



A U.S. Army sergeant instructs a Honduran police cadet in a "high-risk traffic stop exercise," Honduras, 2008.

# ***Preach What You Practice: The Separation of Military and Police Roles in the Americas***

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## Introduction

American citizens enjoy a legal concept that many nations do not. Domestically, the United States has a clear separation between the uses of its military and the uses of its law enforcement agencies. U.S. law generally restricts the military from use against its citizens. While this separation does not guide U.S. operations in battleground environments like Iraq and Afghanistan, it remains very strong at home.

In Latin America, where democracies have struggled mightily to exert civilian control over their armed forces, the reality is different. Most nations lack a similar principle of clear military-police separation. The region's circumstances hardly ever require armies to defend citizens from foreign invaders, but leaders often call upon them to defend some citizens – or the state – from other citizens. Today, many governments are calling on militaries to enforce laws and to combat domestic crime.

Choices made in Washington can have a strong impact on this. The U.S. government is by far the largest provider of military and police aid to Latin America and the Caribbean. Arms and equipment transfers, training, exercises, presence at bases, and military-to-military engagement programs send strong messages about military and police roles. So do diplomatic interactions with the region.

Instead of exporting the principle to which the United States adheres, though, these efforts often do just the opposite: encourage Latin American governments to use their militaries against their own people. This is a longstanding tendency in U.S. policy toward Latin America, though it rarely gets framed in terms of the United States' much different domestic model.

That is what this report will do. The following pages highlight U.S. practices that encourage Latin America's armed forces to take on internal security roles that the U.S. military cannot legally play at home. They go on to point the way toward policy changes to end these practices.

Section I reviews the U.S. experience with Posse Comitatus, an 1878 law that became a cornerstone of U.S. democratic stability by making U.S. citizens' interactions with on-duty soldiers very rare, and causing the institutional character of the country's defense and law-enforcement forces to diverge dramatically. Section II looks at Latin America's far different history of civil-military relations, with a focus on the military's use against citizens internally, in a climate of few external security threats. Section III lays out the United States' persistent, century-long tendency to help the region's

militaries take on internal security roles; this tendency, it argues, continues with today's "wars" on drugs, terrorism, and organized crime.

Finally, Section IV offers recommendations for Latin American governments seeking to protect their populations while at the same time consolidating their democracies; for the executive and legislative-branch architects of U.S. policy toward Latin America; and for the United States at home, as it seeks to secure its citizens and borders against 21st century threats.

These recommendations can be summarized simply. **Militaries should not be used for internal security and law-enforcement roles, and the United States should not encourage such use, either at home or abroad.** While exceptions may exist under extraordinary circumstances – and then, only with several safeguards and institutional reforms in place – the Posse Comitatus model works, and should guide future U.S. security interaction with Latin America.

### I. The History of the Posse Comitatus Act

*"Civilian rule is basic to our system of government. The use of military forces to seize civilians can expose civilian government to the threat of military rule and the suspension of constitutional liberties."—Bissonette v. Haig, 8th Circuit, 1985<sup>1</sup>*

Entrusting an unelected part of the government with the power of arms is risky in a democracy, especially a young democracy. U.S. objection to military power over its citizens in fact dates back to colonial times, even though it wasn't codified into permanent law until after the Civil War. In response to the British quartering their troops in Boston against the wishes of the local populace, the Declaration of Independence itself includes a grievance that the King had "kept among us, in times of peace, Standing Armies without the consent of our legislatures."

While the legal separation of police and military roles is absent from the Constitution, the issue factored into the late-1700s debate over ratification. In the Federalist Papers, Alexander Hamilton assured the American people that the military would not be used against them. He wrote,

*If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary will be a more certain method of preventing its existence than a thousand prohibitions on paper.<sup>2</sup>*



The prohibition against the use of military troops for law enforcement purposes was finally enacted into law at the end of the Reconstruction era. In 1854, the attorney general at the time, Caleb Cushing, issued an opinion that militias could be used to enforce the Fugitive Slave Act, which called for apprehending and safeguarding fugitive slaves. Two decades later, the “Cushing Doctrine” led to the Army’s widespread use to exercise police functions and essentially take governing control of the eleven states of the former Confederacy.

During the presidential election of 1876 Samuel J. Tilden, a Democrat, won the majority of the popular vote, but the Republican, Rutherford B. Hayes, won the electoral vote. There was deep suspicion in the South that the military had exercised undue influence on the election. In a compromise, Hayes was to take the presidency in return for certain concessions, including an agreement to withdraw the federal troops.

The Posse Comitatus Act (PCA) was subsequently enacted in 1878, according to Lawrence (1940), to prevent the “excessive use of federal machinery under the Federal Election Laws [as] in the presidential election of 1876.”<sup>3</sup> The term “posse comitatus” means the “force of the county.” Its doctrine dates back to English common law, in which a county sheriff could raise a posse

comitatus to repress a civil disturbance or for other purposes. The Posse Comitatus Act of 1878 states (as amended):

*Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.*<sup>4</sup>

Over the past century and a half, the wording of the Posse Comitatus Act has remained essentially unchanged, but its use has become engrained in U.S. law and culture. Though there have been several incidents when the Act has been severely tested, this basic concept of civilian control – absent in too many other countries – has helped guarantee freedom from military oppression.

**WHAT DISTINGUISHES MILITARY AND POLICE ROLES?**

Several factors make militaries and police different. A military is meant to fight wars, and a police force is meant to enforce laws. There are clear reasons why neither is good at doing the other’s job. That the police

	The Police	The Armed Forces
<b>Source of Authority and Mandate</b>	Various non-federal police agencies throughout the United States derive authority from the local or state political structure. In other words, the police work for the mayor or the governor, <i>who is answerable to a local citizenry</i> . As such, the police in their law enforcement and crime prevention tasks are also answerable to that citizenry. In most cases, the police are a part of the community they patrol, and they reflect the norms, customs and culture of those communities.	With the exception of the National Guard in “State” or “Title 32” Duty (more on that below), the military derives its authority from the very top of the government, the president as Commander-In-Chief, and as such is <i>not directly answerable to the communities</i> where it may be sent to enforce laws.
<b>Use of Force</b>	Police are trained to use the <i>minimum force necessary</i> to enforce the community’s laws.	Military personnel are trained to use <i>overwhelming lethal force to fight and win wars</i> .
<b>Investigation and Prosecution</b>	<i>Obtaining evidence and securing its chain of custody</i> is standard for police investigations.	Military personnel are <i>not trained in the protection of vital Fourth and Fifth Amendment rights</i> . <sup>5</sup> In fact, in several instances, legal prosecutions have failed due to military actions in an operation or investigation, including mishandling of evidence due to lack of training.
<b>Capabilities</b>	In ideal situations, the police are equipped, right-sized and specifically trained for the tasks of enforcing laws and ensuring civil liberties.	The time, effort and resources that the military spends on law enforcement take it away from its core mission: to be at a high state of readiness in the event of war.

should not be sent to fight a war with a foreign enemy is obvious. The more important distinction is why the military should not be sent to enforce domestic laws.

## POWERS TO USE THE MILITARY WITHIN THE UNITED STATES

The Posse Comitatus Act does not absolutely forbid any federal use of the military for law enforcement or other domestic security purposes. The Act itself allows for special circumstances in which federal law, or the Constitution itself, can expressly authorize the military's domestic use. Although the Constitution does not "expressly" give the president the authority to use the military for law enforcement, it does allow Congress to "provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions."<sup>6</sup> Presidential authority derives from the Constitution, which expressly names the president as Commander-in-Chief of the military and makes it a presidential duty to see that the laws are faithfully executed.<sup>7</sup>

In the Code of Federal Regulations, two presidential exceptions to the Posse Comitatus Act permit military performance of domestic law enforcement functions. They are (1) the "emergency authority," which authorizes the president to use "prompt and vigorous Federal action, including the use of military force to prevent loss of life or wanton destruction of property" and (2) for the "protection of federal property and functions."<sup>8</sup>

Another notable exception is found in the U.S. Code and applies to a variety of circumstances, including a Katrina-sized disaster: the president is authorized to use the militia (that is, the National Guard) or the military to suppress "any insurrection, domestic violence, unlawful combination, or conspiracy" if such violence so hinders the enforcement of state or federal law to the extent that the state's citizens are deprived of their federally protected rights – and if the state authorities are unable or unwilling to protect those rights.<sup>9</sup>

Another legislative exemption to the Posse Comitatus Act is the Coast Guard. Although a branch of the U.S. Armed Forces, the Coast Guard does not fall under the Act because Congress has, through statute, empowered it to enforce domestic law.<sup>10</sup> The Coast Guard operates under several titles of the U.S. Code and while it is primarily under the Department of Homeland Security, it has the authority to conduct military operations under the Department of Defense.<sup>11</sup> Though it has both law enforcement and military responsibilities, the Coast Guard is not used as a primary military force.

## USE OF THE MILITARY GONE WRONG

There are numerous instances of the military being called into action within the United States and performing heroically and efficiently to save lives and restore order. This is particularly true during natural disasters, when the manpower, resources, logistical expertise and rapid mobility that the military possesses are enormously advantageous. We do not take issue with their use in circumstances when other means are overwhelmed or simply not available, and when their mandate is carefully tasked to the mission of saving lives and restoring order in a manner consistent with civil liberties and human rights.

However, in a fair number of instances, the military's use in domestic law enforcement outside the PCA's letter or spirit has gone wrong, sometimes with disastrous consequences. It is important to learn from the mistakes made – and to apply the lessons learned to current and future situations. The list of examples below is meant to be illustrative, not exhaustive.

- **Labor Strikes.** One of the early examples was the use of the military to break up a miners' strike at Coeur d'Alene, Idaho, in 1899. Men arrested by the Army were imprisoned without charge for weeks or months, and the area was kept under martial law for the ensuing two years.<sup>12</sup>

In 1952, President Harry S. Truman called out the military to seize the private property of the Youngstown Sheet and Tube Company steel mills in Ohio, in order to keep striking workers from halting production. The Supreme Court ruled that the President had committed an illegal act.

- **Antiwar Protests.** During the Vietnam War, the military was involved in several instances of intelligence-gathering on the activities of U.S. citizens who opposed the war.

Perhaps the most notable episode was a more violent event in May 1970, shortly after the U.S. invasion of Cambodia was announced, when the Ohio National Guard was called out to put down an anti-war protest on the campus of Kent State University. While Governor James Rhodes had never actually declared a state of emergency, the Guard took to the campus thinking he had. As tensions escalated, some members of the Guard, later saying they felt their lives to be in danger, fired into the crowd of unarmed students, killing four and wounding nine. Nearly a decade of legal battles ended with an out-of-court settlement in which the State of Ohio paid a financial sum to the complainants and the Ohio National Guard issued a declaration of

regret. No Guardsmen were found guilty.<sup>13</sup>

- **Wounded Knee, 1972.** After a trading post was looted on the Pine Ridge Reservation in South Dakota, the FBI and other federal agents surrounded the town of Wounded Knee. During the siege, the military was called in and used in several ways, including aerial reconnaissance flights, as undercover agents, and for advice in negotiations, logistics and rules of engagement.

In an ensuing court case, the legality of the extent of military involvement was questioned, and in 1981 Congress enacted a series of clarifying authorities and restrictions on the use of the military to assist law enforcement.<sup>14</sup> Included in this law are several specific authorities in which the military can share information, training and equipment with law enforcement agencies. Also included is a restriction against “direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.”<sup>15</sup>

The 1980s saw intensifying concern over illicit drug use and drug-related crime in the United States, and the increased authorities of the 1981 law were written partly in response to the perceived need to increase the civilian law enforcement agencies’ capacities, assisted by the military, in the “drug war.” This is discussed further below.

