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The Strategic Implications of Operational Law

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Précis

Cumulative legal developments favor the creation of a dedicated force to conduct many of the peacetime missions now assigned to warfighting units of the U.S. military. In the following essay, the author describes the ascendancy and heritage of what military lawyers call operational law. He argues that operational law follows transformations in the political environment that also led to the appearance of "Operations Other Than War" in United States military doctrine.

This essay is important because it connects a debated change in force structure to a base of civilian policy determinants. Arguments for the creation of a specialized force (whether we characterize the force as military, paramilitary or police) are ultimately founded on cultural concerns reflected in the civilian legal regime. The article notes that the most important military reason for the creation of a dedicated force may be protection of warfighting units. It stresses, however, that the *other than war* definition engages a host of legal considerations rooted in expectations, precedents, regulations, and organizational trends outside military initiative and control. This fact highlights the unsuitability of warfighting units to many OOTW tasks, and the vulnerability of warfighting units to degradation from participating in OOTW. To the extent that this essay correctly anticipates institutional changes, we can also presuppose alterations in bilateral and multilateral military relations between the United States and other countries.

Introduction

Operational law is "[t]hat body of domestic, foreign, and international law that impacts specifically upon the activities of U.S. forces in war and operations other than war . . . It is a collection of diverse legal and military skills, focused on military operations. It includes military justice, administrative and civil law, legal assistance, claims, procurement law, national security law, fiscal law, and international law."¹

The term "operational law" was coined in the aftermath of Operation Urgent Fury in Grenada.² At that time, military lawyers at the United States Army Judge Advocate General's School began a reassessment of the legal advice and support due commanders.³ The long-term result may be a

profound change of direction in the practice of military law.⁴ There is now an accelerating military professional interest in operational law that goes beyond the Army JAG Corps.⁵ This growth in the stature of military operational law is a response to the same environmental factors that led to the development of the doctrinal rubric Operations Other Than War (OOTW).⁶ An institutional phenomenon, operational law (like OOTW) reflects the changing nature of sovereignty, the increasing reach of legal norms into military affairs, and the great variety of missions assigned to military organizations.

This essay does not attempt to teach any part of operational law, extol its application, or even to advocate its growth. Instead, the essay's purpose is to reveal a message that the growth of operational law offers regarding the nature of military operations, particularly operations that are not war. Simply put, most OOTW are police or social service in nature and we will ultimately approach them as such. The most controversial upshot of this assertion is an anticipation that the United States will create a police expeditionary force distinctly different from warfighting units. Such a force can be made suitable by training, indoctrination, and structure to deal with a wide range of noncombat, near-combat, and nonlinear combat missions now given to combat units.⁷ Creation of a dedicated police-military force component could free warfighting elements of the armed forces to prepare for the regional warfare challenges that our National Security Strategy documents will continue to highlight.⁸ This advantage--that scarce combat warfighting muscle might be freed from the bulk of police and social service duties--will ultimately convince military officers to support the creation of such of force. Rededication of warfighting units to the challenges of winning wars will be the primary selling point among military officers. For the National Command Authority and intervention planners, the separate force will represent a closer alignment of capabilities with what may be the greatest nontechnical aspect of what defense specialists call the Revolution in Military Affairs.⁹ This aspect is the above-mentioned reach of legal norms, domestic and international, into activities undertaken by United States armed forces. Of less immediate concern, but perhaps greatest long-term consequence, the alignment of force structure with the details of legal imperatives may help preserve the intangible weight of American moral exceptionalism. In other words, keeping combat forces at a distance from most interventions, and designing a separate force more responsive to the legal requirements of OOTW, may service the sense of moral legitimacy that lies at the base of United States initiative as a world leader.

The reasonableness of this essay's assertions depends in part on clarity regarding what it does not assert. First, no claim is made that there is a sharp, observable boundary (created either by the legal regime or by political norms) between what we are calling "Operations Other Than War" and war. This itself is an area for political and legal argument. Neither the current growth of operational law for OOTW (nor the predicted creation of a separate structure within the armed forces) will follow doctrinal boundaries or imperatives. OOTW is not a whole or integral concept. It is a grab-bag of missions that are usually distinguishable from linear, maneuver war, or are officially distinguished from war for political reasons. Perhaps we can make legal distinctions between a given OOTW and war, but whether or not these distinctions exist is of no immediate concern here. The three factors mentioned above--changes in the nature of sovereignty, the reach of legal norms into military affairs, and the gamut of missions assigned to the military are the determinants of the changes addressed here.

Second, the article does not claim that dedication of force structure to OOTW can entirely isolate combat units from application to problems that we might describe as OOTW. The development of force structure designed specifically to meet the needs of OOTW will become an increasingly attractive option, but the definitional overlap alluded to in the previous paragraph assures that some OOTW missions will continue to demand the assignment of warfighting units.

Nevertheless, an impressive majority of missions subsumed by OOTW are unmatched to the organization, equipment, and spirit of combat units. This is becoming obvious as legal norms increasingly set not just the limits of permissible actions, but training and attitudinal parameters as well.

Third, nothing here suggests that operational law is only applicable to OOTW. Operational law will continue to grow as an influence among warfighters and in the prosecution of pure combat. In almost every military venture, legitimacies of presence, goals, results and methods all interrelate. Legitimacy and legality are intimately tied, so it follows that the degree of legality in the design and execution of any mission will have its effect on mission success.¹⁰ In OOTW, however, an existing reign of laws is more likely to define the limitations within which legitimacy is achievable or claimable. An objective of many OOTW is to leave an enduring rule of law--without the requirement of constant physical coercion. Within this framework of logic regarding the nature of OOTW we can predict the dominance of military police and military legal specialties. What follows is an analysis that shows how imperatives of formal legality are supplanting traditional military considerations. The presentation flows from an example of extreme military legal carefulness, to the reasons for that care, and finally to its consequences for the future of the U.S. military. The initial illustration of matured operational law comes from military counterdrug operations along the United States border with Mexico.

