

The «Guaranteeing Law and Order Doctrine» and the Increased Role of the Brazilian Army in Activities of Public Security

JORGE ZAVERUCHA

In Brazil, as a result of the transition pact, electoral democracy is combined with authoritarian enclaves deeply embedded in the State apparatus. This situation, far from improving, has become worse during recent years as a result of the growing urban violence and the increasing militarization of the measures designed to guarantee public security. The confusing institutional status of the military police and the increasingly important role of the army indicate that, unlike the experience of the more developed countries, in Brazil the national defense role is combined in a dangerous way with the maintenance of internal order. The resulting institutional hybrid blocks the construction of a fully-fledged democracy.

Jorge Zaverucha: Ph.D. in Political Science, University of Chicago. He directs the Núcleo de Estudos de Instituições Coercitivas (NIC) of the Universidade Federal de Pernambuco. His last book, *FHC, Forças Armadas e Polícia: Entre o Autoritarismo e a Democracia* (Record, Rio de Janeiro, 2005), won the Book Prize of the Brazil Section of the Latin American Studies Association in the category of best book on Brazil in Portuguese.

Key Words: Democracy, Armed Forces, Police, Militarization, Brazil.

Note: the author would like to thank Anthony Pereira, Pablo Policzer and John Bailey for their valuable comments.

We're not trained to be handcuffing people. If you visit barracks, you won't find any handcuffs.

But you will find a firing range.

**General Leônidas Pires Gonçalves,
former Army Minister (1985-1990).**

■ State of the art

Two contradictory tendencies characterize the Brazilian political system. On the one hand, there is an increasing mobilization of civil society in search for greater democratization. On the other hand, there is an intensification of the Army's presence in activities of public security. How it occurs? How can we explain this state of affairs?

Indeed, maintaining degrees of political autonomy for the military is the price democrats have to pay to secure military accordance with the new government. For any negotiated transition¹ one expects the new democratic government to make some concessions to the military regarding the maintenance of authoritarian institutions. This is the price of negotiation. Such concessions, however, should be temporary ones, that is, as time goes by, the civilians need to regain the space lost to the military in the state apparatus, as has happened in Pinochet's Chile.

New democratic officeholders, therefore, have to perform two tasks: 1) bury the old authoritarian institutions; and 2) create new democratic institutional arrangements. In order to be credible, the new institutions should not present themselves with just a new label, i.e., a mere façade of the former institutions. Their content needs to be differentiated if one aims at improving the qualities of democracy.

In Brazil, contrary to what Hunter² and Santos³ have stated, I claim that the military are neither «paper tigers» nor has taken place a slow, continuous demilitarization process⁴. The military have lost power in some aspects⁵ while in others their compe-

¹ Moncloa (Spain), Punto Fijo (Venezuela), and Stiges (Colombia) are examples of formal pacts while the Pact of the Naval Club (Uruguay) was informal. Likewise in Brazil, when Tancredo Neves secretly met with General President Figueiredo's minister of the Army, General Valter Pires, to agree informally on the terms of the transition.

² «At the risk of exaggeration, conditions of the 1980s and 1990s have rendered the Brazilian military somewhat of paper tigers» (Hunter 1997:23).

³ In Brazil «demilitarization is in progress, although through a long, slow and peaceful process» (Santos 2004:117).

⁴ The creation of the Ministry of Defense by President Cardoso, in 1999, received different interpretations. Hagopian (2005), Oliveira (2005), Castro (2000) and Carvalho (1999) considered it a great stride in subordinating the military to civilian control. Zaverucha (2006) argued that it was an unsuccessful maneuver aimed at helping Brazil to get a seat at the United Nations Security Council. The fragility of this Ministry, vis-à-vis military commanders, became evident especially during President Lula government: two ministers were substituted after they clashed with the military.

⁵ For example, under Sarney there were six military personnel on active duty in his government cabinet. Today, there is still one: the chief minister of the Institutional Security Cabinet (GSI). The GSI performs, however, a broad range of attributions of a civilian nature.

tences have been augmented.⁶ Here, I will address the increasing role of the Armed Forces, especially the Army, in public security issues.⁷

To demonstrate this argument, I will make use of methodological tools based both on rational choice theory and on ethnographic research (Rothstein 2005). Either contribution will be presented in the historical institutional narrative used to both demonstrate and evaluate the choices made by political actors towards the militarization of public security. The following premises are subjacent that: 1) Micro details influence institutional evolution/involution. Built like this, such an account will permit us to identify collective action problems, veto points, and commitments with credibility (Levy 2004: 216); 2) Cultural aspects of individuals and/or the society influence the formation of their political priorities, given that these priorities are socially constructed. Therefore, democracy is not only the summation of its formal institutions' design. The existence of a democratic *ethos* is important for democracy to legitimate itself (Diamond 1994). Once the agreement from subjects is voluntarily obtained, democracy needs little state coercion.

Differently from a mere historical account, the historical-institutional narrative argues that institutions can shape political actors' preferences, as they are able to distribute power differently as well as to delimitate individuals' choices (Lowndes 2002). For this same reason, such a narrative also seeks to understand the cultural context where the events occur and how this could affect not only actors' strategic choices but also their systems of beliefs and ideas. Cultural and institutional explanations are not mutually exclusive. On the contrary, cultural components could influence the type of formal or informal institutional design, and vice versa (Helmke and Levitsky 2006). Thus, the analysis is at the same time theoretical and empirical. As facts do not speak by themselves, the understanding of facts occurs within both a historical context and a theoretical framework. As Shapiro (2006:605) reminds us, «theoretical ambition without empirical research may well be vacuous, but empirical research without theoretical ambitions will be blind».

Next, I clarify my understanding of fundamental concepts to analyze the performance of the Armed Forces, particularly the Army, on public security activities: civilian control, authoritarian enclave, militarization, institutional hybridism and democracy. Then, I proceed to the empirical part, aiming to demonstrate how public security militarization takes place. Finally, I will try to explain why this process gained so much

⁶ For a list of these competences see (Zaverucha, 2000; 2005).

⁷ For a list of countries in Latin America where the military were taking greater roles in internal law enforcement see Bailey & Dammert (2006)

impetus during the administration of Fernando Henrique Cardoso (FHC) and the maintenance of such pattern during Luiz Inácio Lula da Silva's first term in office, although both Presidents opposed the military regime.

■ Definition of concepts

I understand the civilian control of the military as the capacity of instituted authorities (Executive, Legislative, and Judiciary) and the organized civil society (labor unions, professional associations, the press, etc.) to limit the autonomous behavior of the Armed Forces, eliminating, as a result, authoritarian enclaves⁸ within state apparatus.

Military behavior is politically autonomous when the military pursue their own objectives, which may or may not coincide with the interests of other political groups, and have the institutional capacity to carry them out, regardless of any democratic rules that ban the fulfillment of such objectives. In other words, the government has a limited authority to make new policies as it has no choice but share its power with the Armed Forces.

The concept of enclave refers to any institution that possesses a specific competence or a specific series of autonomous competences (Moyano 1995). There are written or informal laws surrounding this institution that prohibit the interference of political or democratic forces. In short, such institution is immune to society's checks and balances and, accordingly, abides by autonomous rules which differ from those that govern the institutions subject to democratic oversight.

In the former Eastern European communist countries, the control of the military used to be civilian, although not democratic. That is, the military were subject to the rigid control of Communist Parties. Interestingly enough, a lack of civilian control of the military first appeared in Russia after the implosion of the former USSR, not before it. The challenge about the transitions from communist authoritarianism to democratic governments was how to depoliticize the military (Barany 1997).

⁸ It could be argued that democracies seek to create institutions that are immune from politicians' influence, as in the case of an independent Central Bank (Valenzuela 1992). However, what distinguishes a «democratic enclave» from an «authoritarian enclave» is mainly the capacity of democratic authorities to decide whether or not they stay in office without fearing the risk of an armed reaction. Congress may decide that the Central Bank get back under the dependency of the Executive without a fear that Bank officials threaten the government. At most, those officials would choose not to vote for some congressmen or to go on a strike and protest in front of the Congress building.

In Latin America, democratic civilian control of the military is infrequent. Thus, the Latin American transitions intend to demilitarize the politics, as an attempt to lead the military to focus on their exclusive professional activity, e.g., to defend the frontiers of the State. In democratic regimes, institutional competences between the police and Army are clearly separated. In Brazil, however, the policies of public security have increasingly been militarized. This is an indicator that Brazil has a hybrid regime: an electoral democracy with authoritarian enclaves in the state apparatus.⁹

Militarization is understood as a process of adopting military models, concepts, doctrines, procedures, and personnel performing duties of a civilian nature, including public security (Cerqueira 1998). Militarization is an increasing process when Armed Forces' values get close to those of society.¹⁰ Consequently, the higher the militarization degree, the more those values overlap each other. This overlapping influence the way coercive institutions organize themselves with the purpose of imposing law enforcement and order, which makes it more difficult to democratize such coercive institutions. As civilians transfer their problems to barracks they, at the same time, magnify and distort military attributions. This, obviously, extracts a political cost from democracy (Arruda 2007).

