

## Military Operation and Engagement in the Domestic Jurisdiction



# Military Operation and Engagement in the Domestic Jurisdiction

*Comparative Call-Out Laws*

*Edited by*

Pauline Collins and Rosalie Arcala Hall



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*This is for the many military personnel working hard in their roles around the globe and for the scholars and citizens engaged in maintaining a suitable balance of the civilian and the military institutions to ensure stable democracies.*





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# Foreword

This is an important and timely book, which will interest a wide audience. It deserves serious consideration from soldiers and police, lawyers, legislators, and students of the security sector and its evolution.

Work in domestic jurisdictions is what engages most military forces most of the time. Although every one of the cases represented in this volume appears in the Correlates of War data (version 5.0 covering 1816 to 2014) their international conflicts since the end of the Cold War and even further back represent a tiny proportion of their total military effort. However we measure it, by person years, proportion of military expenditure, or named operations, most military forces are overwhelmingly engaged at home. The civil-military relations and legal frameworks for these operations, however, vary widely, and merit close examination in the light of emerging challenges.

Pauline Collins' and Rosalie Arcala Hall's collection of case studies of military operation in domestic jurisdiction is wide-ranging, balanced and a useful starting point for further comparative work. Amongst the 16 cases are six federal states, seven unitary states, and three devolved states. Looking at forms of government, we find seven presidential systems, six constitutional monarchies, two parliamentary republics, and one military junta. Africa, South and Central Asia, and the former Soviet Union are not represented in the collection, and this invites new work along similar comparative lines. Those familiar with these regions will find echoes in many of the cases, but also contrasts, particularly in the role of interior ministry troops and paramilitary border guards, occupying the domestic operational space between police and military forces.

At least three factors suggest that the home front will be even more important for military forces in the future. As countries grapple with natural disasters and the accelerating consequences of climate change, military call-outs are likely to increase. Organized crime, terrorism, and insurgency are recurring threats to the domestic integrity of states. State space is changing with technology and globalization, and defence of state territory and population can no longer be confined to its borders. Beyond these factors which increase demand for military engagement in the domestic sphere, changes to states may interrupt the supply of reliable military forces to respond to call-outs. A close reading of the legal, political, and social context of call-out cases will highlight some of the challenges states may face in the future.

The crises of the young twenty-first century were crash, Covid, and climate (Carney, 2021). Each has created demands for military engagement in domestic jurisdiction around the world. The 2008 Crash, the most severe economic downturn since the Great Depression of 1929, put many countries into social and economic crisis. Labour unrest, riots and widespread unemployment generated demands for military assistance to police forces preserving public order, but the legitimacy of public order is called into question by rising public intolerance of the growing concentration of wealth that helped to generate the crash. Economic turmoil requiring troops in the streets is not new, but public reaction to it is different, and some legal frameworks for call-outs might need adjustment. Public health crises are not new, and neither are the fires, floods, tornadoes, hurricanes and droughts that are the increasingly frequent hallmarks of climate change. But the rising temperatures affecting food security, habitability and survival migration for much of the planet are new.

Military leaders have always resisted overcommitment to domestic operations. Military professional ideologies (Bentley, 2005) emphasize war-fighting competence, and it is on the strength of this competence that the profession makes claims for society's resources. Spending more of their time filling sandbags and putting out domestic fires may be in the future of most professional military forces, and it will change the way that society views them. Will this in turn require new frameworks for the deployment of military forces, which may need to manage civilian labour brigades or volunteers?

Crash, Covid and Climate eclipsed the war on terror into which America led the world in the century's opening years, but the terrorism continued. An illiberal nexus of organized crime, insurgency, and violent political challenges has morphed into new forms requiring military operations under domestic jurisdiction. Gendarme forces, internal security and border troops were creations of the eighteenth and nineteenth centuries as paramilitary forces to control people and territory for the state. Many states reduced the military characteristics of these organizations over the twentieth century. The Belgian Gendarmerie, French *Gendarmerie Nationale*, Dutch *Koninklijke Marechaussee*, and Royal Canadian Mounted Police all came to look more like national police forces than paramilitary units. Paramilitary formations between police and military help to raise the threshold for public order call-outs. Transforming paramilitary forces with light armoured vehicles and heavy weapons into a national police force with a less robust unit structure – transforming green to blue – opens a wider space for military call-outs in support of public order (Dahlberg, 2020). Amongst the cases presented here, Turkey and Mexico have the most robust military gendarme forces, but also favour the use of armed forces for internal security. The illiberal nexus of terrorism, insurgency, and organized

crime has encouraged many countries to reduce the silos between intelligence services dedicated to policing, political and military threats. The legal framework for intelligence might be seen as a penumbra that enables engagement of military assets before military deployment in domestic jurisdiction, and the role of intelligence deserves consideration. To what extent does it knit together force structure, set up competition, or entrench political power?