Legal preparation of the area of operations. Joint Task Force 6 in El Paso, Texas identifies and prepares military units to support civilian law enforcement agencies in the counterdrug effort in the Southwest border states. The military units plan their counterdrug activities meticulously, with legal considerations paramount. Constraints leveled against the domestic use of the federal military by the Posse Comitatus Act are strictly interpreted so that the professional image of the military remains intact and the command is protected from legal attack. Individual units from around the country, whether engineer, ground radar, or another element, will brief their operations plan through the entire chain of command, including flag level. Some tactical consequences of this legal preoccupation are prominent. During a mission pre-brief, given months before commencement of the mission itself, the J-2 will advise on intelligence analysis. For a typical reconnaissance mission, say to detect marijuana cultivation areas or cross-border transport activities, the J-2 will tell the participating unit to carefully prepare visual map overlays. Fortunately, the Intelligence Preparation of the Battlefield (IPB) techniques used to guide weather, enemy, and terrain analysis in combat operations are also useful for this kind of OOTW. The J-2 may require the unit to produce hydrology, ground elevation, and road network overlays from maps and other information available. These relate to the normal needs and patterns of marijuana production. The usual crop will be within a certain distance of a road and an irrigation source, and below a given altitude. However, the J-2 will then say that the most important overlay, an overlay that must be accurate--is the private property overlay. Trespassing is illegal and dangerous.

The J-2 will warn the audience to give special attention to the briefing given by the command's JAG officer. There are other factors to be noted regarding the nature of private versus public property and about constraints to intelligence gathering that the unit can include in the intelligence graphics. The legal officer will explain, for instance, that Federal Bureau of Land Management (BLM) land may be federal property, but that private citizens lease use and access rights, thereby giving the land some characteristics of private property. The JAG will also talk about architectural structures, and perhaps point out that a structure may still have the legal character of a dwelling no matter how odd or dilapidated it appears. Therefore, the military unit cannot stake it out (domestic surveillance is an activity forbidden to the military) or search it. This then turns to advice that the range fans for visual or radar observation be limited to exclude such structures. The Task Force JAG officer then advises that the unit leaders pay special attention to the command's Environmental Protection Agency liaison officer. The EPA briefing could add yet other legal considerations to the map overlay. Perhaps the unit will need to include a wildlife refuge or a protected archeological site. Again, the map overlays take a legalistic shape.

The "U.S. Person." The lawyer's briefing is not a short one. The next subject may be about the "United States Person." It is unlikely that soldiers receiving the mission pre-brief will have ever heard of this term or its consequences, but it too has mapable features. A U.S. Person is defined by executive order to be "a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation directed and controlled by a foreign government or governments."¹¹ U.S. Person status engages a range of constitutional protections including those relating to illegal government searches, invasion of privacy, and warrantless arrests. It is an example of a self-imposed dilution of sovereignty and preferential citizenship rights. For many law enforcement purposes, the rights accruing to United States citizens have been extended beyond citizenship and beyond U.S. borders. This has direct and immediate consequences for the military. Military intrusion into civilian police powers is constrained by the Posse Comitatus Act, and although the statute has many exceptions, its basic intent is to exclude the military from domestic police activities.¹² The Act is, as exemplified by JTF-6, respected. JTF-6 also takes a broad interpretation of the executive order defining the U.S. Person. In that spirit, the command is cautious, presuming anyone within the United States but outside a certain distance from the border to be a U.S. Person. It may also presume that anyone heading toward Mexico from the interior of the United States is a U.S. Person. Rules that might seem relevant only to the intelligence agencies or the Immigration and Naturalization Service become significant for soldiers at the tactical planning level. Along the border, the military does not search, arrest, detain, question, or follow any U.S. Person. Naturally, this limits the scope of the military role.

Whether or not intelligence overlays display legal limitations is of secondary importance. The point is that enemy, weather, and terrain are junior worries compared to the limitations imposed on the soldiers' actions by the concert of civil and property rights protected by law. These worries are translated into graphically illustrated tactical planning factors. They, in turn, have strategic consequences. We can anticipate the problem of a U.S. Person, for instance, complicating possible future deployments of a near-international character.

One looming possibility is the end of the Castro regime in Cuba. Castro's fall from power may yet be a number of years distant, and there are a few analysts who doubt that changes will be abrupt or violent. If there is a period of violent instability, however, it will attract thousands of U.S. Persons intensely interested in steering the outcome. A United States military intervention would be conducted in the most muddled citizenship environment in the nation's history. It should not be lost on anyone who doubts the importance of this problem that actions of the U.S. government in detaining Cubans have already invited legal challenge.¹³ These court actions, in turn, have and will continue to have a direct effect on military missions and orders. In the Southwest, JTF-6 has succeeded in mounting hundreds of missions supporting local law enforcement because it made an absolute priority of legal discipline. JTF-6 based this legal discipline on careful interpretation not only of applicable laws, but of the effect that the violation of the spirit of those laws would have on the legitimacy of the military presence. Because parties to any Cuban conflict will have immediate access to mainline U.S. news media and to U.S. courts, the link between legality and legitimacy of military actions will be constantly and quickly tested. The military must be especially attentive, in advance, of the institutional consequences of their rules of engagement. Support for many OOTW associated with a Cuban crisis will have a geographical origin in southern Florida. Many missions themselves may be focused on southern Florida. In addition, many service members are Cuban-American. To avoid damage to its image and morale, the military will need more than careful writing of rules regarding the immediate use of force. A Cuba contingency could require legislative tooling as to all the police attributes of the organizations involved. Military units may be well advised to extend the spirit of the Posse Comitatus Act to U.S. Persons in Cuba as well as in Florida.

Rules of Engagement (ROE). Of all the areas associated with operational law, ROE may be the most popularly recognized.¹⁴ "ROE are the commanders rules for the use of force."¹⁵ They "define the mission by limiting the use of force in such a way that it will be used only in a manner consistent with the overall military objective."¹⁶ Commanders in OOTW want to be completely confident that the orders they give regarding the use of weapons are legal, practical, provide sufficient security for the soldier, and allow the accomplishment of the mission. A mission may require multiple ROE instructions to correspond with varying phases of a deployment, different geographic locations and even different levels of classification. ROE problems demonstrate the relationship of operational legality to strategy. Force must be used in a manner consistent with the strategic objective. If the ultimate objective is the rule of law, military behavior must satisfy public expectations about the legitimate use of force. These expectations reside not only in the population of the deployment locale, but in the U.S. population and worldwide. Usually, ROE instructions are not difficult to establish. If no condition of warfare exists, it is unlikely that an American commander will issue an ROE instruction other than one prohibiting the soldier from using a weapon for other than self defense or to protect against the imminent loss of life of another person. There will be details in the ROE defining the readiness condition of weapons (loaded, charged, holstered, etc.), and there may be special or classified ROE regarding a particular group that soldiers can presume to be enemy.¹⁷ However, lacking a uniformed enemy, ROE will almost inevitably tend toward the pattern of instructions extant in police departments in the United States. These police rules were not developed in a legal vacuum. They are the product of case and statutory law, criminal and civil, which over time have come to reflect the expectations of the citizenry regarding government use

of force. The ROE that military lawyers give to American commanders in OOTW are an evolved expression of American legal culture.

