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PROMOTING THE RULE OF LAW AND HUMAN RIGHTS

In the wake of the Cold War, the world community has seen the reemergence of

democratic-style governments around the globe. Many of these fledgling "democracies" must redefine the armed forces' role in protecting the rights of their citizenry. The authors present their views on what should be US foreign strategy concerning human rights advocacy issues. This article cites the joint initiatives taken by the US Army Judge Advocate General Corps and the Peruvian army to address the issue of human rights and civil liberties.

THE COLLAPSE of the Soviet Union and end of the Cold War have ignited the fires of democracy and freedom in many nations around the globe. Indeed, from the steppes of Asia to the jungles of Central America, there exists an intense global interest in securing the blessings of peace and social prosperity that we as Americans have so long enjoyed. This stirring has caused many people to hope that mankind is finally standing at a watershed in securing human rights and democratic ideals for large segments of its population.

In tandem with such changes, a number of armies and ministries of defense have mined to the US military to assist them in defining how the law should properly function in their respective military establishments, and further, how the military itself should fit into a more democratic form of government that is serious about promoting human rights.

In his book on warfare, in the 21st century, *Race to the Swift*, Richard Simpkin states that "Democratic governments rest on the rule of law, and must so rest." [1] Recognizing that law is perhaps the most critical component of a military organization in a democratic state, the US Army Judge Advocate General's (JAG) Corps is energetically encouraging the spread of the rule of law with primary emphasis on respecting human rights throughout the world's military organizations. The JAG Corps is answering specific calls for assistance, serving as a forward-based resource capable of advising and responding to a variety of problems confronting emerging and straggling democracies. The requests are arriving from countries as diverse as the new republics of the former Soviet Union to the longer standing, but troubled democracies of Central and South America. Thus, Army lawyers have expanded their traditional mission of providing legal advice and support to their own army to providing legal assistance for the restructuring efforts of the militaries of emerging and struggling democracies. [2] This support ranges from supplying basic information on how the US military adheres to a rule of law to actually assisting host nation legal officers structure their own legal systems.

The Call for Help

The post-Cold War era offers renewed hope for lasting peace coupled with a commitment to human rights. Such aspirations, based on the role of law, become the central theme for a new world order. Without doubt, there now exists a window of opportunity for the world to make substantial and lasting strides toward controlling warfare and significantly improving the condition of mankind.

Accordingly, the defense ministries of countries seeking assistance in creating a law-based military establishment look to America for two reasons. First, the United States emerged from the Cold War as the foremost military power in the world, a power that possessed the capability to influence positive change. Second, these same countries recognize that US Armed Forces have functioned superbly under a rule of law -- be it in the realm of respecting the law of armed conflict or in providing a workable and fair system of law for its soldiers. [3]

In turn, the US Armed Forces enter the post-Cold War era understanding that fostering democracies and encouraging military establishments subject to the role of law are vital to

US national security interests. The US military has expanded its traditional role as a warfighter, a role well suited to checking the aggressive threat of the Soviet Empire during the Cold War, to include operations other than war. New missions include UN-sanctioned humanitarian interventions, counterdrug activities, nation building, peacekeeping operations and humanitarian and disaster relief missions.

Apart from the obvious beneficial effects of these new missions, these activities reflect the US commitment to accelerate the exportation of human rights and democratic principles. Without question, the export of these ideals is the greatest weapon against those who still seek to wage war and against those who would still deny basic human rights to their citizens. Even in the context of the Cold War, it was not the military might of the United States that defeated communism -- it was the ideals that the Western alliance represented. The yearning of the common man for freedom, respect for human rights and representative democracy ultimately caused the Soviet Union to disintegrate. While the traditional concept of military might is absolutely necessary to ensure the protection of such ideals, America's strongest asset has always been the export of those ideals to the rest of the world.

The Response

Just as the US military has demonstrated its support to emerging and struggling democracies through the execution of these new nontraditional missions, US judge advocates have demonstrated their resolve by providing direct assistance to the requesting legal departments of these countries. For example, in response to requests for assistance from the former Warsaw Pact countries, the European Command (EUCOM) legal office organized a week-long conference with the theme "the proper role of a military in a democratic society." Co-hosted by the German ministry of defense, EUCOM sponsored representatives from Albania, Bulgaria, Romania, Czechoslovakia, Poland, Hungary, Latvia, Estonia and Lithuania. The conference was a huge success and many attendees asked for similar meetings in the future. [4] One country, Bulgaria, has already taken advantage of the offers of assistance by sending the first former Warsaw Pact student to the US Army Judge Advocate General's School for basic course instruction in January 1993.

