right and obligation to defend their units and other U.S. forces at all times. Also, under

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<sup>52</sup> CJCSI 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces, Jun. 13, 2005 (document is classified).

<sup>53</sup> Assistance Convention, *supra* note 41.

<sup>54</sup> *Id.*, at art. 2.

<sup>55</sup> *Id.*, at art. 3.

immediate response authority, U.S. military commanders may be allowed to respond to “save lives” in the face of an FCM event. However, a commander’s lawful actions in self-defense or to save lives, especially actions outside of the military installation on HN territory, may raise HN concerns about territorial integrity and use of force.<sup>56</sup> Additional sovereignty considerations may be raised regarding anti-terrorism/force protection (AT/FP) actions when an event takes place on or near an overseas military installation and a commander is simply utilizing his right to self-defense. U.S. military activities for AT/FP should not infringe on sovereignty, but the need to protect USG personnel shortly after a major incident could create friction with the HN. These concepts – immediate response, self-defense and AT/FP, and related issues – are discussed in greater detail in **Chapter 2**.

Public affairs (PA) coordination also raises sovereignty issues in relation to FCM efforts. Entities involved should anticipate extensive media coverage of FCM activities. While responsibility for informing its public about an event belongs to the HN, affected third countries also must keep their citizens informed. The interconnectedness of and global access to media sources ensures that most information disseminated in connection with an emergency will reach widespread audiences. The interests of the HN and other countries in the quality, timeliness, and consistency of information related to the event will overlap. While media coverage can assist the FCM mission, the intense interest of the media in covering FCM operations requires careful coordination among PA elements, including the HN, USG, non-governmental organizations (NGOs), IOs, and other nations involved in the mission.<sup>57</sup> Lack of coordination could not only create confusion among responders and exacerbate public disorder, but may have legal implications as well. **Chapter 8** discusses public affairs in greater detail.

Depending on the location of the CBRNE incident, certain countries may refuse to allow U.S. and international agencies to assist their citizens, citing national sovereignty, regardless of the extent and impact of the incident. Arguably, such a circumstance raises a policy, not a legal, issue. Discussions between the HN, concerned governments and responsible IOs generally will resolve the issue. Generally, USG doctrine and plans contemplate FCM operations being conducted in a permissive environment. Clearly, the United States would not force a country to accept FCM assistance.

Law enforcement issues also can raise sovereignty questions during FCM response efforts. For instance, if a terrorist incident overseas results in American civilian casualties, but the HN refuses to allow the United States to assist in identifying who was responsible for the event, policy makers will need to consider measures the United States can take to validate the results of the HN’s investigation. Crime scene issues are also very important considering that the preservation of evidence may affect response procedures and vice versa. Law enforcement issues are discussed in further detail in **Chapter 6**.

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<sup>56</sup> Legal advisors may want to consider the basis for immediate response actions under international law and how that could affect liability questions regarding U.S. forces providing “good samaritan” types of assistance. *See* footnote 28 in **Chapter 2**.

<sup>57</sup> Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, ch. IV, Section 16, Aug. 15, 2001.

Other sovereignty issues discussed in various chapters of this Deskbook include liability and customs requirements, procedures for shipment of contaminated remains, responding to an event in a nation where no SOFA is in place, and responding to an event in a nation where the national government is no longer functioning due to an FCM incident.

#### **4. Roles and Responsibilities of Key Organizations**

The United Nations (UN), the World Health Organization (WHO), the OPCW, and the IAEA are key IOs that play a role in FCM. A number of regional organizations, such as the European Union (EU), NATO, and the Association of Southeast Asian Nations (ASEAN), have FCM-related agreements and mechanisms in place. Moreover, private voluntary organizations (PVO) and NGOs may play a role in managing the consequences of a CBRNE incident.

To the extent that an affected State does not request assistance directly from the United States or U.S. interests, the United States will not play a role, unless it participates as a member of a supporting international governmental organization such as the United Nations, the IAEA, the OPCW, or the North Atlantic Treaty Organization (NATO). In many cases, agreements involving member States of regional governmental organizations routinely address emergency response and disaster assistance, and if these mutual assistance arrangements result in sufficient response resources, there may not be a request for assistance from the larger international organizations.

##### **4.1 United Nations (UN)**

The UN may provide humanitarian assistance in the event of a CBRNE incident overseas. The various UN agencies involved in humanitarian assistance include the United Nations High Commissioner for Refugees; United Nations International Children's Emergency Fund; the United Nations Environment Program; the United Nations Development Program; and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). Assistance provided by these agencies could include food, water, health, sanitation, agriculture, and education aid as well as security, stability and other life-saving interventions. For instance, OCHA's mission is to improve the effectiveness of the UN's humanitarian operations in the field and to coordinate humanitarian response, policy development and humanitarian advocacy.<sup>58</sup> Among other things, OCHA has a specific mandate to work with other agencies to manage the troublesome issue of internally displaced persons in humanitarian relief efforts.<sup>59</sup> The UN also has a stand-by Disaster Assessment and Coordination (UNDAC) team. Upon the request of a

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<sup>58</sup> OCHA, "A Brief History of OCHA," [http://ochaonline.un.org/webpage.asp?Nav=\\_about\\_en&Site=\\_about](http://ochaonline.un.org/webpage.asp?Nav=_about_en&Site=_about) (last visited Nov. 18, 2005).

<sup>59</sup> See, e.g., the UN, *OCHA/PFP Ministerial Conference on Regional Cooperation and Coordination in Crisis Management for Europe and the NI*, Office for the Coordination of Humanitarian Affairs, Fribourg, Jun. 14-16, 2000; UN, "Handbook for Applying the Guiding Principles on Internal Displacement," The Brookings Institution Project on Internal Displacement, Nov. 1999; and the UN, Guiding Principles on Internal Displacement, United Nations Office for the Coordination of Humanitarian Affairs, [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html) (last visited Mar. 29, 2006).

host nation, the UNDAC team can be deployed within hours to provide rapid assessment of priority needs and to support national authorities and the UN Resident Coordinator to coordinate international relief on-site.<sup>60</sup>

In addition to these response entities, the United Nations General Assembly (UNGA) unanimously adopted the *International Convention for the Suppression of Acts of Nuclear Terrorism* in 2005 which provides guidance for international cooperation in the event of a nuclear terrorist incident.<sup>61</sup> It provides definitions of terrorist offenses, including both acts and threats. The Convention promotes cooperation between Member States in preventing such incidents by sharing information and assisting other States with the investigation, extradition, and prosecution of alleged offenders. It does not apply, however, when offenses are “committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis” for involvement per the Convention.<sup>62</sup> The United States and 96 other countries have signed the Convention, which opened for signature in September 2005. It will enter into force 30 days after ratification by 22 countries.

The UN’s role in assisting in coordinating the response efforts for an FCM incident is discussed below in **section 4.9**.

#### 4.2 World Health Organization (WHO)

The WHO, the United Nations’ health agency, is responsible for the organization and management of international public health to include responding to a CBRNE incident. Operating within a network of regional and country offices, the WHO has the mobility, as well as the capability, to respond quickly to catastrophic disasters and incidents. It actively provides technical cooperation, assesses health needs, coordinates the provision of international health assistance, and manages and distributes critical supplies.<sup>63</sup> In addition, it undertakes epidemiological surveillance, develops measures for disease control, gauges environmental

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<sup>60</sup> UN, Field Coordination Support Section, UNDAC, <http://ochaonline.un.org/webpage.asp?Page=552> (last visited Nov. 29, 2005). See UN, Office for the Coordination of Humanitarian Affairs, United Nations Disaster Assessment and Coordination UNDAC Field Handbook, 2000.

<sup>61</sup> U.N. Ad Hoc Committee, *International Convention for the Suppression of Acts of Nuclear Terrorism*, G.A. Res. 59/766 U.N. Doc. A/59/766 (Apr. 4, 2005) [hereinafter U.N. Doc. A/59/766]. The Convention is open for signature from Sept. 14, 2005 until Dec. 31, 2006; it is subject to ratification and will enter into force 30 days after the deposit of the 22<sup>nd</sup> instrument of ratification.

<sup>62</sup> *Id.*, at art. 3. Similar conventions that may relate to FCM response efforts include: International Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997, 37 I.L.M. 249; Convention on the Physical Protection of Nuclear Material, Mar. 3, 1980, U.S.T. 1980; Convention of the Organization of the Islamic Conference on Combating International Terrorism, Jul. 1, 1999; European Convention on the Suppression of Terrorism, Jan. 27, 1977, 15 I.L.M. 1272; OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, Feb. 2, 1971, TIAS 8413; Organization of African Unity Convention on the Prevention and Combating of Terrorism, Jul. 14, 1999; SAARC Regional Convention on Suppression of Terrorism, Nov. 4, 1987; Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, Jun. 4, 1999.

<sup>63</sup> WHO, Department of Emergency and Humanitarian Action, Sustainable Development and Healthy Environments, p. 31, Washington D.C., 2001.

health, manages health services, and estimates the costs of assistance projects.<sup>64</sup> The overall mission of WHO is to ensure the highest possible level of health for all peoples and its mandate is to mitigate the health consequences of emergencies such as a CBRNE incident wherever they occur.<sup>65</sup> In coordination with other organizations, the WHO addresses ten core issues in health emergencies: assessment of health risks; health coordination; epidemic and nutritional surveillance; control of preventable causes of illness and death; access to basic preventative and curative care; prevention of malnutrition; management of health risks in the environment; protection of health workers, services and structures; human rights to health; and reducing the impact of future crises.<sup>66</sup>

#### 4.3 International Atomic Energy Agency (IAEA)

The primary role of the IAEA, a UN organization, is to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world. The IAEA is responsible for ensuring that any nuclear assistance provided by it, at its request, under its supervision, or its control is not used in such a way as to further any military purpose. To help minimize the effects of any accidents or misuse of atomic energy, the IAEA has developed numerous plans for response to radiological events, including an *Emergency Notification and Assistance Technical Operations Manual* and a *Joint Radiation Emergency Management Plan of the International Organizations*.<sup>67</sup> In addition, the IAEA Emergency Response Network (ERNET) is a global network for a rapid international response in the event of a radiation accident that provides qualified emergency response teams comprised of personnel from Member States and organized on the basis of regional emergency response capabilities. These manuals, response teams, and other resources provide model procedures and a useful framework and procedures for coordinating interagency and international response to radiological events.<sup>68</sup>

#### 4.4 Organisation for the Prohibition of Chemical Weapons (OPCW)

The OPCW is responsible for ensuring that the CWC is implemented effectively and achieves its purpose of prohibiting the development, production, stockpiling, acquisition, transfer, and use of chemical weapons. The OPCW, composed of the Member States that are party to the CWC, was established in 1997 as the treaty-implementing body. In the event of a chemical weapons incident the OPCW may be called upon by Member States to investigate and coordinate or deliver assistance and protection, including consequence management teams, equipment and training. In addition, the OPCW actively verifies the destruction of existing chemical weapons stockpiles and former production facilities, monitors activities within the chemical industry to ensure that dual-use chemicals are being produced or traded for legitimate purposes, and

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<sup>64</sup> *Id.*

<sup>65</sup> WHO, Fact Sheet No. 90, Emergency and Humanitarian Action, Aug. 2001.

<sup>66</sup> *Id.*

<sup>67</sup> IAEA, Emergency Notification and Assistance Technical Operations Manual, EPR-ENATOM, IAEA, Vienna (2004); IAEA, Joint Radiation Emergency Management Plan of the International Organizations, EPR-JPLAN, IAEA, Vienna (2004).

<sup>68</sup> It is not clear whether or not the IAEA response teams are standing teams of member state personnel or if they are formed for each emergency.



coordinates or delivers assistance and protection to Member States under Article X of the CWC if they are attacked or threatened by chemical weapons, including threats or use by terrorists.<sup>69</sup> Additional discussion of the CWC and the OPCW may be found in **section 2** of this chapter.

#### 4.5 European Union (EU)

Within the EU there are bilateral and multilateral agreements and processes to which the United States is not a party. In particular, the European Commission has been working actively to improve emergency preparedness and response capabilities across the EU. For instance, in the event of a natural or man-made disaster, the EU-wide Community Civil Protection Mechanism facilitates co-operation on civil protection assistance. The Mechanism pools the capabilities of participating states to maximize preparedness for a major disaster and enable effective emergency response. The Monitoring and Information Centre processes requests for assistance and facilitates the coordination of assistance.<sup>70</sup> The Centre sends an assessment and coordination team to disasters outside the EU and sends liaison officers to disasters located within the EU to facilitate exchange of information with the HN and with other governmental and non-governmental actors on the ground. The Common Emergency Communication and Information System hosts a database of national emergency response assets potentially available across the EU in a major emergency and it facilitates information sharing between EU member states and the Centre. While the Civil Protection Mechanism, the Centre, and the Common Emergency Communication and Information System focus on preparedness, planning and response almost exclusively for EU member states, the Commission coordinates its efforts with NATO's disaster response mechanism discussed in **section 4.6** below. This includes coordination with non-EU partner countries, including the United States. The Commission is also considering specific programs and mechanisms for terrorism, including specific measures for terrorism involving biological and chemical agents.<sup>71</sup>

#### 4.6 North Atlantic Treaty Organization (NATO)

NATO may also be involved in the case of a CBRNE incident. The Euro-Atlantic Disaster Response Coordination Centre (EADRCC), established in 1998, is responsible for information sharing and coordination of natural and man-made disaster response, including CBRNE consequence management, in the 46 NATO and partnership countries comprising the Euro-Atlantic Partnership Council (EAPC) nations. Through its Euro-Atlantic Disaster Response Unit (EADRU), EADRCC coordinates disaster relief efforts of member nations as requested by the affected nations and conducts exercises to plan responses. For instance, as previously noted, EADRCC conducted an exercise in Ukraine in 2005 to test responses to a terrorist incident

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<sup>69</sup> CWC, *supra* note 42, at para. 5, art. § 8. OPCW Fact Sheet, <http://www.opcw.org/> (last visited Nov. 12, 2005). It should be noted that, strictly interpreting the CWC, a State Party can receive assistance under a threat scenario only if it is threatened by a State; terrorist threats are excluded.

<sup>70</sup> EU, Council Decision, 2001/792, Establishing a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions, 2001 O.J. (L297) (EC).

<sup>71</sup> EC Health & Consumer Protection Directorate-General, G/FS D(2001) GG, Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks, Dec. 17, 2001.

involving chemical agents.<sup>72</sup> As a member of NATO, the United States participates in the EADRCC.

The NATO EAPC members have also created the *Project on the Non-Binding Guidelines and Minimum Standards* to provide non-binding guidelines to prepare for CBRN incidents.<sup>73</sup> These guidelines were created to enhance international cooperation, and focus on issues such as training, standardization, and response.<sup>74</sup>

NATO also has a multinational CBRN Defense Battalion that provides rapidly deployable CBRN detection, identification, and hazard response support in the event of a CBRN attack. The battalion's capabilities fall into five categories: nuclear, biological and chemical (NBC) reconnaissance operations, identification of NBC substances, biological detection, and monitoring operations, NBC assessments and advice for NATO commanders, and NBC decontamination operations.<sup>75</sup> The CBRN Defence Battalion will be under the operational control of the Supreme Allied Commander Europe, though operational control can be delegated to a Joint Forces Command if required.<sup>76</sup> Thus, when U.S. military forces assigned to NATO are acting in a NATO capacity, they may perform NATO FCM missions that are separate and distinct from other FCM response efforts by the U.S.

#### 4.7 Association of Southeast Asian Nations (ASEAN)

One of the primary purposes of ASEAN is to promote peace and stability in the Southeast Asian region.<sup>77</sup> The ASEAN Committee on Disaster Management, under the purview of the Foreign Ministers of member countries and the Committee on Transnational Crime Issues, is concerned with preventing and managing the effects of terrorism. The member countries have also agreed to cooperate on plans and technical assistance to respond to acts of terrorism.<sup>78</sup> The ASEAN Regional Forum (ARF) is the principal forum for multilateral security dialogue in Asia and complements the bilateral alliances and dialogues, which make up the region's security architecture. ASEAN preparedness exercises have included the ARF Confidence Building

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<sup>72</sup> NATO, Exercise "Joint Assistance Exercise 2005," EADRCC, <http://www.nato.int/eadrcc/2005/ukraine/index.html> (last visited May 8, 2006).

<sup>73</sup> NATO EAPC, Project on the Non-Binding Guidelines and Minimum Standards, May 4, 2006.

<sup>74</sup> *Id.*

<sup>75</sup> NATO's Multinational Chemical, Biological, Radiological and Nuclear Defence Battalion, Dec. 10, 2003, <http://www.nato.int/shape/issues/cbrndb/index.htm> (last visited Nov. 18, 2005).

<sup>76</sup> NATO SHAPE: NATO's Multinational Chemical, Biological, Radiological and Nuclear Defence Battalion, <http://www.nato.int/shape/issues/cbrndb/index.htm> (last visited May 8, 2006).

<sup>77</sup> The member countries of ASEAN are: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. In addition to the ASEAN members, the participating countries in the ARF are: Australia, Canada, China, European Union, India, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Mongolia, New Zealand, Pakistan, Papua New Guinea, Russian Federation, and the United States.

<sup>78</sup> ASEAN, Joint Communiqué of the Special ASEAN Ministerial Meeting on Terrorism Kuala Lumpur, May 20-21, 2002.

Measure workshop co-hosted by Australia and Singapore on “Managing the Consequences of a Major Terrorist Attack” from June 3-5, 2003.<sup>79</sup>

Other regional governmental organizations have agreed to measures for enhanced cooperation in emergency response. Among these are the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), the Organization of Eastern Caribbean States (OECS), the League of Arab States, the Gulf Cooperation Council (GCC), and the Council of the Baltic Sea States.<sup>80</sup>

#### 4.8 Nongovernmental Organizations (NGOs)

NGOs play an invaluable role in disaster relief. According to the United Nations, an NGO is a:

Not-for-profit, voluntary citizens' group, which is organized on a local, national or international level to address issues in support of the public good.... NGOs perform a variety of services and humanitarian functions, bring citizens' concerns to Governments, monitor policy and programme implementation, and encourage participation of civil society stakeholders at the community level. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Some are organized around specific issues, such as human rights, the environment or health.<sup>81</sup>

USAID defines a PVO as a “private, voluntary organization engaged in international humanitarian and development assistance.”<sup>82</sup> For the purposes of this Deskbook, NGOs and PVOs will be discussed in tandem as NGOs; they have similar roles and responsibilities in disaster response and NGOs also use the term PVO to describe themselves.

Unbound by formal treaties and requirements, NGOs are among the first to respond to an incident. HN requirements and organization-specific guidelines generally control these organizations' actions during response efforts, enabling the relatively smooth transition of their entities into most incident areas. NGOs bring vital medical assistance and necessary aid to displaced and detained persons, but generally do not possess capabilities to operate in a contaminated CBRNE environment.

Most NGOs belong to associations or have formed alliances or partnerships with many governmental entities to further facilitate their integration into the response process. For

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<sup>79</sup> ARF Annual Security Outlook 2003: Australia, *available at* [http://www.dfat.gov.au/arf/documents/security\\_outlook\\_2003.html](http://www.dfat.gov.au/arf/documents/security_outlook_2003.html).

<sup>80</sup> *See, e.g.*, OSCE, Rapid Expert Assistance and Co-operation Teams (REACT) Programme, 1999; Work of the OSCE within the Caribbean Disaster Emergency Response Agency; OAS, Inter-American Convention to Facilitate Disaster Assistance, Jun. 7, 1991; Joint Defense And Economic Cooperation Treaty Between The States Of The Arab League, art. 3, Jun. 17, 1950; Terms of Reference of the Council of the Baltic Sea States, Section 18, revised 2005.

<sup>81</sup> United Nations Department of Public Information, Non-Governmental Organizations Section, Jun. 2004, *available at* <http://www.un.org/dpi/ngosection/brochure.htm>. NGOs may apply for consultative status with the UN to obtain formal roles in the UN's deliberations.

<sup>82</sup> USAID, Private Voluntary Cooperation, PVC-ASHA, *available at* [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/private\\_voluntary\\_cooperation/](http://www.usaid.gov/our_work/cross-cutting_programs/private_voluntary_cooperation/). U.S. – based PVOs must be registered with USAID in order to receive funds from the agency. A list of U.S. and international PVOs may be found at <http://www.pvo.net/usaid/>.

example, the American Council for Voluntary International Action (InterAction) is a collective membership of over 160 U.S.-based international NGOs.<sup>83</sup> This organization uses its geographic index of member NGOs to significantly aid response teams, as it anticipates which NGOs would be expected to assist in the disaster relief efforts of almost every nation in the world. Governments, private citizens, businesses and/or international agencies fund NGOs to carry out their specific capabilities and competencies, which usually develop agreements or cooperation pacts to smooth the progress of aid when incidents occur. Groups like InterAction work towards coordinating these different response missions before and during an incident.

Important to NGOs' role and capabilities is whether they have consultative status within the Economic and Social Council of the UN. NGOs with this status are awarded certain rights and privileges, and, accordingly have responsibilities to the UN and its missions. Operational coordination and collaboration are furthered in NGO/PVO-UN agreements, with the UN Secretariat's Office for the Coordination of Humanitarian Affairs handling matters of cooperation with NGOs in a disaster response context.

Recognizing the many complex legal and moral issues in FCM and international disaster response, the Task Force on Ethical and Legal Issues in Humanitarian Assistance, another UN organ facilitating coordination of response efforts, was formed by the Program on Humanitarian Assistance at the World Conference on Religion and Peace in 1994. Composed of representatives of major relief agencies, the UN system and experts in humanitarian assistance, the group enumerated humanitarian guidelines and concerns for UN Member States, especially in light of the fact that increasing numbers of military forces are now being used in disaster relief efforts. Examples of recommendations the Task Force made are as follows:

- Humanitarian assistance agencies and organizations must be free to do their work and not be hindered by political or military restrictions.
- The principles of non-interference and sovereignty should not be used as an obstacle to humanitarian assistance. The objective of humanitarian assistance is to save lives and deal with coordination issues; it is not intended to challenge the sovereignty of the State on whose territory aid is to be delivered.
- Appropriate decision making structures should be established at headquarters and at field levels in order to coordinate and resolve political, humanitarian, and military issues of policy and operations.<sup>84</sup>

The Task Force also specified options for joint planning to be employed by political, humanitarian and military leaders to further facilitate the coordination process whenever feasible. Options to be taken into account are: effectiveness in saving lives and minimizing the disruption to at-risk populations; the sustainability of measures to be employed; the resources which can be made available; compatibility of operations; respect for the independence of humanitarian

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<sup>83</sup> InterAction, American Council for Voluntary International Action, *available at* <http://www.interaction.org/>.

<sup>84</sup> Joint Pub. 3-08, Interagency Coordination during Joint Operations, App. J, Oct. 9, 1996.

organizations that are not able or willing to share in a joint planning process; and swift and effective fulfillment of their mandate.<sup>85</sup> Humanitarian principles guide most NGO disaster relief efforts and their top priority is saving and sustaining lives.

For instance, the International Red Cross and Red Crescent Movement have a history dating back to 1859 and continue to be leaders in the area of humanitarian assistance. Its three main bodies are: the national Red Cross and Red Crescent Societies (RC/RC); the International Federation of Red Cross and Red Crescent Societies (IFRC); and the International Committee of the Red Cross (ICRC). Its future strategy focuses on the promotion of fundamental principles and humanitarian values, disaster response, disaster preparedness, as well as healthcare in the community. Essentially, national societies provide a range of services including disaster relief, health and social programmes, and assistance to people affected by disasters. They exist in almost every country and have been involved in the aftermath of terrorist attacks (*e.g.*, the February 2004 stampede in Iraq), nuclear emergencies (*e.g.*, Chernobyl), plane and train crashes, and other man-made disasters. There is a division of responsibility between the national and international RC/RC Societies. In times of armed conflict and internal strife the ICRC has the primary role. During natural and technological disasters<sup>86</sup> that stress the capacity of the national society, the IFRC takes the lead role. When foreign national societies render assistance to their sister societies, they must coordinate with the RC/RC agency that has the lead role.

If a CBRNE incident occurs in armed conflict (or commences one) the Geneva Conventions and Protocols likely will apply. The ICRC will have the right to offer its services, domestic RC/RC societies will also have the right to operate, and other humanitarian organizations (including outside RC/RC societies) should be provided the opportunity to give support.<sup>87</sup> In cases not involving an armed conflict, according to RC/RC rules, the national RC/RC society may determine whether to request outside aid, which in some cases national law may specifically support.<sup>88</sup> According to the IFRC website:

The response system is based on the right of National Societies to request support in a crisis, and of the Federation's Secretariat to offer support. The Secretariat's role is that of coordinator; it launches international appeals to raise funds for the relief operations, and then mobilizes personnel and relief goods.

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<sup>85</sup> *Id.*, at App. J, p. J-5.

<sup>86</sup> IFRC defines “technological disasters” as “non-natural disastrous occurrences,” such as accident release, nuclear or chemical explosions, including situations of chemical or biological warfare, and atmosphere pollution, *available at* <http://www.ifrc.org/what/disasters/types/tech/>.

<sup>87</sup> *See, e.g.*, Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, arts. 3, 10, 14, 25, 30, 143, 59, 63, 76, 143, 6 U.S.T. 3516, 75 U.N.T.S. 287, Aug. 12, 1949; Protocol I, art. 5; 11 U.N.T.S. 3, 16 I.L.M. 1391; Protocol II, art. 18, 11 U.N.T.S. 3, 16 I.L.M. 1442, Jun. 8, 1977.

<sup>88</sup> The IFRC has agreements with over 60 states granting it privileged access to facilitate its support of the national societies.

Through its regional and country field offices, the Federation can also provide managerial, technical and administrative expertise and support to the National Society as required.<sup>89</sup>

As NGOs may arrive before U.S. response personnel and remain after foreign military and other U.S. response personnel have gone; their importance cannot be understated. USG decision-makers should recognize that mutually beneficial arrangements between U.S. support elements and NGOs may be crucial to the success of the response. Most of these organizations attempt to maintain neutrality during relief operations, avoiding formal contracts. For instance, national Red Cross organizations have auxiliary status within their host country and are recognized by the governments of their countries as voluntary aid societies and as auxiliaries to the public authorities in the humanitarian field. They have autonomous status which allows them to operate in conformity with the fundamental principles of the Red Cross movement, allowing it to maintain neutrality in times of conflict.

Issues that arise when NGOs become involved in disaster response include the procedure for DoD and other USG agencies to provide support to NGO efforts and funding. NGOs may need logistical, security, or other assistance from governments or other NGOs to conduct their relief operations. For instance: “During UNIFIED ASSISTANCE, the ability to use U.S. military aircraft was an important issue with non-governmental organizations (NGOs), media civilians and foreign military personnel.”<sup>90</sup> The USAID/OFDA element of the FEST would likely communicate with the U.S. military to coordinate any assistance that might be rendered to the NGOs supporting the response effort.<sup>91</sup> NGOs have a variety of funding sources, including private donations and grants and contracts from national governments and IOs. Generally, in the United States, USAID will fund NGOs to assist with relief activities in an FCM setting after an assessment of the situation has been made. Depending on the scale of the event, the level of effort involved for the military in supporting the NGOs’ relief activities may be significant. **Chapter 4** goes into further detail on how the U.S. military funds its support to FCM operations, to include providing assistance to NGOs.

#### 4.9 Managing Activities of Responding Government and Non-Government Organizations

The HN has primary responsibility for managing the activities of inter-governmental organizations (IGOs) and NGOs providing assistance. With the consent of the HN, UN-OCHA may assist in this coordination effort.

OCHA carries out its coordination function primarily through the Inter-Agency Standing Committee, which is chaired by the [Emergency Relief Coordinator] ERC. Participants include all humanitarian partners, from UN agencies, funds and programmes to the Red Cross Movement

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<sup>89</sup> Disaster Response: The Federation Approach, *available at* <http://www.ifrc.org/what/disasters/response/fedapproach.asp>; *see also* David Fisher, International Disaster Response Laws, Rules and Principles (IDRL) Presentation, FCM Legal Deskbook Workshop I, Sept. 27, 2005.

<sup>90</sup> P.B. Collins, Combined Support Force 536 Staff Judge Advocate After Action Report 5800/17, for descriptions of DoD coordination with DOS in USG response to the December 2004 tsunami [hereinafter Tsunami AAR].

<sup>91</sup> Government Accounting Office, *Combating Terrorism: Department of State Programs to Combat Terrorism Abroad*, GAO-02-1021, Sept. 12, 2002.

and NGOs. The [Inter-Agency Standing Committee] ensures inter-agency decision-making in response to complex emergencies. These responses include needs assessments, consolidated appeals, field coordination arrangements and the development of humanitarian policies.<sup>92</sup>

OCHA uses the concept of an On-Site Operations Coordination Centre to coordinate NGO and IO activities with the host nation's Local Emergency Management Authority.<sup>93</sup>

Regarding the coordination of the U.S. response effort both internally and with international organizations, the U.S. Agency for International Development/Office of Foreign Disaster Assistance (USAID/OFDA) Disaster Assistance Response Team (DART) is responsible for integrating and communicating with any arriving NGO response team. The DART will also determine the need for services and work jointly with NGOs to coordinate the provision of these services. See **Chapter 1** for further details on the DART.

The U.S. military's response forces will also coordinate with the NGOs and PVOs to work towards a common mission and end-state and to manage the flow of resources. Joint Publication 3-08 describes the Armed Forces and the NGO and private voluntary organization relationship:

NGOs and PVOs do not operate within either the military or the governmental hierarchy. Therefore, the relationship between the Armed Services and NGOs is neither supported nor supporting. An associate or partnership relationship may accurately describe that which exists between military forces and engaged NGOs and PVOs. If formed, the focal point where U.S. military forces provide coordinated support to NGOs and PVOs would be the Civil-Military Operations Center (CMOC).<sup>94</sup>

Internal U.S. coordination can also be facilitated by the American Council for Voluntary International Action (InterAction), a U.S.-based consortium of private agencies that operate in 180 countries.<sup>95</sup>

For the U.S. military, the primary impact of NGOs and IOs will likely be at the Joint Task Force (JTF) level. DoD guidance notes that NGOs and IOs may view the military as an "inexhaustible resource reservoir" and therefore the military may receive direct request for various types of support. As noted, other than immediate response situations, only assistance that has been coordination with DOS may be provided. U.S. forces must be clear on the types of assistance they are capable of delivering and allowed to provide and ensure that all requests for assistance are processed according to U.S. law and DoD regulations and procedures..<sup>96</sup>

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<sup>92</sup> United Nations Office for the Coordination of Humanitarian Affairs, "A Brief History of OCHA," *available at* [http://ochaonline.un.org/webpage.asp?Nav=\\_about\\_en&Site=\\_about](http://ochaonline.un.org/webpage.asp?Nav=_about_en&Site=_about) (last visited Feb. 2, 2006).

<sup>93</sup> See UN, Office for the Coordination of Humanitarian Affairs (OCHA), *On-Site Operations Coordination Centres (OSOCC) Guidelines*, (draft), p. 1.

<sup>94</sup> *Id.*, at ch. II, p. 18. See *supra* text accompanying note 20 for a discussion of CMOC.

<sup>95</sup> Joint Pub. 3-07.6, *supra* note 57.

<sup>96</sup> *Id.*

## Chapter Four - Liability and Fiscal Law

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**Table 4-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
Presidential Documents		
<a href="#">10 U.S.C. § 127, 127a</a>	DoD	Emergency and Extraordinary Expenses Fund and Contingency Operations Funding Authority
<a href="#">10 U.S.C. § 166a</a>	DoD	Combatant Commander Initiative Fund for expenses including humanitarian and civil assistance
<a href="#">10 U.S.C. § 401, et. seq.</a>	DoD, DOS	Provides authorization for and conditions on funding for humanitarian and civic assistance provided in conjunction with military operations
<a href="#">10 U.S.C. § 2341-2350, NATO Mutual Support Act</a>	DoD	Authorizes DoD to enter into acquisition and cross-servicing agreements (ACSA) with specified foreign governments and IOs
<a href="#">10 U.S.C. § 2557</a>	DoD, DOS	Authorizes provision of DoD non-lethal excess supplies for humanitarian relief purposes, among others
<a href="#">10 U.S.C. § 2561</a>	DoD	Authorizes use of DoD humanitarian assistance funds for the transportation of humanitarian relief and other humanitarian purposes worldwide
<a href="#">10 U.S.C. § 2733, Military Claims Act</a>	DoD	Allows claims based on military noncombat activities, and activities resulting from the fault of military personnel
<a href="#">22 U.S.C. §2151, et seq., Foreign Assistance Act</a>		Provides authorization and specifies funding for foreign disaster assistance
<a href="#">22 U.S.C. § 2751 et seq., Arms Export Control Act</a>	Various Federal Agencies	Controls exports of specified articles and services for national security and other reasons
<a href="#">28 U.S.C. § 1346 (b), 2671, et seq., Federal Tort Claims Act</a>	USG	Provides limited waiver of the federal government's sovereign immunity when its employees are negligent within the scope of their employment; Limited to the United States.
<a href="#">31 U.S.C. § 3721, Personnel Claims Act</a>	DoD	Allows claims by military personnel for loss or damage of personnel property that occur incident to service
Agency Directives/Instructions/Manuals		
<a href="#">DoDD 2010.9</a>	DoD Components	Governs the development and implementation of ACSAs
<a href="#">DoDD 5100.46</a>		Regulations applicable to the provision of foreign disaster assistance
<a href="#">DoDD 5515.8</a>		Assigns single service responsibility for the processing of claims against or on behalf of DoD
<a href="#">Joint Pub. 3-07.6</a>		Policy regarding provision of humanitarian assistance
<a href="#">CJCSI 2120.01</a>		Policies and procedures concerning the use of ACSAs
International Agreements/Arrangements		
<a href="#">NATO SOFA</a>	States Parties	Discusses limitation of liability for assistance provided under the agreement, as well as arrangements for customs and duties
<a href="#">NATO EAPC, Memorandum of Understanding on the Facilitation of Vital Cross Border Transport</a>		Aims at improving efficiency in responding to CBRN incidents.
<a href="#">US-Italy Acquisition and Cross-Servicing Agreement, with Annex</a>		Sample agreement for the provision of logistics support
<a href="#">Assistance Convention</a>		Requires provision of assistance and limitation of liability
<a href="#">Vienna Convention on Civil Liability for Nuclear Damage</a>		Limits liability for nuclear operators
<a href="#">Convention on Temporary Admission</a>		Requires States to facilitate customs arrangements for various purposes, include relief assistance

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">Assistance Convention</a>	Signatory Parties	Convention on assistance in the case of a nuclear accident or radiological emergency
<a href="#">Kyoto Convention</a>	Signatory Parties	International Convention on the Simplification and Harmonization of Customs Procedures
<a href="#">Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines (Visiting Forces Agreement)</a>	United States, Philippines	Places limits on U.S. military forces in the Philippines and outlines liability issues for the both the Philippines and the United States.

## **1. Introduction**

Foreign consequence management (FCM) activities, particularly those involving the use of U.S. military personnel, can involve a variety of fiscal and liability issues for both the United States and the host nation (HN). These issues range from jurisdiction over criminal matters involving U.S. personnel, to duties and customs placed on equipment and supplies brought into a country by U.S. forces, to funding sources for response operations.

There is no overarching agreement or model in place to manage fiscal and liability issues, but rather a variety of domestic provisions and international arrangements. Funding for civilian response activities varies depending on the type of entity responding. Civilian and military government responders, such as the U.S. military and United States Agency for International Development (USAID), and inter-governmental organizations (IGOs) have funds expressly designated for particular types of foreign assistance. The question with such responders usually is not whether funding is available, but which designation or “pot of money” is applicable to a particular event. For the U.S. military, this question is particularly important as it must balance standard military requirements in a given area of responsibility with the surge requirements attendant to an extraordinary event, such as an act of CBRNE terrorism. U.S.-based non-governmental organizations (NGOs), the second major categories of responders, are often funded by government agencies, in addition to private donations. These NGOs allocate their resources in accordance with their individual arrangements with their donors and their operating requirements.

Generally, there is no consistency across nations regarding the relief of foreign responders from liability. Express bilateral or multilateral agreements have been necessary to ensure that responders are free from liability for damage resulting from actions undertaken during the course of responding to a disaster or emergency. However, it is important to ascertain the applicable standard of care that will ensure immunity as it may vary across the different agreements. To deal with liability issues concerning military personnel, a Status of Forces Agreement (SOFA) or a Visiting Forces Agreement (VFA) usually is in place between the United States and a host nation. Examples of these include the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) and the Visiting Forces Agreement between the United States and the Philippines (discussed in the Philippines country study). In the absence of pre-existing arrangements concerning liability, the United States Government (USG) likely will negotiate the issue with the host nation early in the emergency.

## **2. Fiscal Law and Policy Relevant to FCM**

FCM response is time sensitive. In order to respond quickly and efficiently it is important to understand how appropriations and funding will be handled before an event occurs so that funding issues do not hamper consequence management efforts. U.S. regulations largely address the interagency funding issues that USG entities may experience in coordinating a response to a CBRNE event overseas. However, there remain grey areas in the funding and reimbursement

requirements and processes. Various treaties and agreements attempt to address these issues. Having clear and concise agreements on fiscal issues far in advance of any event will help outline responsibilities and procedures and align expectations.

## 2.1 U.S. Fiscal Law and Policy

As noted in Chapter 3, appropriations for international disaster assistance are generally found in the U.S. Foreign Assistance Act (FAA or the Act), specifically 22 U.S.C. § 2292 as well as 22 U.S.C. § 2318. The funds appropriated under the FAA may be allocated or transferred to any agency of the USG to carry out the purposes of the Act.<sup>1</sup> In addition to these funding sources, the FAA contains other funding options. Title 22 authorizes the President to direct the drawdown of defense articles, defense services and military training and education to meet unforeseen emergencies that require “immediate military assistance to a foreign country or international organization” and the requirement “cannot be met under the authority of the Arms Export Control Act [22 U.S.C. 2751 et seq.] or any other law except this section.”<sup>2</sup> Up to \$25 million of additional funds are to be available for such use in each fiscal year. As with the special authorities mentioned in previous chapters, pursuant to 22 U.S.C. § 2411, the President must notify the Speaker of the House and the Committee on Foreign Relations and Appropriations of the Senate each time this authority is exercised.

Additional funds for international disaster relief may be made available through the provisions of 22 U.S.C. § 2360. This section allows up to 10 percent of the funds made available for any part of the FAA, with a few exceptions, to be transferred to and combined with funds made available for any other part of the Act. However, no one account may be increased by more than 20 percent of its original funded value. If funds are not immediately available, 22 U.S.C. § 2357 authorizes any agency of the USG to furnish goods and services on an advance-of-funds or reimbursement basis to foreign countries as well as IOs and relief agencies. Finally, 22 U.S.C. § 2364 allows the President to authorize assistance without regard to “any law relating to receipts and credits accruing to the United States,” when it is in the important security interests of the United States.

For the Department of Defense (DoD), Foreign Consequence Management is a subset of the many types of response activities considered Foreign Humanitarian Assistance (FHA).<sup>3</sup> However, FCM creates unique challenges for military forces responding to a CBRNE event overseas and while there are similarities to FHA situations, the differences add to the myriad legal issues and hurdles for the military commander, his staff and his legal advisors. For example, reimbursement of funds for actions taken as part of immediate response authority is not guaranteed.<sup>4</sup> DODD 5100.46, *Foreign Disaster Relief*, sets guidelines for DOD reimbursement of supplies during foreign disaster response.