Major Mark Martins, instructor in the International and Operational Law Division of the U.S. Army JAG school and an authority on rules of engagement, concluded that the present method of imparting ROE to individual soldiers and Marines relies too heavily on what he terms a "legislative" model of controlling behavior.¹⁸ As Martins puts it, there is a resulting failure to account for the cognitive limits of humans under stress. When the shooting starts it is easy to forget the rules. Martins' recommendation is a "training model" which would include training scenarios designed to reinforce the standing rules across the spectrum of potential conflict. Martins notes that the present method of imparting land force ROE struggles to sort rules according to their purposes.¹⁹ The method

"also struggles to draw a sharp conceptual line between war and peace. Combatant commands draft and disseminate wartime rules in the same manner as they do peacetime rules; however, the rules themselves differ to reflect the increased justification for using force in wartime operations. Wartime ROE (WROE) permit U.S. forces to open fire upon all identified enemy targets, regardless of whether those targets represent actual, immediate threats. By contrast, the PROE merely permit engagement in individual, unit, or national self-defense--the sole legal ground for international use of force during peacetime."²⁰

Martins' analysis bears heavily on the theme of the present essay. As he states in the introduction to his thesis, there are two dangers inherent in ROE instructions. The first is that soldiers will respond tentatively to an attack. A classic example of this tentativeness is provided by the failure of Task Force Smith, the first unit to see combat in the Korean War. Before the North Korean Army engaged the unit, officers at all levels were describing Task Force Smith's mission as a "police" action. Commands did not publish ROE as they do today, but the characterization of the operation as a police action was enough to misguide soldiers into inaction when under attack.²¹ The second danger is that the soldier will be too aggressive. As an example, Martins uses the courts martial of an Army specialist for the negligent homicide of a Somali during Operation Restore Hope.²² Martins argues that the importance of ROE to the success of military deployments requires a basic change in the training of soldiers.

Martins points out that current soldier training emphasizes wartime ROE and not peacetime ROE, and that the training depends on a clear distinction between war and peace. Martins' analysis about the practical difference between a legislative model and a training model is surely correct. Merely describing the right way to disassemble a weapon or to assault a hill or to organize a motorpool is no substitute for practice in those things. ROE is not different in this respect.²³ Police departments across the country now involve peace officer candidates in marksmanship training that stresses target identification and ROE in simulated situations based on real, controversial cases. Difficulty arises from the recommendation that American combat soldiers receive training that allows them to employ, by way of situational and repetitive training, a whole range of ROE from peacetime to wartime. Many will argue that the soldier can be trained for one or the other and that training toward restraint is the more demanding. It seems at best ambitious to train a warrior for an immediate and violent response and to simultaneously

train him to employ a precise and legally supportable self defense. We hope a qualified law enforcement officer will be better trained in ROE than the average combat soldier. The combat soldier must spend training time on mastering the effective functioning of a larger variety of weapons, unit maneuvers, equipment and combat skills. The police officer must spend relatively more time on legal considerations involving the application of force.

We can summarize the implication of the ROE debate as follows: There is a need to prepare soldiers both to be warriors and to be peace officers. It is hard to train and indoctrinate them to be both simultaneously. Effective ROE discipline is essential to the accomplishment of strategic objectives in most OOTW. Therefore, the training set that participants in most OOTW must receive will be distinct from the training needed by the combat soldier. This in turn implies the design of a separate force that can train under a distinct doctrinal regime.²⁴ Yet currently it is administration policy to "use the same collection of general purpose forces" for both conventional war and OOTW.²⁵

Property. While ROE mostly focus on immediate physical relations with people, questions surrounding property can have a longer-lasting effect on peace, stability, and legitimacy. Discussion of JTF-6 activities along the Mexican border region already raised the subject of property. There the prominent property issue was trespassing, but operational lawyers are concerned with a variety of property issues. Reimbursement claims for property damaged or seized by U.S. forces was a key concern in the after action reviews of operation Urgent Fury.²⁶ At least when it came to claims, the JAG corps could rely on a large body of experience, including many Reforger training exercises in Germany. More recent deployments have raised the complexity of the property element of operational legal practice. A paragraph from an after action report on Operation Restore Hope to Somalia is illustrative:

Humanitarian assistance operations presented questions of how to handle public and private property. When U.S. forces arrived in Somalia, there was no functioning government. Resolution 794 gave U.S. forces authority to use "all necessary means" to facilitate the flow of relief supplies. In effect, the U.S. was a de facto occupying power during Operation Restore Hope. U.S. and coalition forces, therefore, had authority to perform some or all functions previously performed by the former government. Consequently, the right of coalition forces over former government property was superior to the rights of others. Public property, once determined as such, could be seized to support the JTF mission if it was susceptible to direct military use. Real property (of the former government), airfields, ports, and other facilities were used without paying rent or taxes. Moveable property that was susceptible to direct military use, such as road construction materials, was seized. Private property was not confiscated, but it could be requisitioned if necessary for the maintenance of the "occupying army."²⁷

Coalition forces in Somalia also had to deal with related contraband issues and with the property issues imbedded in the weapons confiscation program. It must be remembered about these property problems that viable private claims can generate future suits in U.S. courts--and there will always be a population of lawyers ready to enter them. As a result of the United States'

emerging intervention policy, the country could build a flood of future federal cases. Commanders understand that the equitable resolution of property claims is an integral and necessary part of maintaining support for or tolerance of U.S. presence.²⁸ It is intuitively understood that questions associated with damage to private property have a volatile emotional content, so the time and money are well spent to ameliorate the condition of those whose property has been affected. Important legal distinctions, such as the difference between confiscation, seizure and requisition, guide property and contract issues.²⁹ Cuba again offers some difficult legal issues for any intervention there. Real estate on the island is still claimed by members of the Cuban exile community or by non-Cubans who had acquired property before the Communist revolution in 1959. Many of these properties are highly valuable and have been possessed for decades by groups and individuals favored by Fidel Castro. Some situations are more complicated than others. A few mansions, for instance, have been given over to foreign governments as Embassies. Depending on mission scope, an intervention in Cuba might require a legal preparation of the area of operations that includes not only a detailed overlay of public and private property, but also an historic overlay based on land title registry documents (or the Communist system equivalent).

