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**THE U.S. MILITARY ROLE IN SUPPORTING
THE RULE OF LAW IN PEACE OPERATIONS AND OTHER
COMPLEX CONTINGENCIES**

BY

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ABSTRACT

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This paper examines options on how the U.S. military might best support the provisions of Presidential Decision Directive 71 (PDD-71). PDD-71 directs the Departments of State (DOS), Defense (DOD), Justice (DOJ), and the U.S. Agency for International Development (USAID) to improve the United States' capacity to conduct effective civilian police (CIVPOL) operations and complementary criminal justice development (which encompasses police, justice, and penal system development). In a February 2000 Department of State (DOS) White Paper, "The Clinton Administration's Policy on Strengthening Criminal Justice Systems in Support of Peace Operations", DOS called for the U.S. Government to advocate that UN missions use a mix of military and paramilitary forces to carry out any new peace operation. These paramilitary forces would function as constabulary forces that train for and conduct law enforcement functions in their home countries. These forces would possess specialized skills not common to either military or civilian police organizations.

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THE U.S. MILITARY ROLE IN SUPPORTING THE RULE OF LAW IN PEACE OPERATIONS AND OTHER COMPLEX CONTINGENCIES

Establishment of a small, permanent peace force, or the machinery for one, could be the first step on the long road toward order and stability. Progress cannot be forced, but it can be helped to evolve. That which is radical one year can become conservative and accepted the next.¹

—William R. Frye, Writer, 1957

THE RULE OF LAW IN PEACE OPERATIONS

Commanders executing peace operations and complex contingencies are often faced with confronting considerable civil disorder, violence, and crime. As conflicts end and armies demobilize, a security vacuum develops that indigenous law enforcement organizations cannot fill, at least initially. Law enforcement and other criminal justice institutions usually have been destroyed, rendered ineffective by the conflict or corruption, or these institutions have become part of the conflict due to partisan behavior. During conflicts the police are often involved and are consequently viewed as biased by the civilian population rather than as public servants. Prior to the start of many conflicts, the police have been viewed as the primary instrument for state-sponsored repression of the citizens. In these situations, the other aspects of the indigenous criminal justice system, such as judicial and penal systems, and the law code, are often in disarray and are in need of substantial reform as well.² Effective law enforcement and criminal justice systems are necessary for a society to achieve and maintain durable peace. The need to reestablish an indigenous criminal justice system is often a fundamental aspect of a successful peace operation. By reconstituting indigenous criminal justice systems, promoting public safety and developing responsive criminal justice institutions, the U.S. can successfully and economically support American interests.

On February 24, 2000, President Clinton signed Presidential Decision Directive (PDD) 71, "Strengthening Criminal Justice Systems In Support of Peace Operations and Other Complex Contingencies." The intent of PDD-71 was to improve the capacity of the U.S., other countries, and international organizations to provide criminal justice assistance in peace operations and other complex contingency operations. Presidential Decision Directive 71 directs the Departments of State (DOS), Defense (DOD), Justice (DOJ), and U.S. Agency for International Development (USAID) to improve the United States' capacity to conduct effective civilian police (CIVPOL) operations and complementary criminal justice development (which encompasses police, justice, and penal system development).³ PDD-71 addresses improving the U.S. capacities of the U.S. Government to respond to criminal justice aspects of peace

operations; the response capabilities of other organizations; the capacities of other countries to respond to criminal justice aspects of peace operations; and operational activities. The State Department has been named as the lead agency for coordinating U.S. participation in international criminal justice development activities. The military's role in this initiative has yet to be determined.

THE NATIONAL SECURITY STRATEGY, NATIONAL MILITARY STRATEGY AND PDD-71

As part of the National Security Strategy, the United States seeks to shape the international environment to promote peace and stability. Then it pursues this objective through a variety of means: diplomacy, economic cooperation, international assistance, arms control and nonproliferation, and health initiatives. Peace operations support important national interests. Although these interests are not as vital as our national survival, they do affect our national well being and the character of the world in which we live.⁴ Therefore, failure to preserve a favorable world order could adversely affect core national interests. Accordingly, the United States seeks to create a stable, peaceful international security environment, by: shaping the international environment, using all elements of national power, responding appropriately to threats and crises, and preparing for an uncertain future.⁵

The National Military Strategy stipulates the military's role in engagement, offering guidance on how the military can help shape the international environment, respond to crises which threaten our national interests, and prepare now for an uncertain future. When a crisis arises, swift action by military forces may sometimes be the best way to prevent, contain, or resolve regional conflicts. Effective military response may preclude greater effort and increased risk later.⁶