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<sup>1</sup> 22 U.S.C. § 2292 (2005).

<sup>2</sup> 22 U.S.C. § 2318 (2005).

<sup>3</sup> Joint Pub 3-07.06, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, Aug. 15, 2001.

<sup>4</sup> *Id.*

Military FCM operations under the authority of 10 U.S.C §§ 402, 404, and 2557 are supported by OHDACA funds made available under 10 U.S.C. § 2561. These funds are authorized for supporting the Humanitarian Assistance Program (HAP), the Humanitarian Mine Action (HMA) Program, and Foreign Disaster Relief and Emergency Response (FDR/ER). With some exceptions, OHDACA funds generally may not be used in support of Humanitarian and Civic Assistance (HCA) operations performed under 10 U.S.C. § 401.<sup>5</sup> HCA operations may only be funded through annual appropriations to DoD specifically for such purposes.<sup>6</sup> The following table lists various activities funded under the above statutes and shows when they may be paid for with OHDACA Funds:

Category	Recipient	Humanitarian Mine Action	Humanitarian Assistance	Trans of HA/DR	Foreign Disaster Assistance	Excess Non-Lethal Supplies
		10 USC 401	10 USC 2561 <sup>7</sup>	10 USC 402	10 USC 404 <sup>8</sup>	10 USC 2557 <sup>9</sup>
Supplies & Services	Foreign Military	Y*	N	N	N	Y*
	Foreign Civilians	Y	Y	N	Y	Y
Transportation	Foreign Military	N	N	N	N	N
	Foreign Civilians	N	Y	Y	Y	Y*
Construction & Repair	Foreign Military	Y*	N	N	N	N
	Foreign Civilians	Y	Y	N	N	N
Medical care <sup>10</sup>	Foreign Military	Y*	N	N	N	N
	Foreign Civilians	Y	Y	N	Y*	N
Training <sup>11</sup>	Foreign Military	Y*	N	N	N	N
	Foreign Civilians	Y	Y	N	Y	N

Table 4-2. Use of OHDACA funds<sup>12</sup>

Additional restrictions on HCA funding include:

- 10 U.S.C. §401 prohibits HCA support to military or paramilitary entities. This prohibition does not apply to humanitarian mine action under §401 because military forces may be the only entity capable of conducting mine clearing in many countries.
- Transportation under 10 U.S.C. §2561 can only be provided to foreign military if they provide a specific service to civilians.
- Excess non-lethal supplies can be donated to military only if used for civilian purpose.

<sup>5</sup> However, OHDACA funds may be used to support HMA performed under 10 U.S.C. § 401.

<sup>6</sup> 10 U.S.C. § 401(c)(1) (2005).

<sup>7</sup> 10 USC § 2561 (2005), includes transportation of excess non-lethal supplies; 10 USC § 404 (2005).

<sup>8</sup> 10 USC § 404 (2005), includes medical evacuation.

<sup>9</sup> 10 USC § 2557 (2005).

<sup>10</sup> For the purposes of Tables 4-2, 4-3, and 4-4, the term “Medical care” includes surgical, dental, and veterinary care.

<sup>11</sup> For the purposes of Tables 4-2, 4-3, and 4-4, the term “Training” includes education and technical assistance.

<sup>12</sup> 10 U.S.C. § 401 (2005). Table 4-2, is a product of Operation Unified Assistance, After Action Review, Exercises and Humanitarian Assistance Division, U.S. European Command (USEUCOM). Note: Asterisks indicate that various restrictions may apply as the pertinent authorities are often limited in scope.

In the initial stages of FCM efforts, geographic COCOMs may be asked to provide logistical support such as shelter, medical assistance, and distribute food and water. Humanitarian operations funding described above is closely related; however, the “color” of money can cause limitations. Normally, military forces operating under the immediate response authority may only be able to provide supplies and pay for support using operations and maintenance (O&M) funds. O&M funds may also be used for small scale HCA activities and to fund activities undertaken pursuant to acquisition and cross servicing agreements (ACSAs) which expedite the provisions of logistics support, supplies, and services.<sup>13</sup> DoD Directive 2010.9 and CJCSI 2120.01 implement ACSA authority, setting out requirements and restrictions for developing and executing the agreements.<sup>14</sup> ACSAs are discussed in greater detail in **Chapter 2, section 2.4**. **Table 4-3** below highlights HCA activities that may be funded with Operations and Maintenance (O&M) Funds:<sup>15</sup>

Category	Recipient	Humanitarian Civic Assistance 10 USC 401 <sup>16</sup>
Supplies & Services	Foreign Military	N
	Foreign Civilians	Y
Transportation	Foreign Military	N
	Foreign Civilians	Y
Construction & Repair	Foreign Military	N
	Foreign Civilians	Y
Medical Care <sup>17</sup>	Foreign Military	N
	Foreign Civilians	Y
Training <sup>18</sup>	Foreign Military	N
	Foreign Civilians	Y

**Table 4-3. Use of O&M funds**

Additional funding for military FCM operations may be made available under special authorities. Special military authorities include the Combatant Commander’s Initiative Fund, the authority to

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<sup>13</sup> 10 U.S.C. § 2344 (2005).

<sup>14</sup> DoDD 2010.9, Acquisition and Cross-Servicing Agreements, Apr. 28, 2003; CJCSI 2120.01, Acquisition and Cross-Servicing Agreements, Apr. 28, 2004. *See also*, USAREUR Reg. 12-16, Mutual Logistic Support Between the U.S. Army and Governments of Eligible Countries, NATO Subsidiary Bodies, and United Nations Organizations, Apr. 1997. The United States currently has about 76 ACSA’s in place with countries and IOs nationwide.

<sup>15</sup> Provided by Exercises and Humanitarian Assistance Division, USEUCOM, *supra* note 12.

<sup>16</sup> This provision does not include humanitarian mine action because funding for that is provided via OHDACA funds.

<sup>17</sup> *See* footnote 10 for description of “Medical care.”

<sup>18</sup> *See* footnote 11 for description of “Training.”

meet Emergency and Extraordinary Expenses,<sup>19</sup> and the Contingency Operations Funding Authority.

The Combatant Commander Initiative Fund authorizes the Chairman of the Joint Chiefs of Staff to release funds to a Commander, on the Commander's request, for activities related to, among other things, force protection and training; contingencies; selected operations; joint exercises; and, humanitarian and civil assistance.<sup>20</sup> The Emergency and Extraordinary Expenses authority allows the Secretary of Defense and the Secretaries of the military departments to meet expenses which could not be "anticipated or classified."<sup>21</sup> The Contingency Operations funding authority authorizes the Secretary of Defense to provide funding for "humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance."<sup>22</sup> The Secretary of Defense may also provide non-lethal excess DoD supplies to the Secretary of State for humanitarian relief purposes pursuant to 10 U.S.C. § 2557. **Table 4-4** highlights the DoD support activities funded through specified special appropriations:<sup>23</sup>

Category	Recipient	Combatant CDR Initiative Funds 10 USC 166a	Presidential Drawdown 22 USC 2318	Excess Defense Articles 22 USC 2321j <sup>24</sup>	CDR's Emergency Response Program (CERP) <sup>25</sup> Authorization Act
Supplies & Services	DoD	Y	N	N	N
	Foreign Military	Y	Y	Y	N
	Foreign Civilians	Y	Y	Y	Y
Transportation	DoD	Y	N	N	N
	Foreign Military	Y	Y	Y*	N
	Foreign Civilians	Y	Y	Y*	Y
Construction & Repair	DoD	Y	N	N	N
	Foreign Military	Y	N	N	N
	Foreign Civilians	Y	N	N	Y
Medical care <sup>26</sup>	Foreign Military	Y	N	N	N
	Foreign Civilians	Y	N	N	Y
Training <sup>27</sup>	DoD	Y	N	N	N
	Foreign Military	Y	Y	N	N
	Foreign Civilians	Y	Y	N	Y

**Table 4-4. Use of Special Appropriations**

<sup>19</sup> 10 U.S.C. § 127 (2005).

<sup>20</sup> 10 U.S.C. § 166a (2005).

<sup>21</sup> 10 U.S.C. § 127 (2005).

<sup>22</sup> 10 U.S.C. § 127a (2005).

<sup>23</sup> Provided by Exercises and Humanitarian Assistance Division, USEUCOM, *supra* note 12.

<sup>24</sup> Transportation provided under 22 U.S.C. § 2321j is only allowed if: 1) it is in the national interest of United States to do so; 2) the recipient is a developing country receiving less than \$10 million in FMF/IMET aid; 3) the total weight of transfer does not exceed 50,000 lbs; and 3) transportation is provided on a space-A basis.

<sup>25</sup> Funds allocated for CERP are for Iraq and Afghanistan only.

<sup>26</sup> See footnote 10 for description of "Medical care".

<sup>27</sup> See footnote 11 for description of "Training".

Joint Publication 3-07.6 addresses various fiscal issues faced by the U.S. military during humanitarian operations, which largely resemble those of FCM missions. “Supplies and equipment left behind as a result of HA support operations must be in accordance with all applicable Federal laws and statutes relating to the donation or transfer of military articles and supplies. Consult legal counsel prior to any release of supplies and equipment.”<sup>28</sup> According to U.S. military doctrine, forces participating in humanitarian missions are to be reimbursed for the expenses of support and activities requested by USAID/OFDA.

### **3. Liability**

FCM response activities may involve complex and often highly dangerous operations; accordingly, personal injury and property damage can be expected despite the best efforts of responders. Questions of liability for damages incident to consequence management activities will be secondary to the immediate needs of disaster response, however they must be considered. Possible areas of liability for FCM activities include the operations of improperly credentialed foreign medical personnel and damage to property or persons in the host nation.

Corporate or non-government organizations (NGOs) foreign assistance operations are subject to considerable HN legal regulation, which may cause operations to stall while such services as logistical planning, financial cooperation and agreements, and the use of foreign responders (such as medical personnel) are undergoing consideration and approval. The International Federation of the Red Cross and Red Crescent Societies (IFRC), in a study of laws affecting international relief operations, notes:

Laws concerning the recognition of professional qualifications, particularly for medical personnel, impose important barriers. Many countries lack comprehensive good samaritan laws and foreign relief personnel and organizations thus find themselves exposed to significant risk of liability for their dangerous work.<sup>29</sup>

In operations involving the U.S. military, Status of Forces Agreements (SOFA) or Visiting Forces Agreements (VFA) with HN generally cover liability issues for U.S. military personnel. Liability issues for non-military U.S. responders may be addressed by U.S. laws and regulations and/or other bilateral and multilateral arrangements. **Section 4.1 of Chapter 2** provides additional information on liability protections available under SOFAs and VFAs, and more discussion of how such agreements can provide liability protection for military personnel is found below.

#### **3.1 U.S. Liability Laws and Regulations**

The United States Government (USG) has sovereign immunity against any claims based on the U.S. response to a FCM incident. The Federal Tort Claims Act (FTCA), which provides various

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<sup>28</sup> Joint Pub. 3-07.6, *supra* note 3, ch. IV § 6.

<sup>29</sup> IFRC, *Background Paper on International Disaster Response Laws, Rules and Principles (IDRL)*, Nov. 28, 2005, available at [http://www.ifrc.org/docs/pubs/idrl/fema\\_1105.pdf](http://www.ifrc.org/docs/pubs/idrl/fema_1105.pdf).



exemptions to the USG's sovereign immunity (such as for the negligent or wrongful acts or omissions of an employee of the USG under certain circumstances), typically does not apply overseas.<sup>30</sup> Legal advisors should ascertain if multilateral or bilateral agreements between the United States and a host nation (such as a Status of Forces or Visiting Forces Agreement, both of which are described in more detail below) address liability issues for USG personnel responding to an FCM matter, and/or claims against the U.S. that may arise during emergency response activities. Given the number of DoD contractors providing critical support to the U.S. military, their status and exposure to liability should be carefully considered by legal advisors.

Under the Foreign Claims Act (FCA), the U.S. may pay claims filed by inhabitants of foreign countries for personal injury, death, or property loss or damage caused by U.S. military personnel outside of the United States “[t]o promote and maintain friendly relations.”<sup>31</sup> As a general rule, the FCA will not apply in foreign countries where the U.S. has an agreement (such as the NATO SOFA and the U.S. SOFA with the Republic of Korea for military personnel) that “provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States.”<sup>32</sup>

Section 2734a of the FCA outlines how such international agreements are to be enforced in the context of claims incident to the non-combat activities of the armed forces; in general, the claims provisions of those SOFAs or other such agreements will apply. In situations where no SOFA or other international agreement apply, claims may be made under the FCA based on negligent acts or omissions by U.S. military personnel, or based on the noncombat activities of U.S. forces. Under the FCA, there generally is no scope of employment requirement.<sup>33</sup> Eligible “inhabitants” include receiving state and other non-U.S. nationals and all levels of the receiving state government.<sup>34</sup> If there are SOFAs/other international agreements governing settlement, adjudication, or cost sharing of claims between the United States and the country where the claim for damage is based, those agreements are controlling.<sup>35</sup> DoD has assigned responsibility for the processing of claims against or by the United States in overseas countries/areas to a single

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<sup>30</sup> See Section 2680(f) of the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* (2005) ; Grimes, Maj. Derek I., Rawcliffe, Maj. John, Smith, Cpt. Jeannine, Operational Law Handbook, Judge Advocate General's School, International and Operational Law Dept., ch. 8, p. 152 (2006) (hereinafter the “Op Law Handbook”) *available at* [http://www.au.af.mil/au/awc/awcgate/law/oplaw\\_hdbk.pdf](http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf)

<sup>31</sup> Foreign Claims Act, 10 U.S.C. § 2734-2736 (1982)

<sup>32</sup> 10 U.S.C. § 2734a (commonly referred to as the International Agreement Claims Act).

<sup>33</sup> The only actors required to be “in scope” for the U.S. to have liability are local nationals of the host nation who work for the United States. The Op Law Handbook, *supra* note 30 at Chapter 8, Section IV.D.1., p. 153.

<sup>34</sup> These types of “inhabitants” are proper claimants. Enemy or “unfriendly” nationals or governments, insurers and subrogees, U.S. inhabitants, and U.S. military and civilian component personnel, if in the receiving state incident to service, are improper claimants. The Op Law Handbook *supra* note 30 at Chapter 8, Section IV.D.1., p. 153.

<sup>35</sup> The Military Claims Act applies when the Foreign Claims Act is inapplicable. This and other limitations generally restrict application of the MCA overseas to claims made by family members accompanying the force. It provides for liability where damage or injury is caused by the negligent or wrongful act or omission of military personnel acting within the scope of their duties. It also provides for absolute liability for damages caused by noncombat military activities 10 U.S.C. §2733 (2005).

service (*e.g.*, the Department of the Army processes such claims arising in Germany, and the Netherlands; and the Navy is responsible for claims arising in Italy).<sup>36</sup>

Liability protections available under various international agreements for various USG responders to a FCM event are discussed below.

### 3.2 International Liability Arrangements

Bilateral and international agreements relating to emergency response assistance often provide for immunity from liability for the supporting State or otherwise provide for the settlement of claims arising out of response activities. Cost-sharing for response activities may also be addressed in such agreements. Examples of multilateral agreements with provisions for the settlement, adjudication, or cost-sharing of claims, and for managing issues of liability, include the NATO Status of Forces Agreement (SOFA) and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Assistance Convention). As discussed in more detail below, these and various other international agreements may offer liability protection for USG employees who work for different federal agencies. When such liability agreements are lacking, the State Department is developing an approach to issues of liability that will seek to tie any offer of FCM assistance from the United States to a commitment from the requesting/receiving country to provide waivers of liability to responding USG agencies and personnel. It appears that the State Department will use an exchange of diplomatic notes, a memorandum of understanding, or some other form of agreement will be used to accomplish this. Legal advisors should determine if such a memorandum or agreement is in place, and who is covered by the agreements when examining liability issues related to U.S. FCM response activities.<sup>37</sup>

Foreign Service employees of the State Department involved in FCM response (and in the general performance of their duties) are provided various privileges and immunities under the *Vienna Convention on Diplomatic Relations of 1961* and the *Vienna Convention of 1969*.<sup>38</sup> Additional privileges and immunities for these individuals may be contained in bilateral agreements – typically consular agreements – and friendship, commerce and navigation agreements may also provide some immunities for DOS (and other USG agency) employees. International organizations often have treaties or arrangements with host states that offer some protections against liability for members of missions to that organization or representatives on a mission for that organization such as supporting a humanitarian assistance mission by a NGO.<sup>39</sup> Examples of these kinds of agreements are discussed below. In addition, some agencies, such as

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<sup>36</sup> DoDD 5515.8, Single-Service Assignment of Responsibility for Processing of Claims, Jun. 9. 1990.

<sup>37</sup> The International Atomic Energy Agency's *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* (Assistance Convention) may be of particular interest for liability issues relating to a nuclear/radiological FCM incident. As discussed in more detail later in this chapter, it provides a potential vehicle for resolving many liability issues for the U.S. responders to such an event.

<sup>38</sup> Department of State, Foreign Service Assignment Notebook Chapter 21, p. 160, 2003 (updated 2006), *available online* at <http://www.state.gov/m/fsi/tc/22052.htm>.

<sup>39</sup> *Id.*

USAID and the Peace Corps, have “specific arrangements with a host nation that provide certain privileges and immunities ‘consistent’ with a particular status.”<sup>40</sup>

The United Nations (UN) *Convention on the Privileges and Immunities of the Specialized Agencies* provides certain immunities to UN agencies such as the World Health Organization. Article III, Section 8 of the Convention states that the UN agencies are “exempt from customs duties and prohibitions and restrictions on imports and exports” which are for official use by the agencies.<sup>41</sup> Concerning the immunity of UN personnel, immunity can be waived where it “would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.”<sup>42</sup>

The Organization for the Prohibition of Chemical Weapons (OPCW) provides oversight through the inspections and monitoring provisions of the *Chemical Weapons Convention* (CWC), as well as through providing protection and assistance in case of a chemical weapons attack. The CWC does not, however, set forth the privileges and immunities to be granted to officials of the OPCW.<sup>43</sup> The privileges and immunities granted to OPCW officials are instead determined through bilateral arrangements between the OPCW and the individual states, as stated in Article VIII of the CWC.

The International Atomic Energy Agency (IAEA), the intergovernmental forum that focuses on nuclear cooperation and safety among states, established the Response Assistance Network (RANET) to coordinate assistance and response activities of member states, including response to nuclear and radiological events. The IAEA does not assume financial responsibility for the responders or equipment involved in assistance activities.<sup>44</sup> The IAEA maintains that the individual states are to be held responsible.

The IAEA’s 1986 Assistance Convention deals with both financial and legal liability issues for States providing assistance. The Assistance Convention states that if agreed to in advance, the HN will reimburse the assisting parties for the costs of support (the parties can agree to either partial or full reimbursement).<sup>45</sup>

The Assistance Convention covers claims and compensation in Article 10. Essentially, all claims against the assisting party arising out of damage to property or the environment and injury to persons are waived. Moreover the requesting State shall compensate the assisting State for the death or injury of its personnel or those acting on its behalf as well as for damage to equipment used to provide assistance. The provisions of the Assistance Convention apply between members of the Convention, when responding in the scope of the Convention, and only in the

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<sup>40</sup> *Id.*

<sup>41</sup> UN Convention on the Privileges and Immunities of the Specialized Agencies, art III, Nov. 21, 1947.

<sup>42</sup> *Id.*, at art. V.

<sup>43</sup> OPCW, Privileges and Immunities Agreements, available at <http://www.opcw.org>, (last visited Jun 25, 2006).

<sup>44</sup> IAEA, *IAEA Response Assistance Network, Incident and Emergency Centre*, [http://www-pub.iaea.org/MTCD/publications/PDF/Ranet2006\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Ranet2006_web.pdf), (last visited Jun 25, 2006).

<sup>45</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Sept. 26, 1986, 25 ILM 1377 [hereinafter Assistance Convention]. The U.S is a party to the Assistance Convention.

absence of other agreements.<sup>46</sup> The Assistance Convention also covers the privileges and immunities of the assisting State's personnel.<sup>47</sup>

As noted, liability issues for military personnel may be addressed in SOFAs or VFAs. Consequence management actions undertaken in Europe will likely involve NATO. Article VIII of the NATO SOFA governs claims by Contracting Parties against other Contracting Parties and completely waives liability for damage caused by employees of the armed services in "connection with the operation of the North Atlantic Treaty."<sup>48</sup> The SOFA provides procedures to deal with claims by third parties for damages caused by employees of the armed services in the performance of their official duties in Article VIII(5) and claims arising from actions not done in the performance of official duties in Article VIII(6). Article IX also covers the obligations of an assisting State which occupies buildings or facilities in the host nation. See the Liability Arrangements section of the Country Study for Italy in this Deskbook for a further description of the NATO SOFA liability provisions.

As noted, other bilateral agreements address liability issues for U.S. military forces providing emergency response assistance. For example, the United States and the Philippines signed a visiting forces agreement (VFA) in 1998 to address, among other things, the status of U.S. military forces in the Philippines. Any operation conducted by the U.S. military in the Philippines, including disaster relief operations, must have the prior approval of the Philippine Government. As well as placing limits on how and when U.S. forces can enter the Philippines, the VFA outlines liability issues for U.S. personnel. Article VI of the VFA waives all claims for damage to property or people arising from military activities covered by the VFA.<sup>49</sup> The U.S. VFA with the Philippines is discussed in more detail in the Country Study for the Philippines that follows the Italy Country Study.

If there is no SOFA or VFA in place, or if the SOFA/VFA does not adequately address the event-specific concerns as previously noted, the State Department may utilize an exchange of diplomatic notes, a MOU/MOA, or other form of agreement tailored to the specific FCM event to help fill the gaps. As also previously mentioned, care should be taken in drafting such instruments to address the status of contractors who provide needed support to DoD and other USG agencies. Legal advisors considering the status of contractors and other liability issues for USG employees responding to a FCM event can seek additional guidance from the Office of the Legal Advisor (L), Office of Diplomatic Law and Litigation (L/DL), Room 5420, Harry S. Truman Building, 2201 C Street, NW, Washington, DC 20520.<sup>50</sup>

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<sup>46</sup> *Id.*, at art. 12.

<sup>47</sup> *Id.*, at art. 8.

<sup>48</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces, Jun. 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 (hereinafter NATO SOFA).

<sup>49</sup> Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, art. V, U.S.-Phil., Feb. 10, 1998, TIAS [hereinafter Visiting Forces Agreement].

<sup>50</sup> Additional contact information (current as of October, 2006): Tel: (202) 647-1074; Fax: (202) 736-7541; e-mail: LDLsbu@state.gov

### 3.3 Customs and Duties

A major concern of responders to foreign incidents has been the lack of a standard framework for managing the customs and duties that accompany crossing international borders to render assistance. Anticipating and making provisions for such requirements minimize delays in placing relief personnel, supplies and equipment at the incident site. Several international agreements on customs facilitation apply between the Parties in the event of a humanitarian disaster. For instance, the *Convention on Temporary Admission*, or Istanbul Convention, requires each Party to grant temporary admission for specified goods. Temporary admission is defined as follows:

the Customs procedure under which certain goods (including means of transport) can be brought into a Customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.<sup>51</sup>

Annex B.9 of the Istanbul Convention deals expressly with goods imported for humanitarian purposes, including medical, surgical and laboratory equipment, and relief consignments. Because such goods may be imported and remain in the assisted country, “temporary admission may be terminated by clearance for home use, when circumstances justify and national legislation so permits.”<sup>52</sup> The *International Convention on the Simplification and Harmonization of Customs Procedures*, or Kyoto Convention, also discusses the facilitation of customs arrangements and waiver of taxes for relief supplies.<sup>53</sup> The effectiveness of the agreements in facilitating movement of supplies and personnel is questionable as each of these agreements requires action by the contracting Parties to facilitate customs arrangements and provide the anticipated relief from duties.

In general, sovereigns do not tax each other. Thus, U.S. forces and diplomatic personnel will be exempt from duties on equipment and supplies related to FCM operations. However, customs procedures can cause delays and private entities providing assistance are subject to customs requirements and may be subject to duties on relief supplies. The United States has in place general customs and emergency preparedness and response agreements with friendly countries that require each side to apply expedited customs procedures to the import and export of material or services into the assisted country.<sup>54</sup> In the case of military border crossings, SOFAs or visiting forces agreements (VFA) generally deal with issues of customs clearance and duty

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<sup>51</sup> Convention on Temporary Admission, Nov. 27, 1993, ch. 1, para. a, (hereinafter Istanbul Convention). The U.S. is not a Contracting Party to the Istanbul Convention. The World Customs Organization (WCO) has recorded 49 Contracting Parties as of June 30, 2005. The *Position as Regards Signatures, Ratifications, and Accessions* is available at <http://www.wcoomd.org/ie/EN/Conventions/conventions.html>.

<sup>52</sup> *Id.*, at ann. B.9.

<sup>53</sup> International Convention on the Simplification and Harmonization of Customs Procedures, May 18, 1973 [hereinafter Kyoto Convention].

<sup>54</sup> See, e.g., Agreement between the United States of America and the Republic of Belarus Concerning Emergency Response and the Prevention of Proliferation of Weapons of Mass Destruction, U.S.- Bel., Oct. 22, 1992.

waivers in advance of any requirement.<sup>55</sup> The NATO Euro-Atlantic Disaster Response Coordination Centre (EADRCC) encourages Member Countries to “develop bilateral or multilateral arrangements to address issues such as visa regulations, border-crossing arrangements, transit agreements, customs clearance and status of personnel.”<sup>56</sup> Members of NATO’s Euro-Atlantic Partnership Council (EAPC) have created a Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport which addresses customs issues during CBRN responses. According to the memorandum, personnel engaged in relief efforts shall “whenever possible, be exempt from visa regulations and immigration inspection.”<sup>57</sup> In addition, as previously discussed, the DOS is developing an approach to U.S. FCM activities that ties privileges and immunities for USG agencies and personnel to offers of assistance. This approach will most likely be based on the exchange of diplomatic notes or incident-specific memorandums of understanding/agreements. Legal advisors should determine if such agreements are in place while examining FCM legal issues. In addition, these and other customs agreements may not always make note of the use of DoD and other contractors to support U.S. responders to a FCM event. The increasing use of contractors makes it important that legal advisors consider them when dealing with liability issues in FCM response activities.

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<sup>55</sup> Agreement between the Parties to the North Atlantic Treaty Organisation regarding Status of Their Forces, Arts. XI-XIV, Jun. 19, 1951, 4 U.S.T. 1792, TIAS 2846.

<sup>56</sup> See “Responding to Civil Emergencies” in NATO Transformed, Jun. 2004, *available at* [http://www.nato.int/docu/nato-trans/html\\_en/nato\\_trans11.html](http://www.nato.int/docu/nato-trans/html_en/nato_trans11.html).

<sup>57</sup> NATO EAPC, Memorandum of Understanding on the Facilitation of Vital Cross Border Transport, Aug 3, 2006.

## Chapter Five – Medical, Evacuation, and Environmental Issues

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**Table 5-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
<b>Presidential Documents</b>		
<a href="#">Exec. Order No. 12114</a>	Various Federal Agencies	Focuses on the environmental effects abroad of major Federal actions
<a href="#">Exec. Order No. 12656</a>		Assigning responsibilities to different Federal departments and agencies for emergency preparedness functions
<a href="#">Exec. Order No. 13139</a>		States USG policy to provide military personnel with appropriate health protection during military operations.
<a href="#">Exec. Order No. 13295</a>	HHS	Lists quarantinable communicable diseases
<b>United States Code</b>		
<a href="#">10 USC § 1094</a>	DoD	Portability of licenses for military health care personnel
<a href="#">22 USC § 1731</a>	DOS	Extension of privileges of native-born citizens to naturalized citizens in regard to foreign services
<a href="#">22 U.S.C. § 2151, et seq. Foreign Assistance Act</a>	Various Federal agencies	Authorizes foreign humanitarian and disaster assistance of the U.S. Federal government
<a href="#">22 USC §§ 2715-2715b</a>		Procedures for notifying next-of-kin for Americans involved in foreign disasters and incidents
<a href="#">22 U.S.C. § 4801 et seq., Diplomatic Security Act</a>		Provides for security of USG personnel and government operations abroad
<a href="#">22 USC § 5501, et seq.</a>		Describes US response to terrorism abroad affecting Americans, including crisis teams, transportation, and remains
<a href="#">33 U.S.C. §1401, et seq., Ocean Dumping</a>		Regulates the dumping of material into ocean waters
<a href="#">42 USC §§ 264 -272</a>	HHS, Public Health Service	Requires regulations to control communicable diseases, including measures to prevent the introduction of foreign infectious diseases into the United States
<a href="#">42 USC § 1313</a>	DOS	Designates DOS the role of LFA for reception of all evacuees in the U.S.
<b>Code of Federal Regulations</b>		
<a href="#">22 CFR Part 216</a>	USAID	Lays out specific procedures for the USAID to ensure that environmental factors are taken into consideration
<a href="#">32 CFR Part 187</a>	DoD	Requires the DoD to be accountable for the environmental effects abroad of any major DoD actions
<a href="#">42 CFR Part 71</a>	HHS, Public Health Service	Regulations designed to prevent foreign disease introduction in the U.S.
<a href="#">42 CFR Part 70</a>	HHS, Public Health Service	Regulations designed to prevent the spread of disease from state to state
<b>Agency Directives/Instructions/Manuals</b>		
<a href="#">DoDD 3025.14</a>	DoD Components	Tasks Dept of the Army, Deputy Chief of Staff for Personnel with the reception and repatriation of all DoD family members, non-essential employees, and DoD contractors.
<a href="#">DoDD 6050.7</a>		Internal procedures for addressing environmental effects of DoD actions abroad
<a href="#">DoDD 6200.3</a>		Emergency health powers on military installations
<a href="#">DoDD 6205.3</a>		Extends the general DoD immunization program to cover biological warfare
<a href="#">DoDD 6490.2</a>		Establishes policy and responsibilities for medical surveillance of all military personnel during active service
<a href="#">DoDI 2000.18</a>		Security of DoD personnel and their families
<a href="#">DoDI 4715.8</a>		Addresses environmental remediation of DoD activities overseas



## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">DoDI 6025.16</a>		Provides for interstate portability of medical licenses for DoD medical personnel
<a href="#">DoDI 6205.2</a>		DoD immunization policies for military personnel and their families
<a href="#">DoDI 6490.3</a>		Describes routine military medical surveillance activities during deployments
<a href="#">Joint Pub 3-07.5</a>		Describes DoD TTP for noncombatant evacuation operations
<a href="#">Joint Pub 3-07</a>		Discusses DoD operations in non-war scenarios
<a href="#">Joint Pub 3-57</a>		Provides guidelines and operating principles for civil-military interaction
<a href="#">Joint Pub 3-07.6</a>		Describes DoD tactics, techniques and procedures for the provision of foreign humanitarian assistance
<a href="#">Joint Pub 3-07.2</a>		Details DoD tactics, techniques and procedures for antiterrorism operations
<a href="#">Joint Pub 4-02</a>		Establishes DoD doctrine in relation to health service support
<a href="#">Joint Pub 4-02.1</a>		Describes the tactics, techniques and procedures for health service logistics support in DoD operations
<a href="#">Joint Pub 4-06</a>		Describes joint tactics, techniques and procedures for mortuary affairs in joint operations.
<a href="#">Joint Pub 3-16</a>		Lays out operating principles for multinational operations
<a href="#">CJCSI 3214.01B</a>		Instructions regarding the provision of military support to foreign consequence management
<a href="#">Memorandum of Understanding Between the Department of State and the Department of Defense</a>	DoD, DOS	Responsibilities for security of DoD elements and personnel in foreign areas
<b>International Agreements/Arrangements</b>		
<a href="#">World Health Organization's International Health Regulations</a>	WHO Members	Provide a public health response to the international spread of disease
<a href="#">Chemical Weapons Convention</a>	Signatory Countries	States Parties have the right to request assistance and protection; States Parties are required to provide assistance and protection through the OPCW in the case of use or threat of use of chemical weapons
<a href="#">Assistance Convention</a>		Facilitates the provision of assistance in the event of a nuclear accident or radiological emergency
<a href="#">Notification Convention</a>		Facilitates notification of other states parties in the event of a nuclear accident or radiological emergency
<a href="#">NATO Standardization Agreements</a>		Establishes standards for medical materiel
<a href="#">Quadripartite Standardization Agreements</a>	United States, United Kingdom, Canada, Australia	Establishes standards for medical materiel
<a href="#">Convention on the Law of the Sea</a>	Signatory Countries	Requires international coordination and cooperation with the IAEA to render assistance in nuclear/radiological assistance
<a href="#">Basel Convention</a>		Limits and sets out requirements for the international movement of hazardous wastes and their disposal
<a href="#">Dumping Convention</a>		Prevents ships and aircrafts from dumping specified pollutants into the ocean
<a href="#">Convention on Environmental Impact and Assessment in a Transboundary Context</a>		Gives States Party an opportunity to participate in environmental analyses of actions that might cause significant negative transboundary impacts
<a href="#">Convention for the Protection of the Natural Resources and Environment of the South Pacific Region</a>		Requires States Parties co-operate in taking all necessary measures for the protection of the South Pacific Region
<a href="#">NATO SOFA</a>	NATO Members	Details the status of forces within NATO countries.

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">NATO EAPC Draft Treatment Protocols Against Radio Nuclear Agents</a>		Provide guidelines for first responders in treating radiological and nuclear casualties.
<a href="#">NATO EAPC Draft Treatment Protocols Against Biological Warfare Agents</a>		Provide guidelines for first responders in treating chemical or biological warfare casualties.
<a href="#">UN A/Res 45/100</a>	UN Members	Emphasizes responsibilities of HN's calling for assistance
<a href="#">EU Council Directive 82/501/ECC</a>	EU Members	Addresses the major-accident hazards of certain industrial activities
<a href="#">EU Council Directive 87/216/EEC</a>		Amendment aimed at broadening the scope of EU Council Directive 82/501/ECC, in particular to include the storage of dangerous substances
<a href="#">EU Council Directive 86/610/EEC</a>		Amendment aimed at broadening the scope of EU Council Directive 82/501/ECC, in particular to include the storage of dangerous substances
<a href="#">EU Council Directive 93/16/EEC</a>		Facilitates the free movement of doctors and the mutual recognition of their diplomas, certificates, and other evidence of formal qualifications
<a href="#">EU Council Directive 96/82/ECC</a>		Addresses the control of major-accident hazards
<a href="#">WHO Guiding Principles for International Outbreak Alert and Response</a>	UN Members	How to prepare for field activity, to activate international support, to coordinate response in the field, to evaluate and follow up outbreaks of international importance
<a href="#">WHO EMC/97.3</a>		Provides guidelines for the safe transport of infectious substances and diagnostic specimens
<a href="#">IAEA Safety Standard Series No. GS-R-2</a>		Provides requirements for preparedness and response for a nuclear or radiological emergency
<a href="#">Rio Declaration</a>	UN Members	Provides principles to protect the integrity of the global environmental and developmental system
<a href="#">Convention on the Law of the Non-navigational Uses of International Watercourses</a>	UN Members	Provides measures for the protection, preservation, uses, and management of non-navigational watercourses and waters
International Agreements/Arrangements		
<a href="#">Heddings, Raymond E.</a>		U.S. roles in providing humanitarian assistance following NBC accidents/incidents

## **1. Medical Treatment**

### **1.1 Standards of Medical Care**

Standards for the treatment of victims of foreign consequence management (FCM) incidents differ across nations which may cause issues when the U.S. provides medical relief assistance overseas. Generally, medical treatment standards set by the HN regarding the treatment of victims will apply to its citizens. That said, USG agencies will need to consider applicable standards set out in U.S. law, regulations and policy. For instance, the U.S. Agency for International Development (USAID) has various standards set out in its Field Operations Guide for assessing and attending to victims of an overseas event.<sup>1</sup> The U.S. military also standardizes its health support across the services; on the international level it attempts more general standardization with the North Atlantic Treaty Organization (NATO) and other allies.<sup>2</sup> As an example of international standards, the NATO Euro-Atlantic Partnership Council (EAPC) has created a Draft Radio-Nuclear Medical Treatment Protocol. This draft protocol provides guidance to medical responders on treating radiological or nuclear casualties. The EAPC is also drafting chemical and biological agent treatment protocols.

Other international medical standards can apply to FCM response situations. For example, in 1997, a group of humanitarian non-government organizations (NGOs) and the Red Cross and Red Crescent movement joined forces to launch an initiative known as “The Sphere Project.” This effort seeks to identify minimum standards for disaster assistance. In 2000, the project published the first Sphere handbook which addresses and provides a level of standardization in five key sectors of disaster assistance, to include health services.<sup>3</sup> Other international agreements and international organizations that can play an important role regarding the standards of medical care and other aspects of FCM medical response are discussed in the following sections.

### **1.2 Role of International Organizations**

The role of international organizations (IOs) in the medical response to an FCM event involving a chemical, biological, radiological, nuclear, or high-yield explosive incident will vary depending on the type of event. A radiological or biological incident will require resources that likely exceed the capabilities of many organizations, thereby necessitating greater involvement by other nations such as the United States. However, chemical or high-yield explosives incidents

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<sup>1</sup> USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide (FOG) for Disasters Assessment and Response, version 4.0, Sept. 2005.

<sup>2</sup> Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 2700.01B, International Military Agreements for Rationalization, Standardization, and Interoperability (RSI) Between the United States, Its Allies, and Other Friendly Nations, Jan. 12, 2006; Joint Pub. 4-02.1, Joint Tactics, Techniques, and Procedures for Health Support, Oct. 6, 1997.

<sup>3</sup> The other sectors are water supply and sanitation, nutrition, food aid, and shelter. The cornerstone of the handbook is the Humanitarian Charter, which is based on the principles and provisions of international humanitarian law, international human rights law, refugee law, and the Code of Conduct for the International Red Cross and Red Crescent Movement. The Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, 2004, <http://www.sphereproject.org/>. See Annex 1, Legal Instruments Underpinning the Sphere Handbook.

will likely utilize the capabilities and resources of numerous IOs. This section outlines the medical response roles and capabilities of those organizations that would likely play a role after an FCM event. There is additional information in **Chapter 4** on most of the IOs mentioned below.

*The World Health Organization*

The primary organization involved in the management of an international public health emergency, such as a biological incident, is the World Health Organization (WHO). The overall mission of WHO is to ensure the highest possible level of health for all peoples and its mandate is to mitigate the health consequences of emergencies wherever they occur.<sup>4</sup> The Department of Emergency and Humanitarian Action within the WHO coordinates the inputs of its technical departments with those of the United Nations (UN), as well as other IOs and NGOs, to address the various health-related issues that may arise during an emergency.<sup>5</sup>

The WHO recently revised the *International Health Regulations* (IHR), which are designed to manage public health emergencies of international concern. The new regulations, finalized in May 2005, require that “each State Party shall develop, strengthen and maintain, as soon as possible but no later than five years from the entry into force of these Regulations for that State Party, the capacity to respond promptly and effectively to public health risks and public health emergencies of international concern.”<sup>6</sup> The IHR are to enter into force in June 2007 (24 months after its May 23, 2005 adoption by the World Health Assembly). The IHR establishes an international legal regime for identifying and responding to health concerns, and grants WHO the authority to issue recommendations to guide the response and nations’ efforts to develop public health response plans. The IHR guidelines and procedures should play a role in the way countries coordinate notification and response to an incident that affects the public health.

