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Rodolfo F. Robles-Montoya
Myrna Mack Foundation
Guatemala

June 2011

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The views expressed in this research paper are those of the author and do not necessarily reflect the official policy or position of the US Government, Department of Defense, US Southern Command or Florida International University.

EXECUTIVE SUMMARY

Faced with the violence, criminality and insecurity now threatening peace and democratic governance in Central America, the region's governments have decided to use the Armed Forces to carry out actions in response to criminal actions, looking to improve their performance. Although public demand for including the Armed Forces in these functions takes place within a legally legitimate framework, it is motivated by tangible circumstances such as increased levels of violence, delinquency and crime. Despite being coupled with the perception of institutional weakness within the security and judicial system (particularly police) and the recognition of prestige, efficiency, discipline and severity in fulfilling the Armed Forces' missions, these arguments are insufficient to legitimize the use of the military as a police force.

Within this context, this paper reflects on the implications or consequences of the use of the Armed Forces in duties traditionally assigned to the police in the Central American region with the goal of contributing to the debate on this topic taking place in the Americas. To achieve this end, first we will focus on understanding the actual context in which a decision is made to involve the Armed Forces in security duties in the region. Second, we will examine the effects and implications of this decision on the Armed Forces' relations within their respective societies. Third and finally, considering this is already a reality in the region, this paper will provide recommendations. The main findings of this research, resulting from the application of an analytical-descriptive and historically based study, are organized in three dimensions: the political dimension, by implication referring to the relationship between the ultimate political authority and the Armed Forces; the social dimension, by implication the opinion of citizens; and other implications not only affecting the structural and cultural organization of armies and police but also the complementary operational

framework within a context of comprehensive response by the State. As a main conclusion, it poses there is an environment conducive to the use of the Armed Forces in citizen's security, in view of the impact of threats provoked by criminal structures of a military nature currently operating in Central America. However, this participation creates an inevitable social and political impact if implemented in isolation or given a political leading role and/or operational autonomy. This participation poses risks to the institutions of the Armed Forces and the police as well.

Finally, this paper identifies an urgent need for the Armed Forces' role to be more clearly defined with regard to security matters, limiting it to threats that impact States' governability and existence. Nonetheless, Central American States should seek a COMPREHENSIVE response to current crime and violence, using all necessary institutions to confront these challenges, but with defined roles and responsibilities for each and dynamic coordination to complement their actions.

CALLING IN THE ARMED FORCES

Central America is a region suffering from the highest rates of violence and criminality, particularly Guatemala with more than 6,000 deaths annually. Guatemala, Honduras and El Salvador are seen as the most violent countries in the so-called northern triangle (WOLA, 2009). In March 2010, the Executive Director of the United Nations Office on Drugs and Crime, Antonio Mario Acosta, publicly stated Central America is a region vulnerable to organized crime, as it has a larger population of young people, a weak security and justice system, underdevelopment and a more affordable market for weapons (Free Press, 2010). According to United Nations Development Programme (UNDP) (2009), in Central America there were 29.3 homicides per 100,000 inhabitants in 2004, second only to South Africa with 31.7 homicides per 100,000 inhabitants.

These statistics are the result of actions by transnational organized crime¹, which already employs methods, organizations, weapons, logistics and personnel with military characteristics, generating high levels of violence and insecurity. This leads to an increase of criminal typologies² from the loss of power and territorial control and citizen fatigue toward the inefficient response from the States. All these factors affect peace and democratic governance in the future and, if there is no change in terms of growth, it may constitute a real threat to the very existence of the States. The effects of crime show it has surpassed the capabilities of law enforcement institutions foreseen by democratic States, as the body responsible for controlling these phenomena.

¹ It is considered as a new threat, concern and challenge of diverse nature, to the security of the States of the hemisphere. For more details, see "Declaration on the Security in the Americas." Organization of American States (OAS), Washington, DC. October 2003.

² In this way, we have arms traffic and human traffic, crimes linked to drug trafficking, terrorism, *maras*' international networks (as for *Mara Salvatrucha MS-13* gang) and their relation among themselves.

