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## ACCEPTING THE UNPALATABLE: LAW AND ORDER IN OPERATIONS OTHER THAN WAR

by

William Rosenau

### THE ISSUE

During the four most recent U.S. operations other than war (OOTW) — Haiti, Somalia, Panama and Grenada — the U.S. government has grappled with a set of highly contentious emergency law enforcement issues. In the course of each of these operations, civilian law and order broke down, and the Department of Defense (DoD), the State Department and other agencies argued bitterly over who should be responsible for restoring it, and how. In each case, a particularly contentious aspect of the debate was the question of creating a local public-security force to maintain order after U.S. military forces departed.

During the past ten years, DoD has resisted law-enforcement missions, arguing that the armed forces exist largely (if not exclusively) to fight and win the nation's wars. Nevertheless, in a number of significant OOTW, U.S. military forces found themselves conducting civilian police training. Although the armed forces have considered such law enforcement-related activities to be outside their ken, they have acquiesced in the face of an undeniable fact: At present, there is no non-DoD organization capable of performing these missions, particularly in a hostile environment.

However, DoD continues to approach civilian law enforcement issues on an ad hoc basis; with each new operation, the mistakes of the past are repeated. Failure to plan for the breakdown of public order and reluctance to take on training missions that civilian governmental organizations have failed to perform have caused the United States significant political problems in the past. A number of DoD

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organizations, including the Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, the Army's Deputy Chief of Staff for Operations, and the Commission on Roles and Missions of the Armed Forces, have concluded that reforms must be made.

Creating a rudimentary public-order or "constabulary" force is a critical part of a U.S. exit strategy in an OOTW; if there is no local force to maintain order, U.S. forces may be compelled to stay on the ground to ensure that public safety is maintained. This is particularly true in operations where coalition forces are unavailable or unable to perform this function. Despite this reality, much of the U.S. officer corps, particularly at the most senior levels, continues to resist the idea that the military must accept a greater responsibility for law enforcement in operations other than war.

While it is true that the U.S. armed forces exist primarily to fight and win the nation's wars, they do not exist solely for that purpose. The U.S. military, and the Army in particular, will frequently be called upon to perform a variety of noncombat missions. This essay will explore one of the most contentious of these — the training of constabulary forces during and after significant OOTW. (The terms "constabulary forces"<sup>1</sup> and "public-safety" forces will be used interchangeably to refer to an interim security force capable of providing the rudiments of public order.) This essay will provide historical background to the current debate, and it will outline a series of relatively modest measures that could contribute to greater success in future operations.

## **BACKGROUND**

Throughout the post-World War II period, the Army was deeply involved in the organization, training and equipping of host-nation paramilitary and police forces. During the Cold War, this responsibility was generated by the demands of counterinsurgency, that is, the use of political, military and economic power to assist a friend or ally (usually in the Third World) threatened by guerrillas and other irregular forces.

An Army military police manual from 1970, for example, stresses the role of U.S. military police in what were termed "stability operations." These personnel, according to the manual, "are particularly effective in providing advice, training and operational assistance to HC [host country] civil, military, and paramilitary police forces in the conduct of countering insurgencies in urban areas."<sup>2</sup> Army Special Forces were involved in training operations throughout the Third World. Mobile training teams from the 8th Special Forces Group, for example, gave counterinsurgency training to paramilitary organizations throughout South America.<sup>3</sup>

However, even during the 1960s, at the height of the military's involvement in overseas police training, the officer corps was largely unsupportive of this and other counterinsurgency-oriented missions. This antipathy had deep historical and cultural roots, as Morris Janowitz has observed:

The professional soldier resists identifying himself with the "police," and the military profession has struggled to distinguish itself from the internal police force. . . . The military tends to think of police activities as less prestigious and less honorable tasks, and within the military establishment the military police have had relatively low status.<sup>4</sup>

The national agony of Vietnam served to reinforce the military's profound unease about "nation-building," counterinsurgency and other low-intensity conflict missions, including Third World police training. This unease coincided with a shift in congressional and public attitudes about America's role in what had been termed the "underdeveloped" areas.