The *WHO Guiding Principles for International Outbreak Alert and Response*, as of May 10, 2005, articulate how to prepare for field activities, activate international support, coordinate responses in the field, and evaluate how to follow up on outbreaks of international importance.<sup>7</sup> Other types of guidance include the *WHO Guidance for Public Health Response to Biological and Chemical Weapons*, which focuses on the effects of a biological and chemical weapons incident on civilian populations.<sup>8</sup> The *WHO Guidelines for Safe Transport of Infectious Substances and Diagnostic Specimens* provide for the identification and classification of transported material in order to ensure safe packaging and transport. These guidelines are applicable for national and international transport.<sup>9</sup>

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<sup>4</sup> WHO, Fact Sheet No. 90, Emergency and Humanitarian Action, Aug. 2001, *available at* <http://www.who.int/mediacentre/factsheets/fs090/en/>.

<sup>5</sup> *Id.*

<sup>6</sup> WHO, International Health Regulations (IHR), May 23, 2005, TIAS 7026 (hereinafter WHO IHR).

<sup>7</sup> WHO Guiding Principles for International Outbreak Alert and Response, as of May 10, 2005, *available at* <http://www.who.int/csr/outbreaknetwork/guidingprinciples/en/>.

<sup>8</sup> WHO, Public Health Response to Biological and Chemical Weapons: WHO Guidance, (2004) [hereinafter WHO Guidance 2004].

<sup>9</sup> WHO, Guidelines for Safe Transport of Infectious Substances and Diagnostic Specimens, WHO Doc. WHO/EMC/97.3, (1997).

*The European Community*

The European Union (EU) is actively working to improve emergency preparedness and response capabilities across Europe by establishing the Health Security Committee (HSC) and a communicable disease network. The HSC has agreed to a program of action for coordinating responses in the event of a public health emergency, while national stockpiles of vaccines and antibiotics are being assessed by the European Medicines Evaluation Agency. In the event of a terrorist attack, the EU-wide Community Civil Protection Action, which provides for immediate response and assistance in the event of a major emergency, will facilitate cooperation on civil protection assistance interventions. The European Community's (EC) Monitoring and Information Centre is ready at all times to manage requests for assistance.

*Other International Organizations*

Specialized agencies such as the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW) may also play a role in managing public health during an international emergency. For example, the IAEA established the *Generic Procedures for Medical Response during a Nuclear or Radiological Emergency* manual which aims to "provide practical guidance to the medical community for medical emergency preparedness and response."<sup>10</sup> The manual also describes the tasks and actions of emergency medical response organizations within the national, regional, and local medical infrastructure.<sup>11</sup>

The OPCW has mechanisms to assist in responding to a chemical incident. The implementation of the OPCW's health and safety program focuses on three main areas, to include: (a) the provision of a general occupational health and safety service to all staff; (b) the provision of specialized medical and safety support to inspection teams; and (c) the provision of advice, information, and training to Member States, on request, regarding health and safety aspects of chemical weapons and defense (properties of chemicals, detection, protection, decontamination, and medical treatment).<sup>12</sup> Such advice, information, and training can be provided through the auspices of the OPCW's International Cooperation and Assistance Division, usually in the form of courses or seminars organized at the request of OPCW Member States. In response to an incident, the OPCW's contribution to medical care is likely to consist of an assessment of prevailing conditions and needs, and coordination of offers of medical personnel and equipment by Member States.<sup>13</sup>

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<sup>10</sup> IAEA, *Generic Procedures for Medical Response during a Nuclear or Radiological Emergency*, EPR-MEDICAL, IAEA, Vienna (2005).

<sup>11</sup> *Id.*

<sup>12</sup> OPCW, Health and Safety, website, available at [http://www.opcw.org/en/health\\_safety.html](http://www.opcw.org/en/health_safety.html) (last visited Nov. 11, 2006).

<sup>13</sup> *Id.* In a worst-case scenario, OPCW assistance at present will likely not be able to meet the needs of the HN, given that the concept for, and the capacity of the OPCW to fully meet the Convention requirements and its operational concept for the delivery of assistance and coordination thereof, are still being developed by States Parties

NGOs such as the International Federation of the Red Cross and Red Crescent (IFRC) may also play a role in the management of a public health emergency. IFRC is an international humanitarian organization with representation from over 175 countries. It actively coordinates international humanitarian assistance and is able to intervene quickly in affected countries due to its national societies. The IFRC also has agreements with over 60 states granting it privileged access. Bringing considerable resources and extensive experience mobilizing for disaster response, the IFRC is a valuable nongovernmental source of assistance to the health sector.<sup>14</sup>

Doctors Without Borders is also an independent international medical humanitarian organization that may assist in the management of a public health emergency. It delivers emergency aid to victims of armed conflict, epidemics, natural or man-made disasters, and exclusion from healthcare. In emergency situations, Doctors Without Borders provides healthcare, rehabilitates and runs local hospitals, fights epidemics, performs surgery, vaccinates local populations, sets up feeding centers for malnourished children, and provides mental health services. Due to substantial logistical capabilities and specialized medical kits for unique situations, Doctors Without Borders is frequently one of the first organizations to arrive at a disaster scene and begin implementation of life-saving measures.<sup>15</sup>

Another organization that will likely be involved in the medical response efforts following a CBRNE event is the International Medical Corps (IMC), which is a global humanitarian nonprofit organization that addresses disaster response. IMC was established in 1984 by volunteer doctors and nurses, and is a private, voluntary, nonpolitical, nonsectarian organization. IMC's interventions in acute emergencies range from the delivery and support of primary healthcare for large displaced populations to the mass immunization of women and children against preventable diseases that are common in overcrowded conditions with poor hygiene, (e.g., tetanus, measles, and polio).<sup>16</sup>

As previously noted, more information on most of the IOs discussed above can be found in **Chapter 4** of this Deskbook.

### 1.3 Medical Licensing

Host nation licensing requirements for medical personnel may be an important component of foreign consequence management (FCM) operations. The lack of formal international standards for recognizing medical licenses may impede response efforts.<sup>17</sup> Generally, international public health issues are addressed through the World Health Organization (WHO) International Health

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<sup>14</sup> *Id.*

<sup>15</sup> About Us, *What is Doctors Without Borders?*, <http://www.doctorswithoutborders.org/aboutus/index.cfm> (last visited Nov. 10, 2005).

<sup>16</sup> About International Medical Corps, <http://www.imcworldwide.org/about.shtml> (last visited Feb. 16, 2006).

<sup>17</sup> For instance, during response efforts for Hurricane Katrina in 2005, accepting offers of assistance from foreign physicians was an issue due to licensure requirements. DTRA, Foreign Consequence Management Legal Deskbook Workshop I Report, p. 8, Sept. 27-28 2005. This issue has also been recognized by various international assistance groups (see, e.g., The International Federation of Red Cross and Red Crescent Societies' International Disaster Relief Laws, Rules and Principles Programme (IDRL) Asia Pacific studies for Nepal (available at: <http://www.ifrc.org/docs/pubs/idrl/idrl-nepal.pdf>) at page 30, and for Indonesia (available at: <http://www.ifrc.org/docs/pubs/idrl/idrl-indonesia.pdf>), at page 26.

Regulations (IHR),<sup>18</sup> but these and other international documents do not comprehensively address licensure requirements in a disaster response situation. Accordingly, in most cases, countries deal with the recognition of foreign medical licenses primarily at the national level.<sup>19</sup>

It is important for legal advisors to determine whether the host nation (HN) requesting assistance from the United States has explicitly granted military or civilian health care professionals (HCP) permission to provide patient care within their borders, and to determine, in any case, what liability protections may be available.<sup>20</sup> Liability issues pertaining to US responders to a FCM event, including medical personnel, are discussed in **Chapter 4**.

At the regional level, the EU has taken steps to address the recognition of medical licenses with Council Directive 93/16/EEC of 5 April 1993. This Directive, which is not limited to disaster situations, seeks “to facilitate the free movement of doctors [within the EU] and the mutual recognition of their diplomas, certificates, and other evidence of formal qualifications.”<sup>21</sup> The Directive applies to doctors who are nationals of Member States and it does not apply to medical personnel of non-EU States.<sup>22</sup>

The international community has recognized the need for a framework that addresses licensure of medical personnel. The NGO International Association of Medical Regulatory Authorities (IAMRA) is attempting to formalize the treatment of medical licensure requirements and expedite the review and recognition process. The stated purpose of IAMRA is “to support medical regulatory authorities worldwide in protecting the public interest by promoting high standards for physician education, licensure and regulation, and facilitating the ongoing exchange of information among medical regulatory authorities.”<sup>23</sup> This group strives to reach broad, international agreement on minimum and preferred standards in education, registration and licensure, and communication of relevant information on the status of medical personnel. While the focus of this organization is not specific to disaster response, the results will likely be applicable.<sup>24</sup>

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<sup>18</sup> WHO IHR, *supra* note 6.

<sup>19</sup> *Id.*, at p. 27.

<sup>20</sup> For example, should a person treated by a U.S. military HCP responding to a FCM event in Europe feel they have a malpractice concern, it is likely that the NATO SOFA would protect the U.S. military personnel from liability. However this may be determined on a case-by-case basis. See Article VII of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, Jun. 19, 1951, 4 U.S.T. 1792; TIAS 2846

<sup>21</sup> EU, Council Directive 93/16, To Facilitate the Free Movement of Doctors and the Mutual Recognition of their Diplomas, Certificates and other Evidence of Formal Qualifications, O.J. 1993 (L165) (EEC).

<sup>22</sup> *Id.* Article 3 of Council Directive 93/16/EEC lists, by state, the qualifications which are mutually recognized under the purview of the Directive.

<sup>23</sup> IAMRA, <http://www.iamra.com/> (last visited Nov. 09, 2005).

<sup>24</sup> The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, [hereinafter Assistance Convention], Sept. 26, 1986, 25 ILM 1377, at least implicitly recognizes this problem and addresses it through provisions waiving criminal or civil liability for medical personnel (along with all other responders) providing assistance to Host Nation citizens after a nuclear/radiological incident. This is discussed in more detail in **Chapter 4, section 3.2**. The United States is a party to the Assistance Convention.

## **2. Medical Vaccinations, Restrictions on Movement and Mass Casualties**

FCM response efforts, particularly when they include vaccinations or medical restrictions on movement (such as quarantine or isolation for the security of the public) generally are governed by Host Nation laws. At the same time, when U.S. citizens abroad are affected by an incident, their safety and security is primarily the responsibility of the Department of State (DOS). The State Department typically is also responsible for military personnel who are assigned overseas but are not under the command of a combatant commander (COCOM), e.g., Marine security forces at a U.S. Embassy.<sup>25</sup> COCOMs are generally responsible for the safety and security of military personnel assigned to the COCOM (and their families).<sup>26</sup> It can be expected that if a Host Nation decides after a FCM incident to impose vaccinations or medical restrictions on movement (such as isolation or quarantine), that affect U.S. citizens visiting or assigned to that country, some tensions can result from these varying responsibilities. In addition, a FCM event could result in a U.S. military commander deciding that a medical quarantine needs to be imposed on a U.S. installation affected by the incident, which could raise myriad legal issues. These and other issues are discussed below.

DoD doctrine for health protection, as called for in Executive Order 13139, provides specific requirements that may directly affect FCM response operations.<sup>27</sup> Joint medical surveillance activities are designed to monitor and evaluate the health of U.S. personnel in order to develop or prescribe preventative medicine and treatments.<sup>28</sup> The results of medical surveillance also dictate the development, stockpiling and application of vaccines to protect deployed personnel against recognized biological threats in their operational environment.<sup>29</sup> Procedures for medical surveillance provide guidance for:

- Medical evaluations pre- and post- deployment and the ongoing identification of possible health threats.<sup>30</sup>
- Immunization for biological warfare, which includes policy for vaccine stockpiling and the application of immunizations.<sup>31</sup> Vaccination issues are discussed in more detail in the following section.

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<sup>25</sup> 22 U.S.C. § 4802 (2005). However, the Department of Defense has agreed to assume responsibility for providing security for some of these non-COCOM DoD elements. Memorandum of Understanding Between the Department of States and Department of Defense On Security of DoD Elements and Personnel In Foreign Areas, Dec. 16, 1997

<sup>26</sup> *Id.*

<sup>27</sup> Exec. Order No. 13139, Improving Health Protection of Military Personnel Participating in Particular Military Operations, Oct. 5, 1999. Exec. Order No. 13139 states that:

Military personnel deployed in particular military operations could potentially be exposed to a range of chemical, biological, and radiological weapons as well as diseases endemic to an area of operations. It is the policy of the United States Government to provide our military personnel with safe and effective vaccines, antidotes, and treatments that will negate or minimize the effects of these health threats.

*Id.*, at Section 1.

<sup>28</sup> DoDD 6490.2, Joint Medical Surveillance, Aug. 30, 1997.

<sup>29</sup> DoDI 6490.3, Implementation and Application of Joint Medical Surveillance for Deployments, Aug. 7, 1997.

<sup>30</sup> MCM 0006-02, Updated Procedures for Deployment Health Surveillance and Readiness, Feb. 1, 2002. DoDD 6490.2, *supra* note 28, and DoDI 6490.3, *supra* note 29. MCM 0006-02 supports implementation of DoDD 6490.2 and DoDI 6490.3.

<sup>31</sup> DoDD 6205.3, Immunization for Biological Warfare Threats, Nov. 26, 1993.



Should an incident occur on a DoD installation, DoD Instruction 2000.18, *Department of Defense Installation Chemical, Biological, Radiological, Nuclear and High-Yield Explosive Emergency Response Guidelines*, provides the DoD guidance for the Services and combatant commanders and assigns responsibility for developing and maintaining guidelines for U.S. installation preparedness and response (DoDI 2000.18 assigns this responsibility to ASD(SO/LIC), however, recent DoD reorganizations have transferred DoD FCM oversight to the Office of the Assistant Secretary of Defense for Global Security Affairs as noted in footnotes 43 and 46 in **Chapter 2**). Enclosure 3 to DoDI 2000.18 contains the “DoD Installation CBRNE Emergency Response Guidelines.” DoD Instruction 2000.18 applies to U.S. installations at home and abroad, and calls for OCONUS installations to ensure interoperability with HN authorities through the implementation of MOUs/MOAs to integrate CBRNE response capabilities. See **Chapter 2, section 4.1** for additional information on local installation agreements.

As mentioned in **Chapter 2, section 3.6**, the Defense Intelligence Agency’s (DIA) Armed Forces Medical Intelligence Center (AFMIC) supports U.S. FCM activities by providing medical intelligence and assessments of potential health threats. This intelligence may be useful when considering medical responses to possible CBRNE events.

## 2.1 Vaccination

The authority to vaccinate its citizens and possibly other vulnerable populations after a FCM incident generally resides in HNs. All those “who enter hospitals where patients are housed and treated should be immunized against these diseases.”<sup>32</sup> World Health Organization guidance calls for distribution plans for existing stockpiles of antibiotics or vaccines.

Under DoD Directive 6205.3, Immunization for Biological Warfare Threats, military personnel in high-threat areas, performing crisis response duties, and those deployed to imminent or ongoing contingency operations can be vaccinated.<sup>33</sup> COCOMs are responsible for evaluating the biological threats in their AOR. Furthermore, any operation that involves “chemical, biological, or radiological warfare or endemic disease threats,”<sup>34</sup> may call for the use of investigational new drugs, *i.e.*, those not approved by the Food and Drug Administration, to protect U.S. personnel. However, the use of these drugs is strictly controlled and various criteria are prescribed by the DoD to ensure the protection of personnel against harmful effects.<sup>35</sup> As noted, if a public health emergency is declared on U.S. installations abroad, military personnel may be ordered by the military commander to submit to vaccination or treatment.<sup>36</sup> The requirement for vaccination or treatment may also be applied to non-military U.S. persons “as a condition of exemption or release from restriction of movement” to prevent transmitting a

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<sup>32</sup> WHO Guidance 2004, *supra* note 8.

<sup>33</sup> DoDD 6205.3, Immunization for Biological Warfare Threats, Nov. 26, 1995..

<sup>34</sup> DoDD 6200.2, Use of Investigational New Drugs for Force Health Protection, Section 3.4, Aug. 1, 2000.

<sup>35</sup> *Id.*

<sup>36</sup> DoDD 6200.3, Emergency Health Powers on Military Installations, May 12, 2003.

communicable disease.<sup>37</sup> Again, foreign nationals generally may be vaccinated/treated only with the approval of appropriate HN officials.

## 2.2 Isolation and Quarantine

As with vaccination, when FCM response operations include isolation or quarantine, the laws of the affected HN will generally govern (with the possible exception of U.S. military personnel).<sup>38</sup> International legal principles may also need to be considered.<sup>39</sup> International considerations are discussed at more length below. In addition to HN and international law issues, U.S. authorities that apply to quarantine in a FCM setting must be considered

In accordance with international agreements and arrangements, U.S. commanders at installations abroad have various public health emergency powers they can enact for the protection of the installation and U.S. persons under their jurisdiction against communicable disease, such as a biological attack. These powers are extended to non-U.S. personnel who may be on base and could also affect U.S. FCM response efforts. Under the authority in DoD Directive 6200.3, military personnel can be ordered to submit to a medical examination; persons other than military may also be required to have a medical exam as a condition of release or restriction of movements in order to prevent transmission of disease. Should the commander order the quarantine of any non-military personnel, coordination with, and, most likely, the approval of the HN health officials would be required; the needs of quarantined persons must be addressed “in a systematic and competent fashion;” and places of quarantine must be safe and hygienic to minimize transmission of disease or infection. Adequate food, clothing, and medical care are also required.<sup>40</sup>

Quarantine shall be accomplished through the least restrictive means available, consistent with protection of public health. Quarantine of any person shall be terminated when no longer necessary to protect public health.<sup>41</sup>

Any persons entering the United States following a biological incident may also be subject to restrictions. The entry of persons, in whole or in part, may be suspended based on the existence of a communicable disease in a foreign country and to avert serious danger of the introduction of such communicable disease into the United States.<sup>42</sup> The Center for Disease Control (CDC) has the authority to apprehend, detain, and conditionally release individuals with specified communicable diseases arriving into the United States from a foreign country.<sup>43</sup> CDC

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<sup>37</sup> *Id.*

<sup>38</sup> Commanders have the ability to quarantine U.S. military personnel on military installations as well as restrict movement to, from, and on the installation. DoDD 6200.3, *supra* note 36.

<sup>39</sup> “The basic types of circumstances that justify overriding individual rights for the public good [in the context of ordering a quarantine] are established in international law and known as the *Siracusa Principle*.” Draft Model Operational Guidelines for Disease Exposure Control prepared by the Center for Strategic and International Studies Homeland Security Program, p. 40, Nov. 2, 2005. Available online at: [http://www.immunizeadults.org/healthcare/documents/draft\\_homeland\\_security\\_guidelines.pdf](http://www.immunizeadults.org/healthcare/documents/draft_homeland_security_guidelines.pdf)

<sup>40</sup> DoDD 6200.3, *supra* note 39.

<sup>41</sup> *Id.*

<sup>42</sup> 42 U.S.C. § 265 (2005).

<sup>43</sup> 42 U.S.C. § 264 (2005); Exec. Order No. 13295, Revised List of Quarantinable Communicable Diseases, Apr. 4, 2003. The quarantinable diseases are: Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow

regulations implementing this authority are currently found in 42 CFR Part 71; however it has also proposed new regulatory procedures for this authority.

As discussed in greater detail in the evacuation section below, following an incident that affects U.S. persons under DOS responsibility, DOS may order the evacuation of all USG personnel and their dependents, except for most military personnel, and will generally provide evacuation assistance for all private U.S. citizens who choose to leave.<sup>44</sup> Private U.S. citizens who decide to stay in the affected area will often be subject to the laws and policies of the HN regarding quarantines, evacuations, etc. The safety of military personnel, dependents, and others subject to a COCOM commander will typically be the responsibility of the commander.

### *International Law*

One of the basic principles outlined in international law regarding assistance is respect for human rights. UN General Assembly (UNGA) emphasizes that, while the HN has the primary role in providing emergency assistance to its citizens it must adhere to the principles of humanity, neutrality, and impartiality regarding all those within its territory needing help.<sup>45</sup>

The WHO International Health Regulations speak specifically to the treatment of travelers in Article 32:

In implementing health measures under these Regulations, States Parties shall treat travelers with respect for their dignity, human rights and fundamental freedoms and minimize any discomfort or distress associated with such measures, including by:

- (a) treating all travelers with courtesy and respect;
- (b) taking into consideration the gender, sociocultural, ethnic, or religious concerns of travelers; and
- (c) providing or arranging for adequate food and water, appropriate accommodation and clothing, protection for baggage and other possessions, appropriate medical treatment, means of necessary communication if possible in a language that they can understand and other appropriate assistance for travelers who are quarantined, isolated or subject to medical examinations or other procedures for public health purposes.<sup>46</sup>

### 2.3 Managing Mass Casualties

The medical treatment of mass casualties, while ultimately the responsibility of the HN, is one response effort that could be quickly overwhelmed in a catastrophic FCM incident. The IOs described above will likely have limited capabilities in dealing with nuclear or chemical incidents, but will be providing medical support to the extent of their abilities following the reduction in danger at the site and surrounding areas.

As with any FCM incident, the response to a mass casualty FCM event that affects U.S. persons will be coordinated by the Department of State, which may likely rely on DoD for a large portion

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Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named); and, Severe Acute Respiratory Syndrome.

<sup>44</sup> 22 U.S.C. § 4801 (2005).

<sup>45</sup> G.A. Res. 45/100, Pg. 2, U.N. Doc. A/RES/45/100 (Dec. 14, 1990)

<sup>46</sup> WHO IHR, *supra* note 6, at art. 32.

of the U.S. response.<sup>47</sup> DOS is responsible for providing liaison with foreign governments and persons concerning arrangements for the preparation and transport to the United States of the remains of non-military American citizens who die abroad, as well as the disposition of personal effects.<sup>48</sup> The remains of U.S. military personnel are the responsibility of the DoD.<sup>49</sup> U.S. military forces will likely provide mass casualty assistance as part of their medical triage support to FCM operations.

If authorized by the HN, U.S. forces, including those attached to a multinational task force, may provide certain categories of health care to foreign civilian populations, returning them to their national health systems as soon as possible or when services can be provided by NGOs or IOs.<sup>50</sup> Assistance can include coordination actions to prevent disease breakout, distributing supplies and equipment, or assisting in the reestablishment of national public health resources. “Primary consideration must be given to supporting and supplementing whatever medical infrastructure exists. No operation(s) should be considered that would or could have the effect of supplanting the existing medical infrastructure.”<sup>51</sup> Using the mission requirements and medical situation, the [(joint task force)] JTF surgeon will develop a “medical concept of operations plan that will (if possible) combine the efforts of the military [Health Support Services] forces, NGOs, and the existing medical infrastructure.”<sup>52</sup>

Various components of the U.S. military deal with the medical response to different CBRNE incidents. A Radiological Advisory Medical Team is trained in radiological health matters and can provide assistance to local authorities and military commanders. The U.S. Army Chemical and Biological Advisory Team provides advice and casualty care, and the Aeromedical Isolation Team, which consists of doctors, nurses, medical assistants, and lab technicians, is trained to provide care and transport to patients with infectious diseases.<sup>53</sup>

Additionally, the U.S. Department of Health and Human Services maintains a Strategic National Stockpile (SNS) to provide for “the emergency health security of the United States” in the event of a bioterrorist attack or other public health emergency. In the past, this language has been interpreted as authorizing foreign deployments when the security of the U.S. public health is at risk, for example, in the event of pandemic influenza or other communicable diseases with global implications.<sup>54</sup> The standard for providing for the U.S. health security, however, may be more difficult to meet in situations where the effects of an event are localized to a particular foreign location, as would generally occur with explosives and chemicals.

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<sup>47</sup> Memorandum of Understanding between the Departments of State and Defense on Responses to Overseas Bioterrorism Consequence Management Events, Dec. 1997 (an inter-agency agreement documenting the roles and responsibilities of the DOS and DoD when responding to biological events occurring on U.S. military installations overseas).

<sup>48</sup> 22 U.S.C. § 5507 (2005).

<sup>49</sup> Joint Pub. 4-06, Joint Tactics, Techniques, and Procedures for Mortuary Affairs in Joint Operations, Aug. 28, 1996.

<sup>50</sup> Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, Aug. 15, 2001.

<sup>51</sup> *Id.*, at app. G, Section 2.

<sup>52</sup> *Id.*, at app. K, Section 5.

<sup>53</sup> *Id.*

<sup>54</sup> CDC, Strategic National Stockpile, <http://www.bt.cdc.gov/stockpile/> (last visited Feb. 2, 2006).

### **3. Evacuation, Notification for U.S. Citizens Abroad and Displaced/Detained Civilians**

#### **3.1 Evacuations**

Generally, the HN will determine when to order an evacuation and the HN is responsible for evacuation procedures for its citizens after an emergency. However, the State Department is responsible for managing the evacuation of United States Government (USG) personnel and U.S. citizens (except, as noted, for military personnel under a COCOM's responsibility) from a foreign country, with DoD playing a supporting role.<sup>55</sup> DOS must provide for the safe and efficient evacuation of USG personnel, their dependents, and private U.S. citizens when their lives are endangered.<sup>56</sup> This responsibility includes the development and implementation of policies and programs for their evacuation, measures to identify high risk areas, and providing staff to the USG mission abroad to assist in evacuations if necessary.<sup>57</sup>

The United States Ambassador to the HN is designated as the responsible authority for evacuation operations and can order evacuation of all USG employees and dependents within that country, other than military personnel assigned to a COCOM. The Ambassador cannot order the evacuation of private U.S. citizens, but is responsible for assisting them should they choose to leave.<sup>58</sup> To fulfill its responsibilities, DOS will cooperate with other Federal agencies, and will delegate authority for operational control and security functions for various U.S. facilities overseas as necessary.<sup>59</sup>

When requested by DOS, the DoD may assist, as militarily feasible, in implementing DOS evacuation decisions and supporting DOS objectives to “protect U.S. citizens abroad; reduce to a minimum the number of U.S. citizens at risk; reduce to a minimum the number of U.S. citizens in combat areas so as not to impair the combat effectiveness of military forces.”<sup>60</sup> The Assistant Secretary of Defense for Force Management and Personnel (ASD(FM&P)) will serve as the noncombatant evacuation operations coordinator for DoD and overseas evacuation requirements.<sup>61</sup> Additionally, if a public health emergency directly affects a U.S. installation abroad, the U.S. commander has the authority to direct evacuation of the installation, including controlling evacuation routes on, and ingress and egress to and from, the affected military installation.<sup>62</sup> However, the authorities provided for under DoD Directive 6200.3 may be subject to the laws of the HN and relevant bilateral agreements and should be coordinated with HN authorities.<sup>63</sup>

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<sup>55</sup> Executive Order No. 12656, Assignment of Emergency Preparedness Responsibilities, Dec. 23, 1988.

<sup>56</sup> 22 U.S.C. § 4801 (2005).

<sup>57</sup> *Id.*, at § 4802.

<sup>58</sup> Joint Pub. 3-07.5, JTTP for Noncombatant Evacuation Procedures, p. IV-1, Sept. 30, 1997.

<sup>59</sup> 22 U.S.C. § 4805 (2005).

<sup>60</sup> DoDD 3025.14, Protection and Evacuation of U.S. Citizens and Designated Aliens in Danger Areas Abroad, Section 4.1, Dec. 8, 2003.

<sup>61</sup> *Id.*, at Section 5.1.

<sup>62</sup> DoDD 6200.3, *supra* note 36, Section 4.6.4.

<sup>63</sup> *Id.*, at Section 4.10.

Eligibility requirements for USG evacuation assistance can be found in DoD doctrine, which delineates the categories of personnel entitled to assistance and can be forcibly evacuated in some circumstances.

The following categories of personnel are eligible for evacuation assistance and can be ordered to depart by either the U.S. Ambassador or U.S. military authorities, depending upon the circumstances:

- US civilian employees of all USG agencies (except DoD employees of military commands who have been designated as “wartime essential”).
- US military personnel assigned to the Embassy (e.g., Defense Attaches and security assistance personnel).
- Peace Corps volunteers.
- US citizens employed on contract to a USG agency if the contract so provides.
- Family members of those above.
- Family members of all other US military personnel (command and non-command sponsored).

The following categories of personnel are entitled to evacuation assistance, but cannot be ordered to depart:

- US citizens employed by non-USG organizations (*e.g.*, World Health Organization).
- US citizens employed by or assigned to IOs (*e.g.* UN Disaster Relief Coordinator, UN High Commissioner for Refugees, International Medical Corps).
- US citizens employed on contract directly by the host government, even though the contract may be funded by the USG.
- US citizens employed by private entities, such as relief organizations, even though the employer may receive some USG funding.
- Fulbright grantees and US citizens in comparable roles.
- Other private US citizens.
- Family members of private US citizens, to include alien spouses, children, and other bona fide residents of the household.<sup>64</sup>

International involvement will vary depending on the type of event and the level of the evacuation. The IAEA provides standards for the level of radiation that requires temporary or permanent evacuations that a HN may follow, but it does not provide procedures.<sup>65</sup> For other incidents, evacuation may not be necessary or possible/desirable. Following a biological incident, WHO guidance notes:

Large-scale evacuation as a preventive measure is not likely to form part of the response to biological incidents. Where contagious disease is involved, it may aggravate the situation by increasing both the spread of infection and the number of secondary outbreaks. Movement of patients should be restricted to the minimum necessary to provide treatment and care.<sup>66</sup>

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<sup>64</sup> *Id.*, at p. IV-6.

<sup>65</sup> IAEA, Requirements: Preparedness and Response for a Nuclear or Radiological Emergency, Safety Standard Series No. GS-R-2, Vienna (2002).

<sup>66</sup> WHO Guidance 2004, *supra* note 8, at p. 71.

### 3.2 U.S. Citizens Abroad -- Notifications and Other Actions

Following major disasters or incidents abroad that affect U.S. citizens, DOS is responsible for providing prompt and thorough notification of all appropriate information to U.S. citizens' next-of-kin.<sup>67</sup> Officers of the Bureau of Consular Affairs collect the names of Americans potentially involved in the disaster in order to report on their welfare to next-of-kin in the United States. The Bureau of Consular Affairs also locates and informs the next-of-kin following the death of Americans abroad. When Americans are injured abroad during disasters, the Bureau notifies family members in the United States, assists in sending private funds to the injured party, collects the prior medical history of injured individuals, and can offer assistance in returning the injured American to the United States.<sup>68</sup> Registration at a U.S. Embassy or Consulate facilitates more effective DOS assistance during disasters and emergency situations. Additionally, "crisis teams" will be deployed to the location of an international disaster involving U.S. citizens. These teams include "public affairs, forensic, and bereavement experts... to augment in-country Embassy and consulate staff."<sup>69</sup> This support is also extended to naturalized citizens.

All naturalized citizens of the United States while in foreign countries are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.<sup>70</sup>

The DoD is responsible for informing the next-of-kin in the event of military personnel casualties.<sup>71</sup>

### 3.3 Managing Displaced/Detained Civilians

As with all other aspects of consequence management, the responsibility for caring for and controlling civilians in the event of an FCM event generally rests with the HN. Domestic laws applicable to enforcing the law will apply and foreign involvement will usually depend on the request and/or consent of the HN. In addition to any applicable domestic requirements, both international human rights law and humanitarian law emphasize preventing conditions leading to displacement of persons and provide legal guidance for the treatment of internally displaced persons (IDP) and refugees should a crisis occur.<sup>72</sup> USG entities, such as the U.S. Agency for

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<sup>67</sup> 22 U.S.C. § 2715a (2005).

<sup>68</sup> DOS, Emergencies and Crisis, [http://travel.state.gov/travel/tips/emergencies/emergencies\\_1212.html](http://travel.state.gov/travel/tips/emergencies/emergencies_1212.html) (last visited Nov. 23, 2005).

<sup>69</sup> 22 USC § 5506(d) (2005).

<sup>70</sup> 22 USC § 1731 (2005).

<sup>71</sup> Joint Pub 4-06, *supra* note 49.

<sup>72</sup> *See generally*, UN, Universal Declaration of Human Rights, G.A. Res 217A at 71, U.N. GAOR, 3<sup>rd</sup> Sess., 1<sup>st</sup> plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948); UN, Charter, Jun. 26, 1945, 59 Stat. 1031, TS 993; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Jun. 8, 1977, 11 U.N.T.S. 3, 16 I.L.M. 1391; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Jun. 8, 1977, 11 U.N.T.S. 3, 16 I.L.M. 1442. *See also*, International Committee of the Red Cross, Legal Protection of Internally Displaced Persons (08/30/2002), *available at* <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList128/3D104AED2E6C7A1CC1256C250033D87F>.

International Development (USAID) and U.S. military forces, may be asked to assist with displaced civilians and/or provide security or technical assistance. As noted, commanders of U.S. military installations worldwide have primary responsibility for protecting DoD personnel and installations from the effects of an FCM event. Military commanders also have the responsibility of protecting all persons and property under their jurisdiction and control.<sup>73</sup> Military installations have designated security forces and military police to effectuate protection and law enforcement measures, but the authority of commanders to use these forces for any movement or detention of foreign nationals must be based on a legitimate request from the HN that has been approved by the State Department and the Secretary of Defense through the processes described in **Chapters 1 and 2**.

International human rights law and humanitarian law emphasize the protection of victims and provide guidance concerning the rights of internally displaced persons (IDP) and refugees should a crisis occur.<sup>74</sup> The right to personal safety is a fundamental aspect of Human Rights Law, which is applicable during both times of war and peace. Humanitarian law, however, is only applicable to an IDP or refugee crisis during armed conflict, and allows for lawful displacements in which persons may be removed from their homes for reasons such as protection or military necessity.<sup>75</sup> If a HN is unable to cope with the humanitarian aspects of the situation it may decide to request assistance from the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA). Refugees protected under international law must still abide by HN laws while in a transitory condition, but legal guidance concerning refugees' rights and responsibilities is provided under the *UN Convention relating to the Status of Refugees*.<sup>76</sup>

## **4. Environmental Aspects of a Foreign WMD Incident**

### **4.1 U.S. Authorities**

Agencies and organizations in the United States may play a role in assisting in the response to the environmental effects of a FCM incident, and environmental considerations may apply to the U.S. FCM response in general. For instance, the U.S. Agency for International Development's guidance for implementation of sections 118(b) and 621 of the Foreign Assistance Act of 1961, as amended, lays out specific procedures USAID personnel should use in order to ensure that environmental factors are taken into consideration in their decision-making processes.<sup>77</sup> The USAID Field Operations Guide (FOG) for Disasters Assessment and Response notes that the first step in responding to a CBRNE incident is to conduct an assessment of the medical and environmental impact.<sup>78</sup> An environmental assessment is then conducted because the

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<sup>73</sup> DoDI 2000.18, Department of Defense Installation Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive Emergency Response Guidelines, Dec. 4, 2002.

<sup>74</sup> ICRC, Legal Protection of Internally Displaced Persons, Aug. 30, 2002, *available at* <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList128/3D104AED2E6C7A1CC1256C250033D87F>.

<sup>75</sup> *Id.*

<sup>76</sup> UN, Convention relating to the Status of Refugees, Apr. 22, 1954 189 U.N.T.S. 150.

<sup>77</sup> 22 CFR Part 216 (2005).

<sup>78</sup> USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide (FOG) for Disasters Assessment and Response, version 4.0, Sept. 2005.



environmental issues that result from an incident can directly affect medical and health issues of the effected population.<sup>79</sup> Moreover, USAID guidance under 22 CFR Part 216.6 recommends an environmental assessment to provide the Agency and host country decision-makers with a full discussion of significant environmental effects of any proposed actions.<sup>80</sup> When USAID assists in the environmental management of a FCM incident, Title 22 of the CFR will guide its response efforts.

The environmental responsibilities that apply to major DoD actions overseas are set out in 32 CFR Part 187. As previously discussed in **Chapter 2**, various exemptions apply to the DoD response to an FCM incident, and it is unlikely that DoD would need to undertake any special actions regarding the environmental consequences of its FCM response activities.<sup>81</sup>

The Department of Energy (DOE) has various regulations and procedures that address the environmental consequences of a radiological or nuclear incident. Specifically, the DOE Assistant Secretary for Environment, Safety, and Health provides oversight to ensure that environmental protection, radiation safety, and those aspects of public health and safety that deal with exposure to hazardous materials are properly addressed.<sup>82</sup> DOE efforts in radiological and nuclear FCM operations are coordinated with the DOS and DoD.<sup>83</sup>

The EPA, which has an important role in responding to overseas radiological incidents, serving as the lead support agency for responding to international emergencies involving radioactive materials (such as the accident at Chernobyl<sup>84</sup>), coordinates agreements and technical assistance to help train other nations in managing the environment (through the EPA Office of International Affairs).<sup>85</sup>

#### 4.2 International Agreements and Organizations

A number of international agreements and organizations will affect the management of the environmental effects of an FCM incident, though there is no specific standard for how “clean” an environment must be to be considered safe. However, many of these international agreements provide strong protection for the environment and impact the transportation and management of WMD materials during FCM operations. The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* provides limits and sets

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<sup>79</sup> *Id.*, at ch. II.

<sup>80</sup> 22 CFR Part 216.6 (2005).

<sup>81</sup> 32 CFR Part 187 (2005).

<sup>82</sup> DOE Order 5530.1A, Accident Response Group, Sept. 20, 1991.

<sup>83</sup> Memorandum of Understanding between the Department of State, the Department of Energy, and the Department of Defense for Responding to Malevolent Nuclear Incidents outside the U.S. Territory and Possessions, May 13, 1982. DOE also has various international programs and studies underway to support development and continued updating of radiation exposure standards. A list of the initiatives is *available at* <http://www.eh.doe.gov/health/index.html#international>.

<sup>84</sup> EPA Radiation Protection Program, <http://www.epa.gov/radiation/about/index.html>.

<sup>85</sup> EPA Office of International Affairs Goals, [http://www.epa.gov/oia/about/03\\_oia\\_goals.htm](http://www.epa.gov/oia/about/03_oia_goals.htm).

requirements for the international movement of hazardous wastes.<sup>86</sup> The provisions of the Convention are overseen by the United Nations Environment Program, and include specific articles that address monitoring of implementation and compliance. In responding to a CBRNE event and the removal of hazardous waste from the effected area, compliance with the Basel Convention must be considered. Hazardous waste not only includes the device itself, but also casualties, exposed materials, etc., depending on the type of event. The *Convention on Environmental Impact and Assessment in a Transboundary Context* gives neighboring States that are party to the Convention the opportunity to participate in environmental analyses of actions that might cause significant transboundary consequences.<sup>87</sup> It will also be necessary to consider which standards or environmental regulations will be adhered to when conducting environmental assessments used in the consideration of environmental issues prior to a large-scale remediation of hazardous and/or radiological waste. This requires notification of DoD decision-makers of any environmental impacts in order to ensure proper response and international cooperation.