- **Los Angeles Riots, 1992.** After Los Angeles police officers were found not guilty of police brutality in the videotaped beating of Rodney King, riots ensued in and around Los Angeles. Fifty-four people were killed and over \$800 million in property damage occurred. In response, 10,000 California National Guard troops, 2,000 regular Army troops and 1,500 Marines were called out to restore order. While individual soldiers’ performance has generally not been criticized, they took to the streets with little or no training in civil disturbances. Further, considerable confusion between the military and the civil authorities was a hallmark of the entire episode.<sup>16</sup>

- **Branch Davidians, 1993.** In February of 1993, the Bureau of Alcohol, Tobacco and Firearms (BATF) tried to arrest David Koresh, the leader of a religious community in Waco, Texas, for stockpiling illegal weapons and explosives. A 51-day standoff ensued, resulting in the deaths of four federal agents and seventy-six men, women and children in the compound. The original raid by the BATF and the final FBI tank attack on the

compound were both run as military exercises and planned by the U.S. military.<sup>17</sup> The military had been called in for assistance under the drug war exemptions to the PCA mentioned above, citing an ultimately false claim that David Koresh had a methamphetamine lab on the premises. Attorney General Janet Reno acknowledged in congressional hearings that the disastrous attack was the implementation of a recommendation from U.S. Army Delta Force.<sup>18</sup>

- **Redford, Texas, 1997.** The military had been further pressed into domestic counter-drug operations in the 1990s, and a Joint Task Force (JTF-6, also involved in the Branch Davidian operations) had been assigned to maintain Listening Posts/Observation Posts (LP/OP) along the Texas border with Mexico, in search of drug traffickers. On the afternoon of May 20, 1997, a teenager named Esequiel Hernández, a U.S. citizen, did not know that four U.S. Marines were concealed in camouflage in the area where he was herding goats while carrying a 22-caliber rifle, which he often did to protect the herd against snakes and other animals. At one point, one Marine felt that another concealed Marine was in danger because of the teenager and he opened fire, killing Hernández instantly. After a series of investigations by congressional staff, a grand jury and the Marine Corps, the Marines were not indicted, and were judged (by the military) to have followed the rules of engagement in their counter-drug operation.<sup>19</sup>



Esequiel Hernández, accidentally killed by U.S. Marines in Redford, Texas in 1997.

## THE NATIONAL GUARD AND THE POSSE COMITATUS ACT

Every state has an organized militia at its governor's disposal. The right of states to form a militia predates the Constitution, which also guarantees it. These military forces, since 1824 referred to as the National Guard, are trained to the standards of the standing regular U.S. Army. There are essentially three forms of duty for which these forces can be utilized:

- **State Active Duty:**

Under "State Active Duty," the Guard and its equipment are at the ready access of the governor, through the adjutant general of the state or territory, for emergencies and any other uses allowed under individual state constitutions. The governor may call them up in natural disasters like floods and earthquakes, or to restore order during a time of civil unrest. Under State Active Duty, the command and control of these forces rests solely with the state governor. Further, under State Active Duty, the Posse Comitatus Act does not apply to these troops' use.<sup>20</sup>

- **Title 32 Duty:**

Article I, § 8 of the Constitution allows the National Guard to be used – again under the command and control of the governor – to "execute the laws of the Union, suppress insurrections and repel invasions." This is referred to as "Title 32 Duty," after the title of the U.S. Code that covers the National Guard. As in "State Active Duty" status, the Posse Comitatus law does not apply to the Guard on Title 32 Duty. After the 9/11 attacks the National Guard was called immediately to patrol and protect the nation's airports under Title 32 Duty. These forces remained under states' control for the duration of their six-month mission. Some questioned the statutory authority for these operations, claiming that the federal use of the guard under Title 32 was for training purposes, not domestic operations. Congress subsequently passed a law that authorizes the Title 32 use of National Guard troops for "homeland defense activities," which are "critical to national security from a threat of aggression against the United States."<sup>21</sup>

- **Title 10 Duty**

The federal government, under the War Powers clause of the Constitution, may press the militia (the National Guard) into federal service.<sup>22</sup> Under Title 10 of the U.S. Code, these troops may be used at home or abroad in combat or combat support. They are mobilized as part of the "total force concept," making them indistinguishable from the regular Army. "Title 10 Duty," which gov-

erns all Guard deployments to Iraq and Afghanistan, is under the sole control of the Commander-In-Chief and the military chain of command. The Posse Comitatus Act applies to all troops deployed under Title 10 Duty within the United States.

## THE USE OF THE MILITARY IN THE COUNTER-DRUG EFFORT

In the 1980s, illicit drug use and drug-related crime was seen as a growing threat and a salient political issue, and Congress was anxious to take action. Beyond the explicit grants of authority enacted in 1981 for military assistance to the police – in drug operations and some operations beyond, like immigration control – Congress began discussing a broader military role in interdicting the flow of drugs into the United States.<sup>23</sup>

Central to the debate over whether to use the military in such a role was the Posse Comitatus law. At 1988 House and Senate hearings on the military's drug-interdiction role, Defense Department witnesses were unified in their opposition to expanding the military's role, warning against the assumption of a police role. When Assistant Secretary of Defense Grant Green voiced that opinion, members of the congressional committees roundly criticized him. Rep. Charles Bennett (D-Florida) said, "We are trying to fight drugs. Instead of coming up with an urgent effort to fight them, you are making all kinds of excuses for not doing it." In the heated exchange, Rep. Bennett went on to say, "The comitatus law is not a noble law. It is a very simple evil law. It ought to be repealed in its totality. It has to do with the Banana Republic."<sup>24</sup>

At the final hearing in the series, President Ronald Reagan's Secretary of Defense, Frank Carlucci, maintained the Department's opposition to the military's use in the law enforcement roles envisioned by the Armed Services Committees. In prepared testimony, he wrote in part, "I remain absolutely opposed to the assignment of a law enforcement mission to the Department of Defense. I am even more firmly opposed to any relaxation of the Posse Comitatus restrictions on the use of the military to search, seize and arrest. I have discussed this matter with the President and other senior members of his Cabinet, and I can report that these views are shared throughout this Administration."<sup>25</sup>

In the end, the bill that eventually passed scrapped earlier attempts to permit military personnel to arrest citizens within the United States.<sup>26</sup> A compromise allowed the military to participate in detection and monitoring of air and sea traffic, which were seen as more customary military roles. Still, it represented a significant step for the military to have such a formal



mission in the traditionally civilian realm of law enforcement.

The following year, the defense authorization bill repealed this section and instead made it permanent law, adding a new Section 124 to Title 10 of the United States Code.<sup>27</sup> This made the military the permanent “single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.”

However, it is important to note that even as Congress pressed these authorities on the military, it was careful to restrict the involvement to (1) detection and monitoring activities, not actual arrest and seizure; and (2) authorization for activities by the U.S. military outside the United States only. These two restrictions allowed continued adherence to the Posse Comitatus Act, which directs the military away from counter-drug activities that include the law enforcement acts of interdiction and arrests.

## U.S. NORTHERN COMMAND

Following the September 2001 terrorist attacks on the United States, the U.S. military reorganized itself to include a higher profile in the defense of U.S. territory. A new Northern Command (NORTHCOM), covering the United States, Canada, Mexico and the waters surrounding them, was established to provide support to civilian authorities in the event of a disaster, and to prevent, deter or defeat any threat against the United States.

The Northern Command has several shared responsibilities with civilian law enforcement agencies. Under their “National Response Framework” the Command is tasked to provide a timely response to a whole range of threats, and is meant to act as the military partner of “first responders.” The Command endorses the importance of the Posse Comitatus Act in its literature and on its web site, and acknowledges that its forces are meant to assist, but not supplant, law enforcement authorities.<sup>28</sup>

## EFFORTS TO REPEAL THE POSSE COMITATUS ACT

Since the 9/11 attacks, policymakers have held recurring discussions about the relevance of the Posse Comitatus statutes and the possible need to amend or repeal them. In October 2006, President George W. Bush signed into law the Defense Authorization Act for Fiscal Year 2007. That Act included a section that essentially repealed Posse Comitatus: “The Use of the Armed Forces in Major Public Emergencies.”<sup>29</sup> It amended the U.S. Code to allow the president to use the military “to

restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States [emphasis added].”<sup>30</sup>

In other words, the president could order the regular military or the National Guard into a state, even over the objection of that state’s governor, for almost any reason. He could even order the National Guard from one state into another state over the objections of both governors, to enforce the laws of the state.<sup>31</sup>

When the little-known provision in the FY 2007 Defense Authorization bill became more widely understood, the section was quickly repealed in the next year’s Authorization bill, thus restoring the effect of the Posse Comitatus Act.<sup>32</sup>

Arguments for and against repealing or amending the Posse Comitatus Act continue to surface regularly in scholarly articles and law journals. The idea of amendment or repeal has not gained critical mass, though, since it is viewed as risky, the military generally opposes it, and because exceptions exist: the President has the right to suspend the Act during extreme emergencies and Congress has enacted specific exemptions, such as the 1988 Stafford Act for disasters and the 1807 Insurrection Act for disturbances.<sup>33</sup>

Further, in response to terrorist attacks, like the World Trade Center bombing in 1993 and the Oklahoma City bombing in 1995—both before the 9/11 attacks—the military was used to assist, but not to supplant, law enforcement agencies. Since 9/11, the military has regularly been used in “special security events” designated by the Department of Homeland Security to protect high-profile targets from terrorist attack. Events such as the Super Bowl, the presidential inaugurations and the 2002 Winter Olympic Games hosted by Salt Lake City are examples. The military personnel used in these situations are restricted to a secondary role, neither replacing local police nor enforcing civil laws, and are within the limits of the Posse Comitatus Act.<sup>34</sup>

## TROOPS TO THE BORDER

For several years in the 1990s, Congress debated the idea of sending military troops to the border to enforce immigration and drug trafficking laws. Rep. James Traficant (D-Ohio) offered original bills and perennial amendments to send up to 10,000 regular military troops to the border, and as recently as the year 2000 his initiative passed the House of Representatives, but did not become law.



Army National Guardsman stands watch outside Nogales, Arizona, as part of Operation Jump Start in 2006.

In 2006, President Bush ordered 6,000 National Guard troops to assist the Border Patrol for a two-year period in California, Arizona, New Mexico, and Texas. These Guardsmen and women came mostly from those four states, but some came from other states, and were pressed into duty under Title 32 status. They operated surveillance systems, analyzed intelligence, installed fences and vehicle barriers, built roads, and provided training.<sup>35</sup> The deployment became known as “Operation Jump Start.” This was the largest number of soldiers on the border since the Mexican Revolution ninety years earlier.<sup>36</sup> The bulk of the Guard activity was in the area of intelligence gathering, and while there were no reports of human rights abuses of migrants, it was disquieting for some U.S. citizens living in the border areas to be under military surveillance.<sup>37</sup>

In May 2010, President Barack Obama announced the intention to send 1,200 National Guard troops to the border again. These troops will join the 340 already there under the “State Counter Drug Programs,” assisting law enforcement with surveillance and intelligence gathering. The National Guard Bureau does not release information about the current rules for the use of force by troops assigned to border duty, nor about how the rules may have changed since the Redford, Texas tragedy involving the Marine Corps, only to say that the rules are the same that apply to other National Guard troops in existing state counter-drug programs.

A Bureau official told WOLA that the National Guard personnel will not participate directly in any Federal and Department of Homeland Security or Customs/Border Patrol law enforcement activities.<sup>38</sup> While the troops will be under Title 32 status and thus beyond the reach of the Posse Comitatus Act, they are assigned to limit their activities to assistance only. However, each soldier will be armed – and naturally will have the right to defend him or herself – which introduces a level of militarization that was not present before their assignment.

While the military deployment to assist law enforcement agencies appears to come within the limits of the Posse Comitatus Act, there appears to be no imminent “threat of attack” on the United States, calling into question the need for a heightened militarization of the border. This also came as the FBI and the Congressional Research Service reported that the incidence of “spillover violence” appears to have significantly declined along the U.S. side of the border.<sup>39</sup>

## II. Latin America’s Inward-Looking Militaries

In the United States, it has become a recognized legal principle that police forces and military forces are entirely different tools, to be reserved for distinct and separate purposes. Thanks to Posse Comitatus, U.S. citizens would view as extremely unusual the idea of heavily armed soldiers patrolling streets, arresting and interrogating civilians, or otherwise playing a major role in citizens’ daily lives. That is far from the case, however, in Latin America.