There is a Political Science body of literature which analyzes the countries by the criterion of political change (Przeworski *et alii* 2000). The classification is dichotomous: democracy and authoritarianism. For these scholars¹¹, the definition of democracy is the one made by economist Joseph Schumpeter, whose innovation was to analyze democracy as a method. The people are replaced by the elites, who must represent the people. For Schumpeter (1942), «the democratic method is an institutional agreement needed to make political decisions by which individuals reach the decision-making power through a competitive struggle for the popular vote».

Therefore, what counts for Schumpeter and his followers are those institutions effectively submitted to political competition. As a rule, this is not the case for coercive institutions. I do not know of any country that chooses its Army commander through

⁹ Regime is a broader concept than that of government and refers to «the (formal or informal) rules that govern the interaction between the main actors in the political system. The notion of regime is about institutionalization, i.e., the idea that such rules are widely understood and accepted and that actors behave according to the rules» (Mainwaring 1992:296).

¹⁰ This way, the AUC (Autodefensas Unidas de Colombia) paramilitary are part of militarized civilian forces while the Israeli Army is a civilized military force (Ben Meir 1995).

¹¹ For a divergent view see O'Donnell (2006).

popular vote. Such a definition is so much restrictive that Mainwaring *et alii* (2001) called it subminimalist conception of democracy, that is, electoral democracy.¹²

Another body of literature emphasizes the characteristics of political systems and point out their ambiguities. This classification is quadruple: democracy, semi-democracy, semi-authoritarianism, and authoritarianism (Ottaway 2003). Semi-democracy and semi-authoritarianism indicate the existence of an institutional hybridism, i.e., there are coexisting authoritarian and democratic institutional traits. Semi-democracy, by definition, is a situation where an «imperfect» democracy evolves unto a democracy made up of solid and responsive institutions. Therefore, it would be necessary to let it take its time. However, after over twenty years since the end of the military regime, the political system does not proceed to regularly overcome its most remarkable authoritarian traits. The State continues authoritarian, even in the presence of democracy of procedures.

I assert that Brazil is an example of such an institutional hybridism. One should not state that there is in Brazil an authoritarian regime or a solid democracy. Only through the restrict lens of political change analyses can one believe that, due to the end of the military regime, the military automatically turned back to carry out their professional duties inside the headquarters. What is noteworthy is the fact that we live this situation ever since 1985,¹³ and there are no prospects that such hybridism will hold back.

Obviously, I do not adopt the subminimalist conception that elections equal democracy. According to it, the classification of regimes should not be based on judgments about the real exercise of power, but on the existence of free elections. Przeworski *et alii* (2000) even affirmed that:

in some democracies (of which Honduras and Thailand are prototypes), the civilian government is but a thin layer covering the military power that is, in fact, exercised by retired generals. However, as long as officeholders are elected through elections where other groups have a chance to win and as long as they do not use power from their position to eliminate the opposition, the fact that the chief of the Executive is a general or an assistant of a general does not add any relevant information.

¹² It should be remembered that the level of truthfulness in elections is not the same in all countries. In Brazil, for example, political parties make use of non-accounted financial resources in elections. As a rule, the Electoral Superior Tribunal has ignored such illegal procedures.

¹³ Back then, José Sarney took office as President of the Republic, as a substitute of General João Figueiredo.

If, for those authors, Thailand and Honduras can be considered democratic countries, Brazil, where the military power is even more dissimulated, could also be an example of democracy. The concept herein adopted, i.e., institutional hybridism, would be, for those authors, a mere conceptual exaggeration.

This article claims that once coercive institutions are capable of constraining elected officeholders' decisions, the higher the degree of institutions' militarization, the greater is the domination of some individuals over others. As a result, the less democratic is the political system in place. Thus, I prefer Shapiro's (2003) definition, whose view is that «democracy is better thought of as a means to govern relations of power in order to minimize domination». Therefore, improved presence of federal military troops in public security affairs contributes to maximize, rather than to minimize, domination of the military over civilians. It damages the prospect of democratic consolidation.

■ **The institutional relation between the Army and the *Polícia Militar***¹⁴

In the democratic world, institutional competences between Police and the Army are clearly differentiated. Police deals with adversaries; the Army deals with the enemy. Police seek to solve conflicts of a social nature while the Army defends the country's sovereignty against an enemy that must be annihilated. For these reasons, the doctrines, weaponry, instruction, and training in the Police are distinct from those in the Army. However, in Brazil, such competences are intertwined. And the worst part: the Army's activities are increasingly entangled with the Police's. That is, the politicization process in the Armed Forces simultaneously occurs along with police militarization.

When a *coup d'état* takes place, the Armed Forces invariably attempt to exert control over the police. Authoritarian regimes abominate rival autonomous institutions, and Brazil is not an exception to this rule. In March 13, 1967, General-President Castelo Branco reorganized the Polices and Firefighter Corps in the states, territories and the Federal District by means of the Decree-law 317. It's been the most important change

¹⁴ In Brazil the police which patrol streets is named *Polícia Militar*. Literally translated becomes Military Police. It should not be taken as Army Police. The plainclothe police which investigate crime is known as *Polícia Civil* (Civilian Police). Therefore, in a same geographic unit there are two polices performing separate roles.

in the history of State Forces (Filocre 2004), whose effects are felt even nowadays, in the 21st century.

Prior to the Decree-law, Military Police performed a reduced police action in the field of repressing civilian disturbs and maintaining order. After the bill, the Military Police were charged with the responsibility of «carrying out ostensive, in uniform police activities, which would be planned by competent police authorities in order to secure law compliance, public order maintenance, and the exercise of constituted powers». The Military Police then became the main state police in Brazil. And holds this standing until today.

In December 30, 1969, general-president Emilio Medici enacted Decree-law 1072, which revoked Decree-law 317. According to the new bill, the Military Police Forces were given exclusivity in ostensive police activity. Moreover, local police corporations were extinct as well as the Division of Traffic Supervisors. Their former members had the chance to become military police officers. The General Inspectorship of the Military Police (IGPM) was created, being a body organically integrated to the Army's General Staff. The military police officers became subject to a trinomial: military instruction, military rule, and military justice.

Among the above trinomial, only the influence of Army instruction was abolished by the 1988 Federal Constitution. In exchange, the Constitution bestowed on members of the Military Police the status of military public servants for the first time in the Republic history. In an identical position were already the members of the Armed Forces.

The Military Police, however, almost lost control on the instruction of their personnel. Following the Military Police Forces strike in September, 1997, a Constitutional Amendment Proposal (PEC) sponsored by then president Fernando Henrique Cardoso suggested giving back such control for the Army. That was sheer pressure made by the Army, who saw in the police officers' strikes not a social problem but the absence of both command and military discipline, whose source, among others, was the curriculum for instruction at state Military Police academies. In the Army's view, it was necessary more military march training and less reflecting on the notions of Law, Sociology, Political Science, Human Rights, etc. With the dampening of strikes, the PEC, temporarily, was brought to a standstill. There was almost a revival in the trino-

mial established in 1969 by General Medici and nothing will stop this from happening if the mentioned PEC is proposed for a second time.

By the way, the public order concept in place in the country is the one found in the Rule of the Military Police Forces and Military Firefighter Corps provisioned by Decree 88777, of September 30, 1983. I do not know of any other democracy that considers firefighters both as military personnel and auxiliary forces of the Army, in addition of being subject to the same Disciplinary Code of the Military Police.¹⁵

According to this Decree, Public Order is «the set of formal rules provided for by the juridical ordering in the Nation, with the purpose of regulating social relations at all levels of the public interest and of establishing an environment for harmonic and peaceful life in common, being supervised by Police Power, and constituting a situation or condition leading to the common good».

Maintenance of Public Order has been defined as «the dynamic exercise of Police power in the field of public security, which is manifest in predominantly ostensive activities, aiming at preventing, dissuading, restraining, or repressing events that violate the public order».

In turn, the concept of Disturbance of Order «comprehends all types of activities, including those stemming from public calamity that, by nature, origin, amplitude, or potentiality, come to jeopardize, at the state level, the exercise of constituted powers, the compliance with laws, and the maintenance of public order, or that threaten the population and public or private properties». According to this definition, there ought to be an ample intervention by coercive institutions on internal conflicts in the Brazilian society.

State Military Police Forces mimic the model of infantry battalions in the Army; they are regulated according to the same Military Penal Code and Penal Proceedings Code of the Armed Forces; their Disciplinary Code is quite similar to that of the Army, in accordance with Decree 667, of July 2, 1967¹⁶; their intelligence units (P-2), like during the military regime, continue to be part of the Army's information system, following

¹⁵ In the 90's when the Firefighter Department became autonomous from the Military Police of Pernambuco state. The military ethos is so deep inculcated that their leaders created the Division of Combat Officials, as a means to keep the military identity of firefighters.