The *Convention on Early Notification in the Case of a Nuclear Accident* is a multilateral agreement concluded in response to the Chernobyl accident.<sup>88</sup> It applies “in the event of any accident involving facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control from which a release of radioactive material occurs or is likely to occur and which has resulted in or may result in an international transboundary release that could be of radiological safety significance for another State.” Parties are required to promptly notify the IAEA and potentially affected States of such releases.<sup>89</sup> Additionally, the *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, also adopted following the Chernobyl accident, includes provisions to facilitate prompt assistance to protect the environment, such as making materials and equipment available to the affected State Party.<sup>90</sup>

The *Rio Declaration on Environment and Development*, (Rio Declaration), focuses on the environmental and developmental obligations of States in the case of an emergency. Under the Rio Declaration, State obligations include ensuring activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction; developing further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction; immediately notifying other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States; and, providing prior and timely notification and relevant information to potentially

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<sup>86</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, 28 I.L.M. 657. *See also* Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, Oct. 1, 1996, 36 I.L.M. 7 (1996).

<sup>87</sup> Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 30 I.L.M. 800.

<sup>88</sup> Raymond E. Heddings, *U.S. Roles in Providing Humanitarian Assistance Following NBC Accidents/Incidents*, 10 (USAF Institute for National Security Studies 1999).

<sup>89</sup> Convention on Early Notification of a Nuclear Accident, Sept. 26, 1986, 25 I.L.M. 1370, art. I, para. 1. The United States is a party to this agreement.

<sup>90</sup> Assistance Convention, *supra* note 24.

affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.<sup>91</sup>

Protections also exist for activities for the marine environment. For instance, the *Law of the Sea Convention*, most provisions of which the United States accepts as reflecting binding customary international law, requires all Parties to preserve the marine environment.<sup>92</sup> The *Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matter*, or the London Convention, prevents ships and aircraft from dumping specified pollutants into the ocean.<sup>93</sup> The U.S. Marine Protection Research and Sanctuaries Act of 1972 prohibits ocean dumping except as permits are issued for such and absolutely prohibits the dumping into the ocean environment of any radiological, chemical, and biological warfare agents as well as any high-level radioactive waste and medical waste.<sup>94</sup>

IOs such as the United Nations may also affect response and management of the environmental effects of a WMD incident. For example, the United Nations Environment Program (UNEP) World Conservation Monitoring Centre (WCMC), which is derived from an agreement made in the year 2000 between the United Nations Environment Program, the United Kingdom (UK) Government, and the World Conservation Monitoring Centre (a UK foundation) that the Centre should fall under UNEP, has become the UNEP's resource center for assessment, information and policy implementation on biodiversity conservation and sustainable management.<sup>95</sup> During "environmental emergencies," such as a CBRNE incident, information is needed rapidly to support the activities of those agencies and organizations responsible for focusing on the problems that may arise. In such instances, the UNEP-WCMC has access to much of the relevant information and is able to quickly retrieve as well as distribute it to those entities responsible for planning measures to reduce the environmental damage of said emergency.<sup>96</sup>

In addition, the WHO's Food and Safety Department is responding to increasing international concerns that chemical, biological, radiological, or nuclear agents might be used deliberately to harm civilian populations and that food might be a vehicle for disseminating such agents. Accordingly, WHO has published *Terrorist threats to food: guidance for establishing and strengthening prevention and response systems*. This document provides guidance to Member States for integrating consideration of deliberate acts of food sabotage into existing programs for controlling the production of safe food. It also provides guidance on strengthening existing communicable disease control systems to ensure that surveillance, preparedness, and response

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<sup>91</sup> Rio Declaration on Environment and Development, August 12, 1992, A/CONF.151/26 (Vol. I). See Principles 2, 13, 18, and 19. The Rio Declaration was adopted by attendees of the UN Conference on Environment and Development.

<sup>92</sup> UN, Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 126.

<sup>93</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, with annexes, Dec. 29, 1972, 26 U.S.T. 2403; TIAS 8165.

<sup>94</sup> 33 U.S.C. § 1412 (2005).

<sup>95</sup> UNEP World Conservation Monitoring Centre. UNEP-WCMC's Strategic Plan, 2003/2004, available at [http://72.14.203.104/search?q=cache:nTQX4sb36eIJ:sea.unep-wcmc.org/aboutWCMC/strategic\\_report/WCMC\\_Strat\\_Plan.pdf+UNEP-WCMC%E2%80%99s+Strategic+Plan,+2003/2004.&hl=en&gl=us&ct=clnk&cd=1&client=firefox-a](http://72.14.203.104/search?q=cache:nTQX4sb36eIJ:sea.unep-wcmc.org/aboutWCMC/strategic_report/WCMC_Strat_Plan.pdf+UNEP-WCMC%E2%80%99s+Strategic+Plan,+2003/2004.&hl=en&gl=us&ct=clnk&cd=1&client=firefox-a).

<sup>96</sup> *Id.*

systems are sufficiently sensitive to meet the threat of any food safety emergency.<sup>97</sup> The Fifty-Fifth World Health Assembly in May 2002 also expressed serious concern about such threats and requested the Organization to provide tools and support to Member States to increase the capacity of national health systems to respond.<sup>98</sup>

The Food and Agriculture Organization (FAO) of the United Nations also addresses food and environmental contamination concerns in the case of a nuclear or radiological incident and may provide assistance to Member States. The Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture in the FAO, among other things, provides international guidance related to preparedness and response to nuclear or radiological events, including the application of appropriate agricultural countermeasures. The FAO will assist Member States with requests to respond effectively to nuclear emergencies through the provision of training support and the development, coordination, and implementation of procedures and response mechanisms. It provides international coordination for FAO's activities with relevant UN and other international agencies, in particular the IAEA.<sup>99</sup>

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<sup>97</sup> WHO, Food Safety Issues: Terrorist threats to food: guidance for establishing and strengthening prevention and response systems, WHO (2002).

<sup>98</sup> The U.S. is also addressing international Agroterrorism concerns. For example, the U.S. Senate has introduced legislation such as the Agroterrorism Prevention Act of 2005 (S.1532) which would amend Title 18 of the United States Code to criminalize acts of agroterrorism and enhance the protection of the U.S. agricultural industry and food security through increased prevention, detection, response, and recovery planning. The Senate has also introduced the Agricultural Security Assistance Act of 2005 (S.573), which would improve the response of the Federal government to agroterrorism and agricultural diseases. The Agricultural Security Assistance Act would provide for bilateral mutual assistance agreements between the United States and other countries. It would require that the Secretary of State, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, enter into mutual assistance agreements with other countries to provide and receive assistance in the event of an agricultural disease, to include; training for veterinarians and agriculture specialists of the United States in the identification, diagnosis, and control of foreign agricultural diseases; providing resources and personnel to a foreign government with limited resources to respond to an agricultural disease; bilateral training programs and exercises relating to assistance; and, providing funding for a program or exercise. S.1532 and S.573 are still pending approval and are not law.

<sup>99</sup> IAEA, Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture, <http://www-naweb.iaea.org/na/nafeweb.html> (last visited Feb.16, 2006).

## Chapter Six - Law Enforcement

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**Table 6-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
Presidential Documents		
<a href="#">PDD 39</a>	Various Federal Agencies	States U.S. counterterrorism policy; designates DOS as Lead Federal Agency (LFA) for FCM with support roles for other Federal agencies
United States Code		
<a href="#">10 U.S.C. § 371, et seq.</a>	DoD, Civilian Law Enforcement Agencies	Authorizes military assistance to civilian law enforcement agencies
<a href="#">18 U.S.C. § 175, et seq. Biological Weapons Antiterrorism Act</a>	DOJ, DoD, Individuals	Prohibitions and penalties for specified transactions related to biological weapons
<a href="#">18 U.S.C. § 229 et seq.</a>		Prohibitions and penalties for specified transactions related to biological weapons
<a href="#">18 U.S.C. § 831</a>		Prohibitions and penalties for specified activities related to nuclear materials
<a href="#">18 U.S.C. § 2331, et seq.</a>		Prohibitions and penalties for terrorism, authorizes DOJ requests for assistance from the DoD
Agency Directives/Instructions/Manuals		
<a href="#">DoDD 2000.16</a>	DoD Components	DoD anti-terrorism standards
<a href="#">DoDD 3115.8</a>	DoD Intelligence Components; US Law Enforcement Agencies	Authorizes DoD to collect Information on non-U.S. persons outside the United States at request of U.S. law enforcement agencies
<a href="#">DoDD 3150.5</a>	DoD Components	Describes DoD response to an improvised nuclear device
<a href="#">DoDD 3150.8</a>		Regulates DoD responses to radiological incidents
<a href="#">DoDD 5210.56</a>		Regulates the use of military force by DoD personnel engaged in law enforcement and security duties
<a href="#">DoDD 5525.5</a>		Regulates DoD cooperation with civilian law enforcement officials
<a href="#">DoDD 6200.3</a>		Emergency health powers on military installations
<a href="#">DoDI 2000.18</a>		CBRNE emergency response guidelines
<a href="#">CJCSI 3214.01B</a>		Policy regarding conditions under which U.S. military forces may use force
<a href="#">DA Pam 50-5</a>		Guidance for nuclear accident or incident response and assistance operations
<a href="#">DA Pam 50-6</a>		Guidance for chemical accident or incident response and assistance operations
International Agreements/Arrangements		
<a href="#">Chemical Weapons Convention</a>	Member Countries	States Parties have the right to request assistance and protection; States Parties are required to provide assistance and protection through the OPCW in the case of use or threat of use of chemical weapons
<a href="#">INTERPOL Constitution and General Regulations</a>		Promotes mutual assistance between police authorities
<a href="#">Charter of the United Nations</a>		Requirements for relations among States, e.g., respect for sovereignty & territorial integrity; human rights standards
<a href="#">Universal Declaration of Human Rights</a>		Obligations governments owe to individuals under their jurisdiction
<a href="#">Geneva Conventions and Related Protocols</a>		Prescribes standards for the treatment of civilians in international and internal conflicts
<a href="#">Refugee Convention</a>		Standards for the protection of refugees

## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
<a href="#">Guiding Principles on Internal Displacement</a>	Signatory Countries	Preventing internal displacement and standards for the treatment of internally displaced persons
<a href="#">UN Doc A/59/766, International Convention for the Suppression of Acts of Nuclear Terrorism</a>	UN Member States	Criminalizes certain acts of radiological/nuclear terrorism, including use and threat of use
Related Literature		
<a href="#">WHO/CDS/CSR/LYO/2004.8, 2004, Preparedness for Deliberate Epidemics</a>	UN Member States	Provides guidelines for preparing for deliberate epidemics, <i>i.e.</i> biological agent attack

## **1. Criminal Investigation**

### **1.1 Jurisdiction**

The affected nation's law enforcement authorities are the primary responders to a crime scene or to civil disturbances related to a chemical, biological, radiological, nuclear, and/or explosive (CBRNE) incident. International assistance may be provided upon request and/or with the consent of a host nation (HN).

As discussed below, the possession, use or threat to use CBRNE, among other enumerated actions, are all criminal acts under U.S. law, which often asserts extraterritorial jurisdiction over these matters. For example, pursuant to Title 18 of the United States Code (USC), the U.S. Attorney General, as the head of the U.S. Department of Justice (DOJ), has primary investigative authority for crimes involving weapons of mass destruction (WMD). An example of such WMD crimes is the Biological Weapons Anti-Terrorism Act of 1989. This statute prohibits the knowing development, production, stockpiling, transfer, acquisition, retention, and use of "any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same."<sup>1</sup> This law also provides for extraterritorial Federal jurisdiction over an offense involving biological weapons that is committed by or against a national of the United States.<sup>2</sup> Other criminal statutes similarly criminalize acts related to nuclear and chemical weapons and provide for extraterritorial jurisdiction if U.S. nationals are victims.<sup>3</sup>

Title 18 also prohibits terrorism generally. Title 18, Chapter 113B addresses international terrorism, and criminalizes, among other things, the use of CBRNE and acts of terrorism transcending national boundaries, whether the act is initiated within or outside of the United States. This law authorizes the United States to assert extraterritorial Federal jurisdiction over prohibited acts and gives the Attorney General primary enforcement authority. The Federal Bureau of Investigation (FBI) is responsible for conducting investigations to facilitate enforcement of these provisions. Terrorism is defined to include prohibited acts involving nuclear, chemical, and biological materials, as well as explosives.<sup>4</sup>

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<sup>1</sup> 18 U.S.C. §§ 175-178 (2005).

<sup>2</sup> *Id.*

<sup>3</sup> 18 U.S.C. §§ 229-229F (2005) (relating to chemical weapons); 18 U.S.C. § 831 (2005) (relating to nuclear weapons). Should a FCM incident result in contaminated food, even in one location, it could have global public health implications. As noted in Chapter Five, such, the U.S. Senate has introduced legislation such as the Agroterrorism Prevention Act of 2005 (S.1532) which would amend Title 18 of the United States Code to criminalize acts of agroterrorism and enhance the protection of the U.S. agricultural industry and food security through increased prevention, detection, response, and recovery planning.

<sup>4</sup> Terrorism, 18 U.S.C. §§ 2331 – 2339D (2005).



## 1.2 U.S. Criminal Investigations

As with virtually all Federal criminal statutes, the FBI is responsible for conducting investigations to facilitate enforcement of these WMD and terrorism laws.<sup>5</sup> Based on these authorities, the Department of Justice may initiate and support extraterritorial criminal investigations in the event of a WMD terrorist event on foreign soil. The DOJ/FBI Legal Attaché to the U.S. Embassy in the HN, if there is one, will likely have developed relationships and worked with relevant law enforcement authorities to assist in coordinating investigations of incidents of interest to the HN and the United States.

The FBI possesses high-technology facilities in Quantico, Virginia and includes personnel highly trained in the areas of hazards, explosives and DNA/forensics. Hazard and explosive teams as well as DNA/forensics units are able to deploy or to serve as consultants 24 hours a day. In addition, the Crisis Management Unit, which deals with the coordination of communications and plans during an incident, is available during a crisis situation. Other agencies can be expected to play a role in assisting in the criminal investigation of an apparent terrorist incident involving WMD overseas. The Departments of Energy (DOE) and Treasury, Department of Defense (DoD) and the rest of the U.S. Intelligence Community, including the Central Intelligence Agency (CIA) and National Security Agency (NSA), often will support and complement the counterterrorism and crisis management operations and requirements of the FBI, as requested and as prescribed by law. As the State Department (DOS) maintains the lead for U.S. foreign consequence management (FCM) efforts, the U.S. Ambassador will play a key role in coordinating U.S. interagency support to the HN. FBI agents may be requested to participate as members of the Foreign Emergency Support Team (FEST) that most likely will deploy to the U.S. Embassy after an FCM incident (see **Chapter 1, section 2.1** and **Chapter 2, section 2.1** for additional discussion of the FEST)

One area of investigation that could involve the DoD after a radiological/nuclear FCM event is in determining the source of the radiological/nuclear materials, which is referred to as nuclear event attribution.<sup>6</sup> It appears that DoD would have a role in this area for FCM events, especially nuclear/radiological incidents on military installations overseas.<sup>7</sup>

## 1.3 Preservation of evidence

Evidence preservation is critical not only to successful prosecution of a potential crime, but also to the prevention of future terrorist acts. Preserving evidence related to a WMD event in a

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<sup>5</sup> The Attorney General has authority to detect and prosecute crimes against the United States pursuant to 28 U.S.C. § 533 (2005). The investigative authority of the Attorney General has been delegated to the FBI. 28 CFR Part 0.85 (Jul. 2005).

<sup>6</sup> The Defense Threat Reduction Agency, Strategic Planning Executive Summary, 2006, *available at* <http://www.dtra.mil/documents/about/StrategicPlan2006.PDF>

<sup>7</sup> See National Security Presidential Directive 43/Homeland Security Presidential Directive 14, Subject: *Domestic Nuclear Detection*, Apr. 15, 2005, which notes that DoD “maintains its respective” responsibility for implementation of the global nuclear detection architecture outside the United States,. Available at: <http://www.fas.org/irp/offdocs/nspd/nspd-43.html>. Legal advisors should consider relevant international agreements and possible restrictions, such as those related to the Posse Comitatus Act, on such investigative activities by DoD.

foreign country is the responsibility of the HN. The U.S. Department of Justice is working closely with HN counterparts to build relationships that will enable the FBI to support foreign efforts to maintain the integrity of and successfully exploit a potential crime scene in the event of a WMD terrorist attack on foreign soil. These efforts include developing treaties and agreements for information sharing and collaboration, as well as through the FBI Legal Attaché program which allows U.S. agents to work directly with their foreign counterparts. Military commanders should consult with their legal advisors whenever undertaking any activities that could affect a crime scene or evidence after a FCM incident. In turn, legal advisors should coordinate with the FBI legal attaché as appropriate to determine if any procedures need to be implemented to preserve evidence and/or show chain of custody.

## **2. U.S. Military Assistance to Law Enforcement Efforts Abroad**

As previously noted, DoDI 2000.21 and CJCSI 3214.01B, make it clear that the primary responsibility for responding to an FCM event lies with the HN. As with other types of FCM support, the HN may request United States Government (USG) law enforcement assistance through DOS. As also noted, while the FBI would generally be responsible for any U.S. investigation of a criminal FCM incident occurring overseas, in most cases, the HN would have primary jurisdiction for the criminal investigation on its territory. Any request for DoD support for HN and FBI criminal FCM investigations, as discussed in detail below, generally must be approved by the Secretary of Defense. As such, in an FCM event, the U.S. military most likely would only receive requests for supplementary logistical and technical support to U.S. law enforcement officials assisting the HN, which again, will most likely have primary jurisdiction to investigate the incident and prosecute those responsible.

Even requests limited to supplementary assistance may require an analysis of DoD policies and regulations that relate to the provisions of the *Posse Comitatus Act* (P.C.A.). The P.C.A. imposes restrictions on the direct involvement of the U.S. military in domestic law enforcement activities, unless various exemptions or exceptions apply.<sup>8</sup> While the P.C.A. has been determined to have no “extraterritorial scope,”<sup>9</sup> legal advisors should carefully review any requests for military forces to provide civilian law enforcement assistance overseas in light of the general restrictions imposed by the P.C.A.<sup>10</sup> Legal advisors should also examine the applicability of the P.C.A., and all relevant civilian law enforcement assistance restrictions that

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<sup>8</sup> 18 U.S.C. §1385 (2005).

<sup>9</sup> Air Force General Counsel Guidance Document, *Posse Comitatus*, Sept. 2003, citing *Memorandum from the Office of Legal Counsel to the Assistant to the President for National Security*, 13 U.S. Off. Legal Counsel 321, Nov. 3, 1989. Case law generally supports this position. Grimes, Maj. Derek I., Rawcliffe, Maj. John, Smith, Cpt. Jeannine, *Operational Law Handbook*, Judge Advocate General’s School, International and Operational Law Dept., at ch. 19, p. 432, para. III.E.2, (2006), available at [http://www.au.af.mil/au/awc/awcgate/law/oplaw\\_hdbk.pdf](http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf), [hereinafter Op Law Handbook].

<sup>10</sup> These general restrictions are: Interdiction of a vehicle, vessel, aircraft, or other similar activity. A search or seizure. An arrest, apprehension, stop and frisk, or similar activity. Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. Department of Defense Directive 5525.5, DoD Cooperation with Civilian Law Enforcement Officials para. E4.1.3, Jan. 15, 1986.

may apply to U.S. military forces wherever they may be.<sup>11</sup> It is also important to note that, in any case, DoDD 5525.5 provides that the Secretary of Defense or the Deputy Secretary of Defense can approve direct military assistance to civilian law enforcement agencies outside the United States, but only under exceptional circumstances.<sup>12</sup>

In addition, should any of the various exemptions to the P.C.A. listed in DoDD 5525.5 apply, P.C.A. restrictions may not be an issue. Some of these exemptions could reasonably be expected to apply to a FCM event, *e.g.*:

- Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.
- Protection of DoD personnel and DoD equipment.
- Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations.<sup>13</sup>

Examples that fit this last category and that could apply to an FCM incident can be found in the U.S. Code Titles 10 and 18 statutes authorizing military assistance, under various circumstances, for certain DOJ/FBI law enforcement functions. For instance, under 10 U.S.C. Chapter 18, the DoD may provide specified assistance to civilian law enforcement agencies to assist in both domestic and foreign incidents.<sup>14</sup> Such military assistance is generally limited to providing supplies, equipment, facilities, related technical assistance, etc., with strict limitations on direct involvement in enforcement of the laws.<sup>15</sup> However, as noted, various U.S. statutes also authorize the Attorney General to ask the Secretary of Defense for direct military assistance in support of the enforcement of crimes involving chemical, biological, radiological, and nuclear (CBRN) materials and terrorism.

For example, the Biological Weapons Anti-terrorism Act of 1989 provides that the Attorney General may seek enforcement assistance from the Secretary of Defense pursuant to Title 10, Chapter 18 “in an emergency situation involving a biological weapon of mass destruction.”<sup>16</sup> Similarly, under section 229 of Title 18 of the U.S. Code, the Secretary of Defense may provide assistance to the Attorney General’s enforcement activities, when requested, “in an emergency involving a chemical weapon.”<sup>17</sup> Title 18, Section 2332a addresses WMD offenses within the

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<sup>11</sup> See Op Law Handbook, *supra* note 9, at ch. 19, p. 432, para. III.E.3, which indicates that DoDD 5525.5 extends the P.C.A. restrictions to military forces overseas. See also Congressional Research Service Report to Congress, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, updated Jun. 1, 2000, p. C46, which notes that DoDD 5525.5 only addresses military law enforcement assistance to domestic agencies (while also noting that DoDD 5525.5 doesn’t explicitly limit the P.C.A. to the United States); available at <http://www.fas.org/sgp/crs/natsec/95-964.pdf>. It should also be noted that DoDD 5525.5, at encl. 4, para. E4.1.2.1, exempts military operations when the primary purpose of the mission is to serve a foreign affairs purpose, as would arguable be the case in FCM situations.

<sup>12</sup> *Id.* at para. 8.1

<sup>13</sup> *Id.* at para. E4.1.2.

<sup>14</sup> 10 U.S.C. § 371, *et seq.* (2005).

<sup>15</sup> Regardless of the circumstances, in most cases, any direct assistance provided to civilian law enforcement agencies, in the U.S. or overseas, requires approval by the Secretary of Defense or the Deputy Secretary of Defense

<sup>16</sup> 18 U.S.C. § 175a (2005).

<sup>17</sup> 18 U.S.C. § 229E (2005).

United States or against a national of the United States, wherever located.<sup>18</sup> In addition, 18 U.S.C. § 831(d) authorizes the Secretary of Defense to provide military assistance to the Attorney General's efforts relating to nuclear or nuclear byproduct materials. Section 831(e)(1) specifically provides that the *Posse Comitatus Act* will not bar the provision of the applicable military support to law enforcement activities in an emergency situation, provided that such assistance will not affect military preparedness. Pursuant to 18 U.S.C. § 831(e)(3): “assistance” may include the use of DoD personnel to arrest persons and conduct searches and seizures. In addition, Section 2332e of Title 18, U.S. Code, which relates to terrorism generally, states: “The Attorney General may request the Secretary of Defense to provide assistance under section 382 of Title 10 in support of Department of Justice activities relating to the enforcement of Section 2332a [which deals with WMD crimes] of this Title during an emergency situation involving a WMD.”<sup>19</sup>

The U.S. Army guidance regarding the response to a chemical attack highlights that the security aspects of law enforcement is a paramount consideration. DA Pamphlet 50-6, *Chemical Accident or Incident Response and Assistance Operations*, provides that “in overseas areas, close cooperation with local (HN) authorities is essential to ensure the establishment of some form of disaster cordon or security area to restrict personnel from the [chemical accident or incident] site for their own protection and the safeguarding of chemical agent material.”<sup>20</sup> It highlights that in FCM incidents, several law enforcement considerations could arise, *e.g.*: the area may need to be secured to protect personnel against the agent and explosives hazard; access to the area often must be controlled to protect the agent and its components and to safeguard information and protect equipment; coordination with civilian law enforcement agencies may be required to provide necessary operations security and to counter activities or intelligence of potentially hostile groups or individuals.<sup>21</sup>

If an FCM incident involves a U.S. military installation, the above consideration regarding coordination with local civilian law enforcement authorities is reinforced by DoD Directive 6200.3. DoDD 6200.3 requires the Public Health Emergency Officer (PHEO) on U.S. military installations to notify “directly or through applicable military channels, appropriate law enforcement authorities concerning information indicating a possible terrorist incident or other crime.” It also requires PHEOs and Commanders to coordinate with the HN and cooperate with authorized law enforcement agencies investigating a possible terrorist attack.<sup>22</sup>

In addition to criminal investigation consideration, an FCM incident will likely generate a need to develop intelligence. DoD Directive 3115.8 sets out the procedures for DoD intelligence components to cooperate with U.S. law enforcement agencies to “collect information outside the United States about individuals who are not United States persons, for use in law enforcement

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<sup>18</sup> 18 U.S.C. § 2332a (2005).

<sup>19</sup> 18 U.S.C. § 2332e (2005).

<sup>20</sup> DA Pamphlet 50-6, *Chemical Accident or Incident Response and Assistance (CAIRA) Operations*, p. 26, Mar. 26, 2003.

<sup>21</sup> *Id.* at 22, 26, 34-35.

<sup>22</sup> DoDD 6200.3, *Emergency Health Powers on Military Installations*, May 12, 2003.

investigations or counterintelligence investigations.”<sup>23</sup> **Section 3.4 of Chapter 8** discusses intelligence sharing with foreign law enforcement agencies.

### **3. International Coordination**

Generally, U.S. and other law enforcement assistance will occur upon the request of the HN, or after HN consent to an offer of assistance from the United States. Arrangements for the provision of law enforcement assistance may be made on an ad hoc basis as the conditions warrant, or assistance may be provided in accordance with pre-existing agreements between the HN and assisting nation. In addition to country-country agreements, various mechanisms are in place to facilitate police and other law enforcement assistance in the event of a WMD crisis on foreign soil. For example, the United Nations International Convention for the Suppression of Acts of Nuclear Terrorism provides a legal basis for international cooperation in the investigation, prosecution, and extradition of alleged offenders who commit terrorist acts involving radioactive material or nuclear devices.<sup>24</sup> It outlines specific activities which will be considered offences against the Convention and calls for nations to adopt appropriate legislation to facilitate international coordination.<sup>25</sup> Various international organizations that may have a role in investigating offenses relating to a FCM incident are described below. Some of these organizations are also discussed in **Chapter 3, section 4** of this Deskbook.

#### *Interpol*

The International Criminal Police Commission (Interpol), an international law enforcement organization, may assist the HN with law enforcement efforts if the disturbance does not involve a political, military, religious or racial character.<sup>26</sup> Interpol's purposes are to promote mutual assistance between criminal police authorities in different countries and to develop institutions that will contribute to the crime prevention and suppression. One of Interpol's high priority areas is assisting in terrorism cases. The core functions of Interpol are to provide secure global communications services; databases and data services to assist police worldwide; and other

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<sup>23</sup> DoDD 3115.8, Collection of Information on Non-U.S. Persons Outside the United States at Request of U.S. Law Enforcement Agencies (LEAs), Sept. 7, 1999. DoD Intelligence Components are, specifically, the National Security Agency/Central Security Service (NSA/CSS), the National Reconnaissance Office (NRO), the National Geo-Spatial Intelligence Agency (NGA), and the Defense Intelligence Agency (DIA). *See also* DoDD 3150.5, DoD Response to Improvised Nuclear Device (IND) Incidents, Mar. 24, 1987 (stating that in the event of an improvised nuclear device event on foreign soil, DoD will assist the DOS and likely, the FBI, but “operational control over DoD assets is exercised by the DoD senior representative.” The Directive notes two MOUs in place between the Departments of State, Energy and Defense, and the FBI, for responding to improvised nuclear device events domestically and abroad.)

<sup>24</sup> U.N. Ad Hoc Committee, *International Convention for the Suppression of Acts of Nuclear Terrorism*, G.A. Res. 59/766 U.N. Doc. A/59/766 (Apr. 4, 2005) [hereinafter U.N. Doc. A/59/766].

<sup>25</sup> *Id.*

<sup>26</sup> INTERPOL Constitution and General Regulations, (1956), as amended, *available at* <http://www.interpol.int/Public/icpo/LegalMaterials/default.asp>.

police support services.<sup>27</sup> In the aftermath of a disaster, Interpol may be accessed for disaster victim's identification.<sup>28</sup>

The organization operates worldwide through a wide network of country offices, called National Central Bureaus, staffed by trained law enforcement officers who liaison between the country's law enforcement organizations and Interpol to provide assistance with apprehending fugitives and other law enforcement matters. An international organization with legal personality, Interpol has entered into cooperation agreements with a wide variety of other organizations, including the Organizations of American States and of African Unity, the Secretariat of the Basel Convention, the International Civil Aviation Organization, and the European Central Bank.

### *OPCW*

The *Chemical Weapons Convention* (CWC) provides for assistance and investigation in cases of alleged use or threat of use of chemical weapons. The procedures for alleged use investigations are set forth in Part XI of the Verification Annex to the Convention. The investigation will be carried out by an Organization for the Prohibition of Chemical Weapons (OPCW) inspection team which may include qualified experts. Drawn from a list prepared by the OPCW Director-General on the basis of nominations received from State Parties, these experts complement the expertise of OPCW investigation teams in particular fields that are not available at the OPCW and that would be required in an investigation of alleged use. The OPCW Conference of the States Parties has decided that such experts, if needed, will be integrated into the OPCW inspection team under a contract of employment and are subject to the obligations of inspectors, in particular those related to protection of confidentiality, observance of safety regulations, and use of approved inspection equipment. The qualified experts will be selected for a specific purpose and their activities will be limited in accordance with that purpose and the instructions of the OPCW investigation team leader.<sup>29</sup>

An investigation concerning an alleged use of chemical weapons can also be requested in the form of a challenge inspection by any State Party which doubts another State Party's compliance with the CWC. In the event of a challenge inspection, the inspected State Party has not requested the investigation, and thereby does not hold the right to refuse entry to the OPCW inspection team. The State Party under the challenge inspection is under an obligation to provide access to the requested site (which, the State Party can manage in order to protect sensitive installations and information unrelated to chemical weapons) and it has the right and obligation to demonstrate compliance. Procedures for an alleged use investigation in the form of a challenge inspection are governed by Article IX of the CWC and Parts X and XI of the Verification Annex.

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<sup>27</sup> Interpol Factsheet G1/01, Interpol: An Overview, *available at* <http://www.interpol.int/Public/ICPO/FactSheets/GI01.pdf>.

<sup>28</sup> Interpol Fact Sheet, FS/02, Interpol's Support in Major Disasters, *available at* <http://www.interpol.int/Public/ICPO/FactSheets/FS02.pdf>.

<sup>29</sup> OPCW Conference of the States Parties decision entitled, "Understanding on the Status of 'Qualified Experts' in the Context of Investigations of Alleged Use," OPCW document C-I/DEC.46, May 16, 1997, *available at* [www.opcw.org](http://www.opcw.org).

*IAEA*

The International Atomic Energy Agency (IAEA) is active in the field of nuclear security, to include detecting, preventing and responding to the procurement, distribution and use of radiological and nuclear material. It has developed a plan of action to deal specifically with the threat of nuclear terrorism. With respect to detection, the IAEA has been working with Member Countries to enhance detection capabilities so that illicit activity related to nuclear materials or radioactive sources may be identified at an early stage. In the area of response, the IAEA works with international organizations (IOs) and national governments to ensure rapid and effective response to emergencies involving nuclear terrorism.<sup>30</sup>

*WHO*

The World Health Organization (WHO) has taken the lead in coordinating the health aspects of the international response to public health emergencies caused by an epidemic, whether natural or caused deliberately. While WHO's mandate does not include law enforcement or non-proliferation, the disease reporting and surveillance mechanisms that WHO has in place certainly will aid national law enforcement and intelligence agencies who have the primary responsibility for handling the law enforcement aspects, if any, of a biological incident.<sup>31</sup>

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<sup>30</sup> IAEA Director General Dr. Mohamed ElBaradei, Introductory Remarks at the Global Threat Reduction Initiative Partners Conference (GTRI), Sept. 18, 2004, *available at* <http://www.ransac.org/Official%20Documents/U.N.%20and%20International%20Atomic%20Energy%20Agency/9222004115758AM.html>.

<sup>31</sup> WHO, Preparedness for Deliberate Epidemics, WHO/CDS/CSR/LYO/2004.8, 2004, *available at* [http://www.who.int/csr/resources/publications/deliberate/WHO\\_CDS\\_CSR\\_LYO\\_2004\\_8.pdf](http://www.who.int/csr/resources/publications/deliberate/WHO_CDS_CSR_LYO_2004_8.pdf).

## Chapter Seven – Standardization of Assistance

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**Table 7-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
Agency Directives/Instructions/Manuals		
<a href="#">DoDD 2010.8</a>	DoD Components	Calls for "mutual logistics support, combined logistics support, and standardization" and for follow-on arrangements with HNs to ensure coordination on logistics lines of communication
<a href="#">DoDD 2010.9</a>		Authorizes DoD components to acquire and provide logistic support, supplies and services directly from and to eligible countries and IOs
<a href="#">CJCSI 2700.01B</a>		International military agreements for rationalization, standardization, and interoperability between the united states, its allies, and other friendly nations
<a href="#">Joint Pub. 3-07.6</a>		Joint tactics, techniques, and procedures for foreign humanitarian assistance
<a href="#">Joint Pub. 3-08</a>		Joint doctrine for interagency coordination during joint operations
<a href="#">Joint Pub. 3-11</a>		Joint DoD doctrine for operations in nuclear, biological, and chemical environments
<a href="#">Joint Pub. 3-16</a>		Joint DoD doctrine for multinational operations
<a href="#">Joint Pub. 3-41</a>		Overarching guidelines and principles for CBRNE-CM operations
<a href="#">Joint Pub. 3-57</a>		Joint DoD doctrine for civil-military operations
<a href="#">Joint Pub. 3-07.5</a>		Joint DoD tactics, techniques and procedures for noncombatant evacuation procedures
<a href="#">Joint Pub. 4-02.1</a>		Joint DoD tactics, techniques and procedures for Health Support
<a href="#">Joint Pub. 5-0</a>		Joint doctrine for planning joint operations
<a href="#">USAID ADS 251</a>	USAID	Policies, general procedures and responsibilities for managing USAID's Foreign Disaster Assistance Program
<a href="#">USAID Field Operations Guide</a>		Guidance for USAID personnel field activities in providing international assistance
International Agreements/Arrangements		
<a href="#">Assistance Convention</a>	Executive	Requires international coordination and cooperation with the IAEA to render assistance in nuclear/radiological assistance
<a href="#">Chemical Weapons Convention</a>		States Parties have the right to request assistance and protection; States Parties are required to provide assistance and protection through the OPCW in the case of use or threat of use of chemical weapons
<a href="#">Convention Relating to the Status of Refugees</a>		Focuses on the status, rights and responsibilities of refugees
<a href="#">Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction</a>		Prohibits each State Party from developing, producing, stockpiling or otherwise acquiring or retaining any bacteriological or toxin weapons
<a href="#">IAEA, Method for Developing Arrangements for Response to a Nuclear or Radiological Emergency – EPR-METHOD</a>	IAEA Members	Aims to provide a practical resource for emergency planning and to fulfill functions assigned to the IAEA in the Assistance Convention
<a href="#">IAEA Safety Standard Series No. TS-G-1.2 (ST-3)</a>	IAEA Members	Planning and preparing for emergency response to transport accidents involving radioactive material
<a href="#">CEI Plan of Action</a>	CEI Member States	Addresses core values and goals of CEI members

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Reference and Section	Affected Entity	Principal Focus
<a href="#">EU, Proposal for a Council Regulation (CNS) 2005/0052</a>	EU Members	Establishes a Rapid Response and Preparedness Instrument for Major Emergencies
<a href="#">EU Council Decision 1999/847/EC, as amended</a>		Establishes a community action program in the field of civil protection
<a href="#">EU Council Decision 2001/792/EC, as amended</a>		Establishes a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions
<a href="#">EU Council Regulation 381/2001</a>		Creates a rapid-reaction mechanism
<a href="#">EU Commission Decision 2004/277/EC</a>		Establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions
<a href="#">NATO Standardization Agreement, AJP-4</a>	NATO Members	Provides doctrine for the planning, execution and support of Allied joint operations
<a href="#">NATO Standardization Agreement, AJP-4.4</a>		Provides guidance on Movement & Transportation doctrine and procedures for Article 5 and Non-Article 5 operations in support of Strategic Commanders Defense Concepts, supporting concepts, and SACEUR's Reinforcement Planning System for Nations
<a href="#">NATO Standardization Agreement, AJP-4.5</a>		Allied Joint Host Nation Support Doctrine and Procedures
<a href="#">WHO Guidance 2004</a>	UN Members	Guidance for public health response to biological and chemical weapons
<a href="#">WHO Medical Device Regulations</a>		Provides guidelines for appropriate use and types of medical devices
Related Publications		
<a href="#">The Sphere Project</a>		Humanitarian charter and minimum standards in disaster response

## **1. Introduction**

The standardization of assistance during a foreign chemical, biological, radiological, nuclear, and/or explosive (CBRNE) incident is an important aspect of foreign consequence management (FCM) operations. Different countries have different requirements and regulations guiding consequence management efforts. Additionally, if non-governmental organizations (NGOs) are involved in response efforts, they will likely follow their own standards or those of the host nation. The primary issues regarding the standardization of assistance include: 1) interoperability of responders' tactics and procedures; 2) effective equipment; 3) environmental standards; and 4) requirements for medical treatment (which is discussed in **Chapter 5**). The lack of standardization in these areas poses significant challenges to those involved in FCM operations. However, several international organizations (IOs) and intergovernmental organizations (IGOs) are working to develop response and/or preparedness procedures and agreements that may enable increased standardization to facilitate FCM.

The International Organization for Standardization (ISO), the world's largest developer of technical standards, plays an important role in standardization of equipment, procedures, and environmental standards. Its standards are often referenced in other international venues concerned with standardization. ISO is a NGO made up of a network of 156 national standards organizations. ISO occupies a special position between the public and private sectors and is able to act as a bridging organization in which a consensus can be reached on solutions that meet both the requirements of business and the broader needs of society.<sup>1</sup> Current international standards under ISO address issues such as the transport and disposal of dangerous goods and waste, protective equipment, environmental protections, and extensive standards for fissile material and radioactive waste.<sup>2</sup> The American National Standards Institute (ANSI) is the United States (U.S.) representative at the ISO. ANSI is a NGO and administers and coordinates the U.S. voluntary standardization and conformity assessment system. ANSI standards are adhered to by private U.S. organizations and U.S. Federal agencies and departments, such as the Center for Disease Control (CDC). ISO and national standards-setting bodies like ANSI play critical roles in ensuring that responders can work together effectively.

## **2. Equipment**

In the case of an FCM incident, equipment such as decontamination systems, mobile laboratories, field hospitals, medical equipment, and facilities for temporary accommodation of persons may be necessary. However, the host nation (HN) may have safety, interoperability, or other issues with the importation and use of such equipment in CBRNE response. For instance, U.S. responders may have difficulty importing specialized chemical, biological and radiological detection equipment into foreign countries. In these instances, it may be necessary for the United States to negotiate with the HN at the time of the incident based on the specific

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<sup>1</sup> ISO, Overview of the ISO System, <http://www.iso.org/iso/en/aboutiso/introduction/index.html> (last visited Feb. 02, 2006).