Psychological Operations (PSYOP). Legal influences reach past the use of force in dealing with people (ROE), and past property rules--into the realm of ideas. Lawyers have begun to play a much larger role in PSYOP. This is true on two levels. At one level we note that international law (and the arguments made about international law in international forums) is a premier format of international propaganda. Justifications for all actions are couched in international legal arguments, and propaganda at levels below that of the international forums is likely to rest on a foundation of international legality if it is to have much longevity. At times, proof of obedience to international law is less important because domestic laws are perceived to be more rigorous or better enforced than international law. In any case, the propagandist and the military lawyer must synchronize completely. To be assured of this synchronization, either the PSYOP officer must be made completely aware of all angles of relevant international foreign and domestic law, or the international lawyer must be made aware of the relevant propaganda objectives and techniques.

The second level of involvement of the legal expert with PSYOP relates to the legality of the activity itself. Several rules and regulations constrain PSYOP.³⁰ If black or grey propaganda were to be used, then the activity would be much better conducted within the protective confines provided by an intelligence organization.³¹ In such a case, the legal adviser must be totally knowledgeable about relevant laws, regulations and orders governing intelligence activities and PSYOP. The lawyer must also be able to discuss the indirect practical effects on the news media.³² Here, the legal issues identified with PSYOP meld with those surrounding the public affairs offices and command information activities. Legal issues arise about what news agencies will gain access to areas, persons, and documents under military control. Also contentious are restrictions placed on coverage, and what copyright laws might attend some products--all will need increasingly sophisticated legal support.³³ These questions fuse the legal treatment of public affairs offices and PSYOP units in many types of deployment.³⁴

Both levels of professional legal involvement in PSYOP presage an increasing need to marry legal educations and approaches with the informational instrument of power that the OOTW commander will, for better or worse, employ.

Current organizational tendency. Several identifiable organizational tendencies also carry legal dimensions that push the United States toward the development of a separate OOTW force. Included are interagency collaboration, international peace operations, growth of nongovernmental and private voluntary organizations (NGOs and PVOs--hereafter called NGOs), and habitual deployment of units holding specialized OOTW expertise. At least three of these tendencies are wrapped in unique legal considerations.

"The interagency." The term interagency is now heard used as a noun, but this usage is as much exhortation as it is reference to an existing thing. It invokes concerted effort by all U. S. government agencies that can contribute to or have a stake in the outcome of a government project. At the level of the United States unified commands, the military has become an interagency actor, and operations, especially OOTW, include multiagency activities. Representatives of the CIA, DEA, FEMA, the EPA and others will have permanent liaison personnel assigned to the military staff. As military operations, deployments and temporary organizations (joint task forces usually) tend away from active combat, the interagency relationships become broader, more numerous, and more essential to the accomplishment of the mission. Civilian agencies' personnel rarely fall subject to military disciplinary laws, and every civilian agency brings along its individual statutory mandate. The civilian agencies are generally created and funded for peacetime pursuits and must follow laws and regulations pertaining to a peacetime legal regime. We can say that almost every increment of increased collaboration from a civilian agency to a military command restrains the project by some new set of legal considerations. Each new legal entailment further distances the military force from being able to apply its original combat design.

International peace operations. President William Clinton's administration has shown remarkable deference to collective international decision-making in security affairs. The National Security Strategy of Engagement and Enlargement expresses an unequivocal change regarding the attainment of national security goals, stating, "we cannot secure these goals unilaterally."³⁵ President Clinton underlined and ratified these expressions by seeking approval from the United Nations, rather than from the United States Congress, for the recent intervention in Haiti. It remains to be seen if the United States government will continue to thus honor the United Nations, or if Haiti represents a unique usage. It does appear that United States participation in collective security measures will remain at a higher level than in the past.³⁶ Like the interagency, collective security participation brings a formidable range of legal entailments. The categories of peace operations--peacekeeping, peace-making, peace enforcement, and related terms--are still unsettled. Significant differences exist between United Nations, United States, and other national parlance. Many, if not most military deployments that occur under a peace operation label, however, will have a police character. In this regard, it is informative to review comments from Canadian military writers. The Canadian military has participated actively in collective security endeavors, and Canadian officers claim some doctrinal authority as to the nature and workings of international peace operations. In the following excerpt, Canadian Army officer and peace operations expert David Last refers to a form of peace operation he calls "constabulary intervention."

The constabulary role can be carried further, once segregation has been effective and in place for a while. Shots can be treated as criminal matters, for resolution by

the civilian police, reinforcing the norm that shots by either opposing force are not to be tolerated under the cease-fire. There are two interesting examples of this occurring. In the first, two shots were reported. A young soldier claimed to have returned fire when shot at by a UN patrol. In response to the protest, the UN used Australian civilian police to investigate the incident, treating both the UN and the opposing force as potential suspects. The forensic evidence exonerated the UN, and was presented to the opposing force for subsequent action against the individual guilty of careless discharge of a weapon.

In the second case, the accusation was made not by a soldier, but by the commander of an opposing force unit. It was alleged that several shots were fired from a heavy machine gun at a specific time and place. UN observers should have heard the shots and seen the tracers, but had not. There was some suspicion that the accusation was false, with the aim of embarrassing the UN or the other side. The incident was escalated to UNFICYP headquarters, where staff officers demanded a full civilian police investigation, with interviews of all witnesses. The accusations were withdrawn.

In these two cases, the soldiers on the scene acted as policemen, maintaining a stable and orderly background against which combatants come to rely not on force of arms, but on recourse to the adjudication of a neutral third party. Research has shown that this is the main impact of effective police practices, which rely on presence and assertion of a positive influence more than on coercion. Constabulary intervention, then, is the classic tool of peacekeeping forces at the tactical level for maintaining a stable segregation of forces once an effective cease-fire is in place.³⁷

The above excerpt is offered to highlight the police nature of many multinational peace operations. Debate over the prognoses for success in these collective security enterprises aside, the character of "engagement" is one in which legality and legitimacy are expressly tied.