¹⁶ State of Parana's Military Police does not even possess a Disciplinary Code of their own. They abide by the Army's Disciplinary Code..

dispositions of the Military Area Commands of their respective jurisdictions (Decree 88797).

It means that the Military Police are legally obliged to send all collected information to the Army's Commander through the so-called «technical channel». That is, such Commander possesses information related to the governor of the State¹⁷, imperiling the federative principle. Moreover, there is no State Legislative Assembly control of the intelligence branch of the Military Police (P-2)¹⁸. In addition, state military police officers persist working in Army's headquarters at the disposal of the mentioned information system.

Article 22-XXI, along with article 144- IV, § 6º, provide no help in establishing a civilian control of the military. While the former stipulates that the federal government is responsible for organizing Military Police Forces, their troops and weaponry, as well as for convoking or mobilizing such forces, the latter, in addition to determining that State Military Police Forces are subordinated to State governors,¹⁹ sets forth that the MPs should be considered both reserve and auxiliary forces of the Army.

In theory, all Brazilians are reserve troops of the Armed Forces. Police forces being considered auxiliary force of the Army is a common situation during authoritarian regimes. In democracies, only in times of war are police forces auxiliary forces of the Army. In peace time, the Army becomes a reserve force of the police, helping them whenever it is needed to repress certain social disturbances. When the Army intervenes in these situations it does it in the position of a representative of the political power, but never as if were at war. This refers to the doctrine elaborated by Lord Mansfield in 1831, which has ever since been implemented in England and all other democratic countries (Engdahl 1971).

Until 1998, the Military Police were directly subordinated to the General Inspectorship of the Military Police (IGPM), headed by a Brigadier General. Today, the Military Police are under the direct control of the Land Operations Command (COTER), which is the most important operational command in the force. It is headed by an Army General, the highest rank.

¹⁷ The State Military Household is headed by a superior official from the Military police. In the past, there was only the Civilian Cabinet at a State Government.

¹⁸ In fact, it is a corrupt copy of the intelligence service of the Army, known as E-2.

¹⁹ State Governors pay police officers salaries and nominate their commander-general. Differently from the military regime, most of Military Police Forces are headed by officials of their own.

The COTER is a Sectorial Direction unit of the Operational System responsible for guiding and coordinating, at its own level, the preparation and deployment of Terrestrial Forces, according to ministerial directives and the Army's General Staff. Now it has a new organizational chart. Through its Auxiliary Force Sub-Chief, the COTER pursues studies on legislation, organization charts, proposals for the creation and or extinction of Military Police and Firefighter units, besides controlling the effectiveness and weaponry of such Auxiliary Forces.

State governors appoint MPs commanders, in general from among members of the force. Moreover, governors pay the salaries of military police officers at the disposal of the Army, whether or not the MPs have been federalized, i.e., put under the control of the Army.

Members of the state military have, therefore, two bosses: the state and the federal government. Such institutional arrangement is a potentially explosive one, since in case of a conflict between a governor and the President of the Republic, police officers would not be sure about which authorities to obey.²⁰

An identical situation occurs with Firefighter Corps. To guarantee a military status and, thus, be considered Army's auxiliary forces, they must be controlled by the Army; need be structured on the basis of military hierarchy and discipline; must integrate a Military Police Force or be independent bodies as long as federative units secure them an autonomous condition as such recognized by the Army's General Staff; use uniform and subordinate themselves to the general prescriptions of the Army's Internal Rule of General Services and the Army's Disciplinary Rule, as well as to specific legislation about precedence between military members of the Armed Forces and members of auxiliary forces; perform their professional duties under a full time work regime; and be subject to the Military Penal Proceedings Code.

The 1988 Constitution did nothing to return to the Civilian Police (investigative police) any of the attributions they had prior to the military regime. The Civilian Police is among the institutions that lost most power with the advent of the military regime. It continued to exert activities similar to those established by authoritarian governments. Until 1964, the Civilian police used to patrol the streets and supervise the traffic with Civilian Guards in uniform, to actuate in the prevention and repression of

²⁰ The Army has a federal military unit in each State that could control the local Military Police as soon as the President of the Republic decrees the convocation of the Military police.

crimes, in addition to ensure the safety of governors and other authorities (Barbosa 1997). Today, the militarization of the civilian portion of public security is consolidated, as the Military Police are in charge of ostensive police duties and traffic supervision, the Firefighter Corps take care of fire control and accidents in general, while the State Military Household is responsible for governmental security and for commanding the Civilian Defense system (floods, hill slides, etc.).²¹

■ The Armed Forces and the Police in the Constitution

It is clear the continuity of the civilian and military elites within the State apparatus. The 1988 Federal Constitution articles referring to civilian-military relations are similar to the 1967-69 Constitution articles. Thus, the civilian elites did not care to create new institutions to advance the democratic civilian control of the military.

Institutional hybridism has characterized our transition from the beginning. But, this is not the view of former Vice-President of the Republic (1994-2002), Marco Maciel, who was a government leader in the Chamber of Deputies during the administration of President-General Ernesto Geisel and nowadays a senator. He wrote: «Our transition to democracy – I dare to affirm this without a fear of contestation – was the most successful one in the second half of the 20th century, both in terms of extension and density, even if compared to the transition in Spain, whose terms were established by the Moncloa Pact» (Maciel 2005).

Nevertheless, as opposed to the Spanish Constitution, the 1988 Brazilian Federal Constitution gathered in only one title (V – Of Defense of the State and Democratic Institutions) three chapters: Chapter I (Of State of Defense and State of Siege), Chapter II (Of the Armed Forces), and Chapter III (Of Public Security). Our constituent congressmen did not manage to disengage from the newly defunct authoritarian regime, and ended up granting constitutional status to military organizations which performed

²¹ The Military Police (*Polícia Militar*) are in charge of the Civilian Defense in the states. However, in June 19, 2001, President Fernando Henrique Cardoso appointed Infantry Colonel of the Army Jose Wilson Pereira to head the National Secretariat of Civilian Defense.

police activities (Military Police) and civilian defense (Military Firefighter Corps),²² along with the civilian police.

Besides that, the constituent congressmen mixed up issues of external security with issues of public security, turning militarization into something constitutionally valid. For instance, Article 142 of the Federal Constitution states that the Armed Forces «are destined to defend the nation, to secure constitutional powers and, by initiative of any of the latter, to secure law enforcement and order». But, how can it be logically possible to simultaneously be subject to and secure something? According to Agamben (2002: 19), «the sovereign, who has the legal power to suspend laws, legally puts itself out of law».

All logic aside, the military are the ones who hold the constitutional power to *guarantee* the functioning of the Executive, the Legislative, and the Judiciary, the rule of law and internal order, when the contrary should be the case. In other words, the Armed Forces are the bastions of law enforcement and order, defined as such by them, regardless of the opinion of the President of the Republic, the National Congress, or State Governors, who are entitled to command the Police. Therefore, the Armed Forces do have the sovereign and constitutional power to suspend the validity of the juridical ordering, legally putting themselves out of law.²³

In any democracy, power is not granted to those who hold sheer force. On the contrary, sheer force is put at the disposal of power. In Brazil, when the Constitution was established, precisely those who are tempted to violate it were given the task of safeguarding its supremacy (Zaffaroni, 1995). Now, if the military are guarantors they also become organizers of political life. Whenever necessary, the Armed Forces ceases being State's means and turn into State's ends. The constituent congressmen made use of a democratic procedure to grant the Armed Forces a role that has been subject to become incompatible with liberal rights and with the will of the majority.²⁴

²² Firefighter corps are auxiliary forces of the Army. They use uniform and subordinate themselves to the general prescriptions of the Army's Internal Rule of General Services and the Army's Disciplinary Rule, as well as to specific legislation about precedence between military members of the Armed Forces and members of auxiliary forces; perform their professional duties under a full time work regime; and be subject to the Military Penal Proceedings Code. I do not know of any other democracy that institutionally treats Firefighters this way.

²³ Like in the sandinist and pinochetist constitutions. The difference is that the Chilean Senate has recently abolished such a constitutional clause with the argument that the historical condition that supported the provision exists no more.

²⁴ After President João Goulart's election rally at the Central of Brazil station, the chief of the Army's General Staff, General Castelo Branco, in March 13, 1964, addressed a memo to his subordinates reminding them that «the national, permanent military means are not supposed to defend government programs, let alone government propaganda, but to secure the constitutional powers, the way these po-

Order is not a neutral concept as its operational definition at all stages of the decision-making process involves choices that reflect dominant political and ideological structures. Therefore, the notion of (dis)order involves ideological judgments and is subject to stereotypes and prejudices about the (un)desired conduct of certain individuals. Besides, the mentioned article does not specify whether the law is constitutional or ordinary.