<sup>2</sup> The complete list of ISO standards is available at <http://www.iso.org/iso/en/CatalogueListPage.CatalogueList>.

equipment required for that incident. Without adequate procedures in place in advance to manage such concerns, responders may have to rely on such ad hoc negotiations to import and/or use equipment necessary for an effective response.

Multilateral treaties such as the *Chemical Weapons Convention* (CWC) provide procedures for transporting needed supplies and providing related services via the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (OPCW).<sup>3</sup> According to Article X of the CWC:

“Assistance” means the coordination and delivery to States Parties of protection against chemical weapons, including, inter alia, the following: detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures.<sup>4</sup>

The type of assistance delivered through the OPCW, on request, can be divided into two main categories: hardware (mainly protective equipment) and the dispatch of a variety of assistance teams.<sup>5</sup> The hardware is offered by Member States (a limited stockpile is kept by the OPCW itself) and consists of chemical agent detectors, personal protective equipment, and medical equipment primarily for civilian use.<sup>6</sup>

The International Atomic Energy Agency (IAEA) also provides equipment guidelines in the *Method for Developing Arrangements for Response to a Nuclear or Radiological Emergency*. The equipment of IAEA decontamination teams should include radiation survey instruments and sources, personal protection equipment and supplies per team member, decontamination equipment and supplies, sampling equipment, and other general supplies such as first aid kits, plastic sheets, covers, etc.<sup>7</sup>

A number of North Atlantic Treaty Organization (NATO) Standardization Agreements provide standard operating procedures for all NATO forces<sup>8</sup> and address the standardization of medical materiel, providing specifications for various medical care items, markings on medical service vehicles, and patient classifications.<sup>9</sup>

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<sup>3</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, Jan. 13, 1993, S. Treaty Doc. No. 103-21 (1993), *reprinted in* 32 I.L.M. 800 (hereinafter CWC). The U.S. is a party to the CWC. The OPCW and other IOs mentioned in this chapter are also discussed in **section 4 of Chapter 3**, **section 3 of Chapter 6**, and in other chapters of this Deskbook.

<sup>4</sup> *Id.*

<sup>5</sup> Lisa Tabassi, Briefing on OPCW Assistance in the Event of Use of Chemical Weapons, Foreign Consequence Management Legal Deskbook Workshop I, Sept. 27, 2005.

<sup>6</sup> *Id.*

<sup>7</sup> IAEA, *Method for Developing Arrangements for Response to a Nuclear or Radiological Emergency*, EPR-METHOD, (2003).

<sup>8</sup> See e.g. NATO, *Allied Joint Logistics Doctrine*, Allied Joint Publication (AJP)- 4, Dec. 2003; NATO, *Allied Joint Movement and Transportation Doctrine*, AJP- 4.4, Dec. 2005; NATO, *Allied Joint Host Nation Support Doctrine and Procedures*, AJP- 4.5, May 2005.

<sup>9</sup> *Id.*

The World Health Organization (WHO) provides guidance to states on medical devices and equipment. Its *Medical Device Regulations* includes guidelines for national health authorities in the selection, use, procurement, and disposal of medical devices, including the creation of national standards and adherence to international standards articulated in international treaties and through the ISO.<sup>10</sup>

Individual states are also addressing equipment standards for CBRNE response at the national level. In the United States, the Office of Law Enforcement Standards (OLES), which is part of the National Institute for Standards and Technology (NIST) at the Department of Commerce, is specifically researching critical incident technologies to:

... facilitate development of the suite of chemical, biological, radiological, nuclear, and explosive protection equipment standards. This suite of standards includes development of performance standards for personal protective and respiratory protection equipment, detection equipment, decontamination equipment, selection care and maintenance guides, and the support programs to facilitate equipment certification, such as laboratory selection and certification programs.<sup>11</sup>

The U.S. Federal agencies involved in the project range from the Department of Homeland Security (DHS) and the Environmental Protection Agency (EPA), to the Inter-Agency Board for Equipment Standardization and InterOperability. OLES has numerous publications already addressing equipment standards, such as those for portable organic vapour detectors and x-ray systems for bomb disarmament.<sup>12</sup> The on-going critical incident technologies project will continue to develop standards to address all areas of CBRNE response.

### **3. Decontamination Standards**

Each HN will likely have its own guidelines for decontamination. For instance, within the United States, the EPA provides guidance on cleanup levels for radioactive sites and trains other U.S. departments and agencies to prepare for such emergencies.<sup>13</sup> However, international standards may also apply to an FCM event.

IOs such as the IAEA have developed a series of safety standards that address response efforts during a radiological incident to include decontamination standards. For example, the *Safety Standard Series Planning and Preparing for Emergency Response to Transport Accidents Involving Radioactive Material* addresses the proper decontamination of persons involved in a radiological incident.<sup>14</sup> It specifies:

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<sup>10</sup> WHO, *Medical Device Regulations*, 2003.

<sup>11</sup> NIST, Office of Law Enforcement Standards (OLES), *Standard Reference Materials, Critical Incident Technologies*, [http://www.eeel.nist.gov/oles/critical\\_incident.html](http://www.eeel.nist.gov/oles/critical_incident.html) (last visited Feb. 02, 2006).

<sup>12</sup> NIST, OLES Standards – Publications Listing, *available at* [http://www.eeel.nist.gov/oles/oles\\_standards\\_publications.html](http://www.eeel.nist.gov/oles/oles_standards_publications.html).

<sup>13</sup> EPA Radiation Protection Program, <http://www.epa.gov/radiation/about/index.html>.

<sup>14</sup> IAEA, *Planning and Preparing for Emergency Response to Transport Accidents Involving Radioactive Material*, Safety Standard Series No. TS-G-1.2 (ST-3), IAEA, Vienna (Aug. 2002).

... [P]ersons contaminated or suspected of being contaminated should be initially decontaminated at the accident site. They should later be thoroughly monitored and decontaminated in an appropriate facility. They should be provided with a change of clothing at the accident site, if possible, and the contaminated clothes should be collected for later washing or disposal. Contaminated persons should be wrapped in blankets to help limit the spread.<sup>15</sup>

The IAEA's safety standards are not legally binding on Member States, but may be adopted for use in national regulations in respect to their own activities. Currently, many Member States are not adequately prepared to respond to such emergency situations and have expressed a desire to:

- strengthen their national emergency preparedness arrangements;
- harmonize them with their neighbors; and
- learn from international experience in responding to these relatively rare events.

It is important to note that these standards are binding on the IAEA in relation to its own operations and on States in relation to operations assisted by the IAEA

In addition, the IAEA publication, *Method for Developing Arrangements for Response to a Nuclear or Radiological Emergency*, discussed above, outlines what constitutes a decontamination team. According to this document, a decontamination team should have sufficient competence and experience within the following areas:

- (1) personal and equipment decontamination techniques;
- (2) contamination monitoring; and
- (3) basic radiation protection.<sup>16</sup>

The equipment of the decontamination teams should include radiation survey instruments and sources, personal protection equipment and supplies per team member, decontamination equipment and supplies, sampling equipment, and other general supplies such as first aid kits, plastic sheets, covers, etc.<sup>17</sup> These manuals and safety standards provide a detailed framework and outline specific procedures for coordinating inter-agency and international response to radiological events. The manuals and safety standards of the IAEA also provide a detailed framework and outline specific procedures for coordinating inter-agency and international response to radiological events.<sup>18</sup>

#### **4. Techniques and Procedures**

The HN responding to an FCM incident may already have response techniques and procedures in place for e.g., detection of contaminants, decontamination, and remediation. The United States and other assisting nations likely will coordinate differently and may use different techniques and procedures which may raise issues when providing assistance, and can require modification of the assisting countries' methods and procedures based on the HN standards.<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> IAEA, EPR-METHOD, *supra* note 7.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See generally, USAID ADS Series 200, Chapter 251, International Disaster Assistance, Feb. 17, 2004; USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide for Disaster

Despite the paucity of internationally recognized standards of assistance, a number of international agreements provide guidance to the management of a foreign CBRNE incident. Agreements such as the IAEA's *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* (Assistance Convention) provide a framework for international cooperation and coordination to render assistance and support in response to nuclear or radiological incidents.<sup>20</sup> The Assistance Convention provides a possible vehicle for the HN to make assisting nations aware of required FCM response procedures and techniques. The HN must "specify the scope and type of assistance required and, where practicable, provide the assisting party with such information as may be necessary for that party to determine the extent to which it is able to meet the request."<sup>21</sup> In situations where the HN is not able to provide this level of specificity, the HN and assisting states will, "in consultation," decide the scope and type of assistance required.<sup>22</sup>

Organizations such as the OPCW provide assistance teams that specialize in medical advice and treatment, detection and chemical reconnaissance, sampling and analysis, decontamination, urban search and rescue in contaminated areas, water purification, explosive ordnance disposal and providing the necessary infrastructure support for assistance operations.<sup>23</sup> These teams provide technical training ranging from medical personnel courses to the conduct of emergency assistance and rescue courses.<sup>24</sup>

Various regional IOs such as the European Union (EU) and NATO are continuing to develop techniques and procedures relating to consequence management in an attempt to standardize response efforts. Within the European Union, the European Commission has been working actively to improve emergency preparedness and response capabilities across the EU. The EU has developed a series of measures and actions in the field of civil protection, in particular:

- 1) Council Decision 1999/847/EC of 9 December 1999 established a Community action program in the field of civil protection; currently set to expire by the end of 2006 (it was extended for two years from its original expiration date in 2004).<sup>25</sup>
- 2) Council Decision 2001/792/EC of 23 October 2001 established a Community mechanism to facilitate cooperation in civil protection assistance operations.<sup>26</sup>

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Assessment and Response, version 4.0, Sept. 2005; Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, Aug. 15, 2001; Joint Pub. 3-41, Chemical, Biological, Radiological, Nuclear, and High Yield Explosive Consequence Management, Oct. 2, 2006.

<sup>20</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (hereinafter Assistance Convention), Sept. 26, 1986, 25 ILM 1377. The U.S. is a party to the Assistance Convention.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> WHO, Public Health Response to Biological and Chemical Weapons: WHO Guidance, p. 133, (2004) (hereinafter WHO Guidance 2004).

<sup>25</sup> EU, Council Decision 1999/847/EC of 9 December 1999, Establishing a Community Action Programme in the Field of Civil Protection, (1999/847/EC), Dec. 09, 1999, *available at* [http://ec.europa.eu/environment/civil/pdfdocs/1299pc0847\\_en.pdf](http://ec.europa.eu/environment/civil/pdfdocs/1299pc0847_en.pdf).

<sup>26</sup> EU, Council Decision of 23 October 2001, (EC) 2001/792/EC, Establishing a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions, Oct. 23, 2001, *available at* [http://ec.europa.eu/environment/civil/pdfdocs/mecanisme\\_en.pdf](http://ec.europa.eu/environment/civil/pdfdocs/mecanisme_en.pdf). *See also* EU, Council Proposal for a Council

Essentially, in the event of a major emergency, such as natural, technological, radiological or environmental accidents occurring inside or outside the EU, the EU-wide Community Civil Protection Action Program facilitates cooperation on civil protection assistance and provides for immediate response. The program includes training activities and developing a rapid response mechanism, with an emphasis on compatibility of techniques and procedures.<sup>27</sup>

A number of NATO Standardization Agreements provide standard operating procedures for all NATO forces.<sup>28</sup> These agreements help health service logistics support planners estimate the degree to which combined forces will be interoperable.<sup>29</sup> For instance, the Allied Joint Logistics Doctrine “details NATO logistic principles and policies, with an operational level focus, to foster common understanding and co-operative logistic planning among NATO military authorities, nations and NATO agencies.”<sup>30</sup>

## **5. Standardization Shortfalls**

Despite the international agreements, treaties, and processes established within various governments and IOs with regard to responding to a CBRNE incident, there remains a lack of standardization in international disaster response and FCM operations. To review and facilitate humanitarian activities in response to natural and technological disasters the International Federation of the Red Cross and Red Crescent (IFRC) established the International Disaster Response Laws, Rules and Principles (IDRL) project. Thus far, IDRL has concluded that there are clear gaps between the application and harmonization of laws, rules and instruments that apply to FCM and international disaster response.<sup>31</sup> These gaps include:

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Regulation (CNS) 2005/0052, Establishing a Rapid Response and Preparedness Instrument for Major Emergencies, COM (2005) 113 final (Apr. 26, 2005) (Proposing to expand the mechanism created by the 2001 Council decision for the purpose of developing rapid reaction capabilities resourced through a European Union Solidarity Fund).

<sup>27</sup> See e.g., EU, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Improving the Community Civil Protection Mechanism, COM (2004) 137 final (Apr. 20, 2004); EU, Council Decision, 2005/12, Amending Decision 1999/847/EC, Regards the Extension of the Community Action Programme in the Field of Civil Protection, 2004 O.J. (L 6/7) (EC); EU, Council Decision, 2001/792, Establishing a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions, 2001 O.J. (L297) (EC); EU, Council Decision, 1999/847, Establishing a Community Action Programme in the Field of Civil Protection, Council Decision, 1999 O.J. (L327/53) (EC); EU, Commission Decision, 2004/277, Laying Down Rules for the Implementation of Council Decision 2001/792/EC, Euratom, Establishing a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions (notified under document number, 2004 O.J. (L087) (EC); EU, Council Regulation 381/2001, On Creating a Rapid-Reaction Mechanism, 2001 O.J. (L057) (EC).

<sup>28</sup> See e.g., NATO Standardization Agreements, *supra* note 8.

<sup>29</sup> Joint Pub. 4-02.1, Joint Tactics, Techniques, and Procedures for Health Support, Oct. 6, 1997.

<sup>30</sup> AJP-4.4, *supra* note 8.

<sup>31</sup> A wider understanding of IDRL, Statement delivered by Encho Gospodinov, Head of Delegation and Permanent Observer to the United Nations, International Federation of Red Cross and Red Crescent Societies representative, at the 58th UN General Assembly in New York, Nov. 4, 2003, *available at* <http://www.ifrc.org/docs/news/speech03/eg041103.asp>.



...inconsistency of access to disaster affected populations; delays, inefficiency and inconsistency in facilitation of disaster response by states; lack of coordination within and between national and international response structures; and divergence between knowledge of quality & accountability and application.”<sup>32</sup>

Additionally, the Central European Initiative (CEI), which is composed of 17 Member States,<sup>33</sup> identified a gap in international cross border procedures. The new CEI Plan of Action 2004-2006 states: “Border-crossing procedures need to be improved in the case of interventions for either natural or man-made disasters, peacekeeping operations, etc.”<sup>34</sup> While not directly related to standards for the types and use of equipment, the lack of consistency in the procedures for responders getting their equipment through customs, *e.g.*, taxes, searches, etc., can greatly affect response time and the availability of responders and equipment. See **Chapter 4, section 3.3** for further discussion of this issue.

The Department of State (DOS) has been working to develop a template for bilateral agreements that are intended to assist the United States Government (USG) and partner nations in standardizing response efforts in order to identify problems quickly and respond efficiently and effectively to avoid or minimize damage. The proposed agreements will help accomplish this by enhancing operational preparedness; facilitating smooth post-event operations; improving partner risk awareness of weapons of consequences; and, establishing the basis for further capacity building to combat WMD.

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<sup>32</sup> IFRC, IDRL Project, Research and Key Findings PowerPoint Presentation (2003), *available at* <http://www.ifrc.org/what/disasters/idrl/news/sept2003.asp>.

<sup>33</sup> CEI member states: Albania, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Italy, Macedonia, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia and Ukraine.

<sup>34</sup> CEI Plan of Action 2004-2006, Section II.1.2, Nov. 21, 2003.

## Chapter Eight - Communications during FCM

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**Table 8-1. Relevant Authorities**

Reference and Section	Affected Entity	Principal Focus
Presidential Documents		
<a href="#">Exec. Order No. 12333</a>	Various Federal Agencies	Sets out responsibilities and procedures for intelligence activities
<a href="#">Exec. Order No. 13151</a>		Establishes the Global Disaster Information Network for the better use of information technology for disaster response
<a href="#">Exec. Order No. 13354</a>	US Intelligence Entities	Establishes the National Counterterrorism Center
<a href="#">Exec. Order No. 13355</a>		Amends previous intelligence guidance to strengthen the management of the intelligence community
<a href="#">Exec. Order No. 13356</a>		Strengthens requirements and mechanisms for the sharing of terrorism information to protect Americans
<a href="#">Exec. Order No. 13388</a>		Further strengthens requirements and mechanisms for the sharing of terrorism information to protect Americans
<a href="#">HSPD 10</a>	Various Federal Agencies	Provides guidance for increased defense against bioterrorism
<a href="#">Memorandum for the Heads of Executive Departments and Agencies, Dec. 16, 2005</a>		Guidelines and requirements in support of the information sharing environment
United States Code		
<a href="#">6 U.S.C. §§ 481-484, Homeland Security Information Sharing Act</a>	Various Federal Agencies	Policies and requirements for sharing intelligence/threat information
<a href="#">22 U.S.C. §§ 2715-2715b</a>		Procedures regarding major disasters and incidents abroad affecting U.S. citizens
<a href="#">22 U.S.C. § 4801, et seq., Diplomatic Security Act</a>		Provides for security of USG personnel and government operations abroad
<a href="#">50 U.S.C. § 403-5D</a>		Policies regarding foreign intelligence information
<a href="#">Pub. L. 108-458</a>		Policy for intelligence reform and terrorism prevention
Agency Directives/Instructions/Manuals		
<a href="#">DoDD 5230.9</a>	DoD Components	Requires clearance of DoD information for public release
<a href="#">DoDD 5400.13</a>		Establishes JCS Response Cell and provides public affairs support
<a href="#">DoDI 2000.21</a>		Policies and responsibilities for DoD support to USG FCM operations
<a href="#">CJCSI 3214.01B</a>		Instructions regarding the provision of military support to foreign consequence management
<a href="#">Joint Pub. 3-07.6</a>		DoD procedures for foreign humanitarian assistance operations
<a href="#">FM 3-11.21</a>		Multi-service tactics, techniques, and procedures for nuclear, biological, and chemical aspects of consequence management
<a href="#">Global Disaster Information Network, Fact Sheet</a>	Various Federal Agencies	Discusses the goals and accomplishments of the GDIN program
<a href="#">USAID Field Operations Guide for Disaster Assistance</a>	USAID	Policies and procedures for USAID employees performing disaster assistance in the field
International Agreements/Arrangements		
<a href="#">Chemical Weapons Convention</a>	Member Countries	States Parties have the right to request assistance and protection; States Parties are required to provide assistance and protection through the OPCW in the case of use or threat of use of chemical weapons
<a href="#">EU Council Decision 2001/792/EC, Euratom</a>	EU Members	Establishes a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions.
<a href="#">IAEA EPR-NETWORK</a>	IAEA Members	Outlines the IAEA's emergency response network
<a href="#">U.N.S.C. Res. 1373</a>	UN Members	Calls for accelerating information exchange

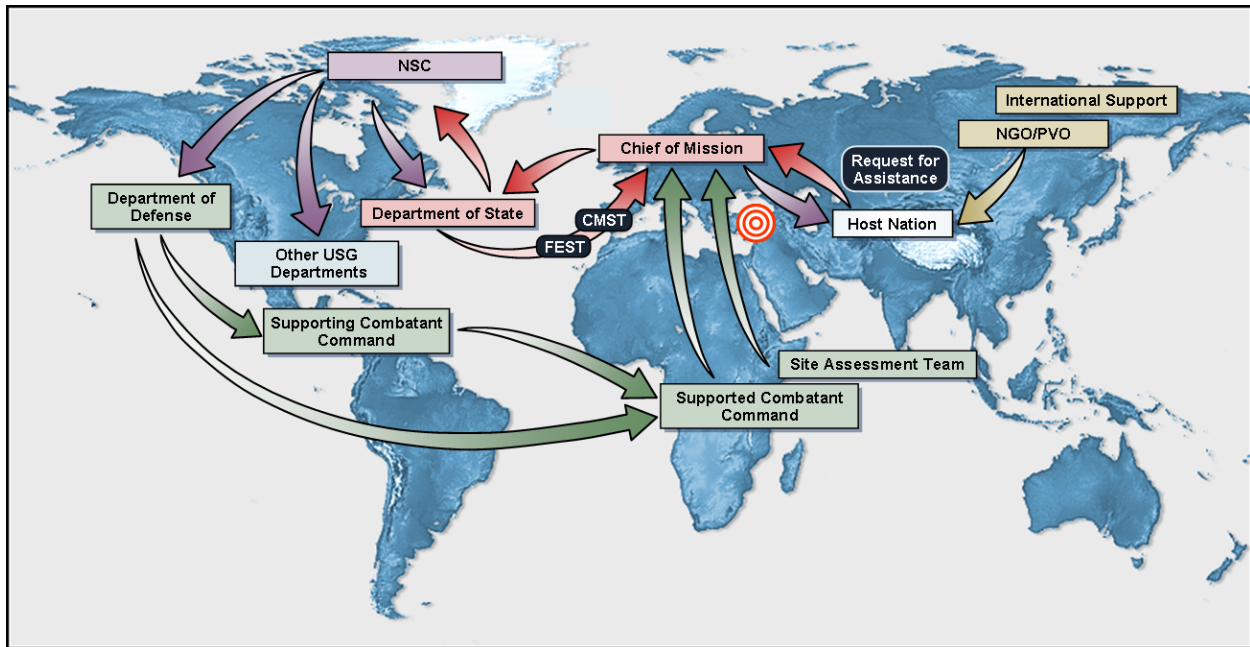
## Foreign Consequence Management Legal Deskbook

Reference and Section	Affected Entity	Principal Focus
Related Literature		
<a href="#">The Joint Warfighting Center, Joint Doctrine Series Pamphlet 6</a>		Doctrinal implications of the Joint Interagency Coordination Group (JIACG)
<a href="#">Tussing and Reynolds, eds.</a>		Responding to Terror: A Report of the U.S. Army War College Consequence Management Symposium

## 1. Introduction

Following a foreign consequence management (FCM) event, it is imperative that information is communicated accurately and in a timely manner in order to assure that requests for assistance and responses to the event are as effective and efficient as possible. As noted in **Chapter 1**, a fundamental aspect of U.S. policy is that the host nation (HN) maintains primary responsibility for all aspects of the response to chemical, biological, radiological, nuclear, and explosive (CBRNE) events, specifically including communications. Clearly, the ability to effectively communicate is critical at all levels of response and among all responders. Sharing information among decision-makers, responders, and the public is essential to an effective response, and the legal implications of communications should be considered as far in advance as possible to avoid problems in the coordination of response efforts.

## 2. Requests for Assistance



### Figure 8-1: FCM Request Process

The process whereby a request for assistance (RFA) after an FCM event is submitted to the United States Government (USG) is discussed in **Chapter 1, *USG Foreign Consequence Management Response Overview***. In summary, the HN should assess whether its internal resources are capable of managing the incident and what additional resources are necessary. Once the determination is made that additional support is needed, the request may go directly to the U.S. Embassy or the Department of State (DOS) from the appropriate HN authorities, as depicted in **Figure 4-1**.<sup>1</sup> However, it is also possible that a RFA may be made directly to a local

<sup>1</sup> DTRA, Unit 2 – Domestic and Foreign WMD Consequence Management Briefing, Apr. 2005.

U.S. installation commander, either from HN civilian authorities or a HN installation commander. In these cases, the U.S. commander may unilaterally determine that the requested assistance can be provided under his immediate response authority if appropriate emergency conditions apply. **Chapter 2, section 2.3** provides more information on immediate response. Under other narrow circumstances, a military commander may be able to provide certain assistance to some countries directly (e.g., through an Acquisition and Cross Servicing Agreement -- also described in more detail in **Chapter 2**), but commanders should always attempt to coordinate the matter with DOS.<sup>2</sup>

### **3. Information Sharing**

#### **3.1 U.S. Information Sharing Requirements for FCM**

Once response efforts begin, communication is critical to a coordinated and effective response. Responders must be able to share information with each other regarding their efforts to mitigate the effects of the incident to the greatest extent possible, as well as avoid duplication of effort and ensure the proper assistance is being provided. The United States has several laws and regulations in place that apply to information sharing after an FCM event.

U.S. citizens work, live and travel all around the world. An FCM incident of any size will result in many Americans becoming concerned about relatives, employees, or friends who are in the affected country. Following a major foreign disaster or incident, is tasked under 22 U.S.C. §2715 with providing “prompt and thorough notification of all appropriate information concerning such disaster or incident and its effect on U.S. citizens to the next-of-kin of such individuals.” The “warden system” is utilized by U.S. Embassies to notify U.S. citizens abroad who have previously registered with the Embassy about emergency situations.<sup>3</sup> When an emergency or disaster occurs, registered citizens will be notified via telephone, fax, or email about the threat and what actions should be taken. Additionally, the DOS will act as a “clearinghouse” for up-to-date information and will liaison with foreign governments.<sup>4</sup> This involves continued communication, frequent updating of information, and providing related services and assistance. In addition to USG assistance in bridging communication, several non-governmental organizations (NGOs) such as the Red Cross have systems in place to assist families with communication after a large scale disaster.

#### **3.2 International Information Networks**

On the international level, various frameworks for notifying other countries of a WMD incident or other types of disasters have been developed to strengthen the international response process by quickly sharing needed information. The Global Disaster Information Network (GDIN), for

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<sup>2</sup> If an Acquisition and Cross-Servicing Agreement is in place, a military commander may be able to provide requested assistance via the HN’s military. ACSA support generally does not require prior coordination with the State Department, but such coordination is essential to avoid duplication of efforts and other inefficiencies. ACSAs are more fully described in **Chapter 2, section 2.4**.

<sup>3</sup> U.S. GAO, *Combating Terrorism: Department of State Programs to Combat Terrorism Abroad*, <http://www.gao.gov/new.items/d021021.pdf>, (last visited Jun. 14, 2006).

<sup>4</sup> 22 U.S.C. § 4802 (2005).

example, was established in 1998 by the United Nations (UN), Canada, and the United States. The network is designed to reduce the impact of national disasters by increasing access to and creating information for decision-makers. Users of the GDIN include disaster managers at all levels, international organizations (IOs), private voluntary organizations (PVOs) and NGOs, and national and sub-national bodies.<sup>5</sup> Executive Order 13151 sets out U.S. policy regarding GDIN, including implementation guidance and responsibilities of U.S. Departments and agencies. It established the Interagency Coordinating Committee which serves as the single entity for all matters, national and international, concerning the development and establishment of the network.<sup>6</sup>

A number of international governmental organizations have also established information networks to facilitate response to an FCM event or other disaster. The North Atlantic Treaty Organization (NATO) Euro-Atlantic Disaster Response Coordination Centre (EADRCC), established in 1998, is responsible for information sharing and coordination of natural and man-made disaster response, to include WMD consequence management, in the 46 NATO and partnership countries comprising the Euro-Atlantic Partnership Council (EAPC) nations. For instance, during Exercise Dacia 2003, HN requests for international assistance were made through the EADRCC, which then circulated the request and incident information to the other EAPC countries.<sup>7</sup> EADRCC also works closely with the UN Office for the Coordination of Humanitarian Affairs (UN-OCHA).<sup>8</sup> To ensure cooperation and coordination with UN efforts, a UN-OCHA Liaison Officer is permanently based in the EADRCC.<sup>9</sup>

In the event of a terrorist attack, the European Union (EU)-wide Community Mechanism for Civil Protection provides for immediate response and assistance and will facilitate cooperation on civil protection assistance for major emergencies. An important part of the Mechanism is the Monitoring and Information Centre (MIC), which is accessible 24 hours a day. Through the MIC, any country affected by a major disaster can submit a RFA. The MIC immediately forwards requests to the national contact points in the participating states and checks in its database of information on the national civil protection capabilities for potentially available assistance. The individual countries then determine whether they can offer assistance in the specific incident. This process is intended to save valuable time in the aftermath of any incident. The MIC is also capable of quickly mobilizing and dispatching small teams of experts to assess

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<sup>5</sup> Partners in the GDIN include the U.S. Departments of Defense (DoD), Interior and State, Canada, Italy, Mexico, Russia, Australia, South Africa, Turkey, the United Nations, Organization for Economic Cooperation and Development (OECD), Native American Communities (Navajo, Pueblo Laguna, Pueblo San Juan, and Pueblo Zia), Asia-Pacific Area Network (APAN), and AmTech Technology Alliances. U.S. Department of State, "Global Disaster Information Network," Fact Sheet, Apr. 17, 2004, *available at* <http://www.sdp.gov/sdp/initiative/gdin/31536.htm>.

<sup>6</sup> Exec. Order No. 13151, Global Disaster Information Network, as amended, Apr. 27, 2000.

<sup>7</sup> NATO, Exercise "Dacia 2003" Scenario, <http://www.nato.int/eadrcc/2003/dacia/scenario.htm> (last visited Nov. 29, 2005).

<sup>8</sup> UN-OCHA's coordination role is discussed in more detail in **Section 4.2** of this Chapter and in **Chapter 3, Section 4.9**.

<sup>9</sup> NATO, Euro-Atlantic Disaster Response Coordination Centre (EADRCC) Enhanced Practical Cooperation in the Field of International Disaster Relief Fact Sheet, Jul. 24, 2002, <http://www.nato.int/eadrcc/fact.htm> (last visited Mar. 28, 2006).

the situation and needs, coordinate the assistance operations and communicate with the competent authorities or other IOs. Importantly, the MIC also collects validated information throughout the response efforts and transmits regular updates to all participating states.<sup>10</sup> Other initiatives within the Mechanism include the development of a Common Emergency Communication and Information System (CECIS) which will help ensure efficient and secure information sharing between the MIC and the national points of contact.<sup>11</sup>

The International Atomic Energy Agency (IAEA) Emergency Response Network (ERNET) has procedures for enhancing communications following a radiological event for those states that are party to the Assistance Convention. The IAEA manual sets out the “criteria and requirements to be met by members of ERNET and is intended for use by institutions in Member States in developing, applying and maintaining their emergency response capabilities.”<sup>12</sup> Using ERNET, States Parties may request the IAEA to “transmit requests for assistance and relevant information in the event of a nuclear or radiological emergency;” as well as to “establish and maintain liaison with relevant IOs for the purposes of obtaining and exchanging relevant information and data, and make a list of such organizations available to States Parties, Member States and the aforementioned organizations”.<sup>13</sup>

The Organization for the Prohibition of Chemical Weapons (OPCW) also has mechanisms for submitting requests for assistance and sharing information following a chemical weapons incident or threat. A State Party may submit its request for assistance and protection to the Directorate General (DG), which immediately forwards it to the OPCW Executive Council (OPCW EC) and all States Parties, including those States Parties which have volunteered to dispatch emergency or humanitarian assistance within 12 hours. The DG initiates an investigation by an OPCW inspection team within 24 hours to establish the foundation for further action, the facts and the type and scope of supplementary assistance and protection needed for responding to the incident. Investigations will be completed (unless extended) within 72 hours and reported to the OPCW EC. The OPCW EC will meet within 24 hours to decide whether to instruct the OPCW Technical Secretariat to provide supplementary assistance. The investigation report and the OPCW EC's decision will be immediately transmitted to all States Parties and relevant international organisations. If the Council so decides, the DG will provide assistance immediately and may cooperate with the requesting State Party, other State Parties and relevant IOs. If information from the on-going investigation or from other reliable sources gives sufficient proof that there are victims of the use of chemical weapons and that immediate action is indispensable, the Director-General has authority to implement emergency assistance

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<sup>10</sup> EU, Council Decision, 2001/792, Establishing a Community Mechanism to Facilitate Reinforced Cooperation in Civil Protection Assistance Interventions, 2001 O.J. (L297) (EC). See also Community cooperation in the field of Civil Protection: The role of the Community Mechanism for Civil Protection, <http://europa.eu.int/comm/environment/civil/prote/mechanism.htm> (last visited Nov. 18, 2005).

<sup>11</sup> Community cooperation in the field of Civil Protection: The role of the Community Mechanism for Civil Protection, <http://europa.eu.int/comm/environment/civil/prote/mechanism.htm>, (last visited Nov. 18, 2005).

<sup>12</sup> IAEA, IAEA Emergency Response Network, EPR-NETWORK (2002), IAEA, (2002).

<sup>13</sup> *Id.*



measures and to inform all States Parties thereof. States Parties are required to make the fullest possible efforts to provide assistance.<sup>14</sup>

### 3.3 Information Sharing During Response Efforts

As with most other USG FCM response activities, information sharing and coordination during FCM activities is coordinated by DOS as the Lead U.S. Federal Agency (LFA). Current DOS planning calls for a Washington, DC-based, DOS-chaired interagency clearing house for all FCM issues. Under current planning, it will utilize an interagency staff (including DoD representation) to develop a comprehensive consequence management response plan via physical and virtual (networked web based) collaboration. A key objective for this interagency group is to provide global coverage with 24 hour operations during incident response, interacting as necessary with the U.S. Ambassador/Chief of Mission (COM) and the Foreign Emergency Support Team (FEST) or Consequence Management Support Team (CMST).<sup>15</sup> For more on the FEST and CMST, see **Chapter 1, section 2.1** and **Chapter 2, section 2.1**.

The pertinent combatant command (COCOM) will coordinate with DOS to develop coordination relationships with the FEST/CMST and command and control relationships with the HN's response management element and the Joint Task Force – Consequence Management (JTF-CM) Headquarters, if a JTF-CM is deployed. Additionally, a Joint Interagency Coordination Group (JIACG), usually present in major commands, is a “multi-functional, advisory element that represents the civilian departments and agencies and facilitates information sharing across the interagency community.”<sup>16</sup> In an FCM operation, a JIACG can:

- provide the combatant commander with a “standing capability specifically organized to enhance situational awareness of civilian agency activity,”
- assist in keeping civilian and military agencies “informed of each others efforts to prevent undesired consequences and uncoordinated USG activity,” and
- help develop interagency continuity to the COCOM “in planning and operations from pre-crisis through crisis resolution, and post-crisis recovery and reconstitution.”<sup>17</sup>

If required during the initial phase of the response, a dedicated communication link will be established between the COCOM and the U.S. Embassy to coordinate initial military logistics, transportation, surveillance requirements, as well as any special/critical requirements such as

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<sup>14</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, Jan. 13, 1993, S. Treaty Doc. No. 103-21 (1993), *reprinted in* 32 I.L.M. 800 [hereinafter CWC]. The U.S. is a party to the CWC.

<sup>15</sup> If deployed, the FEST augments the capabilities of the U.S. Embassy and interfaces with the HN Emergency Operations Director to assess the situation, and advises the COM, country team and the HN on resource requirements. The PRC coordinates the FEST and the CMST, which may be deployed to the Embassy, HN, and Regional Command Headquarters to facilitate the overall USG response and coordinate multinational efforts. As previously noted, the CMST is composed of personnel with skills especially relevant to consequence management and may either supplement or relieve the FEST. Bert B. Tussing and Jeffrey C. Reynolds, eds., *Responding to Terror, A Report of the U.S. Army War College Consequence Management Symposium*, pp. 37-38, Aug. 21-23, 2001, available at <http://www.carlisle.army.mil/usacsl/Publications/Consequence%20Management.pdf>.

<sup>16</sup> JIACG, USJFCOM, [http://www.jfcom.mil/about/fact\\_jiacg.htm](http://www.jfcom.mil/about/fact_jiacg.htm) (last visited Nov. 21, 2005).

<sup>17</sup> The Joint Warfighting Center, Joint Doctrine Series Pamphlet 6, *Doctrinal Implications of the Joint Interagency Coordination Group (JIACG)*, pp. 5-6, Jun. 27, 2004.

search and rescue or security. Combatant commands are also authorized to establish, if required, a temporary civil-military operations center (CMOC) or a humanitarian assistance coordination center (HACC) to facilitate coordination with regional NGOs, IOs and HN government agencies.<sup>18</sup> DoD joint doctrine notes that CMOCs can provide highly valuable tools in focusing the efforts of civilian and military operations towards achieving the same goal.<sup>19</sup> The major activities of the CMOC are:

1. Coordinating relief efforts with U.S. and allied commands.
2. Coordinating with NGOs, IOs, and local authorities.
3. Providing interface with U.S. Government organizations.
4. Assisting in transition operations.
5. Monitoring the CMO effort.<sup>20</sup>

One example of the successful use of a CMOC occurred in Haiti during Operation *Uphold Democracy*, which was considered both a military and humanitarian operation. The *Uphold Democracy* CMOC served as the main contact between military forces and the various civilian organizations involved and facilitated communications.<sup>21</sup>

### 3.4 Sharing Threat and Intelligence Information

Sharing threat and intelligence information is critical to preventing additional incidents and holding culprits responsible. UN Security Council Resolution 1373 calls upon States to:

Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups.<sup>22</sup>

Sharing intelligence information must be done in accordance with existing guidance. The Homeland Security Act of 2002 provides that intelligence information regarding an actual or potential terrorist threat, collected through either intelligence gathering activities or as part of a criminal investigation, may be disclosed to any appropriate authority, including a foreign government, for the purposes of “preventing or responding to such a threat.”<sup>23</sup> Agencies within the intelligence community may take part in law enforcement activities to investigate or prevent

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<sup>18</sup> Joint Pub. 3-07.6, Joint Tactics, Techniques, and Procedures for Foreign Humanitarian Assistance, CMOC, ch. III, Section 2; *see also* HACC, ch. II, § 8, Aug. 15, 2001.

<sup>19</sup> Major Aaron L. Wilkins, “The Civil Military Operations Center (CMOC) in Operation Restore Hope (Haiti),” National Defense University, Mar. 1997, *available at* [http://www.ndu.edu/itea/storage/434/CMOC\\_in\\_Uphold\\_Democracy.pdf](http://www.ndu.edu/itea/storage/434/CMOC_in_Uphold_Democracy.pdf).

<sup>20</sup> US Army, FM 41-10, Civil Affairs Operations, Appendix H, Feb. 2000.

<sup>21</sup> *Id.*

<sup>22</sup> S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

<sup>23</sup> 50 U.S.C. §403-5d (2005).

international terrorist activities, as well as to provide specialized equipment and technical knowledge when authorized by the General Counsel of the providing agency.<sup>24</sup>

Executive Order 13355 specifically calls for:

The fullest and most prompt sharing of information practicable; assigning the highest priority to detecting, preventing, preempting, and disrupting terrorist threats against our homeland, our people, our allies, and our interests.<sup>25</sup>

The heads of agencies possessing or acquiring terrorism information must set common standards for the sharing of terrorism information within the intelligence community, with other agencies having counterterrorism functions, through or in coordination with the Department of Homeland Security.<sup>26</sup> The standards will be used to meet the requirements set out in Intelligence Reform and Terrorism Prevention Act (IRTPA).<sup>27</sup> This act calls for the creation of an information sharing environment (ISE) for “the sharing of terrorism information in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties.”<sup>28</sup> Furthermore, the guidelines in the IRTPA call for the sharing of information between executive departments and agencies and foreign partners. The ISE must support and facilitate the transfer of appropriate terrorism information to our foreign partners and allies, which will require the development of policies and procedures for information access and exchange.<sup>29</sup> The Secretary of State, in coordination with the Secretaries of Defense, the Treasury, Commerce, and Homeland Security, the Attorney General, and the Director of National Intelligence (DNI), must submit to the president for approval “recommendations for appropriate legislative, administrative, and policy changes to facilitate the sharing of terrorism information with foreign partners and allies.”<sup>30</sup> The ISE implementation plan is expected to be delivered to Congress in July, 2006.<sup>31</sup> These improvements are seen as critical to the successful execution of missions, including military support to FCM exercises and operations, requiring interoperability among U.S. and coalition partners. Additional information on the intelligence sharing process can be found in **Chapter 2**.