NGOs. The work of NGOs often may be essential to the successful outcome of an operation. However, relations between a U.S. military force, or a U.S.-led international military force, and NGOs may not always be cordial or fluid. Some NGOs will hold negative prejudices against the U.S. military, and will be unwilling to reciprocate duties. In Somalia, for instance, some NGOs resisted the disarmament of gunmen who were extorting the NGOs in protection rackets.³⁸ The problem of the status of NGOs in many OOTW situations awaits juridical clarification. For example, where does an NGO gain authority for its presence in a "failed state" situation? When there are parties to a conflict as defined in the Geneva Conventions, the International Committee for the Red Cross will in almost all cases attempt to secure authorization for its presence from all sides of the conflict in order to establish neutrality. Some organizations, Doctors Without Frontiers, for instance, reject any requirement to request permission. When does one of the parties to the conflict, or an intervening power, have a right to expel such an organization? Or, to what extent are members of an NGO subject to the civil and criminal jurisdiction of an intervening command? Poorly considered decisions about these issues might not withstand the criticism of other NGOs on which the commander could come to depend.

Habitual deployment of OOTW-ready units. OOTW specialized forces may be already be a reality. The U.S. Army's 10th Mountain Division, home-based in Fort Drum New York, sent 5,100 soldiers to Homestead Air Force Base in Florida to give assistance in the aftermath of Hurricane Andrew in 1992. It deployed 7,300 troops to Somalia in 1993. Tenth Mountain troops were sent to Panama early in 1994, and later the division sent nearly 8,600 soldiers to Haiti for Operation Restore Democracy.³⁹ Partly because the unit has gained specialized OOTW expertise and has exercised interagency and inter-organization networks, the division appears to have become the country's default fire brigade. United States Special Operations Command, meanwhile, has assumed sole responsibility for a number of OOTW mission areas. Its limitations relate mainly to the large scope of deployments required for many types of interventions.⁴⁰

The United States Coast Guard provides one model of an organization having military capabilities and wartime combat responsibilities, but whose missions and mandate are police in character. Protection of life and property of those at sea is the essence of United States Coast Guard efforts, but the Coast Guard mission list reads like a description of operations at sea other than war. It encompasses maritime law enforcement, international ice patrol, fisheries patrols, search and rescue, aids-to-navigation, marine environmental protection, boating safety, port safety and security, military readiness, marine inspection, and waterways management. All of these require seamless interagency coordination, and internalized domination of relevant legal constraints and obligations. "The CG does not have a Judge Advocate General (JAG) Corps. All lawyers, including those who practice operational law, are line officers. As such, these lawyers are tied to non-legal billets in other mission areas throughout their careers."⁴¹ Coast Guard legal expertise, in other words, is not an add-on, adjunct, or "force multiplier."⁴² It is woven into the institutional body of knowledge necessary for accomplishment of the Coast Guard mission. This integration of legal training and police training is natural when compared to the relationship of many district attorneys or district prosecutors offices with police departments across the United States. The intimate relationship helps to confirm public trust that the rule of law is being served by the public force. The United States Coast Guard has been trusted with a range of duties that covers many of the missions falling under OOTW, to include restoration of domestic order on land. Under its broad statutory mandate, the Coast Guard provided assistance to Federal agencies to quell the widespread looting on St. Croix after Hurricane Hugo had ravaged the island. The President also used his legal authority to order the Coast Guard to suppress violence and restore law and order on St. Croix.⁴³

Three of the organizational tendencies just elaborated--interagency collaboration, international peace operations, and growth of NGOs--carry extensive legal considerations along with them. The fourth tendency, habitual deployment of OOTW-ready units, is in part a product of the first three. As the body of legal controls and mandates develops, it will be increasingly necessary to respond to that legal regime with organizations that do not have to re-learn the law for every mission.

Conclusion. At the outset, this essay asserted that post-Cold War changes in sovereignty, increasing reach of legal norms, and variety of mission types given to military organizations spurred doctrinal experimentation with "Operations Other than War" and operational law. Not highlighted was increased American willingness to intervene militarily in foreign lands. This new disposition toward military intervention gives the subject of this essay its importance. A

recent book by Richard Haass, *Intervention*, lends perspective.⁴⁴ Haass had been assigned to write a speech on the subject of intervention that was to become President George Bush's final major public statement on national security issues.⁴⁵ The book itself is a defense of the propositions expressed in the speech and provides an elaboration of the theoretical and practical context in which it was written.⁴⁶ Haass does not waste ink on national self-doubt or moral circumspection. He frames the controversy as when, where, why, and how to intervene. Whether or not the U.S. has a right to intervene is finessed under the assertion that isolationism is no longer possible for America.⁴⁷ In brief, *Intervention* represents and formulates the details of a currently dominant attitude about America's role in the world and about how the military is a primary tool of that role. Reading between the lines we can see that the American military may have to be able to constantly and simultaneously respond to a long gamut of missions. Coinciding with this acceptance of United States international crusading is an acknowledgment that the federal military will be applied in domestic support operations almost whenever and wherever it can be of help. The message is clear. The U.S. military will engage in a lot of OOTW. But, what is military?

A semantic pitfall in the debate over the appropriate use of American military forces in interventions and other OOTW is the duality of meaning of the word military. For many "military" thinkers, the term has a substantive content that evokes war between nation states and their uniformed armies. In American English, however, "military" also refers to any organization or resource controlled by the United States Department of Defense. Calls for military participation, or military help, or military involvement, or even the use of military force, do not necessarily mean a call for military approaches, or military art, or military ethic in their ontological sense--only in the bureaucratic sense. On one hand is a special professional purpose in time of war. On the other is an institutional expediency. Fortunately and unfortunately, the ontological "military" fosters obedience to superiors, and denial of unsuitability or inability to accomplish an assigned mission. A trap is set against the traditional military ethic. Any order given to the military (that is, to a military commander in the Department of Defense) is treated as a military mission. The request is to be obeyed, the mission can and will be accomplished. Nevertheless, the mission given may have been a military one only in the bureaucratic sense.