Given this reality, Central American States have recognized the need to organize in order to deal with this problem. They simultaneously respond by developing policies that minimize the causes of their structural weakness. In the field of security, they create strategies to contain and reduce the effects of threats and violent attacks on society.

In the specific area of security, which is the subject of this report, States should use all instruments, mechanisms and their willingness to confront these threats and attacks, to try to fulfill the purposes enshrined in their charter.³ Within this context, Central American states have been forced to allocate duties normally assigned to the police in a democratic society, to the Armed Forces, with the goal of strengthening their operations in the absence of viable alternatives given the gravity of the situation.

However, although the political decision to use the military for these roles is legally legitimate⁴ and motivated by the prevailing conditions of insecurity, growing public demand for effective responses, increasing perception of citizen insecurity, institutional weakness of judicial and security systems (particularly police) and a recognition of the Armed Forces' institutional prestige, efficiency, discipline and severity in fulfilling their missions, these arguments, both

³ Every state is organized with the purpose of preserving peace and security as well as to promote development but most important to guarantee the well being of all citizens, protect their lives and integrity in search of the supreme end which is the common good. These duties constitute the essential goals of all States and are stated on international documents, Constitutional charters and norms.

⁴ In relation to this point, in various countries of Central America, like Guatemala and El Salvador, judicial mechanisms grant presidents the power to call for *collaboration* and use the armed forces in domestic security and public order when the civilian police forces are overwhelmed by crime and violence. At the same time, the norm creating the police in Nicaragua define its duties as requesting the President to approve the support of the Nicaraguan Army in exceptional cases to maintain or reestablish public order and citizen's security.

social and judicial in nature, are not enough to legitimize its use for law enforcement.

The objection to the participation of the Armed Forces in this regard is based on several reasons. Sometimes society rejects this measure by arguing the military should not perform these duties given the 1980's peace agreements (which can be generalized to all Central American countries), as well as the dreadful memory of its role during the period of the region's internal conflicts. More importantly, it requires a detailed analysis of the effects and implications of this type of decision on the Armed Forces, both in relation to the highest political authorities (political dimension) and civil society (social dimension), and its own organizational culture and relationship with the police (technical dimension).

POLITICAL IMPLICATIONS

The participation of the Armed Forces in police duties incurs several risks that have political implications. Some of these implications are discussed below.

Credibility

Disproportionate response by elements of the Armed Forces, within the framework of security support, involves the risk of gradual deterioration of the credibility people have for political authority and security institutions. This risk is latent because the military has been created to neutralize and defeat an enemy⁵ using methods which, compared to the rational use of force, due process, mediation of conflicts and actions based on respect for civil rights, are classified as violent and generators of abuses and human rights violations.

⁵ It refers to the military goal within the international law framework limited to "establishments, constructions and positions of the armed forces...goods that due to their nature, location and purpose, contribute to military action; goods which destruction or capture offer a military advantage." Charter of Humanitarian International Law.

The Inter-American Commission on Human Rights argues that:

... The history of the hemisphere shows that the intervention of the Armed Forces in internal security matters in general is accompanied by violations of human rights in violent contexts, for that reason it should be noted that practice recommends the avoidance of military intervention in matters of internal security because it entails a risk of violations of human rights (IACHR, 2009).

For example, consider a case of alleged human rights violations by military forces under joint patrols in Mexico. A report by the Secretariat of National Defense of Mexico (SEDENA) released in August 2010, stresses 4,035 human rights violations' complaints were received from December 2006 to December 31, 2009.

A publication on Municipal Management of Public Safety in Central America and the Dominican Republic showed arbitrary abuses by elements of the army in the process of "police work" with joint police patrols on roads and rural areas as part of the Joint Task Force Group (GFTC) plan, have taken place in Guatemala (FLACSO, DEMUCA Foundation, 2010).

Corruption and Co-optation

Despite preparation, effectiveness and efficiency in fulfilling their duty, the Armed Forces are vulnerable to co-optation and corruption by organized crime. The analysis of cases that have taken place in Latin America (Colombia, Guatemala, Mexico) reveals the military can be co-opted by criminal gangs to commit crimes, that it could benefit from information obtained from the police or allow criminal acts in sectors or geographical locations to which they are assigned. They are also vulnerable to participate in

distribution and handling of drugs, drug trafficking prostitution and human trafficking.