By the early 1970s, the nation had grown weary of its role as the "world's policeman" and the "free-world colossus." This was reflected in the policy of Vietnamization and the so-called Nixon Doctrine, both of which called for greater military self-reliance on the part of America's friends and allies. Congress had also grown alarmed at the extent and nature of the U.S. government's involvement in the internal affairs of Third World client regimes, particularly in Southeast Asia and Latin America.<sup>5</sup> A 1974 amendment to the Foreign Assistance Act effectively ended foreign police-force training.

During the 1980s, however, U.S. national leaders regained a commitment to confronting Soviet and other challenges to Western security. The specters of terrorism, insurgency and drug trafficking caused senior policymakers to reevaluate the blanket ban on foreign-police training activities. The Reagan administration argued successfully that the threats posed to the nation's security required the U.S. military and other agencies to be able to conduct limited, specialized training of Third World security forces, particularly in Central and South America and the microstates of the Eastern Caribbean.<sup>6</sup>

Since the mid-1980s, the Justice Department's International Criminal Investigative Training Assistance Program (ICITAP) has conducted much of the U.S. government's overseas police training. A successor to the Agency for International Development's Office of Public Safety (OPS),<sup>7</sup> which was disbanded in 1974, ICITAP has been hampered by many of the same problems that plagued OPS: a lack of a clear mission, inadequate funding, overly complex policy oversight arrangements, and a lack of access to effective personnel.

These deficiencies have been apparent in every major contingency operation in which ICITAP has participated, including Panama, Somalia and Haiti. In the case of Operation Just Cause, for example, one senior U.S. military officer explained how the organization was overwhelmed by its responsibilities: "We tried to push ICITAP in the direction of deploying its people throughout the country to work in every precinct and province. . . . [However, they] could not comprehend operating on this scale."<sup>8</sup>

As a consequence of ICITAP's shortcomings, the U.S. military has had to conduct limited amounts of security-force training. Such activities occupy a legal "gray area"; depending on which lawyers one asks, training in the context of an OOTW is, or is not, defying the intent of Congress. But the alternative — having U.S. troops provide for local law and order for an indefinite period — has been deemed unacceptable by many commanders.

In Panama, troops created a police training course and conducted joint patrols and other training activities with local security forces. In Somalia, according to one Army study, "facilitating the restoration of a police force (within legal parameters) and a judicial system was a requirement and a challenge."<sup>9</sup> Marines in Mogadishu and other parts of the country trained what they termed "auxiliary security forces" to take some of the responsibility for law enforcement off the shoulders of

the U.S. military.<sup>10</sup> In Cap-Haitien, Limbe and other provincial Haitian towns, Army Special Forces and other military personnel were involved in reestablishing local security forces after the Haitian military (known as the FAd'H) disbanded.<sup>11</sup>

## A MODEST PROPOSAL

Although officials throughout the U.S. government have recognized that ICITAP is incapable of performing rudimentary security-force training — particularly in a less-than-permissive environment — there is no indication at present that ICITAP will be improved anytime in the near future. Although the United Nations has become increasingly involved in constabulary training, and may expand its Civilian Police Unit, its ability to carry out this mission is very much in doubt, given the UN's history of dysfunctionality.<sup>12</sup> Similarly, we may not always be able to rely on our coalition partners to conduct the necessary training.

As a result, U.S. military commanders, as they plan the next major OOTW, will confront the same security-force training gap their predecessors did. Regrettably, other agencies of government with responsibilities in the low-intensity conflict/OOTW environment, including the Departments of State and Justice and the Agency for International Development (AID), cannot be counted upon to perform.<sup>13</sup> Unless organizational reforms are made, the mad scramble that characterized the U.S. government's performance with respect to constabulary training in Haiti is likely to be repeated.