The essence of police operations is enforcement of the law, whereas in war, violence is applied in an almost extra-legal context. This, then, is what the growth of operational law reflects--recognition that legal norms provide operational parameters. We must now go one step further and recognize that legal norms should also inform the establishment of mission goals, methods, training, and resource management. The consequences of not making major institutional changes in response to this legal reality are readily visible. At one end, warfighting units may lose the spirit of combat. At the other end, police missions will be inexpertly accomplished, perhaps leaving commanders vulnerable to lawsuits. More than a failure to use the right tool, mistakes in law enforcement can undermine internal morale of the force, and public morale toward the force. The British, for instance, experienced the police dilution of military identity in Northern Ireland in the late 1960s. British military doctrine applied in Northern Ireland grew out of touch with the expectations of the legal regime, and therefore became illegitimate politically. "In short the use of troops in public order disputes in what might be termed the traditional aid to the civil power role, had, for a variety of reasons, become politically unacceptable in Britain by 1969."⁴⁸

Because of attention by U.S. military JAG officers to the evolution of National Security Law, the United States military is not losing track of American legal expectations. However, there may be a gap in the practical obedience to legal expectations because of inertia in force structuring. Ongoing missions and reactions to U.S. military conduct will continue to shape operational law. New cases will be argued and new precedents set, most of which are likely to further limit commanders' powers in OOTW. U.S. military actions in Haiti are yet to be analyzed, but conditions are appropriate for the establishment of some demanding new legal parameters.

Haiti's former military rulers earned widespread enmity not only in Haiti, but in much of the international community. The military-controlled government was the object of severe and repeated criticism from human rights groups, other nongovernmental aid organizations, and major news media organs hoping to improve conditions in Haiti. As such, a quantity of good will toward the international intervention has existed among these groups. It is understandable that they would be generous in underplaying or overlooking collateral and incidental violations of civil rights that the international force might feel obligated to commit in order to bring Haiti a semblance of democratic order. However, the record of United States command behavior, and the way it is presented, can quickly shift toward the appearance of arrogant disregard for human rights.⁴⁹

As we establish order, we must understand that we have temporarily taken over Haiti's sovereignty and that our actions have long-term political consequences on a society which will shape such actions to suit its needs. Sovereignty will be restored as work proceeds on a desired end state of a new political order that respects human rights, individual liberty, the constrained use of force, the rule of law, and the right of people to freely express themselves and organize politically. . . . The critical test of legitimacy will be the shape and effectiveness of the judicial system and the police. . . . One of the lessons learned in Panama is that you cannot take thugs and make them into law-abiding and respected police. The society will reject them and their morale will diminish.⁵⁰

The police and judicial performance of the United States in Haiti may prove excellent. A substandard performance may avoid detection. Either way it will have its effect on the long term prospects for Haitian democratic development. More important still is the pending challenge of the Cuban transition. The U.S. military has already been dealt the questionable role of warden to tens of thousands of Cuban would-be immigrants. In view of the much greater strategic ramifications that Cuba's troubles will have for the United States, it behooves the United States military to ensure a correct alignment of forces with the expectations and demands of the civil legal regime. Such a realignment will prove useful in missions ranging far beyond the Caribbean, and will pay dividends in terms of military self image, morale, professionalism, and readiness.

The many individual legal considerations brought together as operational law have a combined strategic influence. The sweep of this growing body of law will generate mission attributes that traditional combat units are ill-disposed, ill-equipped, and ill-advised to master. If U.S. civilian leaders and military commanders are to successfully conduct OOTW, then they will have to operate within the edifice of operational law. For many OOTW challenges this will require a way

of thinking foreign to combat doctrine and education. Therefore, invention of a new organization attuned to the legal basis of its actions will be the offspring of necessity.⁵¹

ENDNOTES

1. International and Operational Law Division, Operational Law Handbook (Charlottesville, Virginia: The Judge Advocate General's School, 1994), A-1. (The Operational Law Handbook is now used at the Judge Advocate General's School and at the Army War College in Carlisle, Pennsylvania as a text reference. At the War College it has replaced Theater Planning and Operations for Low Intensity Conflict Environments: A Practical Guide to Legal Considerations.).

2. See David E. Graham, "Operational Law--A Concept Comes of Age," The Army Lawyer (July 1987): 9. "Lest there be any doubt, OPLAW is a new concept. It is not simply a modified form of international law, as traditionally practiced by Army judge advocates, dressed up in battle dress uniform and given a catchy name." Ibid; "By its nature, OPLAW transcends normally defined military legal disciplines and incorporates, for the first time in one legal regime, relevant substantive aspects of international law, criminal law, administrative law, and procurement-fiscal law." Ibid., 10.

3. A foundation had already been laid within the Judge Advocate General academic community for the construction of operational law doctrine. Department of Defense Directive 5100.77 of 10 July 79 required all US forces to abide by the law of war. (In 1977, President Carter had signed the 1977 Protocols to the Geneva Conventions) As a result, the international law division of the JAG school gained status and positions, though the scope of interest remained fixed on law of war issues. Shortly before the Grenada intervention, Joint Chiefs of Staff Memoranda 59-83, of 1 June 83, (and a later memorandum--MJCS 0124-88, 4 Aug 88) required lawyers to provide advice on both restraint and the right to use force, and to assist in operational plans and orders. These instructions, as well as FORSCOM Message, Subject: Review of Operations Plans, 29 October, 1984, provided the official mandate on which operational law doctrine was developed.

4. Although the Operational Law Handbook includes national security law as one of its elements, it is also correct to conclude that operational law is a practitioner bi-product of national security law. National security law has become a major area of legal study, like domestic law or tax law, that is individually recognized by the American Bar Association. Over eighty law schools in the United States now offer some course work in national security law. This body of legal study reflects legislation and court decisions that have shaped all aspects of national defense during the past half century. It is an area of study that involves scholars, policy makers, and legal practitioners well beyond those in military uniform. The development by military lawyers of military operational law doctrine was a unavoidable consequence of this larger academic movement. Rather than just relating operational law principles based on experiences from military deployments (although this is important), military legal faculty must prepare unit JAG officers to incorporate the lessons of national security law into their military practice. The future of military law is now tied in great measure to the evolution of national security law. The range of this discipline can be seen in the contents of one of the major national security law texts. See, e.g., John Norton Moore, et. al., National Security Law, (Durham, North Carolina: Carolina

Academic Press, 1990). Materials in Moore's text cover 1200 pages in 28 chapters ranging from international conflict management to emergency preparedness.

5. As part of its annual senior service college curriculum, The Army War College at Carlisle, Pennsylvania now offers a 30 hour advanced course to prospective senior officers and civilian leaders on legal aspects of defense and military decisions. At the Command and General Staff College at Ft. Leavenworth, Kansas, the follow-on generation of military leaders is now offered a 30-hour elective on operational law.