U.S. policies regarding peace operations have been outlined in two other PDD, PDD-25 and PDD-56 (as well as PDD-71). Presidential Decision Directive 25, "U.S. Policy on Reforming Multilateral Peace Operations," was promulgated in May 1994 largely, but not exclusively, in response to a perceived problem with United Nations (UN) peacekeeping activities. The perception was that the UN had not been very selective and not very effective in peace operations. This PDD-25 essentially proffers a decision guide for how our UN delegation votes on peacekeeping matters. PDD-25 distinguishes between operations involving U.S. troops and those not involving U.S. troops. It also provides guidance for the U.S. vote in accordance with our level of involvement. While it has been politically popular in some sectors to lambaste the UN, to their credit, the UN has adopted 20 of the 25 U.S. recommendations

based on PDD-25. PDD-25 also created the Peacekeeping Core Group, the primary interagency policy development body for peace operations.

Promulgated in May 1997, PDD-56 "Managing Complex Contingency Operations," requires interagency planning and cooperation to achieve unity of effort among the interagency participants. An Executive Committee (EXCOM) for each operation, called for in this Directive, serves as the primary interagency mechanism to conduct political-military planning and coordinates day-to-day management of U.S. participation in a specific operation. Although the Department of State has made some headway in implementing the provisions of this PDD, the Department of Justice and others are not yet prepared to use it. In preparation for operations in Kosovo, an interagency plan prepared in advance was not updated and has therefore not been effective in its implementation. Finally, PDD-56 requires the continuous collection of lessons learned.⁷

CHALLENGES TO U.S. INTERESTS

The first major U.S. post Cold War peace operation was conducted in Somalia in 1992. From 1948 to 1988 the UN was involved in 15 peace operations. Since 1988, the trend, however, has been skyrocketing: the UN has been involved in 35 peace operations. Peace operations are conducted on a continuum ranging from preventive diplomacy (actions taken in advance of a predictable crisis), peacemaking, peace building, peacekeeping, to peace enforcement (which involves military force or the threat of it to compel compliance to maintain or restore peace and order).⁸ In most cases, failure to take such actions could have led to disruption of the peace or stability in the region. In the cases of purely humanitarian assistance or intervention, these operations appeal to our national values and therefore support our national interests.

During the 2000 presidential campaign, then presidential candidate George W. Bush argued that American forces around the world have been stretched thin by the Clinton administration's peacekeeping commitments, wearing out old equipment and driving some experienced troops to leave the military. The former Under Secretary of the Army and Under Secretary of Defense for Personnel and Readiness, Bernard D. Rostker, declared that "the U.S. military is in the peacekeeping and nation building business to stay."⁹ General Henry H. Shelton, Chairman of the Joint Chiefs of Staff said "It is naïve to think that the military will become involved in only those areas that effect our vital national interests." General Shelton went on to say, "The strategic environment will most certainly cause us to deploy forces to

achieve limited military objectives. As a global power, I submit that we cannot retreat from one activity to do another exclusively."¹⁰

FILLING THE SECURITY GAP

Rebuilding a country's security infrastructure is a long-term task where both the military and the police have their proper roles. The equation $\text{peace} = \text{order} + \text{justice}$ neatly describes the necessary balance between the various components of society. Whereas the military provides the "order" part of the equation, working police and judiciary system are needed to guarantee the "justice" part. Likewise, civilian police can never be a substitute for a military presence if the latter is necessary to guarantee a stable environment or act as a deterrence force.¹¹

Prior to the onset of war, the local police generally ensure law and order. In most cases, however, law enforcement by the police, courts and penal institutions collapse after the onset of hostilities. International military intervention when used alone is a blunt instrument, capable of providing a basic, rigid form of order. This military force can attempt to deter and limit loss of life and destruction of property but that is about all. Local law enforcement may have ceased to function or have become oppressive and even murderous. International police assistance must be mobilized to oversee the restoration of this function. Unlike the military, CIVPOL contingents have not had the capability to mobilize and deploy quickly to fill the security vacuum until a new criminal justice system is in place (see FIGURE 1).¹²