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<sup>24</sup> *Id.*, at § 2.6. See also, Exec. Order No. 12333, United States Intelligence Activities, as amended, Section 1.5, Dec. 4, 1981.

<sup>25</sup> Exec. Order No. 13355, Strengthened Management of the Intelligence Community, Aug. 27, 2004.

<sup>26</sup> Exec. Order No. 13356, Strengthening the Sharing of Terrorism Information to Protect Americans, Aug. 27, 2004. This Order has been revoked by Exec. Order No. 13388, however, the common standards called for in Exec. Order No. 13356 are maintained and referred to in that order. Exec. Order No. 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, Oct. 25, 2005.

<sup>27</sup> Exec. Order No. 13388, *supra* note 26.

<sup>28</sup> Pub. L. 108-458, Intelligence Reform and Terrorism Prevention Act of 2004, Dec. 17, 2004.

<sup>29</sup> *Id.*

<sup>30</sup> Memorandum for the Heads of Executive Departments and Agencies, Guidelines and Requirements in Support of the Information Sharing Environment, Dec. 16, 2005, *available at* <http://www.whitehouse.gov/news/releases/2005/12/20051216-10.html>. Except for those activities conducted pursuant to sections 102A(k), 104A(f), and 119(f)(1)(E) of the National Security Act of 1947.

<sup>31</sup> The Interim Implementation Plan Report in Support of the Information Sharing Environment, Feb. 3, 2006, *available at* <http://www/ise/gov>.

### 3.5 Public Affairs Policy and Coordination

Another important requirement during initial response operations to an incident is efficient and well thought out public affairs plans and guidance. Communications with the public may involve mitigating panic, facilitating evacuations, and providing public health information, such as contamination areas and limiting the spread of disease.

In most large U.S. embassies, there will be public affairs officer who will coordinate all U.S. public affairs guidance concerning the U.S. response to an FCM event with the DOS Bureau of Public Affairs in Washington DC and appropriate HN officials. Generally, the U.S. Embassy in the HN will designate a spokesperson to coordinate with USG and HN representatives, as well as provide public affairs guidance to the PAOs involved. The State Department's overall FCM role and response activities are discussed in detail in **Chapter 1**. Ultimately, two primary principals apply to FCM incidents:

- Public affairs in an FCM incident is the responsibility of the HN; and
- All responding/assisting U.S. agencies will coordinate with DOS prior to releasing any information to the public.

DoD public affairs guidance requires that DoD information intended for public release that pertains to “subjects of significant concern to the DoD shall be reviewed for clearance by appropriate security review and public affairs offices prior to release.”<sup>32</sup> The Office of the Assistant to the Secretary of Defense for Public Affairs (OASD(PA)) determines who shall serve as the “source of information about joint, combined, and unilateral operations and decide whether to delegate public affairs release authority to Combatant Command level.” Combatant commanders are required to grant the news media access to unclassified information on joint, combined, or unilateral operations and coordinate public affairs matters within the DoD and with other Federal departments and agencies. The Joint Chiefs of Staff (JCS) typically will establish a JCS PA Response Cell within the National Military Command Center (NMCC) during times of crisis to provide JCS public affairs support to OASD(PA).<sup>33</sup>

U.S. military personnel involved in response efforts should anticipate extensive news media coverage of FCM activities. While news media coverage can assist the FCM mission, the intense interest of the news media in covering military FCM operations requires careful coordination among public affairs elements, including the HN, USG, NGOs, IOs, and other nations involved in the mission.<sup>34</sup> Lack of coordination could not only create confusion, but may have legal implications as well. Legal review of press releases and other public affairs products is essential.

## 4. Coordinating Responders' Activities

Coordinating response activities during FCM operations can be complicated given the number of agencies and people involved and the array of activities that will be occurring. This will likely

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<sup>32</sup> DoDD 5230.9, Clearance of DoD Information for Public Release, Apr. 9, 1996.

<sup>33</sup> DoDD 5400.13, Joint Public Affairs Operations, Jan. 9, 1996.

<sup>34</sup> Joint Pub. 3-07.6, *supra* note 18; *see also* ch. IV, § 16.

make it difficult to “speak with one voice” to the public and the media. Although there is no command relationship between the U.S. agencies, the military, and IGOs, NGOs, and the HN, responders should have a clear understanding of the roles and relationships of these entities.<sup>35</sup> Each U.S. agency involved will remain in command of their components, but DOS, as the LFA for the U.S. response to an FCM event, generally will coordinate all proposed U.S. activities, to include public affairs to the maximum extent possible so it can fulfill its coordination role.

#### 4.1 Managing the DoD Response

As noted in greater detail in **Chapter 2**, in response to a HN request that has been approved/forwarded by the State Department, the Secretary of Defense will determine the level of DoD support and may designate the combatant command and command relationships for each FCM response.<sup>36</sup> When DoD provides FCM assistance, DOS will generally be the LFA, but U.S. response forces will remain under the command and control of the appropriate combatant commander. The pertinent combatant commander may designate and deploy a Joint Task Force – Consequence Management (JTF-CM) for command and control over DoD assets deployed to assist in responding to a foreign WMD event. This task force will be tailored to meet the specific needs of the operation.<sup>37</sup>

#### 4.2 Managing Activities of Responding Government and Non-Government Organizations

As noted, the HN has primary responsibility for managing the activities of inter-governmental organizations (IGOs) and NGOs providing assistance in response to an FCM Incident. An important coordination role in this area may be played by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA):

OCHA carries out its coordination function primarily through the Inter-Agency Standing Committee, which is chaired by the [Emergency Relief Coordinator] ERC. Participants include all humanitarian partners, from UN agencies, funds and programmes to the Red Cross Movement and NGOs. The [Inter-Agency Standing Committee] ensures inter-agency decision-making in response to complex emergencies. These responses include needs assessments, consolidated appeals, field coordination arrangements and the development of humanitarian policies.<sup>38</sup>

OCHA uses the concept of an On-Site Operations Coordination Centre to coordinate NGO and IO activities with the host nation’s Local Emergency Management Authority.<sup>39</sup> Coordination can also be facilitated by the American Council for Voluntary International Action (InterAction),

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<sup>35</sup> *Id.*

<sup>36</sup> Department of Defense Instruction (DoDI) 2000.21, Foreign Consequence Management, E2.1.4 para. 4.3.3, Mar. 10, 2006. See also CJCSI 3214.01B, Military Support to Foreign Consequence Management Operations, Section 5c, Mar. 31, 2006.

<sup>37</sup> *Id.*, CJCSI 3214.01B. See also FM 3-11.21/MCRP 3-37.2C/NTTP 3-11.24/AFTTP (I) 3-2.37, Multi-Service Tactics Techniques and Procedures for Nuclear, Biological, and Chemical Aspects of Consequence Management, Dec. 2001.

<sup>38</sup> United Nations Office for the Coordination of Humanitarian Affairs, “A Brief History of OCHA,” available at [http://ochaonline.un.org/webpage.asp?Nav=\\_about\\_en&Site=\\_about](http://ochaonline.un.org/webpage.asp?Nav=_about_en&Site=_about) (last visited Feb. 2, 2006).

<sup>39</sup> See UN, Office for the Coordination of Humanitarian Affairs (OCHA), *On-Site Operations Coordination Centres (OSOCC) Guidelines*, (draft), p. 1.

a U.S.-based consortium of over 150 private agencies that operate in 180 countries.<sup>40</sup> OCHA is discussed in more detail in **Chapter 3, section 4.9**.

As also discussed in **Chapter 3, section 4.9 and Chapter 1, section 2.1**, the U.S. Agency for International Development/Office of Foreign Disaster Assistance (USAID/OFDA) Disaster Assistance Response Team (DART) plays a key role in coordinating U.S. response efforts with NGO response teams.

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<sup>40</sup> Joint Pub. 3-07.6, *supra* note 18.

**DISCLAIMER:**

**The following country studies are meant to provide examples of the legal regimes and issues that could arise when the United States provides FCM support. These studies are meant to provide a general overview of the applicable laws and issues for the two countries, and are not meant to be an exhaustive analysis of either. Different laws and legal issues will apply in other countries and regions.**

**COUNTRY STUDY: U.S. Support for FCM in Italy**

**Background**

In responding to a request for assistance after a foreign consequence management (FCM) incident, United States decision-makers and responders must be aware of the domestic response infrastructure that exists in the host nation (HN) in order to integrate efforts as efficiently as possible. Host nation domestic law, international law, and involvement in international organizations (IOs) will impact response. This country study sets out Italy's incident response framework in order to provide greater insight on how and where U.S. responders will assist following an FCM incident in Italy.

**Organization for Consequence Management**

In Italy a number of departments, laws, and plans guide the response efforts of the Italian government in a chemical, biological, radiological, and nuclear (CBRN) incident.<sup>1</sup> The primary responding entity is the Ministry of Interior, which is responsible for public order and security maintenance during consequence management activities. Within the Ministry of Interior, the departments dealing with FCM are the Department of Public Security and the Department of Fire and Rescue Service and Civil Defense. The Department of Public Security deals with the prevention of a CBRN international event while the Department of Fire and Rescue Service and Civil Defense manages a situation once it occurs.

The Department of Public Security is responsible for implementing the public security and public order policies established under Italian law. It also plans, coordinates, directs, and manages the technical and operational aspects of the national police forces, and provides the overarching authority for locally-based efforts.<sup>2</sup> The Department of Civil Protection, which belongs to the Presidency of the Council of Ministers, primarily consists of volunteers under the National Service of Civil Protection and is responsible for "coping with the protection of the country's people and goods, undergoing particular threats and dangers deriving from conditions

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<sup>1</sup> Italy's response plans do not address incidents involving high explosives in the same manner it does with CBRN incidents. It is likely, however, that the Italian consequence management procedures involving high explosives will be similar to those for a CBRN event.

<sup>2</sup> National Laws and Measures for Counter-Terrorism and Regulation of Biology, DePaul University, College of Law, International Human Rights Institute (Aug. 2003).

of natural, environmental or anthropic risk”.<sup>3</sup> Should Italy request assistance from the United States, it is with these departments that U.S. planners and responders would coordinate efforts.

- Department of Public Security (Ministry of Interior)
- Department of Fire and Rescue Services and Civil Defense (Ministry of Interior)
- Department of Civil Protection (Presidency of the Council of Ministers)

In sum, at the national level, the Presidency of the Council of Ministers may coordinate the overall response activities in case of civil protection emergencies such as national or anthropic disasters. The Ministry of Interior directly coordinates the overall response activities in case of intentionally originated emergencies (civil defense), such as CBRN attack.

### *First Responders*

The National Fire and Rescue Service, the police forces, and emergency health services represent the operational level of response to an FCM event in Italy.<sup>4</sup> In addition to preventing and extinguishing fires, the National Fire and Rescue Service is responsible for the safety of the general public as well as urgent rescues that present technical challenges. It takes full responsibility for protecting and preserving the population from nuclear or radiological risks. Moreover, the National Fire Service personnel are assigned law enforcement duties.

The National Fire and Rescue Service, operational in Italy since 1941, is the only public structure that provides fire prevention and protection in addition to emergency technical rescue including CBRN hazards. Its services are responsible for the entire national territory, excluding three autonomous provinces of Aosta, Bolzano and Trento. It is governed by the Department of Fire and Rescue Service and Civil Defense, which belongs to the Ministry of Interior. The Department of Fire and Rescue Service and Civil Defense structure consists of 8 Central Directorates, 18 Regional Directorates of the National Fire Brigade, and 100 Provincial Fire Brigades. The Provincial Fire Chiefs are the technical “authorities” in case of fire and other natural or man-made emergencies on the territory of their provinces.

According to Italian law and existing emergency planning, when a CBRN incident occurs, the provincial fire brigade commander is responsible for coordinating the rescue operations in the affected area while the other first responders maintain their own responsibilities. The fire brigade sets up an “Integrated Advanced Command Post” that is open to all representatives of the various components of the first responders’ agencies. This ensures a positive flow of communication with operative centers and close coordination among the first responders. Essentially, the operative centers provide necessary assistance to the teams, ensures the timely flow of information, and keeps the Prefect, who represents the Italian government at the provincial level, informed of any developments regarding the situation/crisis.

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<sup>3</sup> Italy, Department of Civil Protection, *The Italian Civil Protection of National Service Brochure*, available at [http://www.protezionecivile.it/cms/attach/brochuredpc\\_eng2.pdf](http://www.protezionecivile.it/cms/attach/brochuredpc_eng2.pdf).

<sup>4</sup> Italy, National Act n° 1570/1941.



The main police forces in Italy consist of the State Police (Ministry of Interior, Department of Public Security) and the *Carabinieri* (Ministry of Defense). Both are responsible for the security and order of the general public in conjunction with other State Corps to include the *Guardia di Finanza* (Ministry of Finance), *Corp Forestale Dello Stato* (Ministry of Agriculture and Forests), and the *Guardia Costiera* (Ministry of Transport and Infrastructures). Additionally, local municipal, provincial and regional police forces may play a role in FCM. In order to fulfil these duties, all police forces rely on other components of the Ministry of the Interior for coordination and support.

### *Coordinating Italy's Responders*

In each of Italy's 103 provinces, a Prefect represents the Italian government.<sup>5</sup> The Prefect is responsible for order as well as public security and supervises the implementation of guidelines issued in the field. In order to carry out his/her functions, the Prefect must be kept informed by the Head of Police Forces at the provincial level (Questore) the Provincial Fire Chief and other relevant authorities (e.g., the commanders of *Carabinieri*, *Guardia di Finanza* and local medical/health agencies and technical services). The Prefect may convene the Provincial Committee for Order and Public Security which consists of representatives from the police forces, the fire brigade, and other authorities concerned with the situation.<sup>6</sup> The Committee has advisory functions, but ultimately the Prefect is responsible for making any decisions regarding incident response. The Prefect reports to the President of the Council of Ministers and/or to the Minister of the Interior on all activities relating to a CBRN incident response. Each Prefect has developed a CBRN plan in each province. According to the national civil defense plan, the Prefect is the only Authority in charge of giving information to the population and media.

At the central or strategic level, Italy's Council of Ministers and the Prime Minister set government policy and provide guidance to and coordinate the Ministers' administrative activities. The Ministers carry out their duties according to Italian law.<sup>7</sup> The Minister of the Interior is responsible for civil defense through the Department of Fire and Rescue Services and Civil Defense, and for law, order, and public security through the Department of Public Security.<sup>8</sup> All other civil administrative issues fall under the direct purview of the Minister of the Interior.<sup>9</sup> Under this authority and according to the National Act No. 133/2002, the Minister of the Interior approved the establishment of a "Crisis Unit" within the Ministry of the Interior, which can be deployed for crisis and consequence management following a terrorist attack. Essentially, the "Crisis Unit" has the ability to meet and assess the level of any perceived threats.

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<sup>5</sup> Ministry of Foreign Affairs, Italy, Geography and Territory, (2004), [http://www.esteri.it/eng/7\\_43\\_96.asp](http://www.esteri.it/eng/7_43_96.asp), (last visited Jul. 21, 2006).

<sup>6</sup> Italy, National Act n° 121/1981 para. 20.

<sup>7</sup> Italy, Constitution of the Republic tit. III, § I, para. 95.

<sup>8</sup> Italy, National Act n° 300/1999 para. 14. National Act n° 121/1981 paras. 1 and 2.

<sup>9</sup> Italy, National Act n° 996/1970 paras. 6, 8.

*Medical/Environmental Issues*

Italy has primary responsibility for ensuring the health and well-being of its inhabitants and environment during an FCM event. The *Ministero Della Salute*, the Italian Ministry of Health coordinates the nation's health and medical services at the national level. However, Italy's health services are primarily administered at the regional level. Italy has twenty regions (*regioni*) of which five are autonomous regions (*regioni autonome*).<sup>10</sup> Each region is responsible for the coordination of medical and health services to the population inhabiting its regional jurisdiction. Foreign responders must coordinate their services with these regional health departments. In the event that a chemical, biological, radiological, nuclear, or high-yield explosive (CBRNE) incident occurs, the USG, IGOs and non-governmental organizations (NGOs) may provide assistance pursuant to established bilateral and/or multilateral agreements. "Recommended actions in the event of an international public health emergency include travel restrictions, quarantine and containment, vaccination and treatment, and dealing with mass casualties."<sup>11</sup> The regional health department must assign roles and responsibilities to the responders, and coordinate the multilateral effort.

IOs, NGOs, and international agreements play an integral role in supporting and assisting the Italian disaster management effort concerning medical and environmental issues. Italy is a party to the European Union (EU), the United Nations (UN), the World Health Organization (WHO), the International Federation of the Red Cross (IFRC), the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons (OPCW), and the North Atlantic Treaty Organization (NATO). All of these international agreements and groups work to coordinate assistance efforts to prevent and respond to FCM incidents. The EU, UN, and NATO provide Italy with comprehensive and technical response and aid for medical and environmental issues. WHO and IFRC response efforts focus on providing medical assistance during FCM events. The IAEA provides resources and assistance with the environmental and health issues associated with nuclear and radiological issues, whereas the OPCW efforts are focused on medical and environmental issues involving the proliferation of chemical toxins or weapons.

If an FCM incident in Italy results in substantial casualties, the USG could employ a coordinated medical effort (employing various military and non-military USG groups) in response to a request for assistance.<sup>12</sup> As noted in **Chapter 1**, the State Department will be the Lead Federal Agency in coordinating the U.S. response to the incident. DoD's role in providing support in the medical area, and for all aspects of the USG response, is described in **Chapter 2**. The United States Agency for International Development (USAID) can provide substantial medical and environmental support in a FCM incident in Italy (as well as the rest of the world). As noted in **Chapter 5, section 1.1**, the procedural guide for USAID medical assistance is the *Operations Guide for Disaster Assessment and Response*. This guide provides a framework for producing a

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<sup>10</sup> Ministero della Salute, Servizio Sanitario Nazionale, Regioni e Province Autonome, (2006), <http://www.ministerosalute.it/ministero/sezMinistero.jsp?id=355&label=ssn>, (last visited Jul. 21, 2006). Consult for a list of Italian regions, and links to regional websites and regional health department websites.

<sup>11</sup> FCM Legal Deskbook Workshop I, Workshop Information Packet, Working Group IV, *International Public Health Emergency*, Sept. 27-28, 2005.

<sup>12</sup> *Id.*

comprehensive analysis and response plan for U.S. responder groups and services.<sup>13</sup> This analysis can be used to generate a needs assessment based upon the current health status of the population affected and the future impact that the incident may have on the effected population and environment.<sup>14</sup> Such a needs assessment can then be used to tailor the U.S. response efforts.<sup>15</sup>

Medical and environmental assistance after an FCM incident in Italy will require the close coordination and delegation by the Italian Government of roles and responsibilities with foreign government and non-governmental organizations. Multilateral organizations such as WHO, OPCW, and the UN, can provide legal frameworks and/or legal resources and protocol guidelines for coordinating a large scale international response. Ultimately, the Italian government and regional health departments hold the legal and administrative authority for medical and environmental response efforts.

### **National Laws, Guidelines, and Plans**

Italian law assigns the entire country, both at a national, regional, provincial and municipal level, with protecting its citizens.<sup>16</sup> National Act No. 225/1992 organizes civil protection as a “national service consisting of the central and peripheral State administrations, regions, provinces, municipalities, national and territorial public agencies, and any other public and private institution and organization present on Italian national territory.”<sup>17</sup> National Act No. 225/1992 outlines and provides a framework for determining the distribution of ministerial powers and national organizations responsible for responding to a civil emergency.<sup>18</sup>

Other Laws related to FCM in Italy:

- Presidential Decree n° 194/2001 outlines the regulations and norms of Voluntary Service Organizations operating in activities organized by the Civil Protection Department.<sup>19</sup>
- Legislative Decree n° 112/1998 bestows upon regional government, from the Department of the Interior, the responsibility to enact regional plans of emergency and first aid to the public and to accept aid from voluntary organizations during a catastrophic event.<sup>20</sup>

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<sup>13</sup> USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide (FOG) for Disasters Assessment and Response, version 4.0, Sept. 2005. The first step in responding to the medical and environmental issues after a CBRNE incident is to conduct an assessment of the medical and environmental impact. An environmental assessment is then conducted because the environmental issues that result from an incident can directly affect medical and health issues of the effected population. *Id.*, at ch. II.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 2.

<sup>17</sup> Italy, National Act n° 225/1992. See also *supra* note 1.

<sup>18</sup> Italy, National Act n° 225/1992.

<sup>19</sup> Italy, National Act n° 194/2001.

<sup>20</sup> Italy, Legislative Decree n° 112/1998.

- National Act n° 401/2001 delegates the power structure of the government response effort from the national to the regional and voluntary organization levels.<sup>21</sup>

The Civil Protection Department serves as the “operative arm” of the President of the Council of Ministries, focusing on the protection of the country's people and goods when facing threats and dangers originating from natural, environmental, or man-made incidents.<sup>22</sup> Its primary functions include:

Promoting and coordinating the whole system; intervening directly in case of national disasters; defining intervention and action procedures common to the whole system; giving guidelines for legislation relative to risk prevention; supporting peripheral structures, particularly the ones with fewer resources; promoting and supporting the activities for the formation and growth of civil protection organizations; informing public opinion and promoting civil protection culture, particularly among young people; directing the setting up and management of information networks necessary for risk prevention; producing and managing exceptional regulations – the official orders - needed to enforce emergency interventions and deal with calamities, in order to reduce to the utmost the damage to people and things.<sup>23</sup>

Each municipality establishes the mayor as the initial point of contact and individual responsible for civil protection. In the case of an emergency or crisis, the mayor is responsible for organizing municipal resources according to pre-established plans specific to the territory and to determine whether outside support from the provinces and peripheral State administrations or national government is necessary.<sup>24</sup> This structure enables the municipality through the “Civil Protection National Service” to respond in a short amount of time, define and assess the significance of the event and determine whether or not local resources are sufficient to deal with the situation.<sup>25</sup>

#### *National Crisis Management Manual*

The National Crisis Management Manual was issued in 1994 by the Prime Minister and is the fundamental reference for crisis management in Italy. However, it is not a national law and is presently under revision. It focuses on three functional and operative levels: the decision-making, coordination, and executive levels. At the decision-making level sits the President of the Council of Ministers, the Council of Ministers, and the Politico-Strategic Committee which is composed of the President of the Council of Ministers and the Ministers of Foreign Affairs, Interior, and Defense.

The coordination level encompasses the politico-military cell, which consists of representatives from the Presidency of the Council of Ministers and the Ministries of Foreign Affairs, Interior, Defense, and Intelligence and ten technical boards for specific matters such as the technical ministerial board for civil defense (C.I.T.D.C.). The C.I.T.D.C. is the most important of the ten

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<sup>21</sup> Italy, National Act n°401/2001.

<sup>22</sup> The Italian Civil Protection of National Service Brochure, *supra* note 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

technical boards because it coordinates the efforts of the ministries and other agencies in their specific fields of activity. It is chaired by the Department of Fire and Rescue Services and Civil Defense and consists of representatives from all of the ministries, public administrations and various private organizations that deal with civil defense. At the executive level the ministries, public administrations and private agencies act according to their own competences as stated by law.

### *National Civil Defense Plan*

After the attacks of September 11, 2001, Italy approved the National Civil Defense Plan to address CBRN terrorist attacks. The national plan refers to the civil defense law, relevant regulations, the National Crisis Management Manual, the National Precautionary Manual as well as related North Atlantic Treaty Organization (NATO) and European Union (EU) plans. The national defense plan guides the institutional bodies that are involved in managing CBRN incidences and describes their duties. It defines a biological, chemical, radiological, and nuclear threat and indicates possible scenarios, modes of attacks, ways to use CBRN agents, and the effects of such agents. It also indicates the level of precautionary, surveillance, rescue, and medical care measures that should be taken.

### **International Arrangements Applicable to Response in Italy**

In addition to the national laws, guidelines and plans as set out by the Italian government, Italy is currently a member of a number of IOs, NGOs, and signatory to agreements which may impact the response to an emergency or CBRNE incident.

#### *European Union (EU)*

Italy is also a founding member of the EU, which provides an institutional framework defining and managing economic and political cooperation between its 25 members.<sup>26</sup> Within the framework, policies such as the Common Foreign and Security Policy (CFSP) and the European Security and Defense Policy (ESDP) address the security challenges as well as concerns of its members. The European Union's civil protection mechanism, to include its Monitoring and Information Centre (MIC), facilitates mutual assistance in the event of an emergency. EU response strategies and mechanisms must be reviewed and considered during the planning of U.S. FCM response activities in Italy.

Within the European Union, there exist bilateral and multilateral agreements and processes to which the United States is not a party. In particular, the European Commission has been working actively to improve emergency preparedness and response capabilities across the EU. In the event of a terrorist attack, the EU-wide Community Civil Protection Action, which provides for immediate response and assistance in the event of a major emergency, will facilitate co-operation on civil protection assistance interventions and provide for immediate response and support in the event of major emergencies.

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<sup>26</sup> European Union, Guide for the Americas, <http://www.eurunion.org/infores/euguide/Chapter1.htm#Chapter%201> (last visited Nov. 18, 2005).

### *North Atlantic Treaty Organization (NATO)*

As a member of NATO, Italy is a signatory to the NATO Status of Forces Agreement (SOFA) signed on June 19, 1951<sup>27</sup>. In addition to the NATO SOFA, Italy has signed bilateral agreements with countries implementing Article III of the North Atlantic Treaty which focus on infrastructure and installations<sup>28</sup> and has entered into a Memorandum of Understanding (MOU) with the U.S. Department of Defense (DoD) that governs the use of military installations in Italy.<sup>29</sup> These agreements are discussed in more detail below.

As a member of NATO, Italy also is a party to the Euro-Atlantic Partnership Council (EAPC) which endorsed, on May 29, 1998, a policy focusing on “Enhanced Practical Cooperation in the Field of International Disaster Relief.”<sup>30</sup> The policy established the Euro-Atlantic Disaster Response Coordination Centre (EADRCC) and the Euro-Atlantic Disaster Response Unit (EADRU).<sup>31</sup> The EADRCC is “responsible for coordinating the response of EAPC countries to a disaster occurring within the EAPC geographical area in close consultation with the [UN-OCHA]” and the EADRU carries out the response efforts in the case of an emergency or crisis.<sup>32</sup>

### *Central European Initiative (CEI)*

Moreover, Italy is taking the lead in furthering coordination efforts between the Central European countries in disaster prevention and intervention in a Central European Initiative (CEI) working group.<sup>33</sup> The Italian Department of Civil Protection, in collaboration with the autonomous Province of Trento, recently held a training course focusing on the protection of the population from the effects of CBRN incidents.<sup>34</sup> The working group recently completed an operational manual on civil protection modeled after the EU manual and is consistently working to establish contacts with other organizations such as the Office for the Coordination of Humanitarian Affairs (UN-OCHA) and the Stability Pact Disaster Preparedness and Prevention Initiative (DPPI).<sup>35</sup>

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<sup>27</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces, art. III, Jun. 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 [hereinafter NATO SOFA].

<sup>28</sup> North Atlantic Treaty, art. III, Apr. 4, 1949, 63 Stat. 2241, 34 UNTS 243. “In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.”

<sup>29</sup> McCormick, Michael J., *Accrediting Technical Representatives in Italy: Avoiding the Reinvention of the Wheel* Defense AT & L (Mar. /Apr. 2003), <http://www.usembassy.it/ussso/files/accrediting.pdf>. See also, Memorandum of Understanding Between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning Use of Installations/Infrastructure by U.S. Forces in Italy, with annexes, Feb. 2, 1995, TIAS 12317 [hereinafter Shell Agreement].

<sup>30</sup> Euro-Atlantic Disaster Response Coordination Centre, *Standing Operating Procedures for the Euro-Atlantic Disaster Response Unit (EADRU)*, Updated Jul. 24, 2003, available at <http://www.nato.int/eadrcc/sop/sop.htm>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Central European Initiative, <http://www.ceinet.org/main.php?pageID=54> (last visited Nov. 18, 2005).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

*World Health Organization (WHO)*

WHO publication, *The Public Health Response to Biological and Chemical Weapons: WHO Guidance* (2004) expands on the *Health Aspects of Biological and Chemical Weapons* publication, and serves as a guide for assessment, identification, response, liability, and international aid to biological or chemical incidents.<sup>36</sup> As a party to the WHO, Italy has access to international aid provided by WHO States Parties in the event of a biological or chemical incident. Additionally, the *International Health Regulations* (IHR) provide States Parties guidance on the roles and responsibilities to "prevent, protect against, control and provide a public health response to the international spread of disease and which avoid unnecessary interference with international traffic and trade."<sup>37</sup>

The WHO IHR is the primary international legal health authority that outlines medical response procedures and provides a legal framework for multilaterally-coordinated response efforts in a CBRNE attack occurring in one or more of its States Parties.<sup>38</sup> Under Part II, art. 6, para. 1 of the IHR, Italy is required to notify the WHO and communicate all available assessments, analyses, and other relevant information if the public health emergency within its territory is of international concern. If the public health emergency also concerns the International Atomic Energy Agency (IAEA), WHO will contact IAEA pursuant to Article 6 Paragraph 1 of the IHR.<sup>39</sup>

*International Atomic Energy Agency (IAEA)*

As a member of the *International Atomic Energy Agency* (IAEA), Italy is required to report nuclear events in its territory as well as contribute to member-coordinated responses to nuclear events. IAEA works to promote the safe use of atomic energy and the preparedness for and response to nuclear emergencies. In order to organize the preparedness and response efforts for a nuclear emergency, IAEA has developed a number of plans, and organized a number of conventions. The *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* (Assistance Convention) provides a framework for international cooperation and assistance in the event of nuclear and radiological incidents.<sup>40</sup> States party to the convention are required to notify the IAEA of available resources which could be utilized in responding to nuclear and radiological events.

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<sup>36</sup> WHO Epidemic and Pandemic Alert and Response, <http://www.who.int/csr/en/>, (last visited Jul. 21, 2006). See also WHO *International Health Regulations* (IHR), (1969, 1995), available at [http://policy.who.int/cgi-bin/om\\_isapi.dll?infobase=Ihreg&softpage=Browse\\_Frame\\_Pg42](http://policy.who.int/cgi-bin/om_isapi.dll?infobase=Ihreg&softpage=Browse_Frame_Pg42).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, "The IHR provide a legally binding framework for the surveillance and reporting of diseases and the application of measures to prevent their international spread". See also Heymann, David Dr., World Health Organization: Outbreak Verification and Response, (2002), available at <http://depts.washington.edu/eminf/2002/mod3topic4/>.

<sup>39</sup> WHO IHR, *supra* note 36.

<sup>40</sup> Convention on the Assistance in the Case of a Nuclear Accident or Radiological Emergency [hereinafter Assistance Convention], Sep 26, 1986, 25 ILM 1377.

The *Convention on Early Notification of a Nuclear Accident*, an IAEA convention, would require that Italy inform the IAEA immediately of a nuclear incident that may affect neighboring countries.<sup>41</sup> Containment of the nuclear incident is the priority of IAEA emergency assistance; the social and environmental impacts of radiation and nuclear waste are of primary concern. In responding to a nuclear or radiological event, IAEA employs the *Emergency Notification and Assistance Technical Operations Manual* and a *Joint Radiation Emergency Management Plan of the International Organizations* as guidance in coordinating member and inter-agency response efforts.

*Organization for the Prohibition of Chemical Weapons (OPCW)*

As a party to the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (CWC),<sup>42</sup> and a member of OPCW, Italy is responsible for providing assistance to members who experience a chemical attack or event, and is entitled to assistance if a request is made to OPCW by Italy (i.e. member state) after or during a chemical attack or event.<sup>43</sup> OPCW acts to mobilize the international assistance effort comprised of technical, logistical, interagency, and medical assistance services. The medical and safety aspects includes the “coordination of Secretariat staff, local victims, experts, teams of specialists dispatched by States Parties and other medical teams, particularly on issues such as the control of communications”.<sup>44</sup> Response and assistance efforts by the OPCW include, but are not limited to, communication and coordination with member states, IOs, and NGOs responding to the incident.

*International Federation of the Red Cross and Red Crescent (IFRC)*

The International Federation of the Red Cross and Red Crescent (IFRC) is party to an agreement with Italy to provide humanitarian services. The IFRC provides both general disaster preparedness services, which assess and predict areas of risk and national response resources (in order to better prepare for a humanitarian response effort), and post-disaster services (which address the basic needs of survivors, such as medical care, food and shelter). The Italian Red Cross, a subset of the IFRC,

forms part of the national defence system (military health auxiliary), the national civil defence system and the national health system, particularly with regard to relief activities and blood collection, treatment and transfusion. The Italian government contributes almost one-third of the IFRC's operating budget through contracts for the provision of services.<sup>45</sup>

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<sup>41</sup> IAEA Convention on Early Notification of a Nuclear Accident, INFCIRC/335, Nov. 18, 1986.

<sup>42</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), art. X, Apr. 29, 1997, *available at* [http://www.opcw.org/docs/cwc\\_eng.pdf](http://www.opcw.org/docs/cwc_eng.pdf).

<sup>43</sup> *Id.*, at paras. 7,8.

<sup>44</sup> OPCW, Emergency Assistance, (2006), <http://www.opcw.org/>, (last visited Jul. 21, 2006).

<sup>45</sup> IFRC, Italian Red Cross, (2002-2003), [http://www.ifrc.org/cgi/pdf\\_profile.pl?itprofile.pdf](http://www.ifrc.org/cgi/pdf_profile.pl?itprofile.pdf), (last visited Jul. 21, 2001).



The Italian Red Cross is overseen by a Board of Directors, and divided into twenty regional committees, 102 provincial committees and 432 local committees providing relief services, volunteer nurses, women's services, a military corps and blood services.<sup>46</sup>

*United Nations (U.N.)*

The United Nations (U.N.) has been a central actor in creating the international law or resolutions behind the creation of many of the international organizations involved in disaster response and humanitarian aid. The main U.N. organ that deals with humanitarian aid to crisis areas, conflict zones, and national disasters, is the Office of the Coordinator for Humanitarian Affairs (OCHA). General Assembly Resolution 46/182 gave birth to the OCHA, which operates through the Inter-Agency Standing Committee (IASC), and is chaired by the position of Emergency Relief Coordinator (ERC), operating as central U.N. coordinating bodies in major or catastrophic events.<sup>47</sup> In the event that a CBRNE event occurs in Italy, the OCHA has an immediate response strategy in place that deploys aid and assistance and coordinates the humanitarian community including:

- United Nations Disaster Assessment and Coordination System (UNDAC) which can dispatch teams within 12 to 24 hours of a natural or sudden-onset emergency to gather information, assess needs and coordinate international assistance
- On-site Operations Coordination Centre (OSOCC) which assists local authorities with coordination international response teams during disasters
- Environmental Standby Experts, a joint venture with the UN Environment Programme, which functions in environmental disasters the same way UNDAC does in natural disasters
- Military and Civil Defence Assets Programme which ensures military resources, when available and appropriate, are effectively used to respond to humanitarian emergencies
- International Search and Rescue Advisory Group (INSARAG) which is a global platform for developing standards for urban search-and-rescue teams and coordination international rescue operations<sup>48</sup>

Italy has submitted a preparedness counter-terrorism letter to the United Nations Security Council addressing measures Italy has in place to prevent and respond to terrorist events and plots. This plan offers a general outline of the structure and resources available for use in responding to the public health needs following a CBRN attack.

With regard to public health, an interdisciplinary Working Group has been created to deal with the consequences of the possible use of biological or chemical weapons. A plan for a rapid and effective response to situations that might create a serious threat to human health has also been distributed; it calls for each individual Regional authority to activate Crisis Units and to identify centres and healthcare structures with the aim of creating a standardised care network at nationwide level. Furthermore, an early-warning system has been established to signal any unforeseen events that could lead to biological, chemical-toxicological and physical hazards,

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<sup>46</sup> *Id.*

<sup>47</sup> UNOCHA, OCHA online, (2006) [http://ochaonline.un.org/webpage.asp?Nav=\\_about\\_en&Site=\\_about](http://ochaonline.un.org/webpage.asp?Nav=_about_en&Site=_about), (last visited Jul. 21, 2006). *See also* UNGA Resolution 46/182, Dec. 1991.

<sup>48</sup> *Id.*

together with a specific protocol for conducting international rapid tests on any suspect material.<sup>49</sup>

This Letter to the United Nations outlines the basic protocol for responding to, and coordinating the medical response to a CBRNE incident.

### **Liability Arrangements**

Italy is party to several agreements which deal with liability issues concerning FCM response activities. Liability issues surrounding military personnel may be covered by SOFAs, such as the NATO SOFA. Specific provisions of the NATO SOFA, which are relevant to a U.S. response to an FCM event, are:

- Article III: Entering forces are exempt from passport and visa regulations as well as immigration inspection.<sup>50</sup>
- Article VII: “The Military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State.”<sup>51</sup>
- Article VIII: Military personnel are not liable for damage caused to the property of a State if the damage occurred during the execution of their duties.<sup>52</sup>

As discussed in **Chapter 4**, the IAEA’s Assistance Convention includes provisions addressing various financial and legal liability issues for responding states. According to Article 10 of the Assistance Convention, claims concerning personal, environmental, and property damage against the assisting State are waived.<sup>53</sup> Furthermore, privileges and immunities for assisting personnel are also covered by the convention.<sup>54</sup>

The CWC does not provide privileges and immunities to members of the OPCW who are responding to an FCM event.<sup>55</sup> Article VIII of the CWC does, however, state that bilateral arrangements between the OPCW and the State parties can determine these issues.

The Department of State (DOS) is currently developing an approach to U.S. FCM response activities which will link U.S. offers of assistance to a commitment from the HN to waive liability to U.S. agencies and personnel. Legal advisors examining U.S. FCM activities and legal

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<sup>49</sup> S.C. Res. 1373, U.N.C.T.C. Doc S/2002/8 2(b)(Jan. 2, 2002).

*Further note that* “all the local Offices responsible for conducting international prophylactic measures on individuals, goods and migrants (namely, all the activities and measures relating to people, property and vehicles crossing the national border, in order to protect public health and persons from exposure to biological, chemical or physical risk factors) have been urged to step up their vigilance in relation to these tasks.”

<sup>50</sup> NATO SOFA, *supra* note 27.

<sup>51</sup> *Id.*, at art. VII.

<sup>52</sup> *Id.*, at art. VIII.

<sup>53</sup> Assistance Convention, *supra* note 40, at art 10.

<sup>54</sup> *Id.*, at art 8.

<sup>55</sup> OPCW, Privileges and Immunities Agreements, <http://www.opcw.org>, (last visited Jun 25, 2006).

issues in Italy should determine whether such an arrangement between the United States and Italy is in place.