Most Latin American countries have not opted for a strong, constitutional separation of military and police forces. This is largely explained by the region’s history and the origins of its armed forces.

### A HISTORICAL LEGACY

Since Latin American nations’ independence, each country’s armed forces have played a crucial role in the formation of states. It is difficult to understand the region’s political history without taking its militaries heavily into account.

Militaries’ prominence throughout the nineteenth and early twentieth centuries was a legacy of the independence wars of the early 1800s.<sup>40</sup> Armies were the first autonomous institutions to emerge in the newborn states.<sup>41</sup> For many countries, “the creation of a permanent army” was, as Rouquie (1987) put it, “the foundation of state sovereignty.”<sup>42</sup> From the ranks of military





Gen. Antonio López de Santa Anna, a classic 19th century *caudillo*, was president of Mexico for 11 times in 22 years.

leadership emerged the decision-makers who spearheaded independence movements and influenced new states' early development.<sup>43</sup>

Unlike George Washington, who left power after two presidential terms, popular generals became *caudillos*, personalistic leaders who sought to control national power. From 1825 to 1879, for instance, Bolivia had a series of "barbarian *caudillos*," originating from the "liberating troops" of independence, who seized the reins of government and ruled brutally over the country.<sup>44</sup>

A legacy of these countries' colonial experience was striking inequality: a tiny landed, European-descended elite, a landless mass, and millions of indigenous natives and black Africans forced to work as slaves.<sup>45</sup> Amid such stark divisions, the small elite resorted to using the military to achieve internal order. In a region that to this day remains the most economically unequal in the world, this coercive force has persisted in the form of extensive military presence among the citizenry.

The armed forces emerged not only as one of the most visible state institutions, but according to Varas (2009) they also enjoyed a special prestige in their societies due to their relative professionalism and evident leadership role.<sup>46</sup> Viewing themselves as the guardians of national values, military leaders took responsibility for their countries' internal development and international positioning.<sup>47</sup> The United States, by contrast, did not have a standing national army of any

consequence until the Civil War.

From the start, Latin American militaries' role was all-encompassing. They sought to maintain social order while spearheading economic development, strategic autonomy, and national unity. In Brazil, in 1896 and in 1914, the military were used to quell internal disorder and riots among civilians; this, in Rouquie's (1987) words, "made the officers aware that they were the guarantors of the status regni – that is, of the state – and that therefore they deserved special budgetary and legislative provisions."<sup>48</sup>

Under militaries' dominance, autonomous civilian state institutions languished. Justice systems, police, infrastructure-building and other government bodies proved consistently incapable of fulfilling their obligations and responsibilities to citizens. Trapped by their own impotence in the face of social demands, Latin American states chose to employ the "saviors of the homeland." This choice carried the opportunity cost of weakening civilian institutions further, which in turn – in a vicious cycle – made the armed forces' management appear more attractive. Militaries began to take over non-military missions, and officers commonly came to occupy presidencies and rewrite constitutions.<sup>49</sup>

By the 1950s, the United States' "National Security Doctrine," discussed below, had achieved wide influence across Latin America. Though the Warsaw Pact was considered to be the foreign enemy, leftist groups, social activists, politicians, and students – who, coincidentally, encouraged fairer distribution of wealth to the detriment of small elites – were vilified domestically. Political, economic, and social matters were transformed into issues of security, leading to a securitization of nearly all aspects of daily life and opening the door for military intervention in every internal matter. From the 1950s to the 1980s, these dictatorships brought dreadful consequences: gross human rights violations and the destruction of civilian government capacities. In Argentina, for example, a military junta ruled the country from 1976 till 1983, naming generals to all top government positions. The Argentine military considered itself the most fit to rule in all public matters and to fend off the communist threat.

Country by country, the region underwent a halting democratic transition from the late 1970s to the early 1990s. By the end of this wave of democratization, and with the Cold War over, most countries in the hemisphere (with exceptions like Cuba, PRI-ruled Mexico, coup-ruled Haiti and Fujimori's Peru) were ruled by freely-elected civilians. For the most part, however, these elected presidents exercised little effective con-

trol over the militaries that had only recently given up total power.

The mid-1980s to the present has been a period of unsteady progress in returning the armed forces to the barracks. Elected civilian leaders have struggled to assert command, reform military institutions, and eliminate repressive and authoritarian legacies.<sup>50</sup> The generally understood objective has been to build professional armed forces that are subordinated to civilian authority and respectful of human rights and the rule of law.<sup>51</sup>

Milestones – not yet reached everywhere – have included the naming of civilian defense ministers, the creation of civilian police forces, greater civilian control over defense budgeting, presidential ability to name and fire commanders, and the ability to investigate and try military human rights abuses in civilian courts.

### Countries with Civilian Defense Ministers



### MIXING ROLES: LATIN AMERICAN ARMED FORCES TODAY

Democratic transitions have shaped military roles differently in each country, so today there is not a single model that applies across the entire region.

Despite many reforms, military systems in much of Latin America have not yet become professionally democratic institutions – conducted by civilian defense ministers, with clearly defined defense missions and armed forces fully subordinated to elected leaders. Defense reforms have taken place, as FLACSO (2007) puts it, “in a context characterized by a legacy of military autonomy, institutional weaknesses, [and] some states’ limited capacity to respond to social demands, social fragmentation and violence.”<sup>52</sup> This is why many governments have had difficulty limiting military roles or establishing institutional mechanisms to achieve full civilian control.

The fundamental military role is the defense of national sovereignty, territory and independence against external aggression. Not all countries, however, have legislation separating police and military missions and roles, and those that do often have unclear constitutional provisions governing the military. Many definitions of the armed forces’ functions are quite ambiguous; some laws only make reference to missions, not functions, or refer to vague concepts.<sup>53</sup> For example, Bolivia’s constitution establishes that the military has to defend the “honor” of the nation, but does not define this term.<sup>54</sup>

Another recurring role is the military’s assistance in times of natural disaster and emergency, as has happened recently after storms in El Salvador and Honduras, and after earthquakes in Peru and Chile. Many countries also promote their armed forces’ participation in overseas peacekeeping missions. Both of these tasks enjoy high levels of acceptance and legitimacy in the region.

One of the most challenging reforms has been getting the military out of citizen security – the area that the United States addressed long ago via the Posse Comitatus Act. Doing so requires that elected civilian leaders draft clear, separate and legally defined military and police missions.

Many armed forces perform police functions, including routine searches and public security checks, and patrolling in areas affected by violence, drug trafficking, gang activity or similar citizen security threats.<sup>55</sup> Latin America is known to suffer the highest rates of criminal violence of any region in the world, with well-armed populations and murder rates higher

than nearly anywhere else. With corrupt and weak police forces overwhelmed, many countries have turned to the military.<sup>56</sup>

A less common role is military participation in development tasks, such as road-building or providing medical services, as in Bolivia and Brazil. When governments do not have civil bodies trained and financed to assist disadvantaged populations, the armed forces are frequently called on because they have the capacity, the personnel and the equipment.

While each country has its own particularities, it is possible to identify broad similarities in military roles across four Latin American sub-regions.\*

The **Southern Cone** (Argentina, Chile and Uruguay) today has the region's most professional defense systems, and the separation of military and law-enforcement roles that most closely resembles the U.S. model.

This is the case principally of Chile and Argentina; both have constitutional provisions separating defense and police roles. In both countries, the armed forces' main mission is the defense of national territory from external aggression perpetrated by a foreign adversary. They can only carry out law-enforcement activities if expressly called on by the President under extreme conditions. Both countries had bloody dictatorships, and their transitions to democracy involved a strong focus on eliminating the armed forces' internal roles. In fact, Andersen (2009) observes that Argentine legislation separating defense from internal security, the National Defense Law, is "shaped and informed in part by the example of the Posse Comitatus Act (18 U.S.C. Section 1385), hailed by many Americans as well as observers overseas as having been for 130 years an important safeguard for limiting military involvement in civilian law enforcement in the United States."<sup>57</sup>

Brazil, with Latin America's largest armed forces, is an outlier in this sub-region. Its armed forces are primarily tasked with the external defense of the nation, but are not expressly prohibited by law from engaging in internal functions. This lack of legal precision has allowed for the use of the military within *favelas* (poor, often violent urban slums) to fight drug trafficking groups.<sup>58</sup> The military has carried out other subsidiary functions in development tasks like combating hoof-and-mouth disease in the southern region, distributing water in the semi-arid northeast, and delivering medical and dental attention to the riverbank population of

the Amazon region, among other projects.<sup>59</sup> They also participate in peacekeeping operations – including a leading role in the UN Haiti mission – cooperate with the national development and civil defense, and are involved, as the law expresses it, in "institutional campaigns of public and social interest."<sup>60</sup>

While militaries in the **Andean** sub-region (Bolivia, Colombia, Ecuador, Peru, Venezuela) differ in many ways, they share an important feature: their militaries are all-encompassing, multipurpose forces whose functions range from traditional national defense to law enforcement, development, and even some involvement in business and investment.

In Bolivia, the armed forces are charged with national defense but also play a major role in development projects, drug control tasks and border security.<sup>61</sup>

### Countries whose Militaries Assist Police in Non-Emergency Situations



\* We have not included the Caribbean as a sub-region in this section because it is far more heterogeneous than other sub-regions. The Anglophone states and Haiti have far different historical and cultural traditions than the Spanish-speaking states, while non-sovereign Puerto Rico and communist Cuba are also unique.



According to Tellería (2008), “The lack of strategic definition has made the Bolivian military perform roles which are not incumbent to its military nature.”<sup>62</sup>

Like Bolivia, Ecuador’s armed forces are also multipurpose. Among other roles, the constitution states that they “guarantee the legal and democratic order of the social rule of law ... collaborate with the social and economic development of the country; ... [and] participate in economic activities exclusively related to the national defense.”<sup>63</sup> The military’s internal security duties are likely to increase following a September 2010 police insurrection that led soldiers, in an opera-

tion to rescue the President, to engage in a bloody firefight with rebellious police officers. The most distinctive characteristic of the Ecuadorian military is its ownership of businesses to finance itself. These include industrial corporations that produce ammunition, clothes and shoes for military use, but also industries that develop car parts, an airline, a banana and shrimp exportation company, supermarkets, and banks, among others.<sup>64</sup>

Colombia, which remains mired in a 46-year-old internal conflict, is the most extreme case of indistinguishable military and non-military roles. “The

### *Militaries in Politics Redux: Honduras Today*

In June 2009, just as many in the region had begun to believe that civil-military coups were over for good, Honduran soldiers entered the presidential residence, seized elected president Manuel Zelaya, and shipped him off into exile. Though the military handed power to a civilian interim government, it has since gained much greater power in the country’s public sphere. Twenty-nine years after the formal end of military rule, Leticia Salomón, Honduras’ most-cited expert in military affairs, now warns of “highly politicized security forces, and in the case of the military, the leadership has become a decision-making body, which is simply not right.”<sup>77</sup>

The Honduran armed forces’ multifaceted role in citizens’ daily lives is supported by ambiguous and permissive language in the country’s 1982 constitution: “The armed forces are formed to defend the Republic’s territorial integrity and sovereignty, to maintain the peace, public order and respect for the Constitution, the principles of free suffrage and the rotation in power of the Presidents of the Republic.”<sup>78</sup> Among other roles, the Honduran armed forces take part in:

**Operation and protection of the electoral process:** The military protects the balloting process during elections. In 2010, legislators sought to modify this rule, but the military effectively made use of its veto power and stopped the reform.

**Law enforcement activities:** Due to Honduras’s increasing crime and violence rates, the Honduran government has involved the military in law enforcement. This role was assigned before the coup, and is contemplated in the Constitution, which allows the military to assist public-security institutions in fighting terrorism, arms trafficking and organized crime. A May 2010 executive decree determined that the military will provide police forces with personnel and equipment in order to help them carry out their functions.<sup>79</sup> In June 2010, a congressional decree ordered the Army to assist the police in stopping the violence caused by gangs and common crime.<sup>80</sup>

**Social repression:** The recent coup showed the Armed Forces being used as a praetorian force responding to the interests of a powerful political and economic sector. In its aftermath, they were used to repress anti-coup political demonstrations, while searching the premises of and even suspending the activities of civil-society organizations and independent media outlets. More recently, the military has been deployed in rural areas to evict and capture peasants involved in land disputes. Army and police personnel have been active in the Guadalupe Carney and Carbonales<sup>81</sup> communities, commonly referred to as the Bajo Aguán, to prevent land takeovers.