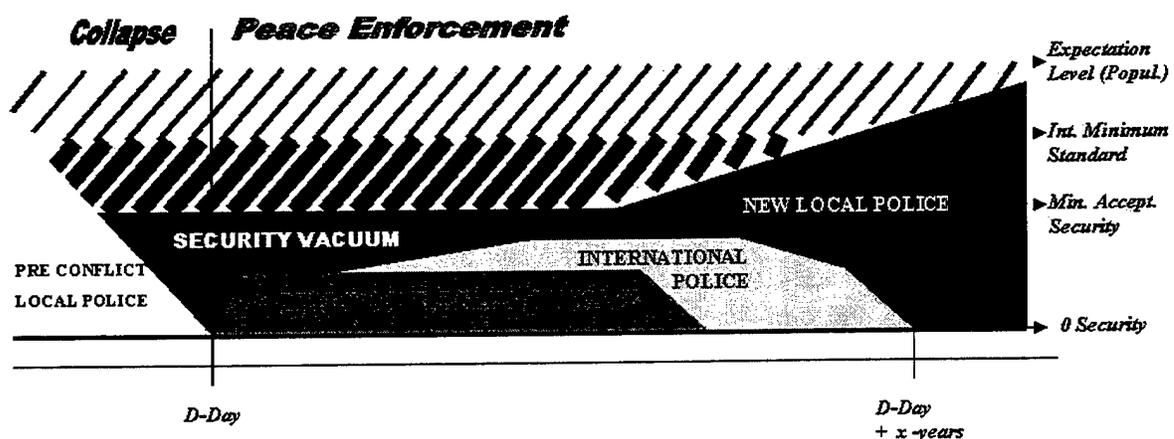


FIGURE 1 THE SECURITY VACUUM

IMPLEMENTATION OF PDD-71

The State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) has been designated as the lead office with responsibility for coordinating participation of the DOS, DOJ, DOD and USAID – to name a few - through an interagency working group.¹³ The INL as part of their international crime program, has three major goals which include helping emerging democracies strengthen their national law enforcement institutions.¹⁴ The INL received \$10-M. to support the implementation of PDD-71 and has several initiatives underway. These include the development of a ready roster of U.S. CIVPOL, the development of a package of materials and incentives to begin outreach to law enforcement agencies educating them about the UN CIVPOL service, and the development of an appropriate training package for U.S. CIVPOL.¹⁵

In the February 2000 White Paper, "The Clinton Administration's Policy on Strengthening Criminal Justice Systems in Support of Peace Operations," the State Department called for the U.S. Government to advocate that UN missions use a mix of military and paramilitary forces to carry out any new peace operation. These paramilitary forces would function as constabulary forces that train for and conduct law enforcement functions in their home countries. These forces would possess specialized skills not common to either military or civilian police organizations. The State Department has been directed to develop methods to provide specialized training to foreign civilian police, gendarme or constabulary forces to prepare these forces for service in peace operations and other complex contingencies.

The White Paper further advocates that the lead organization for future peace operations be a regional organization such as the UN, North Atlantic Treaty Organization (NATO), or the Organization for Security Cooperation in Europe (OSCE). The lead organization would then form a military coalition from its members. This military coalition should then identify the various law enforcement experts (police monitor and mentor, police operations planner, penal system advisor, judicial system advisor) required for the operation. The lead organization should develop job descriptions for these positions and set high standards for the qualification and performance of these experts. Only those experts who preformed to those standards would be retained for the operation, or deployed in future operations.

Training and preparedness of individuals and units supplied by contributing nations would remain a national responsibility. The U.S. lead agency has been directed, however, to maintain a capacity to provide training packages to the contributing states or nations tailored to meet the specific needs of the organizing body.¹⁶

U.S MILITARY'S EXPERIENCE IN PAST AND CURRENT MISSIONS

The military role in this interagency mission is not new. After World War II, the Army formed elite constabulary units, developed around mechanized cavalry groups which were given specialized training to conduct a police type occupation in order to accomplish the United States' mission of complete security coverage.¹⁷ The U.S. constabulary had a troop strength of around 30,000 soldiers.¹⁸ Soldiers assigned to the new constabulary were trained in language, psychology; search and seizure; patrolling, passes and permits; cordons, checkpoints and roadblocks; riot control and quelling disturbances during a four week specialized training course.¹⁹ Lieutenant Colonel Cherry²⁰ in his paper "Engagement Force: A solution to Our Readiness Dilemma" drew many comparisons between the tasks performed by the post World War II Constabulary and those conducted today by our U.S. forces conducting peace operations. Colonel Cherry wrote that "Both duties involve similar non-combat tasks that require highly-trained and disciplined forces, extensive interaction with local officials and civilians, decentralized operations at platoon-level and below, relationships with governmental agencies and non-governmental organizations, different leader and staff skill sets, and restraint through minimum use of force." He concluded that the Army should reexamine the Constabulary for its possible application today.²¹