The Constitution does not specify when or by whom will the law and order be violated. In practice, it is up to the Armed Forces to decide if law and order have been violated and who has done it. And even worse: if a single Executive order is considered offensive to law and order, the military are constitutionally allowed not to follow it, regardless of the fact that the President of the Republic is the commander-in-chief of the Armed Forces. In other words, the 1988 Constitution, just like the former Constitution, has turned constitutional to perpetrate a coup d'état in case it is led by the Armed Forces. This is, in fact, a lack of law and order.

Thus, there is a Damocles sword hanging over the head of constitutional powers. The Constitution reminds such powers that they are allowed to proceed only to the point where the Armed Forces see it fit. Accordingly, again, instead of such powers guarantee the functioning of the Armed Forces, it is the latter, at the last resort, who guarantees the functioning of the former. After all, the Armed Forces are the guardians of the Nation and the constitutional powers which, in turn, are responsible for public security.

In this way, it could be affirmed that the 1988 Constitution preserved the absence of one of the main characteristics of a modern State: clear separation of competence and identity between the force which is responsible for external war (the Army) and the Military Police, which is in charge of maintaining internal order (Van Creveld, 2004).

FHC has contributed to reduce that separation. In February 5, 1998, he sponsored the approval of Constitutional Amendment 18, through which military police officers and military firefighters were granted the juridical status of state military. It was emphasized the military identity, not the police identity. President Lula has done nothing to change such a weird situation.

wers work, and law enforcement» (Neto, 2004: 239). Eighteen days later, Castelo Branco led a *coup d'état* against Goulart.

In Spain, the Constitution (Art. 8) has made clear the separation in the roles of the Army and the police. The *Guardia Civil*, of a military character, became subordinated to the Interior Ministry in times of peace and to the Defense Ministry in times of war. Brazilian Military Police Forces, however, remain auxiliary forces of the Army.²⁵ Therefore, while in other countries there are police forces with a military structure, without being military police, what we see in Brazil is a military structure playing a police role (Cerqueira, 1998). That is, there are more troops than police performing the role of public order.

In Spain, the juridical apparatus of the Franco's regime has been abolished. In Brazil, nonetheless, the Law of National Security (LSN) still persists. This is the juridical formalization of the National Security Doctrine principles. Such a doctrine has evolved in the context of the Cold War and the Military Regime (1964-1985). LSN's latest version dates back to December 14, 1983, (Law 7170), approved by the end of General Figueiredo's administration. The rationale of the doctrine was to fight internal enemies. This is so much so that President Lula was a victim of the LSN: he spent 31 days in jail in 1980, charged with subversion.

As a result, the LSN has been used to treat ordinary crimes. In August, 1995, retired Air Force Colonel Latino da Silva Pontes was arrested for carrying a load of smuggled weapons. In the end, he was convicted to spend eight years in prison for weapons traffic, in accordance with the LSN. Two other civilians, also charged with smuggling, have been prosecuted in accordance with the LSN and await the sentences. As the Penal Code is mild about crimes such as smuggling, the LSN's rigor has been preferred instead. Therefore, crimes against the public security have become crimes against the national security and the punishment should be more severe according to this view. Indeed, Article 12 of the LSN ordains a penalty of three to ten years in prison, while Article 334 of the Penal Proceedings Code establishes a penalty of four years in prison.

Judge Marilena Soares Reis Franco, of the 13th Rio's Federal Court, who convicted colonel Latino, illustrated his sentence with an expression by general Golbery do Couto e Silva, one of the greatest ideologists of the military regime. The judge recalls that Golbery had no limits for the concept of war. «... In fact, one cannot distinguish where peace ends and war begins, one more evidence, which is dreadful in all as-

²⁵ Even the Honduran Congress, in August, 1997, decided that the police (FUSEP), which used to be under the control of the Army, should be demilitarized within eight months and become a civilian police. After the 1963 coup the police was placed under Army control.

pects, of the widespread confusion of values imperiling western world civilization», says the excerpt of general Golbery's comment (Otavio 1997).

The LSN has been also evoked in the fight against the financing of terrorist activities. According to Adrienne Sena, ex-director of the Council for the Control of Financial Activities (Coaf), an agency linked to the Finance Ministry, there is no problem about the fact that the Penal Code is omissive in relation to terrorist crimes, once the LSN takes care of such crimes. «The Law», Sena reminds us, «considers as a crime even financing terrorism, which is typified in articles 20 and 24, the penalties included» (Izaguirre, 2002).

■ Operations to guarantee law and order

With an increasing loss of popular and federal government trust²⁶ in state police forces as well as the escalation of violence, especially in major urban centers, one notices that it has become banal the deployment of the Armed Forces in activities of public security. The Army has received presidential directives towards taking on ostensive police action to defend a farm of ex-president Fernando Henrique Cardoso's offspring; to escort water trucks into drought-ridden towns; to distribute basic food kits; to distribute Real currency brand-new coins; to help fight *dengue* fever; to eradicate aphtha fever; in reason of military or civilian police strikes; to safeguard the 11th Unctad Conference, held in Sao Paulo; to guarantee the security of Rio de Janeiro's carnival; to support the fight against the organized crime or for the pacification of areas under agrarian conflicts²⁷; to protect pope John Paul the Second; to safeguard the Mercosur Summit in Ouro Preto (in Minas Gerais state); to homologate an indigenous area in Raposa do Sol (in Roraima state); due to a collective transportation workers' strike in Vitoria, state of Espírito Santo, Military Police strikes in the states of Minas Gerais and Piauí; to safeguard the Arab Countries Summit in South America and the First Chief of State Meeting of the South-American Community of Nations, etc.

²⁶ Ever since the wave of state Military Police strikes, in 1997, even the Army does not trust in these police forces anymore. The latter are considered second order military, as true military members do not go on a strike. For the Army, the solution would be to reinforce the military content of such police forces.

²⁷ Immediately after nun Dorothy Stang's death, who had been an advocate for the agriculturists, in July 2005, the Army briefly occupied the Anapu region, in the state of Para, to guarantee law enforcement and order.

In face of an increasing deployment of their troops, the military decided to create a Doctrine for the use of troops in public security activities. More precisely, in the absence of declaring federal intervention, state of defense or state of siege, but taking into account the eventual use of coercion, to perform preventive and repressive activities. The Land Operations Command (COTER) was in charge of elaborating a Standard-Program due to the perception of a lack of doctrinal preparation, equipments, and personnel of the Terrestrial Forces in such operations. Operations for Guaranteeing Law and Order (Op GLO) came into being that cover situations affecting the constitutional powers.

Fernando Henrique Cardoso decided to juridically regulate the ostensive police power of the Army in maintaining public order. By means of Decree 3.897, of August 24, 2001, FHC settled directives for the deployment of the Armed Forces in guaranteeing law enforcement and order. The decision was based in an official recommendation by the Attorney General of the Federal Government, Gilmar Mendes, who was later appointed by FHC as a justice of the Supreme Federal Tribunal.²⁸

The mentioned decree, for the first time ever, bestowed upon the Army the police power²⁹ for activities included in the constitutional and legal competence of the Military Police. This measure was taken to juridically secure the action of federal military personnel in guaranteeing law enforcement and order, i.e., not to characterize as federal intervention the use of the Armed Forces in activities of internal order. By yielding police power by decree, the President of the Republic acted as if he exercised Constituent Powers. He created a juridical norm and, thus, made a rule other than regulate. In this way, he infringed upon state autonomy, overstepping his competence, and swindled the Constitution (Arruda, 2007). The fact is that the Constitution does not provide for the use of the Armed Forces in activities to guarantee law enforcement and order, under the headings of «collaboration», «covenant», «agreement», etc., between the Federal Government and the States, although the latter were proven incapable of guaranteeing order. In turn, the National Congress ignored the fact that the mentioned decree was unconstitutional.

Marcio Thomaz Bastos, a former Lula's Minister of Justice, assured the terms of the decree. For him, federal military forces «that take on the function of guarantors of in-

²⁸ Dating from August 10, 2001, the note says: «(...) the Armed Forces, once in charge of (emergently and temporarily) preserving or re-establishing public order, must play a Military Police role as well as exercise – if necessary – Military Police competences, surely in accordance with the terms and limits imposed by the Constitution and other laws to the Military Police itself».

²⁹ In the US, even after the Twin Towers attack, the *Posse Comitatus* Law that prohibits the Armed Forces to use police power has not been altered.

ternal order become responsible, whenever necessary, for actions of ostensive, preventive, and repressive police activity, which is a responsibility primarily of military police forces» (Bastos, 2003).

Public security problems in Brazil will become worse, according to estimates from the Army. As a matter of fact, there are some initial studies on the use of the Army's Aviation for Operations to Guarantee Law and Order in urban confrontations, by influence of the lessons learned from the war in Mogadiscio, Sarajevo, Grosny, Belgrade, and more recently, Baghdad. Therefore, war tactics have been inspiring the use of the Brazilian Army in activities of public security.