For US judge advocates, the primary long-term concern is how the host nation's military can be encouraged to accept a reduced and more professional role appropriate to a democracy. Unfortunately, many nondemocratic nations' military organizations have been the chief abusers of human rights. Thus, a successful strategy to achieve this long-term goal must be based on two overall themes directed toward the host military and appropriate government officials: [5]

- Foster greater respect for, and an understanding of, the principle of civilian control of the military.
- Improve military justice systems and procedures to comport with internationally recognized standards of human rights.

Recognizing that the militaries in many of the emerging and struggling democracies have a slim frame of reference for properly handling human rights issues, a major focus of the Army JAG Corps is to promote, strengthen and assist the host nation's armed forces institutionalize human rights training. This concern for human rights mirrors the overall US national security policy of peacetime engagement by maintaining contacts with allies and friendly governments for the purpose of imparting values and ideals associated with democratic principles.

Furthermore, this concern exceeds the minimally accepted standards for human rights

established by customary international law. International law prohibits genocide, slavery, murder or disappearance, torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination or any activity which demonstrates a consistent pattern of gross violations of internationally recognized human rights. The United States has traditionally promoted by treaty, declaration and action the fullest possible range of meaningful human rights. These rights include freedom of religion, freedom of association, freedom of speech and all of those principles indicative of a truly democratic society. [6]

One of the major obstacles in imparting concepts relating to human rights and democratic principles is that many of these emerging and straggling democracies are typically faced with the social and economic turmoil traditionally associated with low-intensity conflict (LIC) environments, from economic chaos to actual armed insurgency.[7] Thus, the effectiveness of any assistance program must be measured against the realities associated with the specific LIC problems facing the host nation.

The Effort in Peru

An extraordinary example of how the US JAG Corps has been able to assist the military of a nation that is plagued by virtually every symptom of LIC is Peru. Confronted by organized terrorism, drug cartels and economic hardships, Peruvian military officials sought the assistance of the US Southern Command. Foremost in their fight for survival was maintaining the legitimacy of the Peruvian government, wherein true democracy would have a chance for survival.[8] To remedy the legitimacy issue, they sought ways to inculcate human rights and law of armed conflict training into their armed forces.

The Peruvian request came in the face of devastating terrorist attacks throughout the country. By the spring of 1992, terrorist organizations (primarily the Sendero Luminoso and the Movimiento Revolucionario Tupac Amaru) had almost brought the nation to a standstill, and many analysts predicted the imminent overthrow of the government. In an effort to coerce the populace into submission, the terrorists engaged in mass bombings at crowded places, destroyed power plants and public utilities and publicly executed government officials. Their calling card was torture and mutilation of victims, accompanied by the slaughtering of dogs that were then booby trapped and hung throughout the capital city.[9]

While the government of Peru began a series of initiatives to combat the terrorist threat, the Peruvian military acknowledged that the natural temptation for the soldiers to respond in kind to terrorist brutality had to be halted. Not only was such behavior by government troops counter-productive in securing the support of the people, but it also derailed Peru's image in the international community.

In August 1992, at the request of the Peruvian army, US Army judge advocates traveled to Lima, Peru, to discuss the situation with their

Peruvian counterparts. While the Peruvians expressed a desire to receive human rights instruction, it was recognized there was little, if any, standardized methodology to teach human rights to their soldiers up and down the line. There was no centralized military legal facility designed and equipped to train Peruvian legal personnel and commanders in these specialized legal areas. In addition, it appeared that the investigative process for soldiers accused of human rights abuses was deficient.

Clearly, Peruvian soldiers in the field had to be given adequate and meaningful human rights training if they were to be held accountable and if they were expected to be better prepared to cope with the abuses of terrorists. Furthermore, this training had to be

institutionalized into the very fabric of the Peruvian military system so that human rights training would be a continuous requirement for all soldiers. US mobile training teams sent to Latin America, usually consisting of one-shot courses on a particular topic, would not be adequate to inculcate the lessons necessary to achieve minimal international human rights standards. Cultural, language and social barriers suggested the successful solution would be for Peruvian instructors to deliver the actual subject matter presentations. The training would only be effective if it was conducted by trained Peruvian instructors.

After extensive meetings with representatives from each of the Peruvian services, including the Peruvian army judge advocate general, a joint concept plan was formulated. This plan was designed to assist Peruvian judge advocates in developing a standard, pocket-size training text in human rights and to institutionalize human rights training throughout the Peruvian armed forces and national police. In this manner, a common text on human rights could be used by Peruvian instructors for all categories of their military and police forces. The plan was conducted in four phases:

Phase One: Six Peruvian military judge advocates, two each from the Peruvian army, navy and air force, traveled to The Judge Advocate General's School, Charlottesville, Virginia, for a two-week period in October/November 1992. During these two weeks, the Peruvian judge advocates entered into an extensive working relationship with judge advocates from the US Army, Air Force and Navy. The purpose of this working relationship was twofold. First, the Peruvians were assisted in developing a comprehensive human rights training program of instruction to be used in presenting a week-long human rights course to Peruvian audiences. A Spanish-language deskbook was developed covering such topics as human rights, law of armed conflict, international law, criminal investigations and key documents in these areas. The second purpose was to conduct a joint training program between the judge advocates from Peru and the United States to hone teaching skills. In this manner, it was anticipated that the Peruvian officers would be the nucleus of a permanent instructor pool that would then teach human rights throughout Peru's armed forces and national police organizations.