Since the coup, accusations of human rights violations have risen sharply. According to Honduran human rights groups,<sup>82</sup> between 36 and 46 social activists were assassinated between the coup and the inauguration of Porfirio Lobo on January 27, 2010. The military is implicated in at least ten of these assassinations, according to the Honduran Human Rights Committee (CODEH).<sup>83</sup> Between June 28, 2009 and October 10, 2009 alone, the Honduran security forces were responsible for 3,033 detentions according to the Committee of Relatives of the Detained Disappeared (COFADEH).<sup>84</sup> The post-coup regime militarized Honduran society and criminalized dissent “by creating a climate of insecurity and terror,” in the words of the OAS Inter-American Human Rights Commission.<sup>85</sup>

## No Militaries: The Case of Costa Rica

On December 1, 1948, following a brief civil war, Costa Rica's president, Jose María Figueres, decided that the country did not need armed forces.<sup>86</sup> He discharged the Army and proscribed the armed forces as a permanent institution of the State. This was included in Article 12 of the country's constitution. Sixty-two years later, Costa Rica has had no military forces, and has faced no situations that called for a military response.

To assure its national defense, Costa Rica relies on international arrangements, like Chapters VI and VII of the UN charter, to dissuade attacks. It has also made use of the Organization of American States' mechanisms to resolve disputes, such as territorial disagreements with Nicaragua.

In addition, Costa Rica has a national police, the *Fuerza Pública*, under a Ministry of Public Security.<sup>87</sup> It carries out ground security, law enforcement, drug control, and border patrol functions. A Coast Guard patrols Costa Rica's territorial waters. As part of this function, in 1999 Costa Rica signed a bilateral Counter-Narcotics Maritime Agreement with the United States to cooperate against drug-trafficking.

In 1986 Oscar Arias, then President of Costa Rica, declared December 1st as "Military Abolition Day." More recently, during his second presidency, Arias contended, "The army's abolition has made it possible to assign more public resources to the country's development, especially in education, health and culture; it has legitimized the electoral process as the only path to power, and it has avoided the creation of a group of soldiers capable of gaining autonomy and directly taking over the nation's destiny."<sup>88</sup>

persistence of violence has led to the issue of domestic security being considered the main threat to stability," writes Vargas (2008). At the same time, "it has led to the indiscrimination of armed forces and police roles, thus generating a militarization of the police and a 'policialización' of the armed forces."<sup>65</sup> As a consequence, the Colombian armed forces are "more oriented towards domestic public order control functions, leaving a functional ambiguity between Army and Police."<sup>66</sup>

Following this pattern, Venezuela's National Armed Forces carry out missions that range from peacekeeping and joint exercises with other Latin American armed forces, to aiding police and the National Guard to preserve or restore internal order in cases of serious disturbance, to supporting governmental institutions with economic and social development duties.<sup>67</sup> Venezuelan soldiers are increasingly taking up internal order duties such as routinely carrying out neighborhood development projects, arming citizen militias outside the military chain of command that report directly to the president, and participating in the "Plan República" that is activated during electoral processes, among others.<sup>68</sup>

Following the conflicts and democratic transitions of the 1980s, countries in **Central America** also sought to democratize their defense systems. The initial aims of this sub-region's militaries were to be peacekeeping missions and supporting civilian authorities in the event of natural disasters.<sup>69</sup> However, rising crime rates

and pervasive violence have led to heavy military involvement in efforts to address crime, gangs, and drug trafficking. Unlike Southern Cone countries, the constitutions of El Salvador, Honduras, Nicaragua and Guatemala allow for the possibility of expanding military tasks to internal security and other unconventional roles.<sup>70</sup> According to Rivera Joya (2009), this permissiveness, together with U.S. interests after 9/11, has caused the sub-region's armed forces to restructure so that they might once again confront non-traditional threats.<sup>71</sup>

In El Salvador's case, Martínez-Uribe (2008) explains that many sectors view the military as an important factor of governance, which leads to "a high prominence of the military in domestic security matters, given the incompetence of civilian institutions charged with guaranteeing citizen security."<sup>72</sup> In Guatemala, the high level of violent crime has led the armed forces to include crime control and citizen security in their mission. They have, for example, incorporated aspects related to citizen security and criminal investigations.<sup>73</sup> In Honduras, where the military played an instrumental role in a June 2009 coup against an elected president, the armed forces are playing a host of internal roles.

Finally, **Mexico's** armed forces have always characterized themselves as one of the most professional in the region, proud never to have carried out a coup against a civilian government. However, as in Central America, the rise in violence caused by increasingly

well-armed drug traffickers and organized crime groups has pushed the Mexican government to involve the military ever more deeply in drug enforcement and public order.

Moreover, Mexican law calls upon the armed forces to support citizens in cases of public need; to carry out civic and social works aimed at the country's progress; to maintain public order; to offer assistance to people and their assets; and to aid the reconstruction of areas affected by natural disasters.<sup>74</sup> They are also called to confront political protests when the president, judging that they overwhelm public security forces' capacities, orders them to do so.<sup>75</sup> "The overuse of the armed forces in the war against organized crime," warns Benítez Manaut (2008), "involves possible human rights violations, due to the low education level of low-ranking soldiers, and their weak training in such matters."<sup>76</sup>

Using the military for internal matters like crime-fighting carries four main risks. First, it generates a potentially tense overlap between military and police institutional missions and responsibilities, especially for crime prevention and control. Second, it politicizes the military; as Hunter (1994) warns, it "invites the armed forces to remain an important political actor. ... The symbolic significance of military involvement in domestic affairs should also not be underestimated, especially where a tradition of interventionism exists."<sup>79</sup> Third, it places military personnel in a situation for which they are not properly trained or equipped: constant contact with the population. This entails risks of authoritarian behavior and human rights abuse. Fourth, it carries a high institutional opportunity cost. Recurring constantly to the military to solve internal security problems reduces political will to make the investments necessary to build a functioning civilian security and justice sector. This sector's continued weakness, in turn, guarantees that the armed forces will be called on again in the future.

### III. *Posse Comitatus is Not the Model the United States Encourages*

Despite the occasional examples of disputes and overreaching discussed in Section I, the *Posse Comitatus* model has served the United States well. U.S. military and police institutions alike have benefited from the clear separation between their roles and missions.

It is unfortunate and alarming, then, that Washington has supported almost the exact opposite course in Latin America and the Caribbean. For the past century, and continuing today, U.S. assistance has encouraged

the Western Hemisphere's militaries to assume internal roles that would be inappropriate, or even illegal, at home.

#### A BRIEF HISTORY OF U.S. MILITARY ASSISTANCE

Starting with the 1898 Spanish-American War and especially in the two decades after World War I, U.S. forces intervened in, and occupied, several countries in Central America and the Caribbean.<sup>80</sup>

- **Cuba:** 1906-1909; June-August 1912; 1917-1922.
- **Dominican Republic:** March-April 1903; January-February 1904; June-July 1914; 1916-1924.
- **Guatemala:** April 1920.
- **Haiti:** January-February, October 1914; 1915-1934.
- **Honduras:** March 1903; March-June 1907; January 1911; September 1919; February-March, September 1924; April 1925.
- **Mexico:** 1914-1917; 1918-1919.
- **Nicaragua:** February-March 1899; May-September 1910; 1912-1925; 1926-1933.
- **Panama:** November-December 1901 (before independence from Colombia); April, September-November 1902 (before independence from Colombia); 1903-1914; 1918-1920; October 1925.

Upon their exit from Cuba, the Dominican Republic, Haiti, Nicaragua, and Panama, the departing U.S. forces set up new military bodies to keep order in their absence. Though these forces' missions included external defense like traditional armies, in fact they were principally constabularies carrying out internal policing. The "enemies" these small forces sought to confront were not hypothetical foreign invaders. They were criminals, bandits, and – all too frequently – unionists, opposition movements and political reformers.

This first U.S. experience with overseas military assistance was accompanied by very little aid to build civilian governing capacities or credible justice systems. And it went badly. As Loveman (1999) notes, "These constabularies never achieved the professional levels or military capabilities of Chilean, Argentine or Peruvian armed forces [who had received European aid at the time]. They operated almost as military gangsters, keeping order, controlling gambling, prostitution, and other rackets, and extorting resources from the citizenry in the name of 'law and order' and a superficial patriotic fervor."<sup>81</sup>

These U.S.-created, internally focused armies ended up being the principal supports for brutal dictators. The National Guard left behind by U.S. Marines quickly



## *Bolivia: Military and police in counter-drug roles*

Bolivia is one of three countries in the world that produce significant amounts of coca, the plant used to make cocaine. Since the 1970s, the coca issue has weighed heavily over U.S.-Bolivian relations, and the Andean country has been one of the primary battlegrounds in the war on drugs. With U.S. assistance Bolivian forces – both police and military – seek to interdict cocaine smuggling, and manually eradicate thousands of hectares of coca plants each year.

One of the first U.S.-supported missions was Operation Blast Furnace, a 1986 program aimed at supporting law enforcement efforts against coca producers. The mission provided technical assistance to Bolivian police forces seeking to find and destroy peasant-operated coca processing facilities. Blast Furnace, which had little effect on cocaine supplies, publicly involved U.S. military personnel acting on the ground, setting an example for the military's role in domestic anti-drug activities.<sup>103</sup>

A subsequent operation, called Snowcap, further established the U.S. military's growing role. U.S. Special Forces trained the Bolivian rural mobile drug police, known as UMOPAR, and the Pentagon was responsible for lending helicopters and equipment during anti-drug missions. Originally, UMOPAR officers received training at the U.S. Army School of the Americas, but after 1987 they began to be trained in military tactics and strenuous exercise at the "Garras de Valor" School in the Chapare region of Cochabamba province.<sup>104</sup>

As Ledebur (2005) explains, the Bolivian military began participating in drug control operations due to strong insistence from the U.S. government.<sup>105</sup> U.S. funding helped create a Bolivian Air Force unit called the Red Devils, a naval group known as the Blue Devils, and an army unit called the Green Devils to perform drug interdiction operations.

In 1989, the George H.W. Bush administration set in motion the Andean Initiative "to stem the flow of cocaine into the United States by reducing production and trafficking in Colombia, Peru, and Bolivia."<sup>106</sup> This new policy deliberately sought the incorporation of "host country military forces into the counternarcotics effort and an expanded role for the U.S. military throughout the region."<sup>107</sup> The Bolivian military's involvement in anti-drug missions was further strengthened in May 1990, when then-President Jaime Paz Zamora signed a secret agreement with the United States establishing the direct funding of Bolivian armed forces, an institution that "the Bolivian government had previously kept out of drug control."<sup>108</sup>

As these programs proceeded, Bolivia's security forces were the subject of numerous accusations of human rights abuse. Beginning in 1987, Bolivia's Permanent Human Rights Assembly documented the murders of peasants, and other human rights groups have reported unlawful arrests and detentions, verbal and physical abuse of locals, forceful suppression of peaceful protests, and unwarranted searches and seizures of property.<sup>109</sup>

Violations worsened with the 1998 enactment of "Plan Dignidad" (Plan Dignity), a forced-eradication program that sought to eliminate all Bolivian coca within five years. The Plan gave the Bolivian military, particularly the Bolivian Army's 9th Division, a direct role in forced eradication.<sup>110</sup> U.S. support and advice created a Joint Task Force, comprised of police and armed forces, to carry out specific eradication tasks in the Chapare. This structure, and the Plan Dignidad offensive as a whole, sowed new confusion about police and military in Bolivia. They also intensified competition and rivalry within the barracks: police and military officers now competed for U.S. drug-control funds, prestige, and decision-making power.