State space is changing with technology. Domestic jurisdiction and the territory of a state within its borders are concepts of the Westphalian state that no longer hold up well when we examine information infrastructure, or what Benjamin Bratton calls *The Stack*:

Smart grids, cloud computing, mobile and urban-scale software, universal addressing systems, ubiquitous computing, and robotics ... form an accidental megastructure called *The Stack* that is not only a kind of planetary-scale computing system; it is also a new architecture for how we divide up the world into sovereign spaces.

BRATTON, 2015, preface

Information infrastructure allows the penetration of territory, so that citizens and politics are influenced by remote adversaries and essential infrastructure can be attacked with impunity and anonymity. National identity and cohesion can be undermined by social media and manipulation. States in rough neighbourhoods – Mongolia, Poland, Hungary, Finland, and the Baltic states, for example – are considering new domestic roles for the military. Reservists with special skills, elite cyber units, mobilization to support infrastructure, public education and ‘neighbourhood watch’ functions under military discipline might be deployed. Will they become the new price of preserving sovereignty, and are they compatible with liberal democracy? This will depend upon the legal frameworks for their use.

These three factors – climate change, the illiberal nexus, and changing state space – are increasing demand for reliable military operations in domestic jurisdiction. Both the numbers and qualities of forces demanded for operations in domestic jurisdiction and the frequency of their engagement are likely to increase. But the availability of reliable military forces may decline, driven by at least two factors. Aging democracies and federations under strain may face constitutional crises or crises of public confidence that make it harder to deploy in domestic jurisdictions. Public consent is socially constructed; when it erodes, military deployments may create security problems rather than resolve them. This is related to the character of the military being deployed. Recruiting and retaining people with the skills needed for new operations is

already difficult in many liberal democracies. If the quality and training of forces decline, public confidence in military forces may also decline, even to levels where foreign intervention may be welcomed as an alternative to domestic oppression.

The legal framework for military operation and engagement in domestic jurisdiction is important for political, economic, and social understanding of national responses to the changing security environment. The comparative approach taken by Pauline Collins and Rosalie Arcala Hall provides rich material for expanding our understanding of the challenges and potential solutions that face any state and its security sector.

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## Preface

Traditionally democracies have adopted the principle of civilian control of their military and have ensured the military operate within clear domains, such as defence of the nation rather than for any domestic usage. This is to overcome a fear of the military operating as an instrument of oppression and control. The role of civilian police in internal law and order is established by clear divisions and has seen military operating in this space as exceptional. However, all countries provide for constitutional or legal exceptions enabling military deployment domestically such as in situations of aid to civil authorities during internal violence (to restore public order through security operations) or during natural disasters and health pandemics (to aid citizens and government agencies through safety and disaster relief operations). The changing security environment along with different mixes in national militaries such as conscripted, volunteer professional and private providers, mean that the 'military' space is changing and raises the need to engage with the traditional conceptions regarding military operations on domestic soil.

Whether the changes brought by globalisation and trans-terrorism have increased usage of the military in domestic fora, as well as corresponding tensions in civil-military relations, is seen to vary and remains a contested point. With the military operating across these domains, the question this volume poses is whether the traditional role and principles for control of the military remain respected or whether it is time to re-examine the operation of civil-military control principles that have been hard-won historically and acknowledge current practices with a more nuanced formula. Chapters in this volume provide a range of views when considering the motivations of politicians seeking to utilise the military domestically. For instance, is it to fill resource limitations in an internal emergency, be it humanitarian or a security threat, or are military callouts largely to extend emergency powers and increase political power through populist/autocratic legitimacy, or is there some other reason?