In 1994 the U.S. Army Special Operations Command very successfully deployed active and reserve Special Forces, Civil Affairs and Psychological Operations soldiers to Haiti as part of Operation UPHOLD DEMOCRACY. These Special Forces soldiers provided initial constabulary functions while reserve Civil Affairs and Psychological Operations soldiers - who in civilian life were law enforcement specialists, judges, and lawyers - were formed into Ministerial Advisory Teams (MAT). The MAT assisted in the restoration, helping to re-establish other criminal justice functions until civilian organizations were able to conduct these tasks.²²

In Bosnia the Multinational Specialized Unit (MSU) was established to perform constabulary functions in support OPLAN Joint Forge. The MSU is a well balanced, specially equipped and trained force tailored to bridge the gap between the *over-dimensioned* conventional military forces and the less cohesive and unarmed International Police Task Force (IPTF) or CIVPOL. The MSU focuses on civilians, employs minimum force, prefers long term commitment, and employs individuals or small detachments unlike military forces which focuses on an armed enemy, employs massive fire power, prefers short term actions, and relies on larger units or formations. The MSU, because of its specialized training in anti-riot techniques and with its flexibility, can deploy anywhere in the country on short notice to prevent civil unrest. The MSU prefers to use preventive patrols (*recce*) and info gathering over *reactive* on call public

disorder operations. In Bosnia, the MSU provides a valuable link between the IPTF, the Multinational Divisions (MND) and the local police because they interact with each of these forces.

Tasks routinely conducted by the MSU include: deploying to areas where public security conditions are developing or already exist, augmenting and extending an effective Stabilization Force (SFOR) presence in potential hotspots. The MSU can support the MNDs (upon order from the SFOR Commander) in deterring civil disorder, or reestablishing it when deterrence has failed. It can support the phased, orderly return and resettlement of displaced civilians and refugees, and assist the IPTF in providing public security training for the host nation police. Currently, the MSU does not, unless specifically ordered to do so, conduct criminal investigations, routine police activities such as traffic control, and pre-trial or post-trial confinement. When specifically tasked, the MSU will conduct hostage rescues and participate in formal arrests.²³

The structure of the MSU being employed in both Bosnia and Kosovo, however, deals only with the reconstitution of civilian police, only one of the three legs of the three-legged stool. The expression, "three-legged stool" of a justice system was used by the USAID and the International Criminal Investigation and Training Assistance Program (ICITAP) of the Department of Justice, in describing law and order challenges during Operation Uphold Democracy in Haiti. The three-legged stool model depicts the importance of addressing, concurrently, the three elements of a security triad: police, courts, and prisons.

The other two elements of the security triad: the courts and prisons, both of which were still in need of work. Civil Affairs soldiers with civilian criminal justice experience worked with the IPTF in setting up their operations; they provided a valuable link with the Implementation Force (IFOR) in Bosnia to coordinate and mutually support each others' efforts. Civil Affairs teams also helped the Bosnian government build common criminal justice institutions in an attempt to bind the country's ethnic groups. Continued employment of these ad hoc special operations teams for future missions is certainly an option. However, these soldiers come from low density/high demand units that are currently employed both in Bosnia and Kosovo, as well as numerous other locations around the world.

In June 1999 when U.S. forces deployed to Kosovo as part of the Kosovo Force (KFOR), they were confronted with a law and order mission of such scale not seen since the post World War II occupations of Germany and Japan. In Kosovo all three legs of the security triad required immediate rebuilding. The United Nations Mission in Kosovo (UNMIK) and KFOR were faced with maintaining law and order complicated by an absence of an existing criminal

justice system. When UNMIK was unable to establish the criminal justice systems necessary to assume the law and order mission, KFOR was forced to not only provide public security measures, they were also tasked to police criminal conduct, provide judicial review for those arrested, and establish and run prisons.²⁴

THE SEARCH FOR A LEGAL FRAMEWORK

On June 9, 1999, the governments of the Federal Republic of Yugoslavia and the Republic of Serbia signed a written agreement with NATO called the Military Technical Agreement (MTA) which ended NATO's air campaign. At the same time the United Nations Security Council adopted Security Resolution 1244 (UNSCR 1244) which authorized the international security presence which was named the Kosovo Force or KFOR. The UNSCR 1244 also provided for the international civil presence that became UNMIK. The warring parties also signed the Undertaking of Demilitarization, and Transformation of the Kosovo Liberation Army (hereafter referred to as Undertaking) which served as the agreement by the insurgent forces in Kosovo to end the hostilities. The Undertaking provided for the legitimacy of the peacekeeping operation.