For example, two Guatemalan Army lieutenants were captured at El Salvador's International Airport in June 2010 when they tried to transport 77 capsules of heroin to the United States in a special compartment inside the sole of a military boot (*El Periódico*, 2010). Another example was the capture of a lieutenant charged in the case of the theft of 43 rifles from the army on August 19, 2009 (*El Periódico*, 2010b).

Political Authority Abdicating its Responsibilities

There is a danger that politicians might abdicate from their role of carrying out public policy and guiding the strategic and operational actions of the State, thereby transferring responsibility to the military. It will just result in developing a military autonomy to solve security problems (as has happened in the past within the context of counterinsurgency and the resulting human rights violations), which led political authority to abdicate its responsibility to control the actions of the troops. In several Latin American countries, numerous investigation and prosecution cases of those responsible for human rights violations took place after the end of the domestic armed conflicts under pressure from international organizations of the Inter-American System for the Protection of Human Rights.

Diminishing Support for Strengthening the Police Force

There is also the risk the organizational growth momentum of the Armed Forces will take place at the expense of the process of strengthening the police force. Although Central American countries are going through a process of democratic consolidation, strengthening the police requires medium and long term efforts (to readapt regulations, support strategic planning in line with regional threats, strengthen human resources, and provide adequate resources and equipment, etc.). These processes, which are often slow,

do not ensure an impact on public opinion or a decrease in violence or crime rates in the short term, particularly in areas affected by threats that require operational action exceeding these institutions' current capacity.

In most cases where the military has been called for law enforcement activities, the Executive is relying on the credibility enjoyed by the Armed Forces and calling them to conduct joint patrols in dangerous or "red" areas. The goal is to project a legitimate interest not only to improve security by increasing the number of people assigned to provide it, but also to project the State's "strength" in combating and preventing crime and also, in conducting police investigations.

Yet, the decision to assign police responsibilities to the Armed Forces also implies giving special attention to the military institution, including providing equipment or resources it does not possess, since its scope of action is external security. This translates into allocating increased financial resources to meet the needs of the military's operational capacity, at the expense of strengthening the law enforcement institutions.

SOCIAL IMPLICATIONS

Calling the military in to conduct law enforcement activities within the country also has social implications. Some of them are discussed below.

Validation of Authoritarianism

These activities reinforce the opinion of those sectors of the population that prefer authoritarian methods, harsher actions and who view armies as "saviors of the nation." Historically, authoritarianism has had an important social impact linked to the creation, strengthening and reproduction of ideas legitimizing military action as the best solution to problems of a diverse nature which cannot be solved by the State.

Due in part to the rise of outward signs of violence, delinquency and crime that go hand in hand with the poor results achieved by the institutions of the judicial system, particularly the perception of the work undertaken by police, society demands more security as well as methods perceived as more radical, to contain and combat delinquency and crime. In this regard, it demands the presence of the Armed Forces in public security because they are perceived as efficient in the fulfillment of their mission.

Delegitimization of the State's Capacity to Respond

Given the hypothetical overflow of the capabilities of joint forces, the recurring arbitrariness of the Armed Forces and their involvement in crime and corruption, there is a risk of losing credibility in the State's capacity to respond; followed by a disappointment in democratic methods to address these challenges. Similarly, the institutional framework, as well as military and police forces, could be compromised and delegitimized, generating favorable conditions for poor governance, systematic violations of the rule of law and latent risk of anarchy.

In this scenario, citizens could perform on their own security actions normally assigned to the police due to lack of credibility. This can also lead to a strengthening of measures of authoritarianism, abuse or social control by individuals or communities, an outright rejection of the presence of security institutions, increases in cases of social cleansing and killings, among other effects. These actions could create conditions that compromise the rule of law.

TECHNICAL IMPLICATIONS

The involvement of the Armed Forces in functions reserved for the police also has technical implications, as discussed below.