The historical contextualisation presented in each chapter supports the observation that use of the military domestically has remained a shadowy concept. While the accepted situation in democracies is that the military is for protection from external threats, not internal threats, there have, in each nation-state represented in this volume, been usages of the military on domestic soil. Cohn (Ch 3) observes that the line between domestic and external security concerns has forever been blurred. Most relevant is the observation in recent times that, due to the demands presented by the COVID-19 pandemic and environmental catastrophes, there has been an increasing role for

military personnel in humanitarian operations. These activities are mostly welcomed by civilians seeking assistance and tend to build acceptance and trust in their military. However, more discussion to ensure important considerations for understanding the role of civilian and military institutions, as they operate within constitutional structures, is required. Does there need to be a renewal of understanding given these changing roles or can the existing view accommodate the new world. Can and should greater clarity be provided for democracies activating their militaries domestically, both in security and humanitarian activities?

Mechanisms for control of the military extend beyond the legal to incorporate localised application for deployment of military units to interact with local police and civilian agents. The dynamics of these relationships vary depending on their political ecologies (for instance, relatively peaceful areas versus conflict zones). Often constitutional arrangements are limited in coverage of the circumstances under which the military can operate in maintaining public order or provide civilian authority assistance. In many cases, the legislation is ambiguous and open to interpretation because of its use of vague or broad and undefined terms. In such circumstances the importance of fundamental democratic principles, such as civilian control of the military and subsidiarity and proportionality, have a role, particularly for any judicial determinations regarding military internal operations.

Nation-states vary in their political-legal structures across unitary, federal, constitutional monarchies, republics, or autocracies. All have had a varied history in the use of military personnel in domestic matters. Developing democracies have employed their military in circumstances where the police forces have been inadequate. However, three recent happenings have resulted in increased domestic military deployment. These events have been experienced in most countries. In the security domain, there is the rise of Islamic State and increasing acts of terrorism, resulting in military involvement in policing. The other two events have impacted on humanitarian needs: the global COVID-19 pandemic and the widespread flooding and fires following the changes in climate around the globe. Such events have seen involvement of military personnel increasing domestically, even in established democracies. In some states, a declared state of emergency has been extended to enable military control, while in others a military-supported dictatorship exists. This volume considers the whole range and looks at how the laws are framed to address the control of military power in each of the nation-states covered. This comparative approach provides case studies across the thirteen nation-states within three regional domains: the Americas, Europe and the UK and the Asia-Pacific.

A legal focus addresses the bodies of law governing deployments and enabling domestic action, in which the ‘call-out’ provisions operate across different levels of government to manage the integration of military personnel operating alongside civilian policing and other organisations. Understanding when governments can call-out the military to aid in policing considers the tension created within civil-military relations and the bodies of law that address privacy and human rights. This volume provides an examination of what challenges this may present for military, civilians and political systems, a topic infrequently addressed. The analysis presents the law in operation in the nation-states covered in a comprehensive and comparative manner. As a comparative analysis, it incorporates historical developments in the use of the military in different domestic environments.

In an exploratory multidisciplinary approach political and social scientist as well as lawyers and military personnel were invited to respond to any of a range of focal considerations, including:

- The historical changes in the operation of call-out laws in the domestic forum.
- What transformations have occurred in military operations on domestic soil, for instance in response to climate and health crises?
- Does the constitutional political structure control who holds the power to decide when military operations will occur in the domestic context? How is this control of the military exercised?
- What laws cover the superintendence of joint military and police activity? What challenges does this present?
- What changes in the military organisation have occurred to adapt to various domestic missions? How do these changes reduce or enhance the dangers to society of the military deployed on domestic soil?

The three regions covered in this volume all have different histories and range from established to establishing democracies. We turn first to the Americas, Canada, and the US, which have federal systems, as do some of the South American states. With federal systems there is generally some constitutional provision regarding states requesting federal government assistance.

## The Americas

### *Canada*

In Canada, military involvement domestically appears to have been relatively under legislated other than a mention in the 1950 *National Defence Act* that describes potential involvement in ‘an existing or imminent disaster when

directed to do so by the Governor in Council.<sup>1</sup> This was refreshed in 1998 to cover military performing ‘any duty involving public service’<sup>2</sup> and no restrictions were applied on who could request this assistance. In keeping with the broad ambiguous language, the term ‘public service’ is not defined nor is there provision of guiding factors when deciding to commit the military to a public service operation. Discretion of the Governor General and flexibility prevail. At least more proscription exists when military personnel are called to assist law enforcement authorities.