The use of Army helicopters in domestic operations in Rio de Janeiro, in 1994 and 1995, and in the state of Bahia, in 2001, was not very professional. They adapted some techniques, tactics, and procedures into other professional environments. For an operation by air in urban areas to succeed, much training is necessary as well as developing new weapons along with integration between acting forces.

In the past, the Armed Forces debated on whether or not federal troops should act in urban security operations. Today, they debate on which position should the troops put themselves for combat. To this end, a project for urban intervention has been created: the Standard Action Plan for Guaranteeing Law and Order (PPA/GLO). Internally, the Military Intelligence turns to bring forth knowledge about the deployment of the Force in securing law enforcement and order.

In Rio de Janeiro, the Army counts on an Intelligence Unit with 60 personnel specializing in investigation. Additionally, there are elite personnel from the Parachuters Brigade and the Special Forces Battalion (Pinheiro, 2004). Two Special Forces Battalions, with between 1.200 and 1.600 personnel, have training to act in critical urban environments and are subordinated to the Special Operations Brigade, one of the most secret terrestrial forces (Godoy, 2002). They move on armored vehicles or artillery helicopters with teams of 8 to 12 combatant personnel and are capable of carrying flamethrowers, HK machine guns, grenade-throwers, portable rockets, and mortars (ibid).

According to the PPA, all military personnel must perform exercises of Operational Workout. Accordant with the manual, Operational Workout «is the physical condition of preparation adopted by a Military Organization, related to the willingness to deploy, in missions of combat, individual equipments and armory, as well as trans-

ported armory and all other equipments, loads of material, vehicles, ammunition and supplies» (Pinheiro, 2004).

For fear of innocent civilian casualties, the Army created a unit specializing in GLO activities, by means of Decree 5.261, of November 3, 2004. Following the removal of all armored vehicles to the Southern Military Command, the 11th Armored Infantry Brigade of Campinas (state of Sao Paulo) was changed into a Light Infantry Brigade, while remaining subordinated to the 2nd Army Division.³⁰ The 11th Light Infantry Brigade since it is a «light» unit, has operational characteristics to quickly move in ideal conditions to any areas of the national territory, including during GLO activities. This prevents the use of other troops like Parachute Infantry Brigades or Light Air Infantry Brigades, whose training costs are higher and that carry extremely deadly war weaponry.

The decision to deploy terrestrial forces in Guarantee of Law and Order (GLO) activities is of exclusive competence of the President of the Republic. Such GLO activities may take place in situations of institutional normality or otherwise, be that in or rural urban environments. Military Police Forces, with the agreement of a State Governor, will act under the partial or total control of the federal military command responsible for the operations.

At the same time, the Ministry of Justice, through the National Secretariat of Public Security, created, in August 2004, the Public Security National Force (FNS). Without a law of its own, it is a sort of «Federal Military Police». Such a Force gathers military personnel, mainly clash troops, from various states of the federation. The FSN has been destined to serve as an alternative to the use of the Armed Forces in public security operations, as it responds more easily to the civilian power. It is financed by the National Public Security Fund.

The FSN primarily obeys the Ministry of Justice and possesses an *ad hoc* shared management with Security Secretariats, the Federal Police, and the Federal Road Police. Since there has not been any *de facto* federal intervention yet, in case it is called into action, the FSN should theoretically be accountable to the Security Secretariat of the host state, in addition to becoming under the operational control of the local Military Police commander. In an attempt to fix this juridical imbroglio, President Lula enacted Provisional Measure 345, of January 14, 2007. Under this measure, the FSN is a fed-

³⁰ All Terrestrial Force units will deal with matters of qualification for acting in GLO missions. The 11th Light Infantry Brigade, with seven thousand personnel, is the operational unit that has been trained primarily to fight the very Brazilians.

erative force subject to federal coordination, other than a federal troop. In other words, its command is state-based while its coordination is federal! When the federal government performs, within the limits of a particular state, attributions that are proper of a member-state of the federation, this characterizes an intervention. Alas, the National Congress should be informed of such purposes, but it isn't.

Once the FSN is dispersed across various states of the federation, it only turns into barracks when its members meet. For this reason, it is not a force of prompt deployment. Basically, the FSN is a tactical action force, even though all states possess forces with such characteristics, well trained for such tasks.

Beginning in May 6, 2005, the FSN took action in Rio de Janeiro. Although the FSN has been used in tactical actions, the Special Operations Battalion (Bope) of Rio de Janeiro's Military Police gave it training to go up the urban hills where poor squatter live (*favelas*). Nevertheless, FSN members earn higher salaries and better life insurance than those of the Bope's and all other state military police forces personnel. This situation generates dissatisfaction and stimulates non-cooperation among law enforcement agents (Monken, 2007).

A lack of legal basis is still there. The National Security Force is not an entity in juridical terms. It is more of a program. Therefore, there is no clear judicial competence for judging crimes perpetrated by members of the FNS in a state other than their own. If a military police officer, working for the FNS, committed a crime outside his home state, he would be judged by the Military Justice in which state? In his home state or the state where the crime had been perpetrated? If convicted, where is he going to serve his sentence? Besides, members of the FNS do not process police occurrences and, as they are police officers from other states, it would be difficult for them to come to Rio in order to serve as witnesses in trials.

According to the Social Communication Center of the Army (CeComSEx), there are no contradictions between the creation of the FSN and Army's GLO activities. After all, «the decision to count on troops who are also qualified for GLO activities was due to, among other factors, the necessity of having troops best enabled for such ends. Moreover, this helps prevent the use of troops with higher training costs, since the latter are not the most appropriate ones for such kind of mission».³¹

³¹ http://www.defesanet.com.br/eb/td_glo.htm, September 19, 2005.

Nonetheless, during GLO activities the Army speaks the language of war. Instead of performing activities of public security, the Terrestrial Force is prepared to fight adverse forces, be they criminals or social movements' militants. Activities and measures to Guarantee Law and Order may be preventive or operative. Preventive activities and measures have a permanent character and usually restrict themselves to intelligence activities and social communication. For example, the Landless Workers' Movement has been subject to constant vigilance by the Army's intelligence.

Operative activities and measures must have a sporadic character and may occur: a) in a state of normality,³² in a context of cooperation between state governments and Ministry of Justice, to support or coordinate activities by public security agencies and even acting by means of operative measures; b) in a state of non-normality,³³ to apply constitutional safeguards. Such activities will be carried out within a delimited zone in the disturbed area, based on the legal act enacted by the authority who has decided upon the use of Land Forces.

The Brazilian troops which were sent to Haiti carrying the UN flag did exercises in slums in the State of Rio de Janeiro (Tavares Bastos, Rio das Pedras, and Paracambi), where they simulated combats against armed gangs in poor areas. 220 hours of instruction on military techniques on urban combat as well as 300 hours of shooting instruction were performed (Machado 2005), also in a borough of Marataizes, a city 120 kilometers away from Vitoria (State of Espirito Santo). According to the Navy, the marines have chosen the latter because its human as well as geographic conditions are similar to those found in Port-au-Prince, Haiti's capital city³⁴.

By the way, the Armed Forces have been direct victims of attacks to military organizations by Rio's criminals. So much so that 750 personnel were from Rio Grande do Sul, out of 1200 personnel sent to Haiti, the reason being not to leave Rio de Janeiro's military units devoid of personnel (Soliani and Scolese, 2004).

³²According to the GLO Doctrine, state of normality is the situation when «individuals, social groups and the Nation feel in the pursuit of their aspirations, interests, and goals, as the State, in the broadest sense, secures public order and the safety of people and patrimony. Adverse Forces may eventually act without, however, threatening institutional stability in the country. In the legal sphere, it is characterized by the full exercise of individual guarantees and does not require constitutional safeguards. In situations like these, Land Forces action may be decided upon, in case that public order has been compromised.»

³³ According to the GLO Doctrine, state of non-normality is the situation when «the Armed Forces, actually or potentially, compromise public order in a serious manner, and threaten, even potentially, institutional stability and national integrity and sovereignty, with seriously compromising internal order. In the legal sphere, it is characterized by requiring constitutional safeguards, federal intervention, state of defense or state of siege».

³⁴ Photos of the exercises appeared in the front page of *Folha de S.Paulo* newspaper, October 19, 2004.

According to Defense Minister Jose Viegas, Haiti will be a training field before possibly using the troops to fight criminality in Rio de Janeiro.³⁵ In a farewell speech before leaving the Army's command, General Francisco Albuquerque readdressed the subject. During the public ceremony for command change, Albuquerque expressed himself as the following: «I am convinced that the Army can and must cooperate with the guaranteeing and preservation of security in society, as our Constitution prescribes. The preparation of our military personnel for peace operations [in Haiti], and the results therein, are a proof of our capacity» (Lima, 2007).