In order to meet this critical shortfall, the U.S. Department of Defense should first accept the fact that U.S. military forces will be called upon to perform this mission in the future.<sup>14</sup> During time-urgent operations that take place in hostile environments, there is no effective alternative to the U.S. armed forces. The U.S. military must also have a significant constabulary training role in austere or less-than-permissive environments where it is difficult if not impossible for civilian agencies to operate effectively. The formal assignment of responsibilities (perhaps through a change in DoD Directive 5100.1: *Functions of the Department of Defense and Its Major Components*) would allow the military to plan and train for this mission.

Given the Army's significant military police capabilities, it is appropriate to assign to it primary constabulary training responsibilities. Training and support would be carried out by Military Police (MPs); where appropriate, civil affairs, psychological operations forces and Special Forces could provide additional assistance. MPs could conduct joint patrols and other operations with host-nation forces to ensure they are properly trained and that they have developed an adequate respect for fundamental human rights.

A strict limit would be placed on the amount of time DoD personnel could be engaged in these activities. Military-run training would be limited to a maximum of six months, beginning with the end of formal hostilities. To make this reform truly effective, units from the reserve components would have to be heavily involved. Finally, the Army Military Police School (currently located at Fort McClellan, Alabama), in conjunction with other appropriate DoD organizations, would be given responsibility for developing appropriate doctrine and training.

Assigning formal responsibility to the Army is not enough, however. The Department of Defense must not bear the burden of long-term police training, which properly belongs in a civilian agency. On occasion, the Royal Canadian Mounted Police, Britain's Scotland Yard and other agencies could assist the U.S. government. However, it is important to recognize that the United States may have to act alone in the future. Given the failure of ICITAP to perform adequately in Panama, Somalia and Haiti, it is vital to fashion a civilian organization that is up to the task of constabulary training. If ICITAP cannot be reformed, perhaps the Federal Bureau of Investigation — a disciplined, mission-oriented organization with a significant national security portfolio — could take on the training mission.

Critics of this reform will argue that taking on this “new” mission will harm readiness and detract from the central mission of preparing for war. However, that argument fails to address the fact that the U.S. military has done this mission in the recent past, and for the reasons outlined above, is likely to perform it in the future. A more serious criticism has been made by a number of officers serving on the Joint Staff. Assigning constabulary training to the military, according to this argument, would send a dangerous message to those foreign nationals receiving the training, namely that it is acceptable for the military to dominate an essentially civilian activity. In the words of one critic of a larger DoD constabulary training role, this and other forms of security assistance “must not be allowed to violate time-honored pillars of our own democratic governance.”<sup>15</sup>

Again, this argument ignores the fact that the U.S. armed forces are already training foreign paramilitary and police forces. More important, it ignores the training, discipline, and respect for democratic values that are deeply embedded in the officer and NCO corps of the U.S. military. There can be little doubt that the host-nation forces who receive training from U.S. personnel in any area will fail to be influenced by the values resident in American trainers.

## CONCLUSION

Although the U.S. military has been reluctant to embrace law enforcement-related activities, recent OOTW have brought home the fact that civilian agencies of government are ill-equipped and ill-suited to perform many aspects of these missions. As much as DoD would like to avoid this responsibility, it is clear that the armed forces will continue to perform these missions, as unpalatable as they might be.

Accepting this mission on a formal basis would also give DoD leverage in dealing with other government agencies. By planning and training for this mission, DoD will signal to the Departments of State and Justice, the National Security Council and other organizations that it is too important an activity to be dealt with on an ad hoc basis.

Having said that, however, it is just as important for civilian policymakers to recognize that DoD must not be saddled with all of this responsibility. There is an urgent need to strengthen the ability of civilian organizations to plan for and conduct law-enforcement training in the aftermath of an OOTW. Congressional hearings and other forms of high-level attention are essential in terms of motivating the civilian bureaucracies to step up to their responsibilities. The U.S. armed forces exist

primarily to fight and win the nation's wars. Dumping long-term constabulary training on the military because the civilian agencies of government are unable—or unwilling—to live up to their obligations is clearly unacceptable.