As a federal system, the federal government legislates for military matters and the executive is responsible for military control. Of most interest is that this older democracy has no law to ensure the military acts in subordination to local civilian authorities (excluding when responding to riots and insurrection). There is only the general observance that the military operate subject to the command and control of the Crown through the Prime Minister and the Cabinet. The *Emergencies Act* 1988 (not yet used) enables Parliamentary review regarding the limited circumstances in which the federal government can declare an emergency, and it requires provincial consultation as well as providing specific powers in four categories of emergency. The *Charter of Rights and Freedoms*<sup>3</sup> may provide some protections. The Governor in Council can arbitrarily rely on the military (a rare event), or they can be utilised when requested by local, municipal, and provincial governments and civilian agencies.

In the COVID-19 pandemic the Canadian military aided with border control to support quarantine under the Federal Governments sphere of operation. While fortunately pandemics are infrequent, and so military support is correspondingly infrequent, it has historically always been available.

Wentzell outlines, in the case of Canada, that historically there have been some dramatic examples of military involvement in domestic affairs, but the military has been restrained, perhaps due to a combination of culture and training, with little violence occurring. He notes that requisitions for aid of the civil power are rare, but other possibilities exist to enable the use of the military alongside law enforcement agencies. Wentzell observes that the federal government seems disinterested in using the military as an agent of force but there is growing interest in having the military assist with humanitarian and disaster relief. Notably, provinces have relied on military assistance even when

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1 *National Defence Act* (1950), 14 George VI, c. 43, s. 35.

2 *National Defence Act* s.372.6(1).

3 *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act* and Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

their own resources have not been depleted. A risk with this development is the provinces 'under-investing' as well as a lack of emergency preparedness, which can place unusual burdens on the military that affect its main defensive function.

While Wentzell believes the system 'works,' he claims the *Human Rights Charter* contributes to achieving this as it applies a constraint to the military's conduct, along with the norm of subordinating the military to local civilian authorities. However, the Canadian law related to aiding the civil power in assisting law enforcement agencies, while restricted to matters that are both in the national interest and for which the assistance of the military is vital, displays no similar constraint in matters of public service, such as humanitarian assistance and disaster relief. This leaves issues around the lack of role clarity between the military and the civilian police.

### *South America*

The chapter by Pion-Berlin and Martinez begins with the premise that, in the case of Latin American militaries, there is a gap between what the military is legally tasked with and what it actually does. Poorly organized and not committed to democratic rules, its role is very much influenced by individual state governments' imperatives to respond to growing domestic threats from organized crime and high levels of violence from drugs. At the core of this comparison are the relative structural capacities of the military vis-a-vis the police and other state security agents, and how bureaucratic deficiencies in the civilian agencies justify military domestic engagement as a substitute or augmentation in response to these serious threats. Whether the legal framework clearly delineates the tasks of national defense from public order, as well as the supervising authority for the military and police, are at the core of this comparison.

The authors take four countries as representative cases: (1) Argentina, where laws confer traditional roles for the military and allow their domestic use for internal security only under exceptional and extraordinary circumstances; (2) Chile, where the legal framework allows for the military's flexible use; and (3) Guatemala and Mexico, where the laws favour use of military personnel for internal security and other public order tasks typically assigned to the police. In Argentina, the military's role is confined to territorial defense. Military intervention in internal security is expressly prohibited unless ordered by the President, and then only to lend logistical support to requesting civilian authorities. The military may be mobilized at the President's discretion in a state of emergency and in a support role, as was the case during the COVID 19 pandemic. The Argentine military produced protective gear, and provided additional staff for mobile hospitals, transportation for food distribution and

aerial surveillance. Recent decrees categorising narco-trafficking as a public security emergency and transnational crime have provided the legal basis for the military's deployment against these 'state foes.'

Chile delineates the task of external security (military) and public order (police) but assigns the military a phalanx of secondary missions, including law enforcement and public order during elections within the country. Under a state of exception, which includes catastrophic disaster and serious disruption of order, the military may be called out. There are separate rules governing the use of force during a state of emergency (one step below a state of exception), for which decisions are made by a National Emergency Office led by an ex-military officer. Like Argentina, the Chilean government has also recently enacted decrees permitting the military to provide logistical, transportation and technical assistance to police and civilian authorities in anti-drug trafficking and border operations against illegal migration. Chile has a host of legislation supporting a wide array of non-traditional tasks, including contribution to national development, promoting historical and cultural heritage, and biodiversity among others.