Complimentary Law 117, of September 2, 2004, gave provisions for the acquisition of new weapons for military units, as well as the preparation and deployment of the Armed Forces in operations to guarantee law enforcement and order. The Armed Forces prevalence over state security apparatuses was made clear by Article 15, § 5th: «Once the deployment of the Armed Forces to guarantee law and order is determined, competent authorities, by means of a formal act, will transfer the operational control of agencies that develop public security activities to the authority in charge of the operations, who will constitute a center for coordinating the operations, made up of representatives of public agencies under his or her operational control or with correlated interests».

But what is operational control of public security agencies? One can find its definition in the same Article, §6th: «Operational control, for the purposes of this Complimentary Law, is the power bestowed upon the authority in charge of the operations to determine or coordinate specific missions or tasks to be performed by effectives of public security agencies, observing their constitutional or legal competences».

In the United States, when the Army's troops intervened in urban disturbances in Los Angeles, in the well-known Rodney King case, the federal military knew that any possible criminal offenses would be judged at a civilian court. This was to make it clear that they were not fighting enemies, but acting as police reserve forces instead.

In Brazil, Complementary Law 177, § 7th, however, followed a different path. Although the Armed Forces have been acting in public security activities, i.e., fighting Brazilians rather than the enemy, what they do is considered military activity. There-

³⁵ In Haiti, the troops have been engaged in operations similar to the ones they would perform in Rio de Janeiro: patrolling, blocking major points, and controlling the traffic of people and vehicles. Haiti has no National Army.

fore, the effectives are subject to «the provisions of Article 9, section 2, subheading c, of Decree-Law 1001, of October 21, 1969 –Military Penal Code» (Art. 15, § 7°).³⁶ More precisely, the delicts mentioned in Article 9 are considered military crimes in times of peace in case they are committed by military personnel engaged in operations to Guarantee Law and Order. Accordingly, a Decree written at the apex of the military regime repression has been used to typify military crimes committed by federal members of the military in operations to guarantee law and order.

All these anomalies came into sight in March 3, 2006, when an Army's unit in São Cristovão, a neighborhood in Rio de Janeiro, was attacked by seven armed men, who stole ten 7.62 caliber FAL muskets and one 9mm pistol. The reaction was immediate. Around 1.600 Army troops, more in number than the ones sent to Haiti's peace mission, occupied seven Rio's slums (Dias 2006), and intelligence services of the Navy and the Air Force were asked help (Amato 2006). Operation Asphyxia took place, i.e., an operation to suffocate drug dealers on the slums who were allegedly responsible for the attack to the garrison.

The legal basis for the operation was the Military Penal Code (CPM). The robbery of guns is considered a military crime. As a consequence, a Military Police Inquiry is instituted and the official in charge asks a judge to issue orders for search and seizure. The question, however, is how the Army will interpret the military judicial order and the means to be used to comply with it.

Police power is referred to by the CPM, but such power is discretionary, not arbitrary. Accordingly, Maierovitch (2006) recalls that «one cannot exercise military judicial police power to promote operations of war, as the one seen in Rio de Janeiro. Such limitation is imposed in order to preserve the Democratic Rule of Law. For example, the Armed Forces are not legitimate to repress smuggling of weapons under the pretense that the use of these weapons is exclusive to them».

IPM is an administrative procedure whose accomplishment was incompatible with the extent of the military action on Rio de Janeiro's hills. Only by authorization of the President of the Republic can troops be displaced in such scale. It wasn't done because Lula, who was in London at the time, was not consulted on the subject of mov-

³⁶ Article 9. Military crimes in times of peace are considered to be: 2 – the crimes mentioned in this Code,

even though the common penal law defines them likewise, when committed: c) by military personnel on duty, when acting according to their functions, in committees of a military nature, or in alignment, even outside a place that is subject to military management, against retired military personnel or civilians.

ing the troops. Only five days after the start of Operation Asphyxia did the President talk about it publicly in support of the Army's action.

In addition to the huge human contingent deployed, an armored vehicle Cascavel, with a 90mm cannon, was activated on Mangueira hill, in an attempt to intimidate the local population.³⁷ In Rio's borough Complexo do Alemão, the Army positioned a war tank and three trucks, one of which with an anti-aircraft machine gun, at the slum's entrances and people were inspected indistinctly.

Da Silva (2006) recalls that even the Military Proceedings Code, Article 178, prohibits a judge to issue generic orders.³⁸ Article 179 states that the officer in charge of the order must show and read it loud. This has not happened. On the contrary, constraints were imposed to residents, like the imposition of curfew.³⁹ The Army, in this way, broke the law while trying to enforce it. However, Vice-President of Republic Jose Alencar, who was the Minister of Defense at the time, did not think the Army committed any excesses.⁴⁰ For Alencar, military action was a bad thing «that comes for the good», as it was helping reduce criminality in Rio (Gomide, 2006). Nonetheless, he did not show any data to support that affirmation.

As long as the mentioned weapons were not found on the hills, the Army decided to step down to the streets. Military blockades were placed at Rio's major exits, what generated renewed dissatisfaction, as the legitimacy of military action began to be put into question even more intensely.

While looking for an honored solution, the Army opted to informally negotiate with Red Command drug dealers to get back the stolen weapons (Gomide, 2006a),⁴¹ but such version was denied by General Domingos Curado, the commander of the Eastern Military Command.⁴² Testimony inquiry

³⁷ «Tank in Mangueira's battle», *Jornal do Brasil* newspaper, March 7, 2006.

³⁸ «Article 178: a search order must: a) indicate, as precisely as possible, the house where the procedure will take place and the name of the tenant or the owner; or, in case of personal search, the name of the inspected person or characteristics that identify him or her; b) mention the motives and ends of the procedure; c) be subscribed by a recorder officer and by the authority issuing it».

³⁹ «Prosecutors to investigate excesses», *Jornal do Brasil* newspaper, March 11, 2007.

⁴⁰ «Troops defend residents too, says Alencar», *O Estado de S. Paulo* newspaper, March 11, 2006.

⁴¹ «A farce has been set up», *Epoca* magazine, March 20.

⁴² «General says he will not make a deal with criminals», *Folha de S. Paulo* newspaper, March 15, 2006.

Previously, the Office of the Public Prosecutor had denounced General Curado for rejection to give evidence.⁴³ Federal Prosecutors Fabio Aragão and Vinicius Panetto listed irregularities committed by members of the military in the course of the slum's occupancy, according to residents of the Providencia hill: beatings, threats, taps, invasion of houses and businesses, hurts caused by bullets and even a death--a 16-year-old student Eduardo dos Santos, who was shot in the chest.

However, following a request by the federal government, the 2nd Region's Federal Regional Tribunal prohibited the Federal Office of the Prosecutor from proceeding investigations as regard suspicions of human rights violations by the military personnel who occupied the Providencia hill (Torres, 2006). Once more, national security was invoked: a euphemism in favor of the interests of the Armed Forces (Haaqani, 2006), and not a single member of the military was legally held responsible.

■ Conclusion: To resolve without giving a solution

There is a great deal of voluntarism in the subminimalist conception of democracy, which is at the brink of not legitimating the study of the Armed Forces. That is, a desire to get rid of a bothering past. Notwithstanding, the truth is that the military might have withdrawn to the headquarters in the sense that they have stopped presiding over the country's destiny, but this does not mean that they have withdrawn from power. As a proof there is an increasing activity of the Army in decisions related to public security issues which, again, in democracies are in the civilian area of competence.

The main subject of the informal pact, during the transition, between civilians and the military was the revival of electoral democracy in exchange for maintaining authoritarian enclaves within the State apparatus. Therefore, institutional hybridism was the outcome. It means that conservatives have not lost control over the country's coercive agenda. In case of threat, the repressive apparatus could be reactivated constitutionally, guaranteeing legality in the use of violence.

Notice the recent behavior of senator Antonio Carlos Magalhães, a strong ally of the military regime. From the Senate tribune he advocated for a salary raise for the federal military. He advised President Lula, who was jailed by the military regime, that «such wage deterioration must be corrected so that, in case of *popular insurgences*, the

⁴³ «MPF denounces general», *Correio Braziliense* newspaper, March 31, 2006.

Armed Forces are ready to defend the institutions».⁴⁴ President Lula understood the senator's warning and authorized a salary raise for the military. This example points out the nature of the civilian coalition that supports military role expansion. After all, institutions that simultaneously protect the interests of members of both the old and the new regimes are not capable of performing major transformations.

The federal military are getting prepared to play an increased role in the security of Rio de Janeiro. Troops are being trained for this purpose in Haiti. Such a military presence, even though it is popular, closes the door to certain civil society means of expression. Consequently, it is made difficult to have greater democratization in the political system (Norget, 2005).

Political elites do not yearn for a direct military presence in the Great Politics. However, they do not want to give up military protection and support their presence as factor of power. Nordlinger (1977) defines this as moderate praetorianism, i.e., the civilians may govern, but the government is under military oversight on matters of military interest. In this case, matters related to certain public security actions or operations to guarantee law enforcement and order.