When UNMIK arrived in Kosovo it found that its law and order mission would extend beyond providing for police type functions. It became evident that there was an almost complete absence of a judicial authority. Most professional and lay jurists had fled the country and in particular, there was an absence of Serbian trained judiciary. The remaining Albanian jurists with legal training lacked experience and training in basic civil rights. The UNSCR 1244 charter had specially enumerated that in the first phase of the mission, KFOR was to be responsible for "ensuring public safety and order until the international presence could take responsibility for the task." However, in the second phase of the operation KFOR would also be responsible for establishing a "fully functioning independent and multi ethnic judicial system."²⁵

As an initial first step, the United Nations Special Representative of the Secretary General (SRSG) appointed 30 experienced judges and 12 prosecutors to serve on an Emergency Judicial System (EJS). Their function was to review pre-trial detentions and conduct initial hearings. The most significant obstacle to establishment of the EJS was the question of the applicable law in Kosovo. On July 23, 1999, UNMIK, in its first regulation (UNMIK Regulation 99/1), established that the law acceptable in Kosovo would be the law that was in place prior to the intervention of NATO (or prior to March 24, 1999). This move was rejected flatly by the judges of the EJS, preferring the Kosovo Criminal Code that had been annulled by the Serbs in 1989. The SRSG later repealed sections of UNMIK regulation 99/1 and allowed

the use of the previously annulled Kosovo Code or laws enacted after 1989 that provided additional protections for detainees.²⁶

In February 1999 the parties in the Kosovo conflict had met in Rambouillet, France to negotiate a peace settlement. Although the meetings failed to reach a cease-fire agreement, the resulting Rambouillet Accords became the framework for the ultimate KFOR mission and the accords contained provisions that were later combined with the MTA which significantly affected the law and order mission of KFOR.

It would appear that the UN Security Council, under its Charter and other binding laws, has the authority to mandate the use of coercive force without the consent of a state in the event of a complex emergency. Such a complex emergency would include complex humanitarian crises or peacekeeping operations, or in the case of a failed government. In these cases the international community must rely on the Chapter VII (enforcement) authority of the UN Security Council.²⁷

WHAT ROLE SHOULD THE U.S. MILITARY PLAY IN SUPPORTING THE RULE OF LAW?

The references (in PDD-71) to the role the military should play in law enforcement and constabulary activities have been the cause of concern within the Department of Defense although the directive did not call for DOD to take any specific action. The U.S. military has been performing these functions up to now on an ad hoc, de facto level and would prefer to keep doing so rather than to give up the force structure needed to form specialized units.

In June 2000 the U.S. Army Peacekeeping Institute (PKI) hosted its annual Peace Operations Seminar for the Chairman of the Joint Chiefs of Staff (CJCS), it examined the role military forces play in establishing a rule of law in peace operations. The seminar was separated into working groups to explore subjects such as developing guidelines for the extent of military involvement in attacking corruption and organized crime, guidelines for success in military participation in public security initiatives, and military support of public security programs. The seminar participants were asked to consolidate the information presented and to brief the Chairman's representative, LTG Edward Anderson, Director, Strategic Plans and Policy for the Joint Staff. Among the recommendations made were:

(1) Having a standing Joint Interagency Task Force (JIATF) for peace operations strategic planning. The JIATF would be responsible to the National Security Council. It would call upon the Department of Justice to conduct front-end assessments of future peace operations. It would provide structured planning (rather than the current ad-hoc nature in which

planning now occurs). It would include international coordination and would provide valuable linkage to the CINC.

(2) The CJCS would, through the Secretary of Defense, conduct a think tank (with interagency and international participation) to address peace operations. This think tank would address the complexity of the crisis and the expected response. It would focus on the rule of law considerations. It would review lessons learned in previous peace operations, and would make its recommendations to the USG, UN, OSCE, etc.

(3) The Chairman would designate a military proponent responsible for implementing the military aspects of PDD-71. These aspects would include the development of a deployable military capacity for supporting these operations; a study of the use of the reserve components and outsourcing of selected deployable capabilities. The proponent would be responsible for the review, updating, and sustenance of joint peace operations doctrine and training; advocacy for the development of measures to expedite CIVPOL fielding (support modules); and participation in interagency deliberations for implementing PDD-71.