Pion-Berlin and Martinez report that the Guatemalan military operates everything (external defense, internal security, fighting crime, protecting civilians) and everywhere, save its core mission, which is external defense. The military was intended to support the National Civil Police (in charge of internal security) to address crime only sporadically, but the military now has specific units designed to operate at all government levels, ready for possible deployment, including in prisons. There is also a legal framework for a state of exception (including public calamity, siege and war) but the Constitution is vague about the military's role in each specific context.

Mexico, Pion-Berlin and Martinez write, has by far the widest latitude when it comes to the military's involvement in internal security, largely because the law does not conceptually distinguish between internal, national and public security. In practice, the Mexican military primarily performs internal security missions. Moreover, the law broadly defines national security threats to encompass instability, terrorism, espionage, and organised crime. The law puts the National Guard in charge of public security (which includes investigation, arrest, crime prevention and preventative intelligence), but this body is military-dominated; 68% of its personnel are on a 5-year secondment from the army and navy, which maintains command and control over the seconded personnel.

Pion-Berlin and Martinez raise the fundamental question of motives behind deploying the military for internal security when the country has robust security forces to deal with organised crime. The authors also problematise civilian

control by pointing to a myriad of civilian agencies and authorities presumably exercising oversight, but with no defined mechanisms for doing so. Lack of legal clarity and pragmatic considerations by the government, in the face of serious threats from organised crime, are driving decisions for military engagement in the domestic theatre.

### *United States*

Cohn's chapter gives a comprehensive evaluation of the long development of this old democracy and the use of the military domestically. She draws on the Constitution, and legislation covering domestic use of the federal military force, relevant court cases and the Army, and later the Department of Defense's doctrine and training in response to domestic involvement. She notes the fears of maintaining a permanent military that were apparent at the framing of the Constitution, and the lack of mention in the Constitution of federal military usage internally. Debate has ensued as to what that may mean for the US.

The Constitution enabled the federal Congress to 'call forth' state militia forces to execute the laws of the union. The federal government could use the state militia domestically if the local or state authorities could not handle the situation, and they requested help from the federal government. In such circumstances, if the federal government determined that the state had exhausted its resources and needed help repelling 'invasion' or addressing 'domestic violence' (Article IV, Section 4, Guarantee clause), or if the federal government determined that the state authorities were unable or unwilling to enforce federal law (Calling Forth clause), it could raise an army permitted to use necessary force.

According to Cohn, the federal government operated enforcement powers early, as state and local officials appealed for help, even to the detriment of their own authority. Some of this may have been due to the unavailability of a local constabulary, the state militia being the only available coercive forces. Achieving a balance in the law between use of force internally and the rights of citizens to be protected is the challenge. Certainly, it is accepted that having the military engaged in internal law enforcement is a last resort option. The subsidiarity principle expects law enforcement to occur at the lowest enforcement level.

History in the US is littered with the use of the military in domestic circumstances. Mostly this has been with restraint. The president commands the federal military and like the UK, the legislative arm controls the numbers and fiscal resources. However, significantly, the legislature (Congress) has delegated power to the President to call forth troops and establish a regular

force that could be utilised internally. Changes were made to legislation,<sup>4</sup> and through court cases the federal executive power was enlarged over both the states and the federal legislative and judicial arms. Over time the militias professionalised and became the National Guard. The federal military was supportive of this as it preferred avoiding state domestic politics. As state policing developed and interagency cooperation grew, the subsidiary principle was observed.

Periods of labour unrest from 1877 until WWII and the American race struggle for civil rights, particularly during the 1950s-1960s, saw the use of the federal military forces in these conflicts. The struggles raised fears of socialist revolutionary influences and led to the early development of contingency plans involving intelligence surveillance for domestic operations in the Army and War Department. Domestic intelligence surveillance is now a largely accepted fact in which the military activity is mainly self-regulated. The 'war on drugs' and 'war on terrorism' have led to further expansion of executive power, along with military activity domestically. The military and National Guard have been actively involved in border control, attempting to prevent entry of drug traffickers, international organised criminals and immigrants from South American states. 9/11 security fears have resulted in legislation enabling military involvement in counter-terrorism activities on domestic soil.

The trend towards a centralisation of power to the federal executive, in particular the president, is reflected in many of the case studies in this volume. The military more closely comes to represent 'all the king's men' as the presidential title holder obtains significant powers to utilise the military, with restraints being less legal and more political. This provides an efficiency some desire, but it also raises concerns for the breadth of power held by a few.