Plan Dignity also had human victims: 33 coca growers and 27 members of the security forces were killed between 1998 and 2003 in violence stemming from the Plan's often confrontational operations. None of the human rights violations committed during these missions by military and police forces have been thoroughly investigated or brought to justice, nor has any member of the security forces faced serious legal consequences. The lack of accountability for these abuses and the sense of protection enjoyed by military and police officers have only increased the armed forces' power and autonomy.

became the power base of the Somoza dictatorship in Nicaragua, while similar forces propped up Rafael Trujillo in the Dominican Republic and the Machado and Batista regimes in Cuba.

The drive to assist foreign militaries' internal missions receded a bit during the years of Franklin D. Roosevelt's noninterventionist "Good Neighbor Policy" and during World War II. With the advent of the Cold War, though, U.S. military aid to confront "internal enemies" reached unprecedented heights.

Rooting out Soviet influence in the "backyard" became the principal objective of U.S. foreign policy in Latin America. Starting in the 1950s but intensifying heavily after the 1959 Cuban revolution, successive U.S. governments generously aided armies to root out communist subversion, despite the absence of democracy and civil liberties in most of the recipient countries.

The horrors committed by U.S.-aided militaries in Latin America during this period are now well documented—in fact, they are a key reason why WOLA was founded in 1974—and need not be detailed here. The

"National Security Doctrine" explicitly encouraged the region's security and intelligence forces to seek out and destroy a political enemy mixed in with the population. But the definition of "communist subversive" came to be interpreted far too broadly. Opposition politicians, union organizers, human rights defenders, even artists and folksingers came to be regarded as enemies of the state. Tens of thousands were imprisoned, tortured, disappeared and murdered.

Strengthened by this U.S.-inspired internal security mandate, with their capacities far outstripping those of civilians, generals themselves came to take power in much of the region. In Brazil (1964-85), Chile (1973-90), Argentina (1966-73 and 1976-83), Guatemala (1954-85), Uruguay (1973-85) and elsewhere, the military came to take on internal roles well beyond security, controlling all government functions from health to education to infrastructure building.

Often, this included taking over police forces. Here, U.S. aid ran into particular trouble. The U.S. Agency for International Development's Office of

### *Colombia: The armed forces overcome their resistance to a counter-drug role*

At a December 1998 meeting in Cartagena, U.S. Defense Secretary William Cohen and Colombian Defense Minister Rodrigo Lloreda agreed to establish a Counternarcotics Battalion in the Colombian Army. The battalion, financed at first entirely by accounts in the U.S. defense budget, was joined in 1999 by a new U.S.-aided counter-drug Riverine Brigade in the Colombian Navy.

This was a major change for Colombia's armed forces which, despite the country's bitter fight against drug cartels going back to the 1980s, had been unwilling to take on the counternarcotics mission unless it involved fighting leftist guerrillas in the country's long internal conflict. "Colombia's military brass had resisted the conflation of the drug war and counterinsurgency," explains Kirk (2003). "They wanted no part of chasing down traffickers or busting labs, a dirty job better suited to the police. In 1992, the Colombian military had flatly rejected a U.S. offer of \$2.8 million to set up army counterdrug units."<sup>100</sup> That year, reports the National Security Archive, "the U.S. and Colombia agreed to reduce the Colombian military's level of involvement in the drug war and redirect some \$75 million in assistance to the Colombian National Police. ... The U.S. Embassy complained publicly that the military had been using U.S. counterdrug aid to fight guerrillas."<sup>101</sup>

With the July 2000 approval of a \$1.3 billion package of mostly military aid to Colombia and its neighbors – a contribution to a larger strategy called "Plan Colombia" – the military's resistance to anti-drug missions, whether counter-guerrilla or otherwise, wore away. Counter-narcotics funding accounts in the U.S. foreign assistance and defense budgets provided \$4.9 billion in military and police aid (out of a total \$5.6 billion in military and police aid) between 2000 and 2010.<sup>102</sup> Estimating roughly, this aid was split about equally between Colombia's armed forces and police.

The huge infusion of Plan Colombia counter-drug aid made Colombia – until the wars with Iraq and Afghanistan – the world's third-largest U.S. military aid recipient. The Army Counter-Narcotics Battalion quickly became a 3-battalion brigade, while the army and air force received dozens of helicopters and aircraft, whose maintenance was funded by the United States. Today, U.S.-funded military units throughout the country not only fight guerrillas (as they could do with counternarcotics funds after a 2002 change in U.S. foreign aid law): they raid laboratories, help eradicate coca, search people, vehicles and boats at checkpoints, carry out counter-drug intelligence missions, and patrol neighborhoods where drug-funded gangs hold sway.

Public Safety, which aided police forces in several Latin American countries under military rule, was found to be teaching surveillance, interrogation and other techniques that authoritarian regimes badly misused. In some instances, representatives of the USAID office may even have taught or supervised torture to military-run police personnel.<sup>92</sup>

As a result of the Office of Public Safety revelations, Congress in 1974 decided to ban all foreign police assistance. Section 660 of the Foreign Assistance Act continues to be in place today, though it is riven with exceptions (criminal investigations training,

counternarcotics, armyless countries, post-conflict countries, counterterrorism and several others). Today, the ban still makes it impossible to aid foreign police forces simply to improve overall capacities, to fight common crime or to guarantee public safety. Section 660 has had a perverse unintended consequence: with U.S. aid to help civilian police improve public security prohibited, U.S. aid went instead to militaries taking on internal security roles that *Posse Comitatus* would never allow at home.

In the name of anti-communism, U.S. support for Latin America's military regimes was a Cold War

### *Mexico's "war on drugs"*

With the demise of Colombia's big drug cartels since the 1990s, control of transshipment – the most profitable link in the illegal drug trafficking chain – passed to criminal syndicates in Mexico. Confrontations between Mexico's cartels, and between cartels and the government, caused an explosion of violence within Mexico, mostly near the U.S. border, during the 2000s. Over 3,500 drug-related killings were reported in Mexico in 2009.<sup>111</sup>

Unable to deal with rising crime, drug traffickers' increasingly lethal firepower, and the inefficacy of corrupt police forces, the government of President Felipe Calderón, which took office in late 2006, greatly increased the Mexican armed forces' role in fighting cartels, deploying tens of thousands of troops into the streets of key cities. President Calderón asked the United States for help with this strategy, and the Bush administration obliged.

At an October 2007 meeting in Mérida, Yucatán, Presidents Calderón and Bush signed an agreement for a new security cooperation program, called the Mérida Initiative. This proposal provided Mexico and Central America with \$1.6 billion in assistance, most of it military and police equipment and training, from 2008 to 2010.<sup>112</sup> Unlike Colombia, U.S. military personnel do not participate in or support counternarcotics operations in Mexican territory, where sovereignty sensitivities are higher.

The military component of Calderon's counterdrug strategy centers on army forces and the navy, who have intelligence and logistics capabilities to confront drug trafficking organizations.<sup>113</sup> In fact, the military asserts dominance over police forces and other civilian institutions in large areas of many Mexican states. This trend is exemplified by the increasing number of civilian posts currently held by military personnel, particularly in the law enforcement realm.

The militarization of counter-drug operations has resulted in some captures of major traffickers, but has had little effect on cocaine flows and no effect at all on violence levels.<sup>114</sup> It has also had deleterious effects on both society and institutions. The armed forces' conduct of public security functions has brought mounting accusations of human rights abuses. Since President Calderon launched counter-drug operations in December 2006, human rights complaints against the Mexican military have increased from 182 in 2006 to 1,791 in 2009, according to Mexico's National Commission on Human Rights (CNDH).<sup>115</sup> The armed forces' lack of training and preparation for an internal policing role are an important cause of this rise in human rights abuse allegations.

The Mexican military not only has less human rights training, it is also an institution with more functional, financial, and political autonomy than police forces.<sup>116</sup> This makes military personnel less accountable to civilian authorities and allows them to remain unpunished for the human rights violations attributed to them.<sup>117</sup> Accusations of military human rights abuse go to the military justice system, where an acquittal or the dropping of a case is almost totally assured.

After several years of disappointing results, the Mexican and U.S. governments have begun to take halting steps to improve Mexico's police and judicial capacities, with the idea of eventually – perhaps in the distant future – allowing the armed forces to return to the barracks. Meanwhile, though, the United States has once again promoted a model in Mexico that the U.S. military could not legally follow at home.



constant, with a single exception: the Carter administration's late-1970s human rights policy, which sought to distance the United States from the region's worst violators, cutting aid and pressuring for reduced abuses. This policy incensed the Republicans who would reverse it upon coming to power with Ronald Reagan in 1980.

While the Reagan administration ramped up military aid, especially in Central America, it did find itself under pressure to encourage its recipients to adopt at least the basic structures of democracy. This, combined with a global "third wave" of democratizations that began sweeping through Latin America starting with Ecuador in 1978, saw most of the region's military regimes give way to formal democracies by the end of the 1980s.

As civilian leaders have sought to assert control over the armed forces, one of the most difficult frontiers to surpass has been the military's involvement in internal security. As the previous Section (II) explains, the armed forces are called on throughout the region to play internal roles ranging from anti-gang activities to environmental protection. With very few exceptions – only Argentina and Chile come close – no Latin American or Caribbean country that maintains armed forces has anything resembling a *Posse Comitatus Act*.

Though the United States has continued to be well served by its own *Posse Comitatus* restrictions, even in the post-Cold War period this principle has not guided U.S. assistance to Latin America. Since the early 1990s several major assistance programs, involving billions of dollars in U.S. resources, have encouraged the region's militaries to take on internal roles that it would be illegal for the United States to pursue at home.

## COUNTER-DRUG OPERATIONS

With the end of the Soviet threat, most Latin American nations lost their main pretext for maintaining standing militaries large and powerful enough to defy civilian rule. The United States, too, lost the main threat scenario to justify generous aid to these militaries. In many countries, particularly South America's Southern Cone, military assistance levels slipped to almost nothing, beyond training programs and military exercises.

In the Andes, Mexico, and parts of Central America and the Caribbean, however, military assistance levels were maintained or increased over Cold War levels, in response to the next most prominent threat on U.S. policymakers' minds: illicit drug production and trafficking. It was around 1990 that the State Department's International Narcotics Control and Law Enforce-

ment assistance program (INCLE) surpassed Foreign Military Financing, the "regular" military-aid program that provided most Cold War aid, as the number-one source of military and police aid to the region. INCLE, which has made up the bulk of both Plan Colombia and the Mérida Initiative, remains in the number-one spot today.

In 1989, the U.S. Congress added a new section (§ 124) to Title 10 of the U.S. Code: "The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States." While this section, as discussed in Section I above, meant some erosion of *Posse Comitatus* at home, it also meant a large new role for the U.S. military in Latin America and the Caribbean, the transit zone of significant amounts of illegal drugs.

The Defense Department immediately sought clarification from Congress about whether "detection and monitoring" might include giving the Pentagon the ability to use funds from its own enormous budget to aid foreign military and police forces on counter-drug missions. Congress said "yes," with certain conditions, in Section 1004 of the 1991 National Defense Authorization Act. While this section specifies what kinds of aid are allowed (large items like helicopters, and most lethal aid, are not), today Section 1004 authorizes more than \$200 million in U.S. military and police aid to the region each year.

Section 1004 broke with a tradition that began with the Foreign Assistance Act of 1961: that foreign aid would be funded through the Foreign Operations section of the U.S. budget and managed by the State Department. Instead, Section 1004 aid flowed through the Defense budget with no legally mandated State Department input. Because of this unusual arrangement, Section 1004 has not been added to permanent law, and Congress must periodically renew it. Its expiration date has been postponed to 1995, 1999, 2002, 2006, and 2011.

These two drug control programs – the State Department-managed INCLE and the Defense Department-run Section 1004 – together account for about 85 percent of military and police aid to Latin America and the Caribbean since 2000.<sup>93</sup> The principal recipients of this aid have been Colombia, Mexico, Peru, Ecuador, Bolivia, Guatemala, El Salvador, Panama and the Dominican Republic.