According to Freitas (2003), in Brazil there is a «military culture» that gives soldiers the mission to save the nation against any internal problems. In cultures of such kind, military qualities are favorably contrasted to those of civilian political leaders not only by the military themselves but also by the civilians,⁴⁵ therefore, legitimating the interference of the Armed Forces with internal affairs. Such «culture» influences the rhetoric in effect. It is common for politicians to point to a need to declare «war» against drugs;⁴⁶ to «fight» drug dealers, to send «task forces» to operations against delinquents and defrauders.⁴⁷

⁴⁴ «ACM calls attention for low wages in Armed Forces», *Jornal do Senado* newspaper, 06/17/2004. Emphasis is mine. The senator would readress the subject a few days later, saying that the military are «the underpin of democracy», *Jornal do Senado* newspaper, 06/30/2004.

⁴⁵ In the state of Ceará, Wilson Nascimento, Secretary of Public Security and Social Defense, was replaced by retired general Théo Espindola Basto, following a denouncement by the Office of the Public Prosecutor regarding the existence of an extermination group made up of police officers. «Denouncements remove Secretary from office», *Jornal do Commercio* newspaper, June 21, 2005.

⁴⁶ President Fernando Henrique Cardoso (FHC) appointed a retired general to head the Anti-drugs National Secretariat (Senad). President Lula maintained the general in the post. The Senad is not subordinated to either the Ministry of Justice or the Ministry of Health, but to the Chief Minister of the Institutional Security Cabinet, who is an Army general on active duty.

⁴⁷ FHC appointed general Zamir Meis as superintendent of the National Oil Agency. His Mission: to «fight» oil adulteration. He also appointed general Alvaro Moraes as director-general of the Federal Road Police.

I recall two other measures that militarized drug «fight» and, consequently, reduced the Federal Police powers in this field. The creation of the National Anti-Drugs Council, presided over by a member of the military connected to the Ministry of the Institutional Security Cabinet (*Gabinete de Segurança Institucional, GSI*),⁴⁸ which replaced the National Anti-Drugs Council, whose members were exclusively civilians; as well as the extinction of the Narcotics Department of the National Secretariat of Public Security, transferring its patrimonial lot to the National Anti-Drugs Secretariat.⁴⁹

Hence, there is popular appeal towards taking a strong stance with regard to fighting criminality (Pereira & Ungar 2004). Therefore, Army's intervention in public security is appreciated by most of the population.⁵⁰

One of the main problems facing Brazilian society is the use of violence in epidemic proportions in our everyday lives. The State has created coercive institutions such as the Police and Armed Forces for being capable of, among other things, imposing order and guaranteeing, at the very least, the physical integrity of citizens. In Brazil, however, this social pact has been progressively vanishing. A lack of incertitude for citizens on their right to move back and forth coupled with a lack of credibility of various coercive institutions can take us, in the end, to something similar to a civil war.

Given the worsening of public security problems, social hobbesianism escalates. Simultaneously, there has been an increasing plea for the adoption of a repressive conception, whether or not away from the Democratic State of Law. This means a failure in the institutionalization process of conflicts, to the extent that all dividing lines of the social contract have been repeatedly violated. In this view, violence is the visible face of such institutional failure which is perceived in expanding waves of crimes. In other words, violence in essence is the absence of legitimate rules people could resort to (Elster, Offe & Press 1998). Rule of Law presupposes the existence of a juridical security that may only succeed where there is a well known and respected order.

As a rule, police forces remain unequipped, badly trained and underpaid. Since they are inefficient, they have become both a motive for jokes and discredited by people.

⁴⁸ The National Anti-Drugs Secretary substitutes the president of the National Anti-Drugs Council whenever the latter is absent or off duty.

⁴⁹ The United States uses similar anti-drug war rhetoric. However, American army troops were not allowed to perform anti-drug operation inside the country.

⁵⁰ The population's disbelief in police led the Disarmament Statute to specify that all surrendered weapons or those seized by the police should be sent to the Army for destruction, even the most modern or expensive ones. This reveals a population's fear that the weapons might be illegally used by the police.

Such perception has been aggravated by the emergence of repeated cases of corruption among police members. It has become commonplace for police officers to trespass the thin line separating legality from illegality, beginning to commit crimes after receiving professional training paid with taxpayer money. This makes police part of the problems other than a solution.

Once under pressure, officeholders require the Army's presence with a view to solve their short-term problems, obviously without accounting for long-term consequences, e.g., the manner how this can weaken Brazilian democracy to the extent that the competences of both the Army and Police increasingly blend. After all, authoritarian institutions undermine democratic development. The civilian control of the military will not stand until the Armed Forces accept their institutional roles on a daily basis (Weeks 2003).

If the Police have been more and more giving up the role of a coercive instrument of the State, it is the Armed Forces who will take it on, as long as current public policies stay the same. Social capital and criminality are antagonistic. By definition, criminality is, from a social perspective, exactly a lack of social capital at an extreme level. The Army, in particular, is increasingly been seen as the only institution capable of preventing order and law, i.e., the very State, from collapsing.

Such institutional arrangement is a dangerous one in four ways:

1) It shows that civilian and military elites believe very little in the possibility of a future consolidation of democracy. They do not trust in any cooperation among actors over some democratic project that will secure private property and the market (Alexander 2002). For this reason, they tend to be cautious about it by increasingly deploying the Army in areas of civilian actuation, like public security. Joao Pedro Stédile, one of the main leaders of the Landless Movement (*Movimento Sem Terra, MST*) for example, affirmed during a recent interview that the masses will speak out and that «the Right needs to count on a strong government capable of repressing». According to him, the MST has a million people across road edges: they are «our *army* who can be mobilized at any time»⁵¹;

⁵¹ *Carta Capital* magazine, September 21, 2005. Italics is mine.

2) It bestows increasing powers upon the military in disregard of the Police. More and more, the Armed Forces, other than the President or the National Congress, decide over what the threatens to the political system are;

3) It increases the possibility of arbitrary use of violence, allowing «exception situations» to be evoked more frequently and for such situations to be solved by means of force other than by power relations. Impartial coercion is in itself a public good,⁵² which is subject to the same collective action problem it seeks to solve (Putnam 2005). As their coercive powers enhance, the military feel even more tempted to make use of such a force in behalf of themselves and at the expenses of the rest of society. As a consequence, new arenas of power are demanded;

4) Last but not least, it exposes federal troops to direct contact with agents of the traffic in narcotics. This could cause hierarchy to be disrespected within the Armed Forces whose consequences are not difficult for one to imagine. After all, the logic of military action is the use of force to defeat the enemy, and this requires strict obedience to hierarchical command. 

References

- Agamben, Giorgio (2002). *Homo Sacer*. Minas Gerais: Ed. UFMG.
- Alexander, Gerard (2002). *The Sources of Democratic Consolidation*. Ithaca: Cornell University Press.
- Amato, Gian (2006). «Ocupação reforçada» in *O Globo*, March, 6.
- Arruda, João Rodrigues (2007). *O Uso Político das Forças Armadas*. Rio de Janeiro: Ed. Mauad.
- Bailey, John and Lucía Dammert, editors (2006). *Public Security and Police Reform in the Americas*. Pittsburgh: University of Pittsburgh Press.
- Barany, Zoltan (1997). «Democratic Consolidation and the Military: The East European Experience» in *Comparative Politics*. v. 30, n. 1, p. 21-44.
- Barbosa, José Edson (1997). «Devolvam as atribuições da Polícia» in *Jornal do Commercio*, May, 16.
- Bastos, Márcio Thomaz (2003). «As Forças Armadas e a Segurança Pública» manuscrito, 11-12 de outubro.
- Ben Meir, Yehuda (1995). *Civil-Military Relation in Israel*. New York: Columbia University Press.
- Berghini, Ricardo (2005). «Simulação do Exército surpreende moradores» in *O Estado de Minas*, October, 27.
- Carvalho, José Murilo de (1999). «Vargas e os Militares» in Dulce Pandolfi (eds.) *Repensando o Estado Novo*. Rio de Janeiro: Ed. FGV.
- Carvalho, José Murilo de (2005). *Forças Armadas e Política no Brasil*. Rio de Janeiro: Ed. Zahar.
- Castro, Celso (2000). «The Military Politics in Brazil: 1964-2000» in University of Oxford Centre for Brazilian Studies, Working Paper Series (CBS-10-00H).

⁵² A good is a public good when it can be enjoyed by all, even by those who have not contributed for the provision of the good. Consequently, few individuals have an incentive to provide a public good and this ends up jeopardizing everyone else. Such situation is known as the collective action problem.