6. See Headquarters, Department of the Army, Field Manual 100-5, Operations (Washington: U.S. Government Printing Office, 1993). FM 100-5 is a periodically updated capstone document for U.S. Army doctrine. This latest edition includes a chapter titled "Operations Other Than War" where a mission list is offered that includes: noncombatant evacuation operations, arms control, support to domestic civil authorities, humanitarian and disaster relief, security assistance, nation assistance, support to counterdrug operations, combatting terrorism, peacekeeping operations, peace enforcement, show of force, support for insurgencies and counterinsurgencies, and attacks and raids. The manual's glossary defines the term OOTW as "military activities during peacetime and conflict that do not necessarily involve armed clashes between two organized forces." FM 100-5 is more definite about what the Army feels OOTW are not. An OOTW apparently cannot be 'limited' war or 'general war,' although OOTW can occur simultaneously or within either of these. Limited war is an armed conflict short of general war, the example given being Operation Just Cause in December 1989 in Panama. General War is defined as "armed conflict among major powers in which the total resources of the belligerents are employed and survival is at stake." Ibid., 2-1. At the time of the writing of this article, a new Army Field Manual on Operations Other Than War was still in draft.

7. See William W. Mendel, "A Joint Command for Engagement Policy," (Foreign Military Studies Office, Ft. Leavenworth, Kansas, unpublished manuscript), 19.

8. William J. Clinton, National Security Strategy of Engagement and Enlargement, (Washington: The White House, 1994), 1.

9. On other dimensions of the Revolution in Military Affairs, see generally Michael J. Mazarr, The Revolution in Military Affairs: A Framework for Defense Planning, (Carlisle, Pennsylvania: Strategic Studies Institute, 1994).

10. "Legitimacy" also has a formal definition in U.S. Army doctrine. Field Manual 100-5 defines it as "the willing acceptance by the people of the right of the government to govern or of a group or agency to make and carry out decisions." Field Manual 100-5, Operations, note 5 at p. 13-4. For an in depth analysis of the importance of the attainment of legitimacy in some OOTW (and the relationship of legitimacy to other factors) see Max G. Manwaring & John T. Fishel, "Insurgency and Counter-Insurgency: Toward a New Analytical Approach," Small Wars and Insurgencies, (Winter 1992): 272-310.

11. Ronald Reagan, Executive Order No. 12333, December 4, 1981, "Presidents Oversight Intelligence Board." Can be found in Compilation of Intelligence Laws and Related Laws and

Executive Orders of Interest to the National Intelligence Community (Washington, D.C.: U.S. Gov't. Printing Office, 1993), 645.

12. 18 United States Code § 1385, Posse Comitatus Act. The Act states, "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined no more than \$10,000 or imprisoned not more than two years, or both." As understood, the act provides no exception for use of the military just because the requestor is a civilian federal agency, say the FBI. The act is also understood to refer to personnel assets only, not equipment or facilities, and it is not regarded as having any extraterritorial application.

13. Andres Viglucci, "Repatriation of Rafter Is Blocked," Miami Herald (26 October 1994): 1A, 5A.

14. The 1993 FM 100-5 virtually elevates ROE to an operational principle under the term restraint, which is defined briefly as applying appropriate military capability prudently. Field Manual 100-5, Operations, 13-4.

15. Operational Law Handbook, H-1.

16. Ibid.

17. ROE can become complicated. Note the experience with ROE by Joint Task Force Los Angeles that was formed to respond to the 1992 riots in that city. "Arming Order Levels" were established as part of the ROE. They ranged from Arming Order (AO) I to AO-VI. AO-I meant rifle at sling, bayonet scabbard on belt, bayonet in scabbard, pistol holstered, baton on belt, ammunition controlled by the officer or NCO in charge, and weapon chambers empty. AO-VI meant rifle at port, bayonet scabbard on belt, bayonet fixed, pistol in hand, baton on belt, ammunition controlled by the officer or NCO in charge, and weapon chambers locked and loaded. It is understandable how the after action report might conclude "The JTF experienced problems with the application of the arming order levels. Most notable was the inconsistent application of the guidance." Center for Army Lessons Learned, "Operations Other Than War Volume III: Civil Disturbance," CALL Newsletter, (No. 93-7, November 1993): 26.

18. Mark Martins, Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering (Master of Laws Thesis, The Judge Advocate General's School, United States Army, 1994).

19. These purposes are policy, legal, and military. Ibid., 18.

20. Ibid., 19.

21. T.R. Fehrenbach, This Kind of War: A Study in Unpreparedness (New York: Macmillan Company, reprinted U.S. Army Command and Staff College Press, 1994), 100.

22. Martins, Rules of Engagement for Land Forces, p. 10 ; A description of the problems of designing and implementing ROE in a humanitarian relief operation are described in F. M.

Lorenz, "Law and Anarchy in Somalia," *Parameters*, (Winter 1993-1994): 27-41. See also Jonathan T. Dworkin, "Rules of Engagement: Lessons from Restore Hope," *Military Review*, (September, 1994): 26.

23. "Lessons: a. Commander must possess a clear picture of the threat and make an assessment of soldier experience and their level of training and discipline. b. Realistic threat training is essential, so that commanders and first-line leaders are better able to strike the balance between threat level and safety. Predeployment training on the proper ROE is a must." Center for Army Lessons Learned, "Operations Other Than War Volume III: Civil Disturbance," 26.

24. Martins' logic can be reconciled with this point. Combat soldiers still need a modernized approach to training regarding ROE that are appropriate to warfighting conditions and when they are about to be involved in operations that are or approach OOTW. Careful ROE instructions are not enough, and Martins' suggestion that the problem of ROE be incorporated more thoroughly into training habits cannot be discounted.

25. William W. Mendel, "A Joint Command for Engagement Policy," 12, footnote 44.

26. Graham, "Operational Law--A Concept Comes of Age," 10. Graham refers to a quip made regarding the state of operational law at the time. "You can only tell the C.O. he can't shoot the prisoners so many times. You reach the point at which, when the boss has run out of beans and bullets, has certain equipment requirements, and has the locals clamoring to be paid for property damage, you have to be prepared to provide the best possible legal advice concerning these issues as well." *Ibid.*

27. Center for Army Lessons Learned, Operation Restore Hope: Lessons Learned Report, Operations Other Than War, (Ft. Leavenworth, Kansas: U.S. Army Combined Arms Command, 1993), XIV-36.