By definition, assisting militaries to address illicit drug production and trafficking is encouraging them to take on an internal security role. Recipient military units have included the Colombian Army counternar-

cotics brigade and dozens of regular Army brigades; the Ecuadorian Army's northern border units; the Bolivian Joint Task Force, 9th Army Division, and "Devils" task forces; the Guatemalan Navy; and Mexican Army, Navy and Air-Mobile Special Forces units, among several others throughout the region.

Especially in the Andes, "riverine" interdiction programs have prepared navies to patrol rivers, the main arteries of vast roadless areas, where sailors routinely man checkpoints, search and detain citizens. As most countries lack coast guards, U.S. programs also equip and train navies to perform law enforcement tasks in coastal waters.

Weapons, equipment and training have sought to improve these units' intelligence capabilities, including domestic surveillance, wiretapping and interrogation. They have included such small-unit tactics as marksmanship, close-quarters combat, light infantry skills and urban operations, as well as related logistics and communications. They have included training in the piloting and maintenance of the biggest and costliest equipment provided by the United States, particularly patrol boats and helicopters, which over the past twenty years have almost entirely been funded through counter-drug aid accounts.

Like the anti-communist programs of the Cold War years, drug control programs have encouraged militaries to orient themselves to combat a domestic threat mixed in with the general population. Unlike the toxic anti-subversive efforts of the past, today's counter-drug programs do not teach soldiers to view all citizens as potential enemies. However, they do encourage militaries to leave the barracks and operate among the citizenry, even with no change to their orientation toward defeating an enemy with overwhelming use of force.

A few countries have seen periodic surges of anti-drug aid that did much to encourage militaries to take on the drug control mission.

- **Operation Blast Furnace, Bolivia, 1986:** U.S. Army personnel set a strong example for their Bolivian counterparts of how a military can become a leading internal counter-drug force (see box). In an earlier WOLA publication, Ledebur (2005) described this months-long U.S. military offensive against Bolivian cocaine labs:

*In 1986, Bolivia became the scene of the first major antidrug operation on foreign soil to publicly involve U.S. military forces. One hundred sixty U.S. troops took part in Operation Blast Furnace, carried out primarily in the departments of Beni, Pando and Santa Cruz in July through November 1986.<sup>94</sup>*

- **The Andean Initiative, 1989-93:** As the Cold War wound down, the George H.W. Bush administration and U.S. congressional leaders committed to a five-year package of greatly increased counter-drug assistance to Colombia, Peru and Bolivia. It was during the Andean Initiative period that Gen. Maxwell Thurman, the commander of U.S. Southern Command, joked that the war on drugs was "the only war we've got" in the region.<sup>95</sup> Indeed, aid under the Andean Initiative went predominantly to military and police forces: \$183 million out of \$231.6 million in 1990.<sup>96</sup> While the Andean Initiative reportedly intended to "front-load" military assistance and deliver economic and civilian institution-building aid in later years, the Clinton administration chose not to continue the Bush administration's approach. The result was a multi-year aid package that sustained several countries' military assistance at or above Cold-War levels – but with an entirely new internal mission in mind.



Mexican Marines undergo "military operations in urban terrain" training with U.S. Marines, Manzanillo, Mexico, 2010.

- **Brief warming to the Mexican military, 1997-99:** President Clinton's second defense secretary, William Perry, put a high priority on forging links with his counterparts in Latin America. Much of this effort was aimed at Mexico, which at the time was experiencing a sharp rise in drug transshipment and a first wave of drug cartels. Though Mexico's Army has historically viewed the United States with great suspicion, it accepted some counter-drug aid: a donation of 72 used helicopters and an ambitious program, at the JFK Special Warfare School at Fort Bragg, North Carolina, to train thousands of Mexican Air Mobile Special Forces

(GAFE) troops. Neither program turned out well: Mexico returned the helicopters in 1999, arguing that most were too old to fly, and some former GAFEs (though perhaps not U.S. trainees) went on to found the Zetas, one of Mexico's most violent criminal organizations.<sup>97</sup>

- **Plan Colombia and the Andean Regional Initiative, 2000-2006:** The biggest single outlay to date of U.S. military aid to fight drugs began with “Plan Colombia,” a 2000 supplemental appropriation that gave \$1.3 billion in mostly military aid to Colombia and several of its neighbors (see box). Over the next decade, Colombia would go on to receive nearly \$6 billion in military and police aid; most of both went to support counter-drug missions, though an increasing share went to help Colombia fight its decades-old war against leftist guerrilla groups. Among many other priorities, Plan Colombia paid for the creation and provisioning of a Counternarcotics Brigade in the Colombian Army, a Riverine Counter-Drug Brigade in the Colombian Navy, and far greater military participation in, and support of, interdiction and eradication missions. Plan Colombia funds also benefited the armed forces of Peru, Bolivia, Ecuador, and even, through a small “Cooperative Air Interdiction” program, Hugo Chávez’s Venezuela.

- **The Mérida Initiative, 2008-Present:** Following his election in 2006, Mexican President Felipe Calderón sent tens of thousands of soldiers into the streets in zones under the dominion of hyper-violent drug drug-trafficking organizations (see box). Especially in cities near the U.S. border, Mexico’s Army now works hand-in-hand with police forces, and at times supplants them completely. The Bush administration rushed to

endorse this model with a multi-year aid package, now totaling over \$1.4 billion and mostly made up of military and police assistance. The largest items in the aid package – helicopters and surveillance aircraft – are for Mexico’s Army and Navy. The Mérida package also includes counter-drug aid, some for navies but mostly non-military, for Central America, Haiti and the Dominican Republic. In future years’ Mérida aid, as well as in new frameworks called the Central America Regional Security Initiative (CARSI) and the Caribbean Basin Security Initiative (CBSI), the Obama administration is indicating a desire to de-emphasize military aid in favor of civilian institution-building aid. Military aid appropriated in 2008 and 2009, though, continues to be delivered, even as violence measures show President Calderón’s military deployment to be an ineffective response to Mexico’s drug trafficking and citizen security challenges.

#### DEVELOPMENT PROJECTS

While the largest in dollar terms, counter-drug programs are just one of several channels through which U.S. assistance encourages Latin American militaries to adopt, or continue performing, new internal roles. Another is a robust program of exercises in which U.S. military personnel build infrastructure or provide medical services in impoverished regions of the Americas. While these exercises help needy populations and generate goodwill, they also instruct the region’s militaries in the assumption of new internal roles, and do little or nothing to strengthen the civilian government institutions tasked with providing these services.

Known as “Fuertes Caminos” (Strong Roads) from the 1980s to the mid-1990s, and “Nuevos Horizontes” (New Horizons) thereafter, these exercises usually involve four or five major (weeks or months-long) events in as many countries each year, in addition to hundreds of smaller Medical Readiness Deployments (MED-RETES, or even Veterinary Readiness Deployments or VETRETES) throughout the region. U.S. personnel—often reservists or National Guardsmen on short rotations—build “vertical” infrastructure like schools, medical posts or wells, “horizontal” infrastructure like roads, and offer free medical, dental and veterinary treatment to thousands of people and livestock.

Legally, these exercises’ primary purpose is not to deliver the aid, but to train the U.S. personnel involved. The troops get to practice their engineering and medical skills, and develop familiarity with recipient countries’ language, culture, and terrain. As a result, exercises like New Horizons are funded through the



U.S. Marines and Honduran soldiers at an earth-breaking event for the “Beyond the Horizon” humanitarian construction exercise, 2008.



Defense Department's budget (under Operations and Maintenance) and do not count as foreign aid. (As a result, it is hard to parse out personnel expenses and get a good estimate of how much they actually cost.) Normally, the host-country military is not a full participant; its members are often relegated to guarding their perimeter.

These exercises' tempo has increased in recent years, in part – though U.S. officials wouldn't frame it this way – in an effort to keep up with President Hugo Chávez's government in Venezuela, which has sought to win influence in the region by very visibly spreading its largesse through similar quick-impact infrastructure projects. Additional U.S. defense resources have gone to high-profile humanitarian projects like circumnavigations of the Americas by the U.S. Navy's USNS Comfort hospital ship.

Each year, these exercises offer aid to tens of thousands of people who otherwise would not get any. Economic development professionals, however, have worried about their coordination with civilian aid agencies and recipient governments. A common concern, for instance, is that newly built schools and clinics, a few years hence, will lack teachers, doctors or supplies.

In addition, of course, the Southern Command's engineering and humanitarian exercises also send a powerful message: that building schools, paving roads and pulling teeth are appropriate military roles, even though they are clearly not so in the United States. (A very partial exception is the U.S. Army Corps of Engineers, a military agency that has carried out mostly domestic public works construction since its founding in the 1700s.) Construction and medical services are roles that these countries' civilians – their transportation, education and health ministries, for instance – could just as easily be playing.

In countries with few external threats or other reasons to maintain large armed forces, high-profile exercises like New Horizons offer militaries something to do. Their example encourages new roles that not only can help avoid budget cuts, but can keep the armed forces actively deployed among the population.

When militaries take on these roles, states pay an institutional opportunity cost. When militaries build infrastructure or provide medical services, they duplicate the efforts of – and soak up resources that could go to – civilian government bodies like health and transportation ministries. These civilian institutions' resulting atrophy broadens the vacuum further, and the armed forces often end up filling it.



Members of a Dominican Armed Forces counter-terrorism commando unit undergo training with U.S. Marine Special Forces, Ciudad del Niño, Dominican Republic, 2009.

## COUNTERTERRORISM

After the September 11, 2001, attacks, a new “internal enemy” scenario emerged to guide some U.S. military assistance to the region. Though Latin America and the Caribbean lack terrorist groups “with global reach” likely to carry out attacks on U.S. soil, anti-terrorism assistance to the region jumped during the 2000s. Much of it intended to help recipient militaries and police forces detect and combat terrorism, whether al-Qaeda-linked or, particularly in Colombia, the homegrown variety.

In Colombia, the counter-terror mission overlaps completely with the counterinsurgency aid the United States has provided since 2002. Elsewhere in the region, counter-terror military assistance has been small but significant. It has principally flowed through two new programs in the Defense Department's budget.

The Regional Defense Counter-Terrorism Fellowship Program, founded in 2002, is a Defense-budget program to “fund foreign military officers to attend U.S. military educational institutions and selected regional centers for non-lethal training.” Added to permanent law in 2003 (Section 2249c of Title X, U.S. Code), the CTFP funds training already authorized by State Department-managed programs in the Foreign Assistance Act, particularly International Military Education and Training (IMET). Between 2004 and 2007 – the last year for which data are available – it was the fifth-largest funder of U.S. military training in the Americas, out of twelve programs that trained more than 100 students in that period.<sup>98</sup>

Section 1206 of the 2006 National Defense Authori-

### Pulling back on gangs: the El Salvador counter-example

During the Cold War, the United States generously aided the army of El Salvador with an aggressive internal mission: rooting out communist subversion. By the 1980s, this mission blossomed into large-scale U.S. support for the Salvadoran Army in its bloody war against leftist guerrillas.

The peace accord that ended the fighting in 1992 explicitly sought to reduce the Salvadoran military's internal role. It created a Civilian National Police outside the Defense Ministry, with its own academy and the goal of making policing a professional career. During the 1990s El Salvador was not a major drug-transit point, so unlike many countries in the region, its military received very little U.S. government aid for the internal counter-drug mission.



Slide from a 2007 PowerPoint presentation by the Southern Command's Military Group, U.S. Embassy El Salvador.

But El Salvador quickly began to suffer from a different internal security problem: gangs and violent crime. Spurred in part by deportations of Salvadoran criminals from the United States, hyper-violent, gangs proliferated in poor, mostly urban areas marked by low education levels and high youth unemployment. El Salvador's murder rate shot upward to one of the highest in the world – higher even than during the civil war years.

Successive governments opted to crack down with politically popular, but ultimately ineffective, “mano dura” strategies. Guatemala, El Salvador and Honduras have deployed troops internally for high visibility anti-gang campaigns to establish joint military-police patrols in neighborhoods that have significant youth presence.

The Southern Command has tracked the gang phenomenon very closely, and considers gangs to be the prime security threat in Central America. Fortunately, however, the United States has not fully or explicitly endorsed the use of militaries against gangs in El Salvador, and little or no military aid has gone for that purpose in recent years.