Reinforcing the concept of "Saviors of the homeland"

When military personnel perceive to have been called to face a "threat to the homeland," they understand the State uses this measure because it urgently requires its institutional nature, methods, means and actions, for what they have been trained, -- to "destroy," "kill" or "eliminate" whatever threatens the country's existence.

In this regard, the Armed Forces claim a "protector role" in the destiny of the nation, a pre-eminence with different prerogatives from those of common citizens and extraordinary freedom and authority to implement their methodology for which they believe civilians are unprepared. The Armed Forces seek to be allowed to have direct participation in operational and strategic political decisions that will guarantee they "save the nation" in danger of extinction, becoming the National Goal that overrides any other consideration (which becomes a secondary issue) and that can only be achieved with the military leadership in situations where civilians have already failed.

If not controlled from the start with effective measures, this self-perception of the military in view of a challenge to "save the country" can become a new "wave of militarism" in response to aggression and violence from organized crime and drug trafficking.

Military Autonomy

There is the potential for ongoing quests to achieve operational autonomy in military actions, especially when their effectiveness in the fulfillment of their new missions depends on the degree of cohesion to complement the police forces, which is quite complicated, as the police forces do not have the same methodology and ways of acting. In the absence of common processes and procedures guiding frameworks of action between the police and military, decision making is carried out with greater discretion in the execution of tasks, with the danger of overreacting because

of indoctrination and methods of action by military personnel.

Re-adjustment of the Armed Forces

Once the military personnel has been in charge of law enforcement tasks for a prolonged period of time, it will inevitably result in planning, adaptation of doctrine, organization, training and logistics of participants, other than the usual institutional response within a democratic society, as described below.

- **Education:** The Armed Forces need to train and prepare personnel to meet these new roles, especially on issues related to the conceptual framework, procedures and methods, coordinated planning, work organization (including shift work) and logistics. It also implies a clear acceptance of the subordination to political authority responsible for leading the response of the State.

For the police force, this means having the capacity for planning, management and leadership in making operational decisions to improve the State's response. In many countries of the region, the police do not reach the same professional status as the military. For example, in Guatemala there is no Training School of the National Police with professional university equivalence like in the case of the Polytechnic School which trains army officers. However, there is already a process, designed for 2020, that aims to solve this issue but also to achieve a National Civil Police (PNC, for its acronym in Spanish), which could respond to challenges posed by crime and violence in the region.

- **Standardized concepts and methods:** The framework of operational complementation (police role-military role) entails standardized concepts and methodologies of strategic planning and action with the goal of making both forces speak the same

language as they work together. It implies working on inter-institutional planning defining the mission, roles, duties, and deadlines in agreement with the national security plan, and entails preventing scenarios of action and praxis with an ideal reaction of these forces to emerging situations, while respecting human rights.

- **State's Comprehensive Response:** In the context of the State's comprehensive response, it involves implementing and/or strengthening a system of national control as well as an efficient system of justice, governing the military and police forces, to avoid the repetition of historical errors in relation to human rights violations during the period of counterinsurgency operations.

CONCLUSION

The environment has become conducive for States to use their militaries to address security threats, mainly criminal structures with military-style features, which are already undermining democratic governance and threatening its very existence. In the Central American context, the assignment of police functions to the Armed Forces creates an inevitable social and political impact, with especially dreadful memories of the eras of domestic armed conflict, but also affects the relations of the military with the government and inside their own institutions.

The involvement of the military in police work, either implementing it in isolated cases or giving prominence and operational autonomy in developing its new missions, will lead to consequences such as an increasing political leadership, denaturalization of its main functions, and hindering the strengthening of the police forces.

Regarding a social dimension, the involvement of the military in police work generates mixed public opinions

about their participation and outcomes, but also reinforces the idea that armies are "saviors of the nation" as they are considered to be the only institution able to implement authoritarian and extremely harsh measures to restore order and security.

There is a possibility of developing a negative perception and lack of legitimacy for the entire institutional security framework of Central American States which are unable to contain insecurity, despite measures implemented, which could lead people to take the law into their own hands or to create conditions of real lack of governance.