28. "Legitimacy is built on adherence to law, and promise keeping. On the micro level, human rights and subordination to civil authority are the keys to legitimacy. Supporting activities include payment of personal and property damage claims, on time payments for goods and services, proper coordination with civil/military authorities prior to going into an area, and providing a POC [point of contact] for the populace." Robert L. Swann, et. al., "Role of the Judge Advocate Under the new FM 100-5, Operations," The Army Lawyer (December, 1995): 33.

29. For a full definition of these terms, and a review of the significant field of contingency contracting (contracting in the early stages of a military deployment) see Elyce K.D. Santerre, "From Confiscation to Contingency Contracting: Property Acquisition on or Near the Battlefield," Military Law Review 124 (Spring 1989): 111.

30. For a list of relevant legal limitations, see Operational Law Handbook, G-1.

31. Black propaganda purports to emanate from a source other than the true one. Grey propaganda does not specifically identify its source. White propaganda is disseminated and acknowledged by the sponsor, or an accredited agency of the sponsor. Ibid., G-1.
32. For debate about the constitutional and practical relationship between the news media and intelligence organizations, see generally The CIA and the Media: Hearings Before the House Subcommittee on Oversight, Permanent Select Committee on Intelligence, 95th Cong., 1st. and 2nd. Sess. (1978).
33. In May 1992, DOD and major news organizations reached agreement on guidelines that apply to media coverage of U.S. military forces engaged in armed conflict. These rules are listed in Operational Law Handbook, PAO-1.
34. The question arises why a command would want to call any unit a PSYOP unit if the command plans to acknowledge being the sponsor of the propaganda it disseminates. The term PSYOP carries enough pejorative connotations that the presence of such a unit would itself seem poor PSYOP.
35. William J. Clinton, National Security Strategy of Engagement and Enlargement, (Washington: 1994), 6; See also, William W. Mendel, "A Joint Command for Engagement Policy," 27.
36. Debate about the creation of an independent United Nations military force is related by Barry M. Blechman, "The Military Dimensions of Collective Security," in U.S. Policy and the Future of the United Nations, (Roger A. Coate, ed., New York: The Twentieth Century Fund, 1994), 81-88. United States enthusiasm for this idea may have passed, but the call to establish standardized courses, curricula, and educational aids for training earmarked units has not. At the Training and Military Education Conference of the Conference of the American Armies held at Ft. Benning, Georgia 15-17 November, 1994, military delegates from around the hemisphere voted to recommend that the School of the Americas be used to provide common preparation for international peacekeeping operations.
37. G.M.Reay & David M. Last, "Building Peace in the Age of Fragmentation," Canadian Defense Quarterly, (March 1994), 7.
38. F. M. Lorenz, "Law and Anarchy in Somalia," 39.
39. Paulette V. Walker, "Gone Again," Army Times, (October 31, 1994): 12.
40. William Mendel suggests providing the Special Operations Command with the structure needed, in the form of a Joint Engagement Command, to accomplish the kinds of missions that the 10th Mountain Division has recently been asked to accomplish. William W. Mendel, "A Joint Command for Engagement Policy," [].
41. Operational Law Handbook, E-1.

42. The notion of the force multiplier is hard to escape when dealing with organizations whose primary mission is to support a combat unit. "Operational Law specializes in the 'military strength' component of the elements of national power, and the OPLAWYER can walk the commander up to the line between peacetime engagement and conflict. In this manner, law becomes an arrow in the 'quiver' for commanders, and can be used as a force multiplier." Ibid., B-2. Unfortunately, the idea may be irrelevant or counterproductive in many types of OOTW.

43. Ibid., E-2.

44. Richard Haass, Intervention: The Use of American Military Force in the Post-Cold War World (Washington, D.C., Carnegie Endowment for International Peace, 1994).

45. Speech delivered by President George Bush at the U.S. Military Academy, West Point, January 5, 1993. Relevant excerpt can be found in Richard Haass, Intervention, Ibid., at Appendix F., 199.

46. Haass summarizes a number of recent U.S. interventions and proposes a list of types that includes deterrence, preventive attacks, compellence, punitive attacks, peacekeeping, warfighting, peace-making, nation-building, interdiction, humanitarian assistance, rescue, and indirect use of force. Reconciling Haass' list with the way in which military missions have been doctrinally organized by the U.S. military takes a little effort, but there is no contradiction. The range of actions that makes up "engagement" in recent foreign policy parlance is obviously broad. Chapter 3, "The Vocabulary of Intervention," Intervention, 49-66.

47. Also swept aside is the reasonable doubt that the peacetime engagement and nation assistance promoted as the centerpiece of our post-Cold War foreign dealings is effective or useful. On this point see Benjamin C. Schwarz, "A Dubious Strategy in Pursuit of a Dubious Enemy: A Critique of U.S. Post-Cold War Security Policy in the Third World," Conflict & Terrorism (October-December, 1993): 263.

48. Stephan Deakin, "Security Policy and the Use of the Military--Military Aid to the Civil Power, Northern Ireland 1969," Small Wars & Insurgencies 4 (Autumn 1993): 224.

49. See Larry Rother, "Legal Vacuum in Haiti Is Testing U.S. Policy," New York Times (Nov. 4, 1994): 32. The Times article addresses the detention without trial and without right to counsel, of both Haitians and supposed U.S. citizens by U.S. military authorities. The article suggests that this particular human rights story is just beginning.

50. Gabriel Marcella, Haiti Strategy: Control, Legitimacy, Sovereignty, Rule of Law, Handoffs, and Exit, (Carlisle Barracks, Pennsylvania, U.S. Army War College, 1994), 2-7 passim.

51. The author does not favor creation of a national police similar to the gendarmerie, carabineros or border troops of other countries that would have continuous application within the United States. Limitations on the use of national armed forces within the boundaries of the United States should be applied strictly--more especially to a paramilitary organization with police capabilities and orientation. Existence of such a national force will tempt federal leaders

to use it to solve perceived domestic problems. This is an unattractive aspect of the prediction that the armed forces will create a separate interagency structure to deal with OOTW. At the same time, it should be recognized that the nation will continue to be faced with overseas situations that call for a militarized police force.