### **Response of U.S. Forces to an FCM Event in Italy**

U.S. military forces in Italy may need to respond to an FCM event that affects the military installation where they are assigned or to an FCM incident somewhere else in that country. As noted above, provisions of the NATO SOFA will affect the U.S. forces responding to an FCM event wherever it occurs in Italy.

In 1995, the United States and Italy signed the MOU between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning the Use of Installations/Infrastructure by U.S. Foreign Forces in Italy (also referred to as the “Shell Agreement”), which impacts the role of the United States Government’s (USG) military in Italy.<sup>56</sup> The Shell Agreement creates a template to be used to define the use and operation of U.S. military bases in Italy. Although a base is placed under Italian command, the U.S. Commander:

has full military command over U.S. personnel, equipment and operations. He will notify in advance the Italian Commander of all significant U.S. activities, with specific reference to the operational and training activity, to the movements of materiel, weapons, and civilian/military personnel, and to any events/incidents that should occur. Likewise the Italian Commander will keep the U.S. Commander informed of all significant national activities. The Italian Commander will advise the U.S. Commander if he believes U.S. activities are not respecting applicable Italian law and will immediately seek advice from higher Italian Authorities.<sup>57</sup>

For instance, U.S. troops in Italy total approximately 4,000-5,000 service-men and -women per branch resulting in enormous cooperation across the services. Italian military installations have been assigned to U.S. forces and Italian commanders are in charge of U.S. bases in Italy. The U.S. Army Southern European Task Force (SETAF), for instance, integrates into its force structure Italian military officers and is governed by agreements such as the NATO SOFA and the Shell Agreement.<sup>58</sup> U.S. military activities in Italy must adhere to the terms of these agreements.

Moreover, joint FCM training exercises such as *Exercise Lion Shake* promote and encourage cooperation between Italian authorities from the local to the national level and U.S. military forces in the country. Such exercises usually involve a simulation of a chemical or biological weaponized agent released on a U.S. military installation such as Caserma Ederle in Vicenza Italy, where the United States would be the first to respond. Lessons learned from previous exercises are incorporated into such drills in order to refine and increase the realism. In addition to joint training exercises, U.S. and Italian fire departments have an MOU in place that calls for joint support and training together regularly.

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<sup>56</sup> Shell Agreement, *see supra* note 29.

<sup>57</sup> *Id.*, at app. B.

<sup>58</sup> NATO SOFA, *see supra* note 27. *See also*, Shell Agreement, *supra* note 29.

## **COUNTRY STUDY: U.S. Support for FCM in the Philippines**

### **Background**

Due to the size and layout of the many islands that comprise the country, disaster management in the Philippines requires a well developed disaster management program. Disaster management in the Philippines involves a coordinated system utilizing resources from the national level down to the local level. Although this system was primarily created to deal with natural disasters, the Philippine disaster management system may also be applicable to chemical, biological, radiological, nuclear, and explosive (CBRNE) disasters and provides a framework with which to coordinate external response efforts.

### **Organization for Consequence Management**

#### *The National Disaster Coordinating Council*

Established by Presidential Decree (PD) 1566, the National Disaster Coordinating Council (NDCC) serves as the overall coordinator for disaster management in the Philippines, formulating emergency and disaster policy, providing recommendations to the Philippine President, and advising the local and regional Disaster Coordinating Councils (DCC).<sup>59</sup> NDCC is chaired by the Secretary of National Defense and its membership is comprised of representatives from over a dozen government agencies and departments.<sup>60</sup> Each individual member of the NDCC, and their respective agency, is tasked with a specific role regarding disaster management. Since a budget is not allocated to it, the NDCC operates through its member agencies and local networks or DCCs.<sup>61</sup> According to PD 1566, local governments are charged with funding disaster preparedness programs, the DCCs, and the equipping and training of disaster action teams.<sup>62</sup> The DCCs serve as the equivalent of the NDCC, but at the regional and local level. Regional and local officials make up the membership of the DCCs and utilize resources at their local level before seeking help from the NDCC.<sup>63</sup>

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<sup>59</sup> The National Disaster Coordinating Council, Functions of the National Disaster Coordinating Council, <http://www.ndcc.gov.ph/ndccfunctions.htm>, (last visited May 22, 2006).

<sup>60</sup> NDCC membership is comprised of the following: the Secretaries of the Department of National Defense, Department of Public works and Transportation and Communication, Department of Social Services and Development, Department of Agriculture, Department of Education and Culture, Department of Finance, Department of Labor, Department of Justice, Department of Trade, Department of Local Government Community Development, Department of Health, Department of Natural Resources, Department of Public Information, the Commissioner of the Budget Commission, the Presidential Executive Assistant, the Presidential Assistant on General Governments, the Chief of Staff of the Armed Forces of the Philippines, the Secretary-General of the Philippine National Red Cross, and the Administrator of the Office of Civil Defense.

<sup>61</sup> The National Disaster Coordinating Council, Organization of the National Disaster Coordinating Council, [http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=7&MMN\\_position=32:32](http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=7&MMN_position=32:32), (last visited May 22, 2006).

<sup>62</sup> Presidential Decree No. 1566, Strengthening the Philippine Disaster Control and Capability and Establishing the National Program on Community Disaster Preparedness, Jun. 11, 1978 [hereinafter PD 1566].

<sup>63</sup> Although the DCCs are charged with carrying out disaster management plans at the regional and local levels, examples of specific disaster management plans created by the DCCs could not be found.

### *Department of National Defense*

The Department of National Defense provides support to disaster management primarily through three mechanisms: organizing disaster control groups as chair of the NDCC, the activities conducted by the Armed Forces of the Philippines (AFP), and the Office of Civil Defense (OCD).

*Armed Forces of the Philippines (AFP)* – Comprised of the Army, Navy, and the Air Force, the Armed Forces of the Philippines (AFP) has the mandate of protecting the Philippines from both internal and external threats, and assisting in law enforcement activities.<sup>64</sup> During disasters, the AFP helps to establish communications, assists the Philippine National Police in security operations and law enforcement activities, provides transportation for relief services and evacuation of personnel, and assists with infrastructure reconstruction.<sup>65</sup> Each of the three services assists in various ways to help in disaster management and security operations:

- Philippine Army – The primary military unit charged with combating terrorist organizations in the Philippines. In addition, assists in disaster response and recovery efforts.
- Philippine Air Force – Provides search and rescue operations, relief rehabilitation, and air evacuation.
- Philippine Navy – Provides humanitarian assistance throughout the Philippine islands.<sup>66</sup>

*Office of Civil Defense (OCD)* – The Office of Civil Defense (OCD) serves as the operating arm of the NDCC, coordinates the activities of the Philippine government in times of emergencies and disasters, and is also charged with monitoring the implementation of PD 1566. The OCD also performs studies on disaster management and helps to develop training programs for the DCCs.<sup>67</sup> During a disaster, the OCD will coordinate with both public and private sectors to provide for the protection of the citizenry. The OCD maintains the National Disaster Management Center which is used by the NDCC in emergencies and is in charge of operating the Emergency Broadcast System.

### *Department of the Interior and Local Government (DILG)*

The mission of the Department of the Interior and Local Government (DILG) is to “promote peace and order, ensure public safety, and strengthen capability of local government units through active people participation and a professionalized corps of civil servants.”<sup>68</sup> The

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<sup>64</sup> Department of National Defense, About Us, [http://www.dnd.gov.ph/DNDWEBPAGE\\_files/html/aboutus.htm#History](http://www.dnd.gov.ph/DNDWEBPAGE_files/html/aboutus.htm#History), [hereinafter About Us], (last visited May 22, 2006).

<sup>65</sup> The National Disaster Coordinating Council, CC Member-Departments/Agencies, <http://www.ndcc.gov.ph/ndccmembers.htm>, (last visited May 22, 2006).

<sup>66</sup> About Us, *supra* note 64.

<sup>67</sup> NDCC, CC Member-Departments/Agencies, *supra* note 65.

<sup>68</sup> Department of the Interior and Local Government, About Us, <http://www.dilg.gov.ph/aboutus.htm>, (last visited May 22, 2006).

Department helps provide the President with assistance in overseeing the local governments. One of its primary responsibilities is to coordinate with the Local Disaster Coordinating Councils (LDCCs) and to provide training at the local level. In order to maintain basic services during an emergency, the DILG is charged with formulating policy reforms to ensure that basic services will continue to be supplied to the population during disasters.<sup>69</sup> The auxiliary fire and police services are also part of this department along with the Philippine National Police.

*Department of Health (DOH)*

Although local governments are responsible for health services and their immediate response to disasters, the Department of Health (DOH) does take part in disaster preparedness and prevention activities. If an emergency is of such a scale that local governments cannot adequately respond, the DOH can be directed by the President and local government to assume temporary responsibility of health operations.<sup>70</sup> In addition, hospitals have their own Hospital Emergency Medical Services (HEMS) which work with local governments in responding to disaster emergencies.

*Philippine Center on Transnational Crime (PCTC)*

Established in 1999 by Executive Order No. 62, the Philippine Center on Transnational Crime (PCTC) was created to implement a coordinated program of action among all Philippine government, law enforcement, and intelligence agencies.<sup>71</sup> The PCTC supports anti-transnational crime activities, including terrorist activities, in the Philippines. In addition, it works closely with international organizations such as the Association of Southeast Asian Nations (ASEAN) and the International Criminal Police Organization (INTERPOL) in combating transnational crime. The PCTC focuses on four strategies to combat transnational crime: information exchange; strategic studies research; law enforcement coordination; and capacity building.<sup>72</sup>

*Philippine Nuclear Research Institute (PNRI)*

Created by Executive Order No. 128 in January of 1987, the Philippine Nuclear Research Institute (PNRI), part of the Department of Science and Technology (DOST), is mandated with “research and development activities in the peaceful uses of nuclear energy, to institute regulations on the said uses and to carry out the enforcement of said regulations to protect the health and safety of radiation workers and the general public.”<sup>73</sup>

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<sup>69</sup> NDCC, CC Member-Departments/Agencies, *supra* note 65.

<sup>70</sup> Department of Health, Local Health Coordination and Assistance, [http://www.doh.gov.ph/RHONCR/CHD-MM\\_web/lhad.htm](http://www.doh.gov.ph/RHONCR/CHD-MM_web/lhad.htm), [hereinafter Local Health], (last visited June 13, 2006).

<sup>71</sup> The Philippine Center on Transnational Crime, <http://www.pctc.gov.ph/>. (last visited July 18, 2006).

<sup>72</sup> *Id.*

<sup>73</sup> The Philippine Nuclear Research Institute, PNRI in Brief, <http://www.pnri.dost.gov.ph/about.html>, (last visited May 22, 2006).

The PNRI is responsible for creating emergency plans and responses for possible radiological disasters. The PNRI has published a pamphlet entitled *What to Do in Case of a Terrorist Attack Involving Radioactive Materials*. This pamphlet is designed to provide Filipinos with information on how to protect themselves from an attack that involves a radioactive device such as a dirty bomb.<sup>74</sup> PNRI was also responsible for developing the Radiological Emergency Preparedness and Response Plan (RADPLAN) in November of 2000, which deals with responses to peacetime radiological events and is discussed below.<sup>75</sup>

## **National Laws and Regulations, and Plans**

### *Presidential Decree (PD) 1566*

The Philippines has endured a long history of coping with disasters ranging from natural disasters such as tsunamis, flooding, and earthquakes, to man-made events such as fires. The principal legislation guiding disaster management in the country is Presidential Decree (PD) 1566, entitled *Strengthening the Philippine Disaster Control and Capability and Establishing the National Program on Community Disaster Preparedness*. Released in June 1978, PD 1566 can be applied to both natural and man-made disasters, including a CBRNE incident. The decree specifically mentions the threat posed by the “technological advances of the modern world” which have “ushered in more lethal weaponry.”<sup>76</sup> PD 1566 also established The National Calamities and Disaster Preparedness Plan. The goal of this plan is “to ensure effective and efficient implementation of civil protection program thru [sic] an integrated, multi-sectoral and community based approach and strategies for the protection and preservation of life, property and environment.”<sup>77</sup> PD 1566 and the National Calamities and Disaster Preparedness Plan provide for all available resources to be used at each level to deal with any disaster that may arise.

PD 1566 also established the NDCC at the national level which advises the President on disaster preparedness programs, disaster operations and rehabilitation efforts to be carried out in both the public and private sectors.<sup>78</sup> Additional DCCs were created to organize disaster management efforts at regional and local levels. Each of the DCCs provide for their own warning services, health services, public information services, and relief and rehabilitation services.<sup>79</sup> PDD 1566 designates the Secretary of the Department of Local Government and Community Development,

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<sup>74</sup> The Philippine Nuclear Research Institute, *What to Do in Case of a Terrorist Attack Involving a Radioactive Device*, available at [http://www.pnri.dost.gov.ph/documents/radioactive\\_mats.pdf](http://www.pnri.dost.gov.ph/documents/radioactive_mats.pdf), (last visited May 22, 2006).

<sup>75</sup> The Philippine Nuclear Research Institute, *Preparedness For Radiation-Related Emergencies Thru RADPLAN*, <http://www.pnri.dost.gov.ph/documents/radplan.pdf>, [hereinafter *Preparedness*] (last visited May 22, 2006).

<sup>76</sup> PD 1566, *supra* note 62.

<sup>77</sup> The National Disaster Coordinating Council, *Legal Bases of the Philippine Disaster Management System*, [hereinafter *Legal Bases*] [http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=28&MMN\\_position=61:61](http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=28&MMN_position=61:61), (last visited May 22, 2006).

<sup>78</sup> The National Disaster Coordinating Council, *Organization of the National Disaster Coordinating Council*, [http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=7&MMN\\_position=32:32](http://ndcc.gov.ph/ndcc/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=7&MMN_position=32:32), (last visited May 22, 2006).

<sup>79</sup> *Legal Bases*, *supra* note 77.

also on the NDCC, to coordinate the organization of the DCCs and the establishment of local operations centers. This provides for an integrated approach at all levels of Philippine society. Other provisions of PD 1566 include:

- Promoting self-reliance by encouraging cooperation among local officials and their constituents before seeking help at the national level during and after disasters or emergencies.
- Holding drills and exercises to prepare for disasters.
- Authorizing government units to program funds for disaster preparedness activities.<sup>80</sup>

#### *Additional Laws Relating to Disaster Management*

Along with PD 1566, which serves as the basis for the Philippines disaster management program, several other laws focus on disaster management and prevention.

- PD 1096 (The National Building Code of the Philippines) – Defines the standards and requirements for the construction of buildings.
- PD 1185 (The Fire Code of the Philippines) – Provides for a professional fire fighting service, the implementation of safety measures for hazardous materials, as well as fire prevention education in Philippine communities.
- Rule 1040 of the Occupational Safety and Health Standards (amended) – Calls for periodic safety drills in places of employment.
- Republic Act (R.A.) 7160 (Local Government Code of 1991) – Provides for disaster management at the local level by giving local governments some autonomy to develop their own resources and responsibilities.

#### *Philippine Disaster Preparedness Program*

A vital part of the Philippine disaster management program deals with preparedness programs. Each coordinating council performs disaster training programs for the various organizations at their level. Examples of training include search and rescue, evacuation, disaster medicine, vulnerability analysis, damage assessment and first-aid.<sup>81</sup> Training to generate public awareness before and after disasters is also part of the Philippine disaster preparedness programs.<sup>82</sup>

#### *Radiological Emergency Preparedness and Response Plan (RADPLAN)*

The RADPLAN was created in 2000 by the PNRI and creates three levels for radiological emergencies:

- Alert – Events that occur in a nuclear facility that do not threaten the population.

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<sup>80</sup> *Id.*

<sup>81</sup> Asian Disaster Reduction Center, The National Disaster Management Program, [http://www.adrc.or.jp/nationframe.php?URL=./management/PHL/Philippines\\_Disaster\\_Plans.html&Lang=en&NationCode=608](http://www.adrc.or.jp/nationframe.php?URL=./management/PHL/Philippines_Disaster_Plans.html&Lang=en&NationCode=608), (last visited May 22, 2006), [hereinafter National Disaster Management Program].

<sup>82</sup> *Id.*



- Site Area Emergency – Events that affect a specific area or within the boundaries of a nuclear facility, but with insignificant radiation levels.
- General Emergency – An event that affects a wide area and includes high levels of radiation.<sup>83</sup>

The responsibility for initiating operations under the RADPLAN resides with the Office of Civil Defense and the PNRI. The PNRI, however, will take the lead in all radiological-related responses.<sup>84</sup> The initiation of operations under the RADPLAN will allow all of the coordinating committees to begin to carry out their functions related to radiological disaster management.

### **Liability Issues for Foreign Responders**

#### *Chemical Weapons Convention (CWC)*

The Philippines is a party to the *Chemical Weapons Convention* (CWC), which is overseen through inspection and monitoring conducted by the Organization for the Prohibition of Chemical Weapons (OPCW). In the event of a chemical weapons attack, the CWC provides protection and assistance to its member parties. Since privileges and immunities to OPCW officials are not provided by the CWC, bilateral arrangements are developed between the OPCW and individual states according to Article VIII of the CWC.

#### *Assistance Convention*

As noted in **Chapter 4**, the International Atomic Energy Agency's (IAEA) 1986 *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* (Assistance Convention), which the Philippines has acceded to, deals with both financial and legal liability for assisting states. According to the Assistance Convention, if costs for assistance are to be reimbursed, the host nation will reimburse the assisting State.<sup>85</sup> In addition, Article 10 of the Assistance Convention waives claims against the assisting State which concern damages to property and personnel.

#### *Visiting Forces Agreement*

The 1998 Visiting Forces Agreement (VFA) between the U.S. and the Philippines, among other things, outlines a variety of liability issues concerning U.S. personnel. For example, under the VFA, Philippine authorities are granted jurisdiction over U.S. personnel who commit criminal offenses on Philippine territory.<sup>86</sup> However, the United States continues to maintain jurisdiction authority over its personnel in respect to violations of U.S. law, and it may request that personnel

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<sup>83</sup> Preparedness, *supra* note 75.

<sup>84</sup> *Id.*

<sup>85</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency [hereinafter Assistance Convention], Sept. 26, 1986, 25 ILM 1377.

<sup>86</sup> Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, art. V, [hereinafter Visiting Forces Agreement], U.S.-Phil., February 10, 1998, TIAS.

accused under Philippine law be held in custody by U.S. authorities rather than Philippine authorities.<sup>87</sup> On the issue of claims, the agreement states:

“Except for contractual arrangements, including United States foreign military sales letters of offer and acceptance and leases of military equipment, both governments waive any and all claims against each other for damage, loss or destruction to property of each other's armed forces or for death or injury to their military and civilian personnel arising from activities to which this agreement applies.”<sup>88</sup>

If the U.S. forces import or buy materials and equipment to be used in their operations while in the Philippines, no duties or taxes will be levied.<sup>89</sup> Personal effects belonging to U.S. personnel are also exempt from duties and taxes while that person remains in the Philippines.

### **Coordinating Activities with Foreign Responders**

#### *ASEAN Agreement on Disaster Management and Emergency Response*

Focusing specifically on disaster management, the *ASEAN Agreement on Disaster Management and Emergency Response* was agreed to in July 2005. The agreement deals with both natural disasters as well as “human-induced hazards.”<sup>90</sup> The objective of the agreement is to

...provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional and international co-operation.<sup>91</sup>

ASEAN countries agreed to provide any assistance requested by a member country in response to a disaster. The agreement also requires the development of policies dealing with disaster preparedness and prevention, the identification of disaster risks, the creation of “standby arrangements for disaster relief and emergency response,” and cooperation in technical and scientific research.<sup>92</sup>

#### *Cooperation with the United States on Disaster Prevention and Management*

The *Protocol of Intentions Between the Government of the United States of America and the Republic of the Philippines Concerning Cooperation in Disaster Prevention and Management* was agreed to in November 2001. The Protocol was designed to “initiate prototypes of

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<sup>87</sup> *Id.*

<sup>88</sup> Visiting Forces Agreement, *supra* note 86, at art VI.

<sup>89</sup> Visiting Forces Agreement, *supra* note 86, at art VII.

<sup>90</sup> ASEAN, ASEAN Agreement on Disaster Management and Emergency Response, *available at* <http://www.aseansec.org/17587.htm>, (last visited May 25, 2006).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

cooperation that aim to strengthen the emergency management linkages” between the United States and the Philippines.<sup>93</sup> Exchanges of technology and emergency professionals, emergency management training programs, and additional exchanges of information regarding disaster responses and planning were also included in the protocol. These mechanisms also enable the two countries to discuss lessons-learned from their own experiences in disaster management.

The U.S. Pacific Command (USPACOM) hosts the Asia-Pacific Area Network (APAN), a World Wide Web portal that serves as a collaboration environment for enhanced security cooperation, defense interaction and confidence building in the Asia-Pacific region. The APAN:

- Integrates information to increase multilateral planning effectiveness and interoperability;
- Links disaster centers and data sources to speed the flow of crisis information;
- Strengthens best practices for cooperative efforts; and
- Facilitates user access to and sharing of information.<sup>94</sup>

APAN holds standard procedures that countries may use to facilitate combined responses. A specific APAN portal is dedicated to homeland security, and provides CBRNE information and training for first responders.

USPACOM, in coordination with the Chiefs of Defense of several nations in the Asia-Pacific region, also established in 2000 the Multi-national Planning Augmentation Team (MPAT). The program is designed to bring together military planners from nations with an interest in the region to better enable rapid collaboration and interoperability in dealing with crises. As of 2005, 33 nations participate in MPAT including the Philippines. One component of MPAT is the Chemical, Biological, Radiological, Nuclear and Toxic Industrial Material (CBRN-TIM) Program. Among other things, the MPAT Secretariat which is based in the USPACOM exercises directorate, develops responses to enable more rapid and effective responses to regional crises, and integrate practice the management of CBRN-TIM threats in exercises and workshops.<sup>95</sup>

In addition, the Secretariat has focused on integrating CBRN-TIM consequence management plans into the existing Multi-National Forces Standing Operating Procedure (MNF-SOP). Appendix H in Chapter B-7 of the MNF-SOP focuses on consequence management for CBRN-TIM incidents in the region. The Appendix articulates the same general principles as for all other FCM operations: the host nation has primary responsibility; foreign support must be requested and will operate in a supporting role; the lead agency for managing requests for third-country assistance is the Department of State for the United States or Foreign Ministries for other

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<sup>93</sup> Protocol of Intentions Between the Government of the United States of America and the Republic of the Philippines Concerning Cooperation in Disaster Prevention and Management, November 20, 2001, available at <http://www.fema.gov/news/newsrelease.fema?id=5110>, (last visited May 25, 2006).

<sup>94</sup> APAN, About, <http://www2.apan-info.net/apan/About>

<sup>95</sup> MPAT, Multinational Planning Augmentation Team (MPAT) Chemical, Biological, Radiological, Nuclear And Toxic Industrial Material (CBRN-TIM) Program, Feb. 27, 2006 [http://www2.apan-info.net/mpat/documents/InfoPaper\\_MPAT\\_CBRN\\_TIM\\_Feb06.doc](http://www2.apan-info.net/mpat/documents/InfoPaper_MPAT_CBRN_TIM_Feb06.doc)

countries; close coordination with the HN is required, and the primary objective will be to save lives and otherwise rapidly mitigate the effects of the incident.<sup>96</sup>

## **Medical and Environmental Issues**

### *Medical Issues*

Local Philippine governments are responsible for the health and well-being of Philippine citizens during an emergency. Local disaster councils provide training programs for first aid, disaster medicine, search and rescue, and evacuation.<sup>97</sup> However, if the disaster is widespread and the local governments do not have the means to respond, the Department of Health can assume temporary responsibility over the disaster response activities.<sup>98</sup>

The Health Emergency Management Staff (HEMS) is part of the Department of Health and is responsible for its emergency preparedness and response activities. The four main functions of the HEMS are:

- Developing plans, policies, programs, and strategies for health emergency preparedness and response.
- Developing health sector capability for an effective and responsive national health emergency management system.
- Organizes and coordinates efforts of the health sector for an integrated response to health emergencies.
- Advising the Secretary of Health on matters pertaining to health emergency management.<sup>99</sup>

The Philippines also works closely with its allies in preparing for disasters. The United States Pacific Command (USPACOM) conducts ship visits, such as the five month deployment of the USNS Mercy to Southeast Asia in 2006. Although its primary purpose is to serve as a hospital ship for the U.S. military, the secondary mission of the USNS Mercy is to assist the USG in disaster and humanitarian relief.<sup>100</sup> The USNS Mercy may be able to provide medical and surgical facilities for use in case of an emergency situation such as a CBRNE event. The Philippines was one of the areas visited by the USNS Mercy during its deployment.

In the event of a CBRNE incident in the Philippines, the U.S. Agency for International Development (USAID) would likely help provide medical assistance. As previously noted, the USAID Field Operations Guide sets standards for assisting victims of disasters.<sup>101</sup>

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<sup>96</sup> MPAT, MNF-SOP, MOOTW Consequence Management, ch. B-7. Annex H, *available at* <http://www2.apan-info.net/mnfsop/SOP/B7.DOC>.

<sup>97</sup> National Disaster Management Program, *supra* note 81.

<sup>98</sup> Local Health, *supra* note 70.

<sup>99</sup> HEMS, General Functions, <http://www.doh.gov.ph/HEMS/exercise6/general%20functions.htm>. (last visited July 17, 2006).

<sup>100</sup> U.S. Navy, Mission, <http://www.mercy.navy.mil/htm/Mission.htm>, (last visited 13 June 13, 2006).

<sup>101</sup> USAID Bureau for Humanitarian Response Office of Foreign Disaster Assistance, Field Operations Guide (FOG) for Disasters Assessment and Response, version 4.0, Sept. 2005.

As a party to the CWC, the Philippines is entitled to receive assistance in case of an attack with chemical weapons. Article X of the CWC provides assistance in the form of “protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures.”<sup>102</sup>

### *Environmental Agreements*

The Philippines is party to several international agreements and conventions that deal with environmental concerns relating to hazardous wastes such as CBRN materials. *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* defines the limitations for transporting hazardous wastes across international borders.<sup>103</sup> If a CBRNE event were to occur, the provisions of the Basel Convention must be dealt with. In addition, the *Rio Declaration on Environment and Development* provides States with the obligation to notify other States if an emergency that may effect the environment has occurred.<sup>104</sup>

Maritime environmental concerns are also dealt with by several agreements as well. The 1972 *Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matter* (London Convention) prevents States from dumping pollutants into the sea.<sup>105</sup> This too would have to be dealt with by the Philippines in the event of a CBRNE incident.

### **Other International Agreements and Organizations**

Along with the Assistance Convention and the CWC, which have been previously discussed in this chapter, the Philippines is party to several other agreements that deal with consequence management activities. In particular, the Philippines work closely with international organizations and regional organizations such as ASEAN, as well as the United States, in preparing and planning for disaster response activities.

### **Biological and Toxin Weapons Convention (BTWC)**

The *Biological and Toxin Weapons Convention* (BTWC) bans the development, stockpiling, and acquisition of biological agents or toxins for other than peaceful uses. Weapons and equipment designed to use biological or toxic agents are also banned. Along with banning the use of biological weapons, the BTWC also contains provisions dealing with assistance in case of a biological weapon attack. Article VII states that “Each State Party to this Convention undertakes to provide support assistance, in accordance to the United Nations Charter, to any Party to the

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<sup>102</sup> Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, with annexes, Jan 13, 1993, S. Treaty Doc. No 103-21 (1993), reprinted in 32 I.L.M 800 [hereinafter CWC].

<sup>103</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, 28 I.L.M. 657.

<sup>104</sup> Rio Declaration on Environment and Development, August 12, 1992. A/CONF. 151/26 (Vol. I).

<sup>105</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, with annexes, Dec. 29, 1972, 26 U.S.T. 2403; TIAS 8165.

Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.”<sup>106</sup>

## **The United Nations**

The United Nations (UN) may play a role in providing assistance in case of a CBRNE incident in the Philippines. As noted in more detail in **Chapter 3, section 4.9**, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), is responsible for improving UN humanitarian operations and to coordinate humanitarian response, policy development, and humanitarian advocacy, and OCHA could provide assistance to the Philippines after a large FCM event.<sup>107</sup> OCHA works closely with other UN organizations as well as non-government organizations (NGOs) such as the Red Cross.

Along with dealing with humanitarian assistance, the UN also works to combat terrorism. In 2005, the UN General Assembly unanimously adopted the *International Convention for the Suppression of Acts of Nuclear Terrorism*. The Convention provides for international cooperation among members in responding to acts of nuclear terrorism, as well as the sharing of information and assisting in the investigation and prosecution of nuclear terrorists.<sup>108</sup> The Philippines have signed the convention, which will enter into force 30 days after ratification by 22 countries.

## *World Health Organization (WHO)*

The Philippines is a member of the World Health Organization (WHO). The WHO is the UN health agency dealing with international public health, as well as responding to a CBRNE incident. In the past decade, the WHO has become more active in responding to natural and man-made disasters. Along with other organizations, the WHO addresses ten issues in health emergencies: assessment of health risks; health coordination; epidemic and nutritional surveillance; control of preventable causes of illness and death; access to basic preventative and curative care; prevention of malnutrition; management of health risks in the environment; protection of health workers, services, and structures; human rights to health; and reducing the impact of future crises.<sup>109</sup> Additional discussion of the WHO’s FCM roles and responsibilities is found in **section 2** and other sections of **Chapter 5**.

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<sup>106</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Apr. 10, 1972, 26 U.S.T. 583; TIAS 8062; 1015 U.N.T.S. 163 [hereinafter BTWC].

<sup>107</sup> OCHA, A Brief History of OCHA, [http://ochaonline.un.org/webpage.asp?Nav=\\_about\\_en&Site=\\_about](http://ochaonline.un.org/webpage.asp?Nav=_about_en&Site=_about). (last visited Jul 17, 2006).

<sup>108</sup> U.N. Ad Hoc Committee, International Convention for the Suppression of Acts of Nuclear Terrorism, G.A. Res. 59/766 U.N. Doc. A/59/766 (Apr. 4, 2005) [hereinafter U.N. Doc. A/59/766].

<sup>109</sup> WHO, Emergency and Humanitarian Action, Aug. 2001, <http://www.who.int/mediacentre/factsheets/fs090/en/>. (last visited July 17, 2006).

## Cooperation with ASEAN

The Philippines was one of the founding members of ASEAN along with Malaysia, Indonesia, Singapore, and Thailand. Since then, the Philippines has continued to be an active participant in the organization. During the First ASEAN Summit in Bali in 1976, the members of ASEAN agreed to the *Treaty of Amity and Cooperation in Southeast Asia*.<sup>110</sup> Provisions in the treaty called for recognition of the members' sovereignty, the rejection of the use of or threats to use force, and calls for cooperation among the members. This provided the foundation for relations among the members of ASEAN. In addition, the ASEAN Committee on Disaster Management (ACDM) may play a role in consequence management. ACDM was formed in 2003, and is comprised of the heads of national agencies responsible for disaster management in member States.<sup>111</sup> The goal of ACDM is to help coordinate disaster responses in the region.

### *Nuclear Weapon-Free Zone*

In conjunction with other ASEAN countries, the Philippines signed the *Treaty on the Southeast Asian Nuclear Weapon-Free Zone* (SEANWFZ) in 1995.<sup>112</sup> Along with pledging to promote peace and security, the SEANWFZ also aims to protect the member states by forbidding the dumping of radioactive materials into the sea and by preventing the discharge of waste into the atmosphere.<sup>113</sup> Furthermore, any development of nuclear programs for peaceful energy programs must be done in accordance with the standards set by the International Atomic Energy Agency (IAEA). The SEANWFZ entered into force in 1997. The parties to the treaty also created a committee to ensure compliance with the treaty.

### *Combating Terrorism*

The Philippines has joined with other states and organizations in efforts to combat terrorism. These actions encourage cooperation among states in order to better implement measures to prevent CBRNE events. In 2001, in response to the September 11 attacks in the United States, the members of ASEAN agreed to the *Declaration on Joint Action to Counter Terrorism*. The Declaration called for ASEAN members to strengthen national mechanisms to combat terrorism, share information and intelligence related to terrorist activities and organizations, and prevent and combat "all forms of terrorist acts."<sup>114</sup> The Declaration also called on other regions to cooperate alongside ASEAN.

Two years later, ASEAN and members of the European Union (EU) issued a *Joint Declaration on Co-operation to Combat Terrorism*. ASEAN recognized the threat posed by the "illegal

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<sup>110</sup> ASEAN, *Treaty of Amity and Cooperation in Southeast Asia*, available at <http://www.aseansec.org/1217.htm> (last visited May 30, 2006).

<sup>111</sup> ASEAN, *ASEAN Cooperation on Disaster Management*, available at <http://www.aseansec.org/18444.htm>. (last visited Jul 17, 2006).

<sup>112</sup> ASEAN, *Treaty of the Southeast Asian Nuclear Weapon-Free Zone*, available at <http://www.aseansec.org/2082.htm>, (last visited May 30, 2006).

<sup>113</sup> *Id.*

<sup>114</sup> ASEAN, *ASEAN Declaration on Joint Action to Counter Terrorism*, available at <http://www.aseansec.org/3638.htm>, (last visited May 25, 2006).

movements of nuclear, chemical, biological and other potentially deadly materials,” and the need to address these issues in Southeast Asia.<sup>115</sup> Both the EU and ASEAN urged greater cooperation in the fight against terrorism and supported other anti-terrorism efforts in other organizations such as the United Nations.

### **Relations with the United States**

The United States and the Philippines have a long history of security cooperation. Security relations between the Philippines and the United States are based upon the 1951 *Mutual Defense Treaty*. Article IV of the Treaty states that “Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.”<sup>116</sup>

From 1947 to 1992, the United States operated military bases in the Philippines pursuant to the *Military Bases Agreement*. In 1992, the Philippine Senate voted against renewing the agreement. Since the United States no longer maintains bases there, in the event of a CBRNE emergency U.S. control of or jurisdiction over territory in the Philippines is not a major issue. However, the *Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines* (Visiting Forces Agreement) was established in 1998.<sup>117</sup> According to the agreement, U.S. aircraft and vessels will seek prior approval of the Philippine Government before entering Philippine territory.

Military cooperation between the United States and the Philippines is organized through the Joint U.S. Military Assistance Group in the Republic of the Philippines, which serves as the U.S. Security Assistance Organization (SAO) in the Philippines.<sup>118</sup> This organization is responsible for assistance-related activities for the Philippines. Examples of assistance include the training of the Philippine military, foreign military sales, and advising the Philippine military.<sup>119</sup> In addition, the group also conducts joint military exercises between the two countries, including the Balikatan Exercises discussed below.

In order to facilitate the transfer of relief supplies and equipment, the United States and the Philippines reached an agreement in 1954 to allow for the duty-free entry of humanitarian supplies into the Philippines.<sup>120</sup> In 2002, the United States and the Philippines signed the *Mutual Logistics Support Agreement* (MLSA). The MLSA allows for the states to provide logistical

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<sup>115</sup> ASEAN, ASEAN Joint Declaration on Co-operation to Combat Terrorism, *available at* <http://www.aseansec.org/14030.htm>, (last visited May 25, 2006).

<sup>116</sup> Mutual Defense Treaty Between the United States and the Republic of the Philippines, U.S.-Phil, Aug. 30, 1951, 3 U.S.T. 3947, TIAS 2529

<sup>117</sup> Visiting Forces Agreement, *supra* note 86.

<sup>118</sup> U.S. Embassy Manila, Joint U.S. Military Assistance Group, <http://usembassy.state.gov/manila/wwwwhinde.html>, (last visited May 30, 2006).

<sup>119</sup> U.S. Embassy Manila, Security Assistance Office, <http://usembassy.state.gov/manila/wwwhjus4.html>, (last visited May 30, 2006).

<sup>120</sup> Relief Supplies and Equipment: Duty-Free Entry and Exemption From Internal Taxation, U.S.-Phil, Apr 29, 1954, 8 U.S.T. 144.



support to one another during combat exercises, training, or “other cooperative efforts, such as humanitarian assistance, disaster relief and rescue operations, and maritime anti-pollution operations, within Philippine territory, or outside Philippine territory in cases where either Party, or both, has decided to participate.”<sup>121</sup> In case of a CBRNE event, the MLSA would provide the terms to allow for supplies such as food and water, communication equipment, and medical equipment to be transferred between the two states.

### *Balikatan Exercises*

In order to meet the obligations set forth in the 1951 *Mutual Defense Treaty*, the *Balikatan Exercises* is held yearly to improve planning, readiness, and interoperability between U.S. and Philippine forces.<sup>122</sup> The 2001 exercise also included Thailand and Singapore, and involved training for humanitarian and assistance actions. In the 2002 exercise, U.S. special operations forces trained the Philippine army to fight Abu Sayyaf terrorists.<sup>123</sup> During the 2006 *Balikatan Exercise*, 2500 U.S. troops were diverted from the exercise in order to help in search and rescue operations following a mudslide that destroyed the village of Guinsaugon in the Philippines.<sup>124</sup> Both U.S. and Philippine forces cooperated in humanitarian and relief efforts directed at the Philippine communities affected by the mudslide. The U.S. Navy reported that, “Along with the relief efforts, the combined forces of the Philippines and the United States still managed to complete boat salvaging operations in Cavite, live-fire exercises in Magsaysay, parachute training in Clark, leadership training in Ternate, and Medical and Engineer Capabilities Action Project on the Philippine island of Jolo.”<sup>125</sup>

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<sup>121</sup> Mutual Logistics Support Agreement, U.S.-Phil., Nov. 21, 2002,

<sup>122</sup> U.S. Pacific Command, PACOM Facts, <http://www.pacom.mil/about/pacom.shtml>, (last visited May 30, 2006)

<sup>123</sup> Jim Garamone, U.S., Philippines Discuss Balikatan 2003, [http://www.defenselink.mil/news/Feb2003/n02282003\\_200302285.html](http://www.defenselink.mil/news/Feb2003/n02282003_200302285.html), (last visited May 31, 2006).

<sup>124</sup> American Forces Press Service, Search and Rescue Ops End, Relief Ops Continue in Philippines, [http://www.defenselink.mil/news/Feb2006/20060225\\_4314.html](http://www.defenselink.mil/news/Feb2006/20060225_4314.html), (last visited May 30, 2006).