The army leadership has an internal institutional impact that could lead them to become engaged in corruption, including co-optation by organized crime and committing human rights abuses and outrages committed in the development of these new features. Additionally, it will involve organizational reforms to adapt these forces in terms of education, training, logistics and operational methods to meet new missions.

FINAL CONSIDERATION

Regardless of the constitutional framework, legal norms and other mechanisms covering political decisions to employ Armed Forces in duties traditionally assigned to police, these should be more closely scrutinized taking into account the threat to be faced and in particular the impact on governance of the State and its capacity for action and maneuverability against criminal structures. This situation will enable States to decide more objectively and precisely what, when and where to use the Armed Forces in public security in order to optimize their responses, minimize implications described, sustain the legitimacy of the decision to society and at the same time, embark on a real process of strengthening the police forces.

In this context, it is necessary to define the roles and responsibilities for action in the field of security and complementation between the two forces, according to the Framework Treaty on Democratic Security (TMSD) and the strategic guidelines emanating from the highest operational political authority of the State. Thus, the response of the States shall allow strategic and operational actions to respond to national objectives with clear mechanisms of political command and control, coordination, communication and complementation between the actors involved at the implementation level.

In this line of thought, the Armed Forces should prioritize and address threats in the field of their expertise (border control and protection), while serving in a support-cooperation capacity to the police force within the national territory, as they achieve quality standards required by police forces. This implies that border control and security is taken by the Armed Forces as an assigned mission, affecting its current deployment with a comprehensive strategy for coordinated action with the police, which defines political control, clear goals and tasks; respecting the functions of civil customs authorities established by the country's legal system.

In the framework of support to police forces, actions must be developed under the leadership and guidance from the political authority and led by police personnel with excellent training and professional experience, capable of making decisions in situations that inevitably arise in confrontation with delinquents and criminals. Therefore, the militaries of these States should recognize the full authority of their Home Offices or Ministries of Interior.

To this end, it is necessary to standardize the methodological concepts of strategic operations and operating procedures to facilitate joint action between political authorities, police and military, with the purpose of achieving effectiveness in

fulfilling the tasks to be assigned in accordance with the national security plan. This is intended to promote and strengthen both a control system and system of justice to avoid a violent response from government forces and repeated violation of human rights as happened during the period of counterinsurgency (1960-1996).

ABOUT THE AUTHOR

Rodolfo F. Robles-Montoya is a Researcher and Senior Advisor in the areas of Security, Defense and Intelligence at the Myrna Mack Foundation in Guatemala. His expertise has led him to participate in the reform of the security, defense and intelligence institutions in Guatemala. In 2004, Robles contributed to the design of the new Army Doctrine. In 2008, he provided input for the Framework Act on the National Security System (Law DL N° 18-2008). He is currently engaged in the creation and implementation of a new General Inspection System for the Guatemala's Security System, as well as in the process of Police Reform, particularly in the area of institutional internal controls.

Robles-Montoya is an engineer who served in the Peruvian Army. He holds a MA in Administration from the Federico Villarreal National University in Peru, a Certificate in National Strategy Studies from ETSNA Center in Guatemala, and a Certificate in Strategic Studies from the Guatemalan Army. He is currently completing another MA in International Studies at the Francisco Marroquín University in Guatemala. Robles is the author of *"Propuesta de un Sistema de Inteligencia Nacional para Guatemala"* (June 2003) and of *"Lineamientos democráticos para una nueva Ley Constitutiva del Ejército y marco legal para la función militar"* (2004). He also served as Coordinator for Research and Publication of the *"Estudio Comparativo de Policías Latinoamericanas: Bolivia, Chile, Perú, Ecuador, Colombia, Nicaragua y Mexico,"* (2008).

The Myrna Mack Foundation in Guatemala, established in 1993, conducts research and proposes public policies that support human rights, rule of law, and the consolidation of peace and democracy. Inspired by the work of Myrna E. Mack Chang, a young social anthropologist who was assassinated in 1990 by Guatemala's intelligence services while conducting research on the displaced population, the

Foundation has pursued justice for Myrna Mack in national and international courts, hoping to end the impunity surrounding this and other similar cases.

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