(4) The Chairman should require the concept of the operation (CONOPS) and political-military (POLMIL) planning which specifically addresses CIVPOL considerations. This would insure CINC, Joint Staff, JIATF, and international community linkage.

(5) Recommend to CIVPOL that they develop capability to deal with public disorder and armed criminality in-order to expedite the transfer of public security responsibilities to the CIVPOL. The CIVPOL should have real law enforcement capacity and it should distinguish separate security responsibilities.

(6) The Chairman should promote with his international counterparts the establishment of multinational military capabilities such as the MSU.

(7) The establishment of learning objectives and qualifications for peace operations at appropriate military school levels to create versatile thinking and approaches to complex contingencies.²⁸

RECOMMENDATIONS

Since it appears likely that the United States military will continue to be called upon to perform constabulary type functions in peace operations, there exists an urgent need for a permanent constabulary structure with the appropriate training, organization, equipment and doctrine. This will not be an easy pill for the American military to swallow since it will most certainly mean the loss of current organizational warfighting structure to serve as a *bill payer*.

However, the fact remains that our current warfighting forces will continue to be used in this capacity until a suitable force is developed and fielded.

The time has come for bold initiatives to be undertaken to change the current mission of one or preferably two combat divisions. The soldiers comprising these peacekeeping divisions should receive the specialized training to needed to conduct police type duties and should receive much of the same type of training received by the post World War II constabulary.

These divisions could be taken from existing Army National Guard divisions which would be restructured as multi-component (active and reserve component mix) peacekeeping divisions and fashioned much like the post World War II constabulary forces employed in post war Germany. The multi-compo structure would enable the Army to leverage those civilian skills utilized on an ad-hoc basis in past operations such as in Haiti and which exist in the reserve components. The divisions would have assigned three active component mechanized infantry brigades. Also assigned to the divisions would be multi-component: engineer and aviation brigades, a division support command (DISCOM), and armor, signal, military intelligence, civil affairs battalions, and a psychological operations company. Part of the new force structure should contain a school brigade which develops peacekeeping and rule of law doctrine and trains both the United States' peacekeepers as well as those of our allies and potential coalition partners. Finally, rather than a military police brigade this paper would suggest the formation of a unit fashioned much like the MSU currently being employed in Bosnia and Kosovo. This MSU-like brigade would, in addition to having the law enforcement capability, also have the capabilities needed to establish or reestablish the remaining two legs of the security triad (the courts and penal institutions). This organization would be fashioned as a multi-compo or even multi-service mix of active duty and reserve component soldiers. A cadre of active component soldiers would provide a method of quick response law enforcement generalists and reserve component soldiers law enforcement and criminal justice career specialists who, when called to active duty for a contingency operation, could form a MAT needed to institute a stable criminal justice environment. This constabulary/criminal justice force should then be replaced as quickly as possible by the international community or relieved by CIVPOL and a criminal justice development program. These same soldiers would be invaluable in the establishment and operation of the school that would train both the division's soldiers or could provide trainers to assist in training other nations contributing forces in peacekeeping or criminal justice aspects of potential peace operations.

This paper also advocates the further study and consideration of the recommendations made at the conclusion of the June 2000 Peace Operations Seminar hosted by the U.S. Army PKI.

CONCLUSION

The new administration of President George W. Bush has already begun the process of reviewing the way that the Pentagon does business. Secretary of Defense Donald Rumsfeld has announced that he was appointing the long time military analyst Andrew Marshall to review where the military could do things better.²⁹ Mr. Marshall has in the past urged the American military in new directions, possibly one such direction might be the return to variation of the constabulary concept for peacekeeping.

The military component of peace operations plays an important role in the effective restoration of indigenous law enforcement and criminal justice systems. These systems enable a society to achieve and maintain durable peace needed to create a stable and secure environment. Recent U.S. experiences in Haiti, Bosnia, Kosovo, and East Timor have helped to demonstrate the appropriateness of interagency cooperation in the reconstitution of indigenous criminal justice systems. Promoting public safety in the short term and developing responsive criminal justice institutions over the long term, can successfully and economically support American interests. And while supporting those interests, doing so can help bring peace operations to successful completion.

WORD COUNT = 4602

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²⁰ Timothy D. Cherry is a Lieutenant Colonel in the U.S. Army and a graduate of the U.S. Army War College in June, 2000

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