<sup>125</sup> Newstand, Exercise Balikatan 2006 Comes to a Close, Mar. 7, 2006, [http://news.navy.mil/search/display.asp?story\\_id=22593](http://news.navy.mil/search/display.asp?story_id=22593)

## **Appendix A – Acronyms**

ACAT	Assistance Coordination and Assessment Team (OPCW)
AFMIC	Armed Forces Medical Intelligence Center (DoD)
ANSI	American National Standards Institute
AOR	Areas of Responsibility
APAN	Asia-Pacific Area Network
ARF	ASEAN Regional Forum
ACSA	Acquisition and Cross-Servicing Agreement
ASD(GSA)	Assistant Secretary of Defense, Global Security Affairs
ASD(ISA)	Assistant Secretary of Defense, International Security Affairs
ASD(SO/LIC)	Assistant Secretary of Defense, Special Operations and Low Intensity Conflict
ASEAN	Association of Southeast Nations
AT	Anti-Terrorism
AT/FP	Anti-Terrorism/Force Protection
BIA	Bilateral Infrastructure Agreement (U.S.- Italy)
BTWC	Biological and Toxin Weapons Convention
C.I.T.D.C.	Technical Ministerial Board for Civil Defense (Italian Ministry of the Interior)
CAIRA	Chemical Accident or Incident Response and Assistance
CBIRF	Chemical Biological Incident Response Force
CBR	Chemical, Biological, Radiological
CBRN	Chemical, Biological, Radiological, Nuclear
CBRNE	Chemical, Biological, Radiological, Nuclear and/or high-yield Explosives
CDC	Centers for Disease Control and Prevention
CEI	Central European Initiative
CJCSI	Chairman of the Joint Chiefs of Staff Instruction
CMAT	Consequence Management Advisory Team (DTRA)
CMOC	Civil-Military Operations Center (DoD)
CMST	Consequence Management Support Team (DOS)
COCOM	Combatant Command
COM	Chief of Mission
CONUS	Continental United States
CWC	Chemical Weapons Convention
DART	Disaster Assistance Response Team (USAID)
DCI	Director of Central Intelligence
DG	Directorate General (OPCW)
DHS	Department of Homeland Security
DIA	Defense Intelligence Agency

DISN	Defense Information Systems Network (DoD)
DNI	Director of National Intelligence
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DOE	Department of Energy
DOJ	Department of Justice
DOS	Department of State
DPPI	Disaster Preparedness and Prevention Initiative (Stability Pact for Southeast Europe)
DTRA	Defense Threat Reduction Agency
EAC	Emergency Action Committee (USAID)
EADRCC	Euro-Atlantic Disaster Response Coordination Centre (NATO)
EADRU	Euro-Atlantic Disaster Response Unit (NATO)
EAPC	Euro-Atlantic Partnership Council (NATO)
EAR	Export Administration Regulations
EC	Executive Council (EU)
EPA	Environmental Protection Agency
ERNET	Emergency Response Network (IAEA)
ESDP	European Security and Defense Policy (EU)
EU	European Union
FAA	Foreign Assistance Act
FAO	Food and Agriculture Organization (UN)
FBI	Federal Bureau of Investigation
FCM	Foreign Consequence Management
FCMPO	Foreign Consequence Management Program Office (DOS)
FDR/ER	Foreign Disaster Relief/Emergency Response
FEMA	Federal Emergency Management Agency
FEST	Foreign Emergency Support Team (DOS)
FHA	Foreign Humanitarian Assistance
FTCA	Federal Tort Claims Act
GDIN	Global Disaster Information Network
HACC	Humanitarian Assistance Coordination Center (DoD)
HAP	Humanitarian Assistance Program (DoD)
HCA	Humanitarian and Civic Assistance
HCP	Health Care Professional
HHS	Department of Health and Human Services
HMA	Humanitarian Mine Action (DoD)
HN	Host Nation

HSC	Health Security Committee (EU)
HSPD	Homeland Security Presidential Directive
IAEA	International Atomic Energy Agency
IAMRA	International Association of Medical Regulatory Authorities
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IDRL	International Disaster Response Laws, Rules and Principles
IFRC	International Federation of the Red Cross and Red Crescent Societies
IGO	Intergovernmental Organization
IHR	International Health Regulations (WHO)
IMC	International Medical Corps
IND	Improvised Nuclear Device
INTERPOL	International Criminal Police Organization
IO	International Organization
ITAR	International Traffic in Arms Regulations
ISE	Information Sharing Environment
ISO	International Organization for Standardization
JCS	Joint Chiefs of Staff
JIACG	Joint Interagency Coordination Group (DoD)
JTAC	Joint Technical Augmentation Cell (DoD)
JTF-CM	Joint Task Force-Consequence Management (DoD)
JTTP	Joint Tactics, Techniques, and Procedures
LEA	Law Enforcement Agency
LFA	Lead Federal Agency
LSSS	Logistic Support, Supplies, and Services
MIC	Monitoring and Information Centre (EU)
MOA	Memorandum of Agreement
MOD	Ministry of Defense
MOU	Memorandum of Understanding
NAIRA	Nuclear Accident or Incident Response and Assistance
NASPI	North American Security and Prosperity Initiative
NATO	North Atlantic Treaty Organization
NBC	Nuclear, Biological, and Chemical
NEO	Noncombatant Evacuation Operation
NGA	National Geo-Spatial Intelligence Agency
NGO	Non-Governmental Organization
NIST	National Institute of Standards and Technology (U.S. Department of Commerce)
NLETS	The International Justice and Public Safety Information Sharing Network
NMCC	National Military Command Center (DoD)

NRO	National Reconnaissance Office
NSA	National Security Agency
NSA/CSS	National Security Agency/Central Security Service
NSC	National Security Council
NSPD	National Security Presidential Directive
NCTC	National Counterterrorism Center
NUSOG	Netherlands-US Standard Operations Group
O&M	Operations and Maintenance
OAS	Organization of American States
OATSD(PA)	Office of the Assistant Secretary of Defense for Public Affairs
OASD(ISP)	Office of the Assistant Secretary of Defense for International Security Policy
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
OCONUS	Outside the Continental United States
OECD	Organization for Economic Co-operation and Development
OECS	Organization of Eastern Caribbean States
OFDA	Office of Foreign Disaster Assistance (USAID)
OHDACA	Overseas Humanitarian, Disaster and Civic Aid
OLEs	Office of Law Enforcement Standards (NIST)
OPCW	Organisation for the Prohibition of Chemical Weapons
OPCW EC	Organisation for the Prohibition of Chemical Weapons Executive Council
OSCE	Organization for Security and Cooperation in Europe
PA	Public Affairs
PAO	Public Affairs Office
PDD	Presidential Decision Directive
PHEO	Public Health Emergency Officer (DoD)
PRC	Planning and Response Center (DOS)
PVO	Private Volunteer Organization
RC/RC	Red Cross and Red Crescent Societies
RFA	Request for Assistance
ROE	Rules of Engagement
RUF	Rules for the Use of Force
SETAF	U.S. Army Southern European Task Force
SNS	Strategic National Stockpile (HHS)
SOFA	Status of Forces Agreement
SROE	Standing Rules of Engagement
SRUF	Standing Rules for the Use Force
TEU	Technical Escort Unit (DoD)
UN	United Nations
UNDAC	United Nations Disaster Assessment and Coordination Team

UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNEP	United Nations Environment Program
USA	U.S. Army
USAID	U.S. Agency for International Development
USAMRIID	U.S. Army Medical Research Institute of Infectious Diseases
USAREUR	United States Army Europe
USG	United States Government
USJFCOM	U.S. Joint Forces Command
USMC	U.S. Marine Corps
USSTRATCOM	U.S. Strategic Command
VFA	Visiting Forces Agreement
WCMC	World Conservation Monitoring Centre
WFP	World Food Program
WHO	World Health Organization
WMD	Weapons of Mass Destruction

## Appendix B – FCM Resources

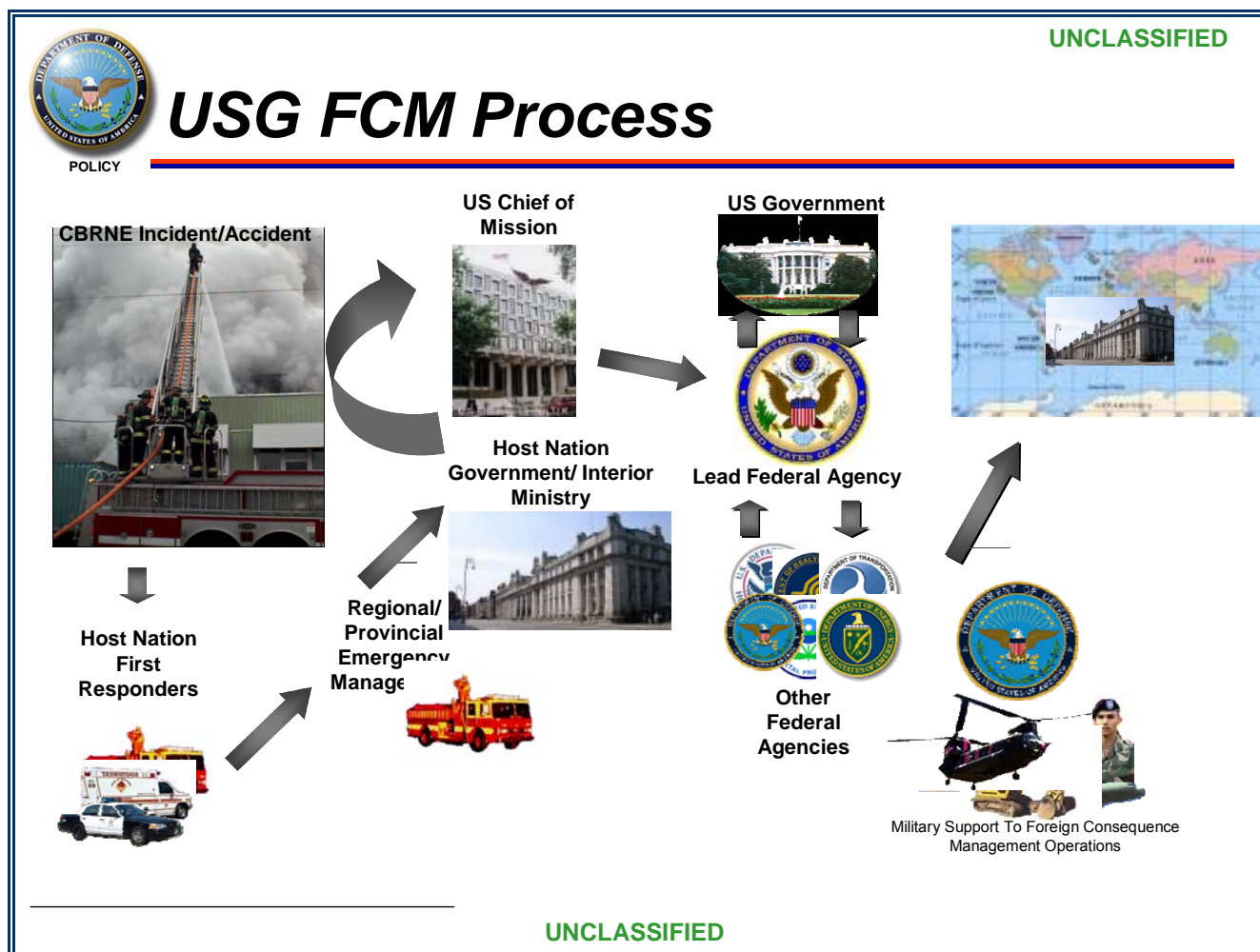
Asset/ Resource	Participants	Role/Responsibilities
Chemical Biological Rapid Response Team (CB-RRT)	DoD, Interagency Support	The mission of the CB-RRT is: On order, deploy and establish a robust and integrated capability to coordinate and synchronize DoD's technical assistance (medical and non-medical) to support the Lead Federal Agency in both the Crisis and Consequence Management of a WMD incident or designated National Security Special Event. Focused on domestic, but responsive worldwide. Now part of 20th Support Command (CBRNE).
Chemical, Biological, Incident Response Force (CBIRF)	U.S. Marine Corps	When directed, forward-deploy and /or respond to a credible threat of a CBRNE incident in order to assist consequence management operations by providing capabilities for agent detection and identification; casualty search, rescue, and personnel decontamination; and emergency medical care and stabilization of contaminated personnel.
Consequence Management Advisory Team (CMAT)	Department of Defense (DoD) – Defense Threat Reduction Agency	Provides advice, coordination, and mobilizes approved national and international resources; deployed to Embassy, HN, and regional Command Headquarters (if required); consists of CBRNE planners and modelers who are typically joint service personnel with training in CBRNE and consequence management skills.
Consequence Management Support Team (CMST)	Department of State (DOS); USG organizations as needed	Provides situation assessments, advice and recommended response requirements to U.S. Ambassador and senior host-government officials; comprised of U.S. subject matter experts, as required by the situation, and structured to rapidly integrate into HN's operations center.
Disaster Assistance Response Team (DART)	USAID	Rapidly deployable team for response to international disasters; assists US embassies and USAID missions with the management of USG response to disasters; consists of specialists trained in a variety of disaster relief skills.
DoD Technical Response Group (DTRG)	DoD, Interagency Support	A trained joint Service EOD advisory group consisting of scientific and technical personnel trained and equipped for supporting and assisting the operational response teams.
Foreign Consequence Management Program Office (FCMPO)	DOS	Assists in developing foreign policy objectives regarding consequence management response capabilities development; coordinates all U.S. FCM policy, diplomatic objectives, and USG actions with foreign governments; initiates, develops, exercises, supports and catalogues partner nations' offers of support to FCM coalition responses capabilities; initiates and develops the USG's management architecture and deployable contributions to a response to a CBRN incident worldwide; and develops the consequence management Response Plan that outlines USG contribution to CBRN response.
Foreign Emergency Support Team (FEST)	DOS, USG Interagency Support	DOS-led, interagency support team designed for deployment immediately in support of the U.S. Embassy either pre- or post-event; primary focus is counter-terrorism; FCMPO provides a WMD Coordinator to the FEST to manage interagency consequence management -related issues.
Joint Interagency Coordination Group (JIACG)	DoD, Interagency Support	Multi-functional, advisory element that facilitates information sharing across the interagency community; represents the civilian departments and agencies.
Joint Task Force – Consequence Management (JTF-CM)	DoD Combatant Commands	If required, Combatant Commander, who develops plans for foreign CBRNE situations within assigned area of responsibility (AOR), may designate and/or establish a JTF-CM to provide command and control (C2) over DoD assets deployed in support of a foreign consequence management operation; tailored to meet the specific requirements of a CBRNE situation.
National Military Command Center (NMCC)	DoD	Provides continuous global monitoring, and maintenance and crisis management capability in support of military operations; establishes Crisis Action Teams (CATs) for operations that require specialized expertise, monitoring or guidance.

## Foreign Consequence Management Legal Deskbook

Asset/ Resource	Participants	Role/Responsibilities
National Security Council (NSC)	Chair: President; Regular attendees (both statutory and non-statutory): Vice President, Secretaries of State, Treasury, and Defense, and the Assistant to the President for National Security Affairs	President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials; the President's principal arm for coordinating these policies among various government agencies. The FEST requires an NSC recommendation and Deputies Committee approval to deploy.
Navy Explosive Ordnance Disposal (EOD)	Navy	Explosive Ordnance Disposal technicians analyze and handle foreign and domestic explosives. They routinely work with the U.S. Secret Service and the U.S. State Department, helping to protect the President, Vice President and other state and foreign officials and dignitaries. They support the U.S. Department of Homeland Security, U.S. Customs Office, and the FBI as well as state and local police bomb squads. EOD technicians also assist in security at large international events, such as the Olympics or world summits.
Planning and Response Center (PRC)	DOS, Interagency Support	Washington-based, DOS led, interagency clearing house for all consequence management issues; interagency staff develops comprehensive consequence management Response Plan; provides global coverage with 24 hour operations during event
Technical Escort Unit	U.S. Army	Samples and packages substances to conform to transportation requirements, performs presumptive analysis to identify items and escorts chemical, biological, radiological, and nuclear materials; battalion-level organization comprised of six companies in four states, to provide a regional response capability to the homeland and combatant commanders. Part of 20th Support Command (CBRNE).
U.S. Army Medical Command (MEDCOM)	Army	Ensures our deploying medical units are trained and equipped, and capable of supporting the medical requirements of the deployed forces under any contingency; home of the Radiological Advisory Medical Team and the Chemical and Biological Advisory Team.
U.S. Army Medical Research Institute of Chemical Defense (USAMRICD)	Army	Develops medical countermeasures to chemical warfare agents and trains and educates personnel in the medical management of chemical casualties.
U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID)	U.S. Army	DoD's lead medical laboratory for medical aspects of biological defense; conducts basic and applied research on biological threats resulting in medical solutions to protect military service members; home of the Aeromedical Isolation Team.



## Appendix C – Graphical Depiction of USG FCM Process<sup>1</sup>



<sup>1</sup> OSD(SO/LIC), Foreign Consequence Management Briefing, FCM Legal Deskbook Workshop I, Sept. 27, 2005.

## Appendix D – Model Memorandum of Agreement

**MEMORANDUM OF AGREEMENT  
BETWEEN THE MINISTRY OF DEFENSE OF [HN]  
AND  
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA  
CONCERNING BIOTERRORIST, OR ATTACK INCIDENTS,  
DISASTER RESPONSE ON  
INSTALLATIONS USED BY U.S. FORCES<sup>1</sup>**

The Department of Defense of the United States of America and the Ministry of Defense of the [HN] (hereinafter referred to as the “Parties”):

Reaffirming their respect for international law and their resolve to act in accordance with treaties as well as bilateral and multilateral arrangements to which they are both Party, including [the North Atlantic Treaty, signed in Washington on 4 April 1949, the Agreement Regarding the Status of Forces of the Parties to the North Atlantic Treaty, signed in London on 19 June 1951 and the [Any Implementing Agreements];

Recognizing that for over forty years the defense arrangements between the Parties have furthered the common security interests of their people;

Further recognizing the risk posed by newly emerging threats, especially emergency health crises that may be caused by bioterrorism and epidemics;

Acknowledging that these emerging bioterrorist threats require advance consultation and coordination between the Parties to ensure both a timely emergency response to a bioterrorist attack on an installation and rapid and effective measures to prevent the tragic loss of life and the spreading of disease and contamination;

Desiring that the response to bioterrorist or attack incidents be accomplished in a manner consistent with treaty obligations and [HN law];

Acknowledging the fact that, due to the varying circumstances and capabilities present at each U.S. installation in [HN], it is advisable to have a Technical Arrangement (TA) providing response procedures for each installation;

Further acknowledging that the TA should utilize a similar structure to provide as much uniformity as possible and to aid local U.S. and HN officials in entering said TAs;

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<sup>1</sup> As discussed in **section 4.1 of Chapter 4**, this Model MOA was drafted by U.S. European Command. For further elaboration on this scenario, *see* United States European Command Joint Analytical Support Program, *Consequence Management and Jurisdictional Aspects of a Bioterrorist Incident (CMBI)* (Sep. 30, 2003) (FOUO version) (hereinafter USEUCOM CMBI), at App. 7.

Have entered into the following understanding regarding responses to bioterrorist or attack incidents.

## **ARTICLE I**

1. The Parties shall maintain and develop cooperative relations aiming at common defense against bioterrorist or similar attack incidents at U.S. installations in HN, in accordance with the principles of mutual benefit and respect for the sovereignty of both nations. In partial furtherance of this aim, the Parties agree to utilize the Model TA attached to this MOA [Appendix 8 to this report] in establishing a coordinated response to bioterrorist and similar incidents, as noted in Article II.

2. The Parties agree to establish, as necessary, various programs and procedures to enhance communication and cooperation on bioterrorist issues between military commanders of the respective forces and throughout the chain of command of the defense departments.

3. The Parties shall maintain close contacts to derive maximum benefit from the programs for cooperation in terms foreseen in existing bilateral agreements.

4. The [Combatant Command] shall be the Executive Agent for the United States Department of Defense in carrying out obligations under this Memorandum of Understanding. The [HN] Defense General Staff shall represent the Ministry of Defense of the [HN] in carrying out obligations under this MOA.

5. This MOA and the TAs which will be negotiated for each installation pursuant to it will neither supersede nor alter the provisions of the agreements listed in the preamble of this MOA or the provisions of any other multilateral or bilateral agreements between the Parties which are not specific to a particular base or installation.

## **ARTICLE II**

1. The Model TA attached to this MOA [Appendix 8 to this report] shall be used as the format for the TAs at each installation used by U.S. Forces in [HN]. These TAs will establish procedures for implementation of the BIA, and such other multilateral and bilateral agreements between the two governments as may be relevant. The arrangements shall contain technical procedures for operation of each individual installation. Changes to the TAs will be approved by the military authorities of both Parties.

2. The Model TA [Appendix 8 to this report] constitutes the basic instrument for negotiating the various Technical Arrangements relative to each installation granted for use by U.S. Armed Forces in [HN]. Therefore, each installation granted for use will have a TA closely reflecting the model text. [Appendix 8 to this report]

3. Any technical annexes, which are supplemental in defining TA details, must respond to the need of a better understanding but remain encompassed within the Technical Arrangement itself.

4. Signature of Technical Arrangements relative to each installation on the HN side will be affixed by the Chiefs of Staff of the cognizant Armed Force or their designates. For the United States, signature will be affixed by U.S. military authorities of comparable rank.

### **ARTICLE III**

This MOA shall enter into force upon signature by representatives of the Parties and shall remain in force until it is terminated by written notice of either Party one year in advance, or by written mutual consent. This MOA, including Annex A may be amended by mutual agreement of the Parties.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective governments, have signed this MOA.

DONE at [location], in duplicate, in English and [HN] languages, both texts being equally authentic.

### **SIGNATORIES:**

#### **Model MOU Between Installation and Community<sup>2</sup>**

#### **TECHNICAL AGREEMENT (TA) ON BIOTERRORIST, OR ATTACK INCIDENTS, DISASTER RESPONSE ON INSTALLATION [##] USED BY U.S. FORCES**

#### **1. Preamble**

[County commissioner's office] [county/mayor's office] of the [urban district municipality(ies)] and the Commander, [installation] in the interest of protection of life and property, and, seeking to secure the advantages of mutual aid and assistance in the event of a bioterrorist attack or similar incidents, have agreed to the following.

#### **2. Definitions**

#### **3. References**

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<sup>2</sup> *Id.* App. 8.

## **4. Mode of Request for Assistance**

### **4.1 Request for Assistance on U.S. Forces Installation in Event of Bioterrorist Incidents**

The U.S. agencies will direct their request for assistance to a Host Nation [HN] Agency listed in the combined alarm and response plans attached to this TA. The request for assistance should specify – to the extent known – what types of dangers are involved, the level of assistance that will be expected, and the locations to which response teams should report.

**4.1.1** The [HN] agencies alerted by the U.S. agencies shall initiate all necessary further actions (according to their alarm and response plans).

**4.1.2** The exact manner in which the request for assistance can be complied with will be decided by the responsible [HN] agencies.

**4.1.3** When [HN] fire and rescue units (assistance teams) are responding on a U.S. accommodation, or outside a U.S. accommodation when the danger originates from the U.S. installation, a Combined Command Post will be established. Actions to be taken on the accommodation are to be controlled by U.S. authorities; actions to be taken outside the accommodation are to be controlled by [HN] authorities. The operations of [HN] response teams will be governed by [HN] Law, even on U.S. accommodations. The Combined Command Post will be clearly marked. U.S. Forces personnel remain under the direct command of the ranking on-scene U.S. military person at all times.

**4.1.4** The Combined Command Post will secure close cooperation and coordination with the Command Post of other responding units (for example, U.S. military police, [HN] police) and all other agencies at the incident.

**4.1.5** The Combined Command Post will be the coordinating/approval authority for release of public information. A Joint Information Center (JIC) will be set up in the vicinity of the Command Post. The JIC will handle response to the media.

**4.1.6** The U.S. agencies shall:

- Inform the [HN] assistance teams of special risks and necessary protective measures;
- Task [HN] response teams through the [HN] response teams' leadership;
- Take into consideration the recommendation of [HN] experts and specialists.

**4.1.7** The U.S. agencies will ensure that sufficient personnel with [HN] language ability are available for the Combined Command Post and for briefing [HN] response teams.

**4.1.8** At events on U.S. installations where participation of [HN] assistance agencies is considered a necessary precaution by the U.S. authorities, the participation of the [HN] assistance agencies will be coordinated with the lead County/City authority specified in Section 3.3.

## **5. Mutual Information about Dangers**

Independent of the provisions of Article 1 above, the party that first receives information about a danger in the AOR of the other party will inform that other party immediately.

## **6. Alarm and Response Plans**

**6.1.** The parties to this agreement will prepare bilingual combined alarm and response plans. The resources of the [HN] Armed Forces will be considered, and the parties will include the [HN] Armed Forces in the planning process. At a minimum, the combined alarm and response plans should contain:

- Alarm and information schemes;
- Lines of notification;
- Contents of notification with key words;
- Address of key response and aid agencies (including interpreters);
- Chain of command schemes;
- Lines of communications schemes;
- Maps with outlines areas of responsibility;
- Operational instructions;
  - Critical Response Tasks. Response plans must also contain plans to accomplish the following bioterrorist tasks:
    - Initiating Protective Measures. The appropriate level of protective gear for each threat or bioterrorist incident should be identified. Personnel can then train and qualify for potential bioterrorist incidents using the selective level of protective equipment allowed within different “hot zones,” actual or simulated.
    - Initializing Detection/Assessment. Installation threat/damage detection/assessment capabilities should be identified. Protocols for using signs, symptoms, and personal observations and interview of casualties or personnel within the immediate area should be developed, especially if responders do not have appropriate detection capabilities.
    - Included in the risk assessment should be consideration for the potential of secondary chemical, biological, radiological, nuclear, and explosive devices. When the threat data is known, plans should include developing an analysis of the geographic extent of the risk and consequences, accomplished locally or at a remote analysis center and conveyed to the local combined command post.

- **Containing the Threat.** Before any rescuers enter the hot zone, the senior U.S. on scene military person determines the safety zones based on hazard risk assessment. The security forces establish an entry control point, if required, which will serve as the sole entrance and exit from the incident site. The U.S. installation commander should have the authority to order the following measures on or near the U.S. installation during an immediate response to a HN location upon the invocation of a public health emergency upon the recommendation of a Public Health Emergency Officer. These same measures should also be used by the U.S. Command authorities.
  - Performance of Tests on Property, Animal (living or deceased), or Human Corpses
  - Closing Decontaminating, or Destroying Dangerous Facilities and Materials
  - Use of Facilities, Materials, and Services
  - Control of Roads and Areas
  - Safe Disposal of Infectious Wastes
  - Control of Health Care Supplies
  - Medical Examinations on Individuals
  - Restrictions on Movement of Individuals
  - Quarantine of Individuals

**6.2** The combined alarm and response plans should – especially for U.S. accommodations without a U.S. fire department, where necessary and where not in violation of U.S. or [HN] security interests, be supplemented by fire plans which contain specific installation information on, for example, access routes, special hazards, water supply, special alarm addresses, as well as, if needed, instructions for the collection of biological samples.

**6.3** The combined alarm and response plans shall be reviewed and updated periodically. On the [HN] side this responsibility rests with the county commissioner's office/mayor's office of the urban district in which the U.S. accommodation is (predominantly) located (lead county commissioner's mayor's office).

Address of the responsible county commissioner's/mayor's office:

.....  
.....

Address of the responsible U.S. agency (lead U.S. agency):

.....  
.....

**6.4** The combined alarm and response plans supplement the alarm and response plans which are prepared for the handling and control of incidents in general. The plans of the responsible [HN] authorities should take into account the aid and rescue resources of the U.S. Forces (personnel, equipment, and experts) and vice versa. To this end, the

responsible U.S. agency and the responsible county commissioner's/mayor's office will keep each other informed of their respective aid and rescue resources. As far as possible, alarm and response plans for the various dangers will be exchanged (on the [HN] side: county level).

## 7. Claims, Costs, Legal Status of Personnel

- 7.1** No party shall be reimbursed by any other party for any costs incurred pursuant to this agreement.
- 7.2** Each party to this agreement waives all claims against every other party for compensation for any loss, damage, personal injury (including pain and suffering), or death occurring as a consequence of the performance of this agreement. This does not apply to claims of third parties. Claims by third parties will be settled in accordance with Article VIII of the NATO Status of Forces Agreement or as otherwise provided under [HN] Law.
- 7.3** Personnel made available by the civilian authorities pursuant to this agreement will not enter into any legal relationship with U.S. authorities during the period of fire and rescue operations (for example, they will not be considered agents or employees, etc.), but rather will remain subject to their [HN] legal relationships with the [HN] civilian authorities.
- 7.4** All financial obligations assumed by the parties to this agreement are conditioned upon the authorization and appropriation of funds in accordance with applicable national laws.

## **8. Provisions of the NATO Status of Forces Agreement and other Agreements**

This agreement does not affect, and will not be interpreted as affecting, provisions of the NATO Status of Forces Agreement, the Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of [HN] of 3 August 1959 (Supplementary Agreement), and other agreements including those dealing with special weapons.

## 9. Settlement of Disputes

Disputes will be resolved by negotiations between the parties at the lowest level possible. Disputes that cannot be resolved at lower levels will be referred to the parties or agencies tasked by them for review and resolution. Inconsistencies between the present agreement and other existing agreements will be resolved through consultation between the parties.

## 10. Modification of Agreement



This agreement may be amended or supplemented at any time upon mutual consent of both parties. Amendments and supplements must be in writing.

11. Inception and Termination.

This agreement will become effective upon the date of the last signature. This agreement may be terminated by either party upon giving six months notice in writing to the other party.

12. Execution

This agreement is executed in two originals in the English and [HN] languages, both texts being equally authentic.

\_\_\_\_\_  
Place, Date

For the lead County(ies)/  
City(ies)

.....

\_\_\_\_\_  
(Name and Title)

For the County(ies)/City(ies)/  
Community(ies)

.....

\_\_\_\_\_  
(Name and Title)

.....

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Place, Date

For the Secretary of the  
Army/Air Force/Navy

\_\_\_\_\_  
(Commander)

## Appendix E – References

### Presidential Guidance

[Executive Order \(Exec. Order\) 12114, Environmental Effects Abroad of Major Federal Actions \(Jan. 4, 1979\).](#)

[Exec. Order 12163, Administration of Foreign Assistance and Related Functions, as amended \(Sept. 29, 1979\).](#)

[Exec. Order 12196, Occupational Safety and Health Programs for Federal Employees, as amended \(Feb. 26, 1980\).](#)

[Exec. Order 12333, United States Intelligence Activities, as amended \(Dec. 4, 1981\).](#)

[Exec. Order 12656, Assignment of Emergency Preparedness Responsibilities, as amended \(Nov. 18, 1988\).](#)

[Exec. Order 12734, Blocking Iraqi Government Property and Prohibiting Transactions with Iraq \(Nov. 14, 1990\).](#)◆

[Exec. Order 12938, Proliferation of Weapons of Mass Destruction, as amended \(Nov. 14, 1994\).](#)

[Exec. Order 12966, Foreign Disaster Assistance \(Jul. 14, 1995\).](#)

[Exec. Order 13010, Critical Infrastructure Protection, as amended \(Jul. 15, 1996\).](#)

[Exec. Order 13118, Implementation of the Foreign Affairs Reform and Restructuring Act of 1998 \(Mar. 31, 1999\).](#)

[Exec. Order 13139, Improving Health Protection of Military Personnel Participating in Particular Military Operations \(Sept. 30, 1999\).](#)

[Exec. Order 13151, Global Disaster Information Network, as amended \(Apr. 27, 2000\).](#)

[Exec. Order 13222, Continuation of Export Control Regulations \(Aug. 17, 2001\).](#)

[Exec. Order 13235, National emergency Construction Authority \(Nov. 16, 2001\).](#)

[Exec. Order 13295, Revised List of Quarantinable Communicable Diseases, as amended \(April 4, 2003\).](#)

[Exec. Order 13354, National Counterterrorism Center \(Aug. 27, 2004\).](#)

[Exec. Order 13355, Strengthened Management of the Intelligence Community \(Aug. 27, 2004\).](#)

[Exec. Order 13356, Strengthening the Sharing of Terrorism Information To Protect Americans \(Aug. 27, 2004\).](#)

[Exec. Order 13375, Amendment to Executive Order 13295 Relating to Certain Influenza Viruses and Quarantinable Communicable Diseases \(Apr. 1, 2005\).](#)

[Exec. Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans \(Oct. 25, 2005\).](#)

[Homeland Security Presidential Directive \(HSPD\) 4/National Security Presidential Directive \(NSPD\) 17, National Strategy to Combat Weapons of Mass Destruction \(Dec. 11, 2002\).](#)

[UNCLASSIFIED VERSION](#)

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[HSPD 7, Critical Infrastructure Identification, Prioritization, and Protection \(Dec. 17, 2003\).](#)  
[HSPD 9, Defense of United States Agriculture and Food \(Jan. 30, 2004\).](#)  
[HSPD 10/NSPD 33, Biodefense for the 21<sup>st</sup> Century \(Apr. 28, 2004\). FACT SHEET](#)  
[HSPD 13/NSPD 41, Maritime Security Policy \(Dec. 21, 2004\). FACT SHEET](#)  
[NSPD 8, National Director and Deputy National Security Advisor for Combating Terrorism \(Oct. 24, 2001\).■](#)  
[NSPD 9, Defeating the Terrorist Threat to the United States \(Oct. 25, 2001\).■](#)  
[NSPD 28, United States Nuclear Weapons Command and Control, Safety, and Security \(June 20, 2003\).◆](#)  
[Presidential Decision Directive \(PDD\)/NSC 39, Counter Terrorism Policy \(Jun. 21, 1995\).■](#)  
[PDD 62, Protection Against Unconventional Threats to the Homeland and Americans Overseas \(May 22, 1998\). FACT SHEET](#)  
[PDD/National Science and Technology Council 7, Threat of Emerging/Re-emerging Infectious Diseases \(Jun. 12, 1996\).](#)  
[White Paper on Presidential Decision Directive 56, Managing Complex Contingency Operations \(May 1997\).](#)  
[Presidential Determination No. 2001-31, 66 Fed. Reg. 51293, Assistance for Pakistan \(Sept. 28, 2001\).](#)  
[Presidential Determination No. 2002-02, 66 Fed. Reg. 53503, Assistance for Pakistan \(Oct. 16, 2001\).](#)  
[Presidential Determination No. 2002-18, 67 Fed. Reg. 91, Determination to \(1\) Waive Section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 \(Pub. L. 107-115\) and Section 620\(q\) of the Foreign Assistance Act of 1961, as amended, to Provide Assistance to Afghanistan and \(2\) Authorize a Drawdown under Section 506\(a\)\(1\) of the Foreign Assistance Act of 1961, as amended, to Provide Emergency Military Assistance to Afghanistan \(Apr. 27, 2002\).](#)  
[Presidential Determination No. 2005-16, Provision of Emergency Disaster Relief Assistance to Twelve Countries Affected by the Asian Tsunami \(Jan. 4, 2005\).](#)

## United States Code

### *Title 6*

[Homeland Security Information Sharing Act, 6 U.S.C. §§ 481-484 \(2005\).](#)

### *Title 10*

[Forces Stationed Abroad: Limitation on Number, 10 U.S.C. § 123b \(2004\).](#)  
[Emergency and Extraordinary Expenses, 10 U.S.C. § 127 \(2004\).](#)  
[Operations For Which Funds Are Not Provided In Advance: Funding Mechanisms, 10 U.S.C. §](#)

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[127a \(2004\).](#)

[Combatant Commands: Funding through the Chairman of Joint Chiefs of Staff, 10 U.S.C. § 166a \(2004\).](#)

[Military Support for Civilian Law Enforcement Agencies, 10 U.S.C. §§ 371-382 \(2004\).](#)

[Humanitarian and Other Assistance, 10 U.S.C. §§ 401-405 \(2004\).](#)

[Foreign Governments: Detail to Assist, 10 U.S.C. § 712 \(2004\).](#)

[North Atlantic Treaty Organization Mutual Support Act, 10 U.S.C. §§ 2341-2350 \(2004\).](#)

[Excess Non-lethal Supplies: Availability for Homeless Veteran Initiatives and Humanitarian Relief, 10 U.S.C. § 2557 \(2005\).](#)

[Humanitarian Assistance, 10 U.S.C. § 2561-2562 \(2004\).](#)

[Environmental Restoration, 10 U.S.C. §§ 2700-2710 \(2004\).](#)

[Military Claims Act, 10 U.S.C. §§ 2731-2739 \(2004\).](#)

[Construction Authority in the Event of a Declaration of War or National Emergency, 10 U.S.C. §§ 2801-2815 \(2004\).](#)

#### *Title 14*

[Cooperation with other Agencies, States, Territories, and Political Subdivisions \(Coast Guard\), 14 U.S.C. §§ 141-151 \(2004\).](#)

#### *Title 16*

[Federal Undertakings Outside United States; Mitigation of Adverse Effects, 16 U.S.C. § 470a-2 \(2004\).](#)

[Endangered Species Act, 16 U.S.C. §§ 1531-1544 \(1973\).](#)

#### *Title 18*

[Biological Weapons Anti-terrorism Act, 18 U.S.C. §§ 175-178 \(2004\).](#)

[Chemical Weapons, 18 U.S.C. §§ 229-229F \(2004\).](#)

[Convention on the Physical Protection of Nuclear Material Implementation Act, 18 U.S.C. § 831 \(2004\).](#)

[Terrorism, 18 U.S.C. §§ 2331-2339D \(2004\).](#)

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[Federal Food Drug and Cosmetics Act, Chapter VII \(Imports and Exports\), 21 U.S.C. §§ 381-399 \(2004\).](#)

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*Title 22*

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[Foreign Assistance Act, 22 U.S.C. §§ 2151-2431k \(2004\).](#)  
[Procedures Regarding Major Disasters and Incidents Abroad Affecting United States Citizens, 22 U.S.C. §§ 2715-2715b \(2004\).](#)  
[Arms Export Controls, 22 U.S.C. § 2751 \*et seq.\* \(2004\).](#)  
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[Federal Tort Claims Act, 28 U.S.C. §§ 1346-2680 \(2004\).](#)

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[Transfers and Reimbursements, 31 U.S.C. §§ 1531-1536 \(2005\).](#)  
[Military Personnel and Civilian Employees Claims \(MPCE\) Act, 31 U.S.C. §§ 3721-3733 \(2004\).](#)

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[Ocean Dumping, 33 U.S.C. §§ 1401-1445 \(2005\).](#)  
[Dumping Permit Program, 33 U.S.C. §§ 1412 \(2005\).](#)

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[National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f \(2005\).](#)  
[Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 \(2004\).](#)  
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[License, Permit, etc., for Transportation for Storage or Storage of Spent Nuclear Fuel or High-Level Radioactive Waste, 48 U.S.C. § 1491 \(2004\).](#)

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[National Security Act, 50 U.S.C. § 403 - 403-8 \(2004\).](#)

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[Defense Against Weapons of Mass Destruction Act, 50 U.S.C. §§ 2301-2365 \(2004\).](#)

[Export Administration Act, 50 U.S.C. App. 2401-2420 \(2004\).](#)

[National Nuclear Security Administration Act, 50 U.S.C. §§ 2401-2484 \(2004\).](#)

*Public Laws*

[Pub. L. 108-458, Intelligence Reform and Terrorism Prevention Act of 2004, Dec. 17, 2004](#)

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[Assistance to Foreign Atomic Energy Activities, 10 C.F.R. pt. 810 \(2006\).](#)

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[Defense Priorities and Allocation System, 15 C.F.R. pt. 700 \(2006\).](#)

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*Title 22*

[Indemnification of Employees \(Dept. of State\), 22 C.F.R. pt. 21 \(2005\).](#)  
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<sup>1</sup> As of 6/17/03, the United States had Status of Forces Agreements with 114 countries and was negotiating agreements with 14 more. The Status of Forces Agreements listed below represent a selection of the most prominent agreements as well as those published in treaty indexes or on the World Wide Web, [http://www.defenselink.mil/policy/sections/policy\\_offices/isa/inra/da/list\\_of\\_sofas.html](http://www.defenselink.mil/policy/sections/policy_offices/isa/inra/da/list_of_sofas.html).

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