For a time in the 2000s, though, Southern Command gave some very serious consideration of military aid to fight gangs. This was mainly because the U.S. government lacked an overall counter-gang strategy at the time, and because Central American governments were regularly asking Southcom to provide military aid to fight gangs.

Southcom took what the Congressional Research Service has called “a leading role in discussing the problem of citizen security in Central America, both within the U.S. inter-agency community and with Central American officials.”<sup>118</sup> In 2004 and 2005, this even included discussions with Central American military leaders, including an enthusiastic contingent from El Salvador, about a possible regional rapid-reaction force, which would be made up of soldiers and police from several Central American countries and primed to respond to “emerging threats” like gang violence. This proposal, note Fyke and Meyer (2008), enjoyed “the explicit support of regional defense officials and U.S. Gen. Bantz Craddock, then the commander of Southern Command,” and at the beginning of 2006 it entered its planning stages.<sup>119</sup>

Southern Command discussed anti-gang strategies at conferences and other meetings with military officials from El Salvador and elsewhere. One of this report's authors attended one such conference, a March 2007 Southcom-sponsored meeting about the role of human rights in anti-gang and law enforcement activities. The armed forces of El Salvador were heavily represented at this meeting. Salvadoran officers explained to the author that the region's militaries had requested that Southcom hold the conference because they sought guidance after having this internal security role thrust on them by civilian leaders and their “mano dura” strategies.

By the end of the decade, it was ever more apparent that the “mano dura” had failed to reduce gang violence. Meanwhile, by the end of the Bush administration, support for a military anti-gang response in Central America – never overwhelming within Southern Command – faded. The approach has become more civilian. In mid-2007, several U.S. agencies (Justice, State, Homeland Security, USAID and Defense) developed a common Strategy to Combat Criminal Gangs from Central America.<sup>120</sup> While Southcom is involved, it is not the “lead agency” of any aspect of the strategy, which does not call for assistance to military forces.<sup>121</sup>

The 2008 Mérida Initiative and the 2010 Central America Regional Security Initiative (CARSI) include significant U.S. assistance to help El Salvador and its neighbors fight crime and gangs. This includes funds to help Central American navies increase maritime drug-interdiction patrols, but does not include any assistance for militaries to fight gangs.

While Southcom continues to monitor the problem closely and to engage with the Salvadoran military on the topic, it is not a significant aid mission. That is the correct model, and an important example of the U.S. government pulling back from helping a Central American military take on an internal security mission.

zation Act made counterterrorism a principal justification for sending \$72 million in “train and equip” military aid to several countries in the region. This provision authorized the Pentagon to use \$200 million of its budget—since expanded to \$350 million—to support foreign militaries and police worldwide. Known simply as “Section 1206,” this aid closely resembles the State Department-run Foreign Military Financing (FMF) program: in Latin America, it has consisted mainly of small weapons, vehicles, patrol boats, communications equipment and construction of infrastructure.

By the end of the Bush administration, it was apparent that Latin America and the Caribbean had very few potential “terrorists with global reach.” Programs like the CTFP and 1206 have declined in importance. Since 2009, Section 1206 funds have been zeroed out in Latin America; Congress has communicated to the Southern Command that aiding militaries in the Western Hemisphere, not a key front in the “war on terror,” is not the intent of the Section 1206 program.

It is positive to see reduced U.S. encouragement of “counter-terrorism” as a new internal military role. In today’s security climate, none dispute the importance of identifying potential terrorists and preventing attacks. However, it was only thirty years ago that Latin American security forces were repressing a broad spectrum of their societies by branding them “communists.” There is a significant risk that, in a large-scale campaign against terrorism, the “terrorist” label could be misused against politicians, journalists, labor leaders, human rights defenders and others carrying

out legitimate, peaceful activities. In Colombia, for instance, President Álvaro Uribe (2002-2010) used the “terrorist” label frequently against his political, judicial and human rights detractors—at times before military audiences—which gravely undermined their security and forced some to abandon the country.

Once again, meanwhile, it is far from clear that armed forces are the most appropriate instrument for this mission. Police, with far better training in investigative techniques, rules of evidence, and work among the population, are often superior. Police units brought down Colombia’s Medellín and Cali cartels\*; captured the leader of Peru’s Shining Path insurgency; and today are successfully controlling alleged terror-group fundraising activity in the Argentina-Brazil-Paraguay “tri-border” region.

At home, the United States ultimately reversed post-9/11 attempts to turn back *Posse Comitatus* in the name of counter-terrorism. It is not clear, then, why it would be in the U.S. interest to encourage militaries in Latin America to take on anti-terror roles that, even in the wake of the attacks, were not granted to the U.S. military at home.

## FOSTERING NEW DISCUSSIONS OF INTERNAL THREATS

Beyond aid programs and exercises are the harder-to-gauge ways in which U.S. representatives – both civilian and military – convey messages about the advisability of involving the military in internal security. Conferences, exchanges, speeches, published materials, and

\* Colombia’s armed forces, unwilling at the time to take on the counternarcotics mission, played a relatively small supporting role in the early-1990s fight against the cartels.

public affairs efforts may appear small in dollar terms, but nonetheless can do much to transmit ideas, doctrine and “best practice” recommendations.

At least occasionally, and perhaps often, these events and materials encourage greater assumption of internal military roles. A 2009 Southern Command “Quick Reference Guide” card lists “drugs/gangs” as a principal military priority in the region. In the past few years, Southcom has hosted conferences for the region’s militaries on non-traditional topics ranging from crimefighting to environmental protection to domestic counterterrorism.



A frequent response to these concerns is that the choice of subject matter owes to requests from the region’s militaries themselves – in particular, militaries having new internal missions like gang-fighting thrust on them by civilians promising “get-tough” strategies. Still, the U.S. government is not obliged to accede to these requests when they end up discussing a role that would not be legal for the U.S. military to play at home. The U.S. response, however, has not been so discriminating.

#### POSITIVE EFFORTS

This critique does not include one internal military role that the U.S. military encourages by example: disaster relief. At least in the early stages of a natural disaster, the military may be the only agency, U.S. or local-government, with the capacity to respond rapidly. Only defense and security forces have fleets of helicopters and boats to deliver assistance, fuel and manpower to carry out logistics, and equipment ranging from communications radios to field hospitals. The U.S. military has greatly aided recovery, and saved lives, in the aftermath of disasters like Hurricane Mitch in Central America, the Haiti earthquake, and several others.

Military disaster-relief missions, however, are

short-term; troops are drawn down and quickly replaced by civilians during the reconstruction stage. This is an excellent example: the military’s internal role is viewed as appropriate only under the most extreme circumstances, and civilian specialists take their place as soon as they are able.

Meanwhile, it deserves recognition that parts of the U.S. government apparatus, including within Southern Command, are coming to understand the risks and undesirability of assisting militaries’ assumption of inappropriate internal roles. “It is a little paradoxical for us to be providing training, assistance and direction to armed forces in the region with respect to how they might better support the law enforcement institutions,” said Acting Deputy Assistant Secretary of State for Western Hemisphere Affairs Kevin Whitaker in July 2010. “It may well be that the better answer here is to reinforce the law enforcement institutions themselves. And this is one of the things that we’ve come to realize over the course of the last several years.”<sup>99</sup> An early reflection of this tendency is the Obama administration’s 2010 declarations of intent to devote more resources to justice reform, police reform and civilian institution-building while steadily reducing military support in three of its flagship aid initiatives to the region: the Mérida Initiative for Mexico, the Central America Regional Security Initiative (CARSI) and the Caribbean Basin Security Initiative (CBSI).

Similarly, since 1997 the Defense Department has maintained an institution in Washington, the Center for Hemispheric Defense Studies (CHDS), whose main purpose is to train civilians from the region in the basics of defense management. The CHDS responds to a need for civilians with defense and security expertise who can manage a defense apparatus and thus maintain more effective civilian control over the military. It is not clear why CHDS must be funded within the Defense budget, and its curriculum in recent years has increased anti-terror content at the expense of defense policymaking and management. Nonetheless, this latter purpose remains vitally important and CHDS plays a useful role in creating a cadre of capable civilian defense professionals in the hemisphere.

#### IV. Findings and Recommendations

Since the end of the Cold War, much of the U.S. assistance for the region’s militaries continued to prepare them to fight an internal threat. Instead of the constabulary duties of the 1920s or the anticommunist mission of the 1960s, today the internal threats are called “non-traditional,” “transnational” or “non-state.”



In the “changed world” of the 21st century, threats like drug trafficking, organized crime, terrorism and even environmental plundering are a “gray area” where military and police responsibilities appear to overlap, and where rules of engagement are not clear.

Because they are a gray area, though, it does not follow that they should be assumed by armed forces trained to defeat an enemy with maximum force. For the most part, these threats require carefully maintained relations with citizens, sophisticated investigative skills, adherence to procedures for building cases, collecting evidence and questioning suspects and witnesses, and close collaboration with prosecutorial and judicial authorities.

These are attributes of police forces. Police who live among the population, not separately in barracks, and are trained to serve and protect the population with minimal exercise of violence. If they do their job reasonably well – with low levels of corruption, respect for citizens’ rights, and quick response times – the population will relate far more positively to the police than it would with soldiers.

### STRONG REASONS TO SEPARATE MILITARY AND POLICE ROLES

Though it was an accident of history – a side effect of the political deal that ended the U.S. Reconstruction era – the Posse Comitatus Act has served the United States well. The clear separation of military and police roles has left the United States safer and its democratic institutions stronger.

It is unfortunate, then, that the United States has historically pursued, and continues to promote, the opposite model in Latin America and the Caribbean. Too many U.S. assistance programs, training and messages reinforce a civil-military tradition that most countries in the region are struggling to undo: the tradition that views armies as the embodiment of the nation, and gives them broad internal security and law-enforcement responsibilities.

There are clear reasons why such responsibilities are best fulfilled by civilians. Whether in Latin America or the United States, several general principles justify the separation of military and police roles:

- The military has specific doctrine, training and equipment for defending the national territory from foreign military threats. The logic behind their mission is the defeat of the enemy, which at times involves the opposing force’s utter annihilation. Their weapons are designed to kill the enemy and are not appropriate for

the purpose of addressing criminal activities. On the contrary, soldiers are not prepared to patrol streets or deal with criminals, who are not distinguishable from civilians and who are presumed innocent until proven guilty. Nor is the military trained to conduct criminal investigations, to collect evidence, to build cases against suspects, or to testify in court, as regular police officers do.

- The military’s logic, firepower, and attack capabilities, when exercised for internal security or related missions like counter-drug activities, pose a serious potential threat to citizens’ security. Their participation in internal matters has often led to human rights violations.

- The military’s role in internal security undermines the armed forces’ professionalization. As Samuel Huntington (1957) pointed out in one of the first studies of civil-military relations, it prevents the consolidation of an objective civilian control of the military.<sup>122</sup> This is particularly important in Latin America, where weaker civilian control allows the military to maintain spheres of autonomy from elected leaders’ decisions.

- The military’s participation in law-enforcement matters draws it away from its traditional mission. In that sense, national defense and the capacity to dissuade a foreign attack could be eroded by a lack of specificity and professionalization resulting from expanding performance of non-military missions.

- The military’s participation in the fight against drug trafficking and organized crime exposes it to the risk of penetration by wealthy criminal organiza-



A U.S. Army sergeant teaches crowd control techniques to Nicaraguan Army soldiers during a peacekeeping training exercise, 2008.

tions that depend on state corruption to survive. This argument is often employed in the other direction – politicians and others contend that armed forces must substitute for police seen as hopelessly corrupt. The armed forces, however, are not immune to this phenomenon. It is difficult for military salaries to compete with the enormous economic power that drug-trafficking and organized crime can offer, especially when judicial and internal controls are weak.

- The military, in much of the region, is subject to military justice instead of civil law, including in cases where citizens' rights are violated. This has produced a culture of impunity: when the military is allowed to judge itself, personnel accused of human rights abuses are rarely punished. On rare occasions when the military must be employed for internal security purposes (see below), human rights crimes must be tried within the civilian criminal code.
- The military's supplanting of law enforcement duties delays or prevents governments from building strong civilian law enforcement institutions. This is a clear case of institutional opportunity cost: as long as governments continue to make up for police forces' deficiencies with military power, law enforcement agencies will never develop to their proper capacities.