Phase Two: The second phase of the plan took place in December 1992 in Peru. Peruvian instructors used the human rights deskbook developed at The Judge Advocate General's School during Phase One to provide a four-day human rights training course in Lima, Peru. The course was taught by the same Peruvian judge advocates who had attended Phase One in Charlottesville, Virginia. They were assisted by two US Army judge advocates during this phase. Approximately 50 participants consisting of field commanders and their judge advocates attended the course. The goal of this training course was not only to provide human rights instruction to senior military commanders, but also to provide the Peruvian judge advocates their "baptism under fire" in presenting these materials to a live audience of their peers.

Five Peruvian instructors led the course, which consisted of platform instruction and seminars. They did an outstanding job of presenting the material to the participants and planning the logistics for the conference. Without exception, they quickly took charge of the seminars, wherein the participants were divided into five joint sections to facilitate individual and group discussion. Phase Two was also a complete success -- the Peruvian instructors clearly demonstrated that they were fully capable and desirous of conducting subsequent human rights training.

As for the audience, all attendees actively participated in the course and seminars, engaged in the question and answer sessions and, most notably, carded on animated discussions following the daily classes.[10] The overwhelming acceptance of the instructors'

presentations indicated that the Peruvians had a genuine interest in human rights issues. Of particular interest were discussions concerning reporting and investigating alleged human rights abuses.

Phase Three: Prompted by the success of the December 1992 course, the Peruvian and American judge advocates spent the next two months creating a standard human rights handbook, titled *Ten Commandments for the Forces of Order*, that could be used to provide basic human rights training for soldiers and police officers throughout Peru.

Much of the developmental work on the *Ten Commandments for the Forces of Order* took place in February 1993 when two Peruvian judge advocates returned to The Judge Advocate General's School at Charlottesville. For two full weeks, the Peruvians joined US judge advocates in creating a working draft of the handbook. Although the extensive course deskbook used during Phase Two served as the catalyst for developing this pocket-size handbook, any handbook for use by soldiers-at-large had to be short, easy to comprehend and attractively packaged.

By reducing the basics of human rights to 10 simple rules, the handbook would not only be short and easy to understand, but it also could be referred to as the ten commandments of human rights, implying a moral obligation for their fulfillment. The pocket-size handbook, printed on heavy plastic-coated paper, incorporates these rules:

- Contribute to social peace by respecting human rights.
- Respect human life.
- Respect the integrity of the people and human dignity.
- Respect the property of others.
- Understand that orders are issued to protect the public.
- Do not commit sexual abuse. Do not torture.
- Every detainee has the right to a judicial trial.
- Human rights violations do not go unpunished.
- You are a guardian of democracy and are respectful of human rights.

Finally, because of the high rate of illiteracy in Peru, the concepts in the handbook had to be presented in a manner that would hold interest and facilitate learning. Thus, the *Ten Commandments for the Forces of Order* relied heavily on the use of color graphics. In fact, each commandment has a corresponding color graphic to help reinforce the concept. For example, the commandment prohibiting larceny depicts a soldier being stopped from stealing property from a civilian house. Thus, when the human rights instruction is given to the soldier in the field, even if the soldier does not understand the written words, the oral instruction is strongly reinforced through the graphic representation. The message is conveyed. In addition to the *Ten Commandments*, a separate deskbook for commanders was developed for training Peruvian officers in the mechanics of the military judicial process.

Phase Four: This final phase took place from July to September 1993 and involved the actual institutionalization of the *Ten Commandments for the Forces of Order* into the Peruvian armed forces. After the Peruvians completed the staffing process and obtained the necessary authorization from the chief of the joint staff, 50,000 copies of the handbook were printed in Lima.

Next, a professional training team of seven Peruvian military instructors, consisting of representatives from each of the services and the attorney general's office, traveled to the

six major military installations in Peru. At each installation, the team was met by a select group of officers who had come from the surrounding regional military and police bases. The training team conducted an intensive program of instruction for these officers in how to teach human rights based on the Ten Commandments for the Forces of Order. After receiving this vital training, the regional officers were given their allotment of the handbook and sent back to their bases, where they distributed the handbook and conducted human rights training classes.

The training team also conducted a separate human rights training course for all available soldiers, officer and enlisted, at the six major installations. US Army judge advocates accompanied the training team, observed the progress of the training program and made recommendations on how to improve the process.