## ENDNOTES

1. This is not to be confused with the term as it is used by Morris Janowitz, who first employed it in the 1950s to describe the new kind of U.S. military force that would be required for the post-World War II era of limited warfare. Morris Janowitz, "Civic Consciousness and Military Performance," in Morris Janowitz and Stephen D. Westbrook, eds., *The Political Education of Soldiers* (Beverly Hills: Sage Publications, 1983), p. 76.
2. Headquarters, Department of the Army, FM 19-50: *Military Police in Stability Operations*, Washington, DC, February 1970, 2-4.
3. "Special Action Force for Latin America: 1966 Historical Supplement," 8th Special Forces Group, 1st Special Forces, Fort Gulick, Panama, 1966.
4. Morris Janowitz, *The Professional Soldier* (New York: Free Press, 1971), p. 419. For a useful discussion of the Army's resistance to the counterinsurgency mission, see Andrew Krepinevich, *The Army in Vietnam* (Baltimore: Johns Hopkins University Press, 1986). For a broad overview of the Army's changing views on noncombat missions, see William Rosenau, "Non-Traditional Missions and the Future of the U.S. Military," *Fletcher Forum of World Affairs* 18, No. 1 (Winter/Spring 1994), pp. 31-48.
5. Critics of U.S. assistance to client states claimed that the U.S. military and other organizations were providing torture training to local police, particularly in South America. Such charges were to prove unfounded. As one State Department official rather condescendingly put it, "No inheritors of the Iberian-Roman tradition seem to need {instruction in torture} from representatives of other cultures." As quoted in Ernest W. Lefever, "U.S. Public Safety Assistance: An Assessment," report prepared for the U.S. Agency for International Development, Brookings Institution, December 1973, p. 94.
6. For an overview of the legislative exemptions to the police training ban, and a discussion of U.S. government training activities, see "Foreign Aid: Police Training and Assistance," U.S. General Accounting Office, March 1992.
7. For a useful discussion of OPS, see Thomas Lobe, "The Rise and Decline of the Office of Public Safety," *Armed Forces & Society* 9, No. 2 (Winter 1983).
8. As quoted in Richard H. Shultz, Jr. *In the Aftermath of War* (Maxwell AFB, Ala.: August 1993), p. 51.

9. "Operation Restore Hope Lessons Learned Report (3 December 1992-4 May 1993)," Center for Army Lessons Learned, U.S. Army Combined Arms Command, Ft. Leavenworth, Kans., n.d., p. XIV-39.
10. For more on Marine law-enforcement activities in Somalia, see F.M. Lorenz, "Law and Anarchy in Somalia," *Parameters*, XXIII, no. 4 (Winter 1993-94). This was not the U.S. government's first experience in Somali police training. The Civil Police Administration, OPS's predecessor organization, began training and other support to the Somali National Police as early as 1958. A.S. Castagno, "The Somali National Police and A.I.D. Assistance," n.d., n.p. (Stanford Research Institute, 1969?), p. 1.
11. Bob Shacochis, "The Immaculate Invasion," *Harper's*, February 1995, p. 44, and John F. Harris, "Haitians Jeer U.S. Sponsored Policemen," *Washington Post*, October 10, 1994, p. A14.
12. For an example of UN involvement in police training, see "Peace-Keeping Training: United Nations Civilian Police Course Curriculum," preliminary draft, Department of Peace-Keeping Operations, United Nations, October 1994, pp. 1-60.
13. According to one military officer involved with planning the Haiti operation, three months after the invasion the U.S. Justice Department had still not lived up to its promise to provide American personnel to reform Haiti's Justice Ministry.
14. Interestingly, the British Army has acknowledged that the military has a responsibility for ensuring that local security forces can maintain order during a peace operation. *Wider Peacekeeping*, Army Field Manual, Fourth Draft, n.d., p. 3-14.
15. Martin Edward Anderson, "Why the U.S. Military Shouldn't Be Training Foreign Police Forces," *Washington Times*, March 1, 1994, p. 17.

(At the time of this writing, Mr. Rosenau was serving as a professional staff member of the Commission on Roles and Missions of the Armed Forces. He is now serving as a foreign policy advisor on the staff of the U.S. Senate.)

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