### RECOMMENDATIONS IN LATIN AMERICA

In light of this, we recommend the following. We understand that we are making suggestions for the consideration of sovereign countries. We do this in recognition of the benefits that the division of police and military roles has afforded the United States since the 1870s:

- The clear separation, by law and doctrine, of military and police roles.
- Strong civilian control of the military. This is done through a Ministry of Defense led by a civilian Minister who decides and defines defense policies, budget priorities, and the military's role in democracy. This in turn requires a civil service educated on defense, security and management issues. A strong civilian leadership is a key element of the military's subordination to democratically elected governments.
- Armed forces that are "right-sized," to include possible elimination, in accordance with a realistic appraisal of defense needs – not internal security or law-enforcement challenges, which are the province of police. "Right-sizing" is particularly necessary in a region where the prospects for international force-on-force conflict is relatively low, but where robust militaries continue to grow and can become a force in search of another – all too often domestic – mission.

However, it is undeniable that in their current form, police forces in much of Latin America tend to be understaffed, under-budgeted, insufficiently trained and penetrated by corruption, and thus overwhelmed by law enforcement challenges. Today in the region, these challenges include the increased – or even superior – firepower that organized crime is employing.

Where police capacities are adjudged to be overwhelmed by the firepower and organization of those committing crimes, or undermined by corruption or other organizational dysfunction, governments are often tempted to turn to the military – the only other available national security force – to address problems of citizen insecurity. In many countries, military forces are seen as less corrupt and more competent than police. They are more heavily armed, and their presence on the streets may reassure anxious citizens. But these advantages are at best partial and short-term.

Military forces are unable to perform many common police functions. They have limited, if not non-existent, investigative capacity, and are unlikely to be able to carry out detective functions (discovering the identity of criminals through witness interviews, carrying out undercover investigations, using forensics, and similar tasks). They cannot pursue the financial crimes and money laundering behind much organized criminal activity. Their strength is in deterring violence on the street through a show of overwhelming force, and in armed confrontations with well-equipped drug



Suriname Army soldiers undergo U.S. Marine Corps martial arts training in Santo Domingo, Dominican Republic, 2008.

trafficking groups.

Sending in the military might bring a short-term respite from out-of-control violence, as street criminals pull back or specific drug trafficking groups are captured or killed (though even this outcome is far from assured). Deploying the military is unlikely to solve the problems of organized crime, drug trafficking, or violence in Latin American societies, because the law enforcement efforts needed to address these problems require far more than the effective deployment of force. (And of course the longer troops are deployed, the more they will be tainted by corrupting criminal influences.)

When governments do deploy troops to address domestic insecurity, human rights and democracy advocates should carefully question these decisions. Questions should include:

- Does the internal deployment have a clear end date, at which point the military fully cedes internal security responsibility to civilian leadership?
- Does the internal deployment come with a well-resourced plan to professionalize the police and strengthen the judicial system, parallel to the military deployment? Does that plan envision an end state in which civilian capacities have improved to the point where any similar future military deployment is unlikely?
- Are troops participating in non-traditional internal roles operating under direct order of the highest level of civilian government, approved by the legislature, and in support of law enforcement entities?
- Is the military subject to civil law and civil criminal courts' investigation and trial? Military justice codes were devised for exceptional and very specific circumstances, principally combat operations in a state of war. These circumstances do not apply to law enforcement.
- Do police and military forces receive human rights education to deal with civilians among whom they operate in the context of counter-drug and other internal missions?

#### RECOMMENDATIONS FOR U.S. POLICY TOWARDS LATIN AMERICA

There is no one-size-fits-all answer to the security issues faced by a region as diverse as Latin America. The recommendations here are meant to inform U.S. policy



A Marine Corps Sergeant gives a toy to a girl at a Peruvian orphanage, 2008.

toward nations of the region that are struggling with the problems that lead to the mixing of police and military roles.

- The United States should, first and foremost, end the practice of using its assistance programs to help foreign countries adopt a police/military role that is contrary to its own model. The U.S. government should not encourage mixing or switching the missions and responsibilities of militaries and law enforcement agencies in a way that, if implemented at home, would violate the Posse Comitatus Act, a model that has served us well.
- As such, the United States military should strictly avoid training foreign police in military tactics and foreign military personnel to do law enforcement work. To the extent that law-enforcement training is necessary, it should be conducted by U.S. civilian law enforcement training agencies, as noted below.
- In democracies facing public security challenges,



instead of supporting a military response, the U.S. government should assign more aid to strengthen police and law enforcement capabilities. This aid should be in the form of law enforcement training, equipment and technology, though recipient countries must show a commitment to sustain the effort. US assistance for police training should focus on comprehensive institutional strengthening of law enforcement (as opposed to just training in counter-drug tactics).

- The United States should do this through assistance programs run by the Department of Justice and the United States Agency for International Development, but negotiated with foreign countries by the State Department. These programs should utilize and improve such ongoing programs as the Justice Department's International Criminal Investigative Training Assistance Program (ICITAP), and the inter-agency International Law Enforcement Academy (ILEA).
- The United States should ensure that ILEA training is provided by non-military personnel, and that those being trained are non-military. The curriculum should be transparent to the public and designed to teach civilian police tactics and procedures, and should come with a specific restriction against military training and tactics. The Academy's operations should be overseen by an advisory council with the participation of non-governmental representatives.
- The Washington Office on Latin America was a strong advocate for restrictions on U.S. training of foreign police forces after the abuses in Latin America during the Cold War. Many restrictions were subsequently included in Section 660 of the Foreign Assistance Act. Today, however, several subsequent amendments have put in place loopholes, which rendered meaningless many of this Section's human rights protections. At the same time, in many countries it has created a situation in which helping police perform police duties is illegal, but helping militaries perform police duties is permitted.

Now, the U.S. Congress should amend Section 660 to help Latin American police forces (and police forces around the world) to become more professional, by revising the restrictions to such aid while at the same time ensuring or strengthening the human rights protections that triggered the need for the Section in the first place. A new Section 660 should serve as a vehicle for clarifying the need to separate civilian law enforcement and armed forces.

- The United States should promote police-to-police cooperation in the hemisphere, for instance by supporting the Organization of American States' annual summit of Ministers of Public Security.

## RECOMMENDATIONS FOR U.S. POLICY WITHIN THE UNITED STATES

In the first section of this report WOLA made the case that the United States has been well served by the legal principles, statutes and directives that separate and define the individual roles of law enforcement agencies and military forces. Whenever the domestic implementation of military and police force has departed from these principles, it has usually had devastating results.

Therefore, WOLA recommends:

- Whenever possible, instead of deploying the National Guard in support of civilian law enforcement agencies, provide the funding for these agencies' own unmet needs for personnel and technological capabilities.
- Avoid the use of the National Guard for border security work. Putting heavily armed military personnel face to face with the public – which is likely to occur occasionally even in a behind-the-scenes supporting role – invites disaster. Listening Post/Observation Post duties can and should be performed by civilian law enforcement agencies.
- The U.S. Congress should amend § 10 USC 371-381 to prevent the overuse of military personnel, tactics, and equipment in domestic law enforcement situations (for example, the 1993 Branch Davidian raid).

## Endnotes

Photos on pages 1, 19, 20, 21, 25, 26 and 27 are from the southcom.mil website. Photo on page 8 is from the defense.gov website. Photo on Page 22 is from a PowerPoint presentation obtained at the publicintelligence.net website.

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<sup>4</sup> Title 18, U.S. Code, §1385.

<sup>5</sup> i.e the 4th amendment protections against illegal searches and seizures, and the 5th amendment rights to due process of law.

<sup>6</sup> U.S. Const. Art I § 8, cl. 16.

<sup>7</sup> U.S. Const. Art II § 2, 3.

<sup>8</sup> 32 CFR 215.4(c)(1).



<sup>9</sup> 10 U.S.C. § 333 (2000). The full text of the section reads:

§ 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

<sup>10</sup> 14 USC § 89.

<sup>11</sup> The U.S. Coast Guard operates under Titles 10 and 14 of the U.S. Code, as well as under Titles 6, 19, 33 and 46.

<sup>12</sup> Jerry M. Cooper, *Federal Military Intervention in Domestic Disorders in THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 123.

<sup>13</sup> See Lewis, Jerry M. and Thomas R. Hensley, *The May 4 Shootings at Kent State University: the Search for Historical Accuracy*. <http://dept.kent.edu/sociology/lewis/lewihen.htm>.

<sup>14</sup> 10 USC 371-381.

<sup>15</sup> 10 USC 375.

<sup>16</sup> See "Lesson in Command and Control for the Los Angeles Riots," Lieutenant Colonel Christopher M. Schnaubelt, *Parameters*. Summer 1997, pp. 88-109.

<sup>17</sup> Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas: Hearing Before the House Comm. On the Judiciary. 103rd Cong., 1st Sess. (1993).

<sup>18</sup> Hearing, supra, at 65.

<sup>19</sup> Major General John T. Coyne, United States Marine Corps, Investigation to Inquire Into the Circumstances Surrounding the Joint Task Force-6 (JTF-6) Shooting Incident that Occurred on 20 May 1997 Near the Border Between the United States and Mexico. *Gilbert v. United States*, 165 F.3d 470, 473 (6th Cir. 1999).

<sup>20</sup> 32 USC 901(1).

<sup>21</sup> US Const. Art II, § 8, cl. 16.

<sup>22</sup> 10 USC 371-181.

<sup>23</sup> *Ibid.* at 40.

<sup>24</sup> *Ibid.* at 287.

<sup>25</sup> The FY 1989 National Defense Authorization Act.

<sup>26</sup> The FY 1990 National Defense Authorization Act.

<sup>27</sup> See Northern Command Web site [http://www.northcom.mil/About/history\\_education/posse.html](http://www.northcom.mil/About/history_education/posse.html).

<sup>28</sup> John Warner Defense Authorization Act for Fiscal Year 2007, § 1076.

<sup>29</sup> Most particularly, 10 USC § 333.

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<sup>40</sup> Saint Pierre, Op.cit, p. 15.

<sup>41</sup> Alain Rouquie. *The Military and the State in Latin America*. Berkeley: University of California Press, 1987, p. 11. <http://publishing.cdlib.org/ucpressebooks/view?docId=ft9b69p386&chunk.id=d0e39&toc.depth=1&ctocid=d0e39&brand=ucpress>.

<sup>42</sup> Saint Pierre, Op.cit, p. 15.

<sup>43</sup> Rouquie, Op.cit, p. 49. The figure of the caudillo has been a constant throughout the region's post-independence history, and may still be in existence, with journalists and commentators sometimes using the term to describe leaders like Venezuelan President Hugo Chávez, a former army colonel who first won election to the presidency in 1998. See, for instance, Tim Padgett, "Hugo Chavez: Man with no limits," *Time* February 11, 2009, <http://www.time.com/time/magazine/article/0,9171,1878742,00.html>.

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<sup>46</sup> Saint Pierre, Op.cit, p. 15.

<sup>47</sup> Rouquie, Op.cit, p. 62.

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<sup>49</sup> Burgeman, Susan. "(Why) Is Police Reform an Emerging Issue for Human Rights Advocates?," Presented at the annual meeting of the International Studies Association: Montreal, Quebec, 20 March 2004, p. 1.

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**Acknowledgements:** WOLA Executive Director Joy Olson, WOLA Program Director Geoff Thale, WOLA Finance and Operations Director Krystal Wubben, WOLA Senior Program Associates Adriana Beltran, Vicki Gass, and John Walsh, WOLA Associate Maureen Meyer, and Assistant to the Director Colin Smith all provided valuable comments and suggestions during the production of this report. Special appreciation is extended to WOLA Program Assistant Joseph Bateman for his assistance in the editing, layout and production of this report. WOLA would also like to recognize the Foundation to Promote Open Society for their generous support of the Regional Security Program.

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ISBN: 978-0-9844873-4-9