The success story in Peru must be tempered by the fact that human rights training can only be effective to the degree that it is inculcated into the psyche of the military. At a minimum, the Peruvians now have three standardized human rights training programs of instruction that are truly their own. It is now up to them to continue the effort. To this end, US strategy as helper and not overseer has paid tremendous dividends. If the Peruvian military is successful in coming years, the success will be due to its commitment to continuing to teach human rights. As with all other concepts, effective training requires constant repetition -- it must be inculcated to be effective. Teaching and training must go hand in hand with investigating abuses and holding individuals personally responsible for their actions.

In the larger picture, the end of the largest totalitarian system the world has ever known, the Soviet Union and the Warsaw Pact, offers a unique opportunity for mankind to advance the role of law and respect for human rights. The world now looks to the United States to provide moral and political leadership, and America has stepped forward to meet that challenge. To accelerate that movement forward, we are using US military attorneys and the unique training and capabilities they provide as a vehicle to achieve goals and programs that are fundamental to our national security -- promotion of the role of law and human rights throughout the world.

It is important to note that these new missions are not the harbinger of some form of American imperialism. Rather, they are a sincere response to fellow soldiers at arms who have sought our assistance. Indeed, the United States cannot afford to be indifferent to the moral values that are the true source of America's global influence.

NOTES

1. Richard Simpkin, *Race to the Swift: Thoughts on Twenty-First Century Warfare* (Elmsford, NY: Pergamon Press, 1985), 320.

2. See Jeffrey F. Addicott, "Operations Law Note: Proceedings of the First Center for Law and Military Operations Symposium," *The Army Lawyer*, December 1990:47. David E. Graham, "Operational Law (OPLAW) -- A Concept Comes of Age," *The Army Lawyer*, July 1987:9. To better support evolving missions associated with overseas deployments, the Judge Advocate General's Corps developed a new legal discipline in the late 1980s. Termed operational law, it is "that body of law, both domestic and international, impacting specifically upon legal issues associated with the planning for and deployment of US Forces in both peacetime and combat environments."

3. See Dietrich Schindler and Jiri Toman, *The Laws of Armed Conflict: A Collection of*

Conventions, Resolutions, & Other Documents (1987). The law of armed conflict is drawn from several sources including international agreement, custom and practice, judicial decision and general principles of law.

4. In June 1993, the Marshall Center opened in Garmisch, Germany, to meet the need for closer East-West ties.

5. See The Foreign Assistance Act of 1961, as amended, 22 U.S. Code 2347, which provides the authority for security assistance under the International Military Education and Training (IMET) program. These two goals are taken from Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513; 104 Stat. 1997.

6. A significant opening in introducing respect for these greater guarantees of human rights into Soviet totalitarianism began with the signing of the Helsinki Accords in 1975. At that time, and to the surprise of many, the Soviet Union agreed to abide by a package of human rights standards that included: the right to life, liberty and security of person; the right to privacy in the family, home and in correspondence; and freedom of thought, conscience and religion.

Although the Helsinki Accords are not legally binding, they imparted political and moral authority that became a rallying cry for individuals on both sides of the Iron Curtain. It was the beginning of the end. The battle for ideas clearly had tilted in the direction of freedom and democratic principles of behavior.

- 7. See Department of Army and Department of Air Force, FM 100-20, Military Operations in Low Intensity Conflict, December 1989, 14. The term "low intensity conflict" is defined as "political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. It frequently involves protracted struggles of competing principles and ideologies. Low intensity conflict ranges from subversion to the use of armed forces. It is waged by a combination of means, employing political, economic, international and military instruments."
- 8. The fight to maintain a democratic government has travelled a rocky and sometimes treacherous road. In April 1992, President Fujimori suspended the constitution, disbanded congress and closed a number of judicial courts. Yet, throughout this "auto-coup" and verified by Fujimori's victory in the November 1992 elections, his popularity with the people of Peru remained high. The people recognized his extraordinary efforts were necessary because corruption had emasculated true democracy under the old system.
- 9. See, for example, Mary Speck, "Caught in Peru's Crossfire," Miami Herald International Edition, 8 December 1992, A1.
- 10. All three Peruvian armed services were represented, as well as senior police officials, representatives from the attorney general's office, the director of human rights and many line officers assigned to the "emergency zones."

PHOTO: Central American soldier and civilians during a civic action operation.

PHOTO: A seminar group discussing human rights problems at Peru's National War College. Facing the camera are the director for human rights and the judge advocate general.

PHOTO: Pages from an instructional manual on human rights and (inset) the pocket-size

handbook distributed to soldiers.

PHOTO: Peruvian police returning to Santa Lucia air base from a cocaine eradication mission in the Huallaga Valley. In addition to the training given to selected military and police officers, a separate human rights course was offered to all available soldiers at each installation.

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