- Cerqueira, Carlos M. Nazareth (1998). «Questões preliminares para a discussão de uma proposta de diretrizes constitucionais sobre segurança pública» in *Revista Brasileira de Ciências Criminais*, ano 6, no. 22, pp. 13-182.
- Da Silva, Jorge (2006). «Quem aciona as Forças Armadas» in *Carta Capital*, March, 15.
- Diamond, Larry (1994). «Political Culture and Democracy» in Larry Diamond (eds.). *Political Culture & Democracy in Developing Countries*. Boulder: Lynne Reinner.
- Dias, Mauricio (2006). «O Veneno do Cascavel» in *Carta Capital*, March, 15.
- Elster, Jon, Claus Offe & Ulrich K. Press (1998). *Institutional Design in Post-Communist Societies*. Cambridge: Cambridge University Press.
- Engdahl, David E. (1971). «Soldiers, riots and revolution: the law and history of military troops in civil disorders» in *Iowa Law Review*, v. 57, n.1, p. 1-73.
- Filocre, Laurentino (2004). *Polícia Militar—Segurança ou Ameaça?*. Belo Horizonte: Armazém de Ideias.
- Freitas, Ricardo (2003). «O Ministério Público Militar na Defesa da Ordem Jurídica e do Regime Democrático» in Flávio Paixão de Moura Júnior, João Carlos de Carvalho Rocha, Samantha Chantal Dobrowski e Zani Tobias de Souza (orgs.) *Ministério Público e a Ordem Social Justa*. Belo Horizonte: Del Rey, pp. 227-244.
- Galhardo, Ricardo (2005). «De 15 a 64 anos, 75% dos brasileiros lêem mal» in *O Globo*, September, 9.
- Godoy, Roberto (2004). «Há 2 batalhões prontos para agir em mortos» in *O Estado de S. Paulo*, April, 14.
- Gomide, Raphael (2006). «Exército reduz criminalidade, diz vice-presidente» in *Folha de S. Paulo*, March, 11.
- Gomide, Raphael (2006a). «Exército negocia com tráfico e retoma armas» in *Folha de S. Paulo*, March, 15.
- Haaqani, Jusain (2006). «History Repeats Itself In Pakistan» in *Journal of Democracy*, v. 17, no. 4.
- Hagopian, Francis (2005). «Government Performance, Political Representation, and Public Perceptions of Contemporary Democracy in Latin America» in Francis Hagopian & Scott Mainwaring (eds.) *The Third Wave of Democratization*. Cambridge: Cambridge University Press.
- Helmke, Gretchen and Steven Levitsky (2006). «Introduction» in Gretchen Helmke e Steven Levitsky (orgs.). *Informal Institutions & Democracy*. Baltimore: The Johns Hopkins University Press.
- Hunter, Wendy (1997). *Eroding Military Influence in Brazil*. Chapel Hill: The University of North Carolina Press.
- Izaguirre, Mônica (2002). «Avanço na prevenção, demora na punição» in *Gazeta Mercantil*, October, 2.
- Levy, Margaret (2004). «An analytic narrative approach to puzzle and problems» in Ian Shapiro, Rogers M. Smith e Tarek E. Masou (orgs.) (2004). *Problems and Methods in the Study of Political Science*. Cambridge: Cambridge University Press.
- Lima, Sandro (2007). «General defende tropa nas ruas» in *Correio Braziliense*, March, 9.
- Lowndes, Vivien (2002). «Institutionalism» in David Marsh e Gerry Stocker (orgs.). *Theory and Methods in Political Science*. New York: Palgrave MacMillan.
- Machado, Sheila (2005). «Soldado critica ofensivas da missão de estabilização» in *Jornal do Brasil*, September, 11.
- Maciel, Marco (2005). «A conciliação começou a ser escrita nas Gerais» in *Correio Braziliense*, May, 23.
- Maierovitch, Walter (2006). «Devolução premiada» in *Folha de S. Paulo*, March, 18.
- Mainwaring, Scott (1992). «Transitions to Democracy and Democratic Consolidation: Theoretical and Comparative Issues» in Scott Mainwaring, Guillermo O'Donnell e J. Samuel Valenzuela (orgs.) *Issues in Democratic Consolidation*. Notre Dame: University of Notre Dame Press.
- Mainwaring, Scott, Daniel Brinks, e Aníbal Pérez Liñán (2001). «Classificando Regimes Políticos na América Latina, 1945-1999» in *Dados*, v. 44, no. 4, pp. 645-687.
- Monken, Mario Hugo (2007). «Força Nacional diz que polícias não colaboram» in *Folha de S. Paulo*, January, 25.
- Moyano, Maria José (1995). *Argentina's Lost Patrol: Armed Struggle 1969-1976*. New Heaven: Yale University Press.
- Neto, Lira (2004). *Castello—A Marcha para a Ditadura*. São Paulo: Contexto.
- Nordlinger, Eric (1997). *Soldiers in Politics: Military Coups and Government*. Englewood Cliff: New Jersey.
- Norget, Kristin (2005). «Militarization, Paramilitarization, and State Violence in Oaxaca, México» in Cecilia Menjivar and Néstor Rodriguez (eds.). *When States Kill*. Austin: University of Texas Press.

- O'Donnell, Guillermo (2006). «Notes on various accountabilities, and their interrelations» in Enrique Peruzzotti and Catalina Sumoluvitz (eds.). «*Enforcing the Rule of Law*». Pittsburgh: University of Pittsburgh Press.
- Oliveira, Eliézer Rizzo de (2005). *Democracia e Defesa Nacional*. São Paulo: Editora Manole.
- Otavio, Chico (1997). «Lei de Segurança Pública muda sua face» in *O Globo*, June, 8.
- Ottaway, Marina (2003). *Democracy Challenged—The Rise of Semi-Authoritarianism*. Washington: Carnegie Endowment for International Peace.
- Pereira, Anthony and Mark Ungar, «The Persistence of the Mano Duro: Authoritarian Legacies and Policing in Brazil and the Southern Cone» in Katherine Hite and Paola Cesarini (eds.). *Authoritarian Legacies and Democracy in Latin America and Southern Europe* (Notre Dame: University of Notre Dame Press, 2004), pp. 263-304.
- Pinheiro, João (2004). «Exército tem plano para o Rio» in *Jornal do Brasil*, April, 15.
- Przeworski, Adam, Alvarez, Michael, Cheibub, José Antonio and Limongi, Fernando (2000). *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990*. Cambridge: Cambridge University Press.
- Putnam, Robert D. (2005). *Comunidade e Democracia—a experiência da Itália Moderna*. Rio de Janeiro: Ed. FGV.
- Rothstein, Bo (2005). *Social Trap and the Problem of Trust*. Cambridge: Cambridge University Press, 2005.
- Santos, Maria Helena de Castro (2004). «The Brazilian Military in Post-Democratic Transition» in *Revista Fuerzas Armadas Y Sociedad*, no. 3-4.
- Schumpeter, Joseph (1942). *Capitalism, Socialism and Democracy*. Nova York: Harper.
- Shapiro, Ian (1992). «Problems, methods and theories in the study of politics, or what's wrong with political science and what to do about it» in *Political Theory*, vol. 30, no. 4, pp. 588-611.
- Shapiro, Ian (2003). *The State of Democratic Theory*. Princeton: Princeton University Press.
- Soliani, André e Eduardo Scolese (2004), «Haiti é treino para ação no Rio, diz Exército» in *Folha de S. Paulo*, May, 17.
- Torres, Sergio (2006). «Justiça pára apuração de ação militar no Rio» in *Folha de S. Paulo*, April, 6..
- Valenzuela, J. Samuel (1992). «Democratic Consolidation in Post-Transitional Settings: Notion, Process, and Facilitating Conditions» in Scott Mainwaring, Guillermo O'Donnell e J. Samuel Valenzuela, eds. *Issues in Democratic Consolidation*. Notre Dame: University of Notre Dame Press.
- Van Creveld, Martin (2004). *Ascensão e Declínio do Estado*. São Paulo: Martins Fontes.
- Weeks, Gregory (2003). *The Military and Politics in Postauthoritarian Chile*. Alabama: The University of Alabama Press.
- Zaffaroni, Eugenio (1995). *Poder Judiciário*. São Paulo: Ed. Revista dos Tribunais.
- Zaverucha, Jorge (2000). *Frágil Democracia*. Rio de Janeiro. Ed. Civilização Brasileira.
- Zaverucha, Jorge (2005). *FHC, Forças Armadas e Polícia: Entre o Autoritarismo e a Democracia*. Rio de Janeiro: Ed. Record.
- Zaverucha, Jorge (2006). «The Fragility of the Brazilian Defense Ministry» in *Revista de Sociologia e Política*, vol. 2, no. 2. [http://socialsciences.scielo.org/scielo.php?script=sci_arttext&pid=S0104-44782006000200002&lng=en&nrm=iso&tng=en]

Este artículo es la versión original en inglés de «La militarización de la seguridad pública en Brasil», incluido en NUEVA SOCIEDAD N° 213, enero-febrero de 2008, ISSN 0251-3552, <www.nuso.org>.