Cohn contends that the 'lines between domestic and foreign security have always been blurry' and they have not always been viewed negatively. In fact, she identifies the possibility that domestic operations have in some circumstance increased trust in the military. Certainly, for the US the military have been central to the US political development. She argues that Defense have a reluctance to engage in internal and therefore politicised activities, preferring to focus on their main role of external defense. However, the unprecedented political events of 2020-2021, she suggests, represent the potential for dangerously partisan uses of the military. To this end, current trends remain with using other agencies in the domestic domain.

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4 *Militia Acts* of 1792 and 1795, and the *Insurrection Act* of 1807.

## Europe and the UK

### *Belgium*

Belgium, a federal system, has experienced terror events and the pandemic, resulting in an increase in activity from the military in the domestic sphere. Security incidents in 2014 and 2015 prompted the federal government to take measures, such as having the military operate alongside the police to secure public spaces. Like other democracies in the developing years during the 19th century and first half of the 20th century, Belgium utilised military personnel to strengthen fledgling police forces. Some of the historical usages were forceful interventions resulting in a public demand for a greater public safety approach. This was reinforced in the pandemic by political agreement between ministers, rather than legislation, to ensure military personnel would not be utilised if public conflict arose during the pandemic.

In the period following the end of the Cold War, legislation was introduced (1994) setting forth three broad categories for the legal use of military personnel during peacetime: operational deployment, relief missions for citizens, and military assistance missions.<sup>5</sup> Each attracted different disciplinary or pecuniary consequences and the detail of each deployment was left for the King to determine. Only two types of missions in the 1994 Law enable domestic deployment, namely public order deployment and national relief. Claerman indicates these are, respectively, 'operations where soldiers are deployed to maintain or restore public order,' and 'missions in a national context and on national soil pursuant to a decision of the Minister of Defence or governments with powers of requisition.'<sup>6</sup> Below deployment level, military personnel can also engage in remunerated activities described as services of public utility or services for third parties, and services in aid of the nation where the call is not otherwise regulated by law.

Further, there is specific legislation that enables specific military tasks such as in customs, shipping and in replacement of civilian workers to name just some. Civilian government agencies can request help from the armed forces in a crisis as has occurred with the Covid-19 pandemic. The King or Minister of Defence have the authority to decide whether to oblige the request. In the case of a civil emergency, legislation provides for a military role at various levels such as providing medical assistance (Discipline 2), policing the location of the emergency (Discipline 3), and logistical support (Discipline 4).

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<sup>5</sup> Act of 1994 art 3, §1, 2°.

<sup>6</sup> Royal Decree of 1994 art 1, 1°, 2, 6/1, 1° and 6/2.

A common factor in many countries is the broad terminology used. Claerman documents terms such as 'public order,' 'to meet the needs of the population,' 'public utility' and 'in aid of the nation'. In this respect, as with other jurisdictions, there is a lack of legislative intent in limiting the armed forces when it comes to protecting public order. That said, there are certain legal principles such as subsidiarity and proportionality, police maintaining operational control (the civil-military control principle), the different ability to use certain weapons and conduct search and arrests, and the ideal that it is a last resort option. For the European domain, the European Court of Human Rights requires armed forces to have specific training in policing. These aspects tend to limit the extent of participation to providing logistical support or act as deterrents only in security scenarios.

Claerman observes some concerns with the vague nature of the domestic role of the military, concluding there are no clear limits on domestic military intervention. The move to provide more police powers to military personnel requires a degree of discussion that this volume highlights is necessary so that an informed public can assess whether a new understanding is called for when it comes to the military and its activity in domestic fora.

### *Czech Republic*

The Czech Republic presents an interesting case study of a country transitioning from communism following USSR president Mikhail Gorbachev's proclamation of 'perestroika and glasnost' towards a democratic state, integrating with Europe and NATO. This transition brought profound reform to the armed forces through the 1990s. It included military downsizing, abolition of conscription and reinstating strong civilian control of the military. A significant signal in this regard was the replacement of the military justice system, on 31 December 1993, with the ordinary civil justice system.<sup>7</sup> Military members continue to be investigated by military police but they are prosecuted through the civilian courts. To date there have been no civilian prosecutions.

Historically the Czech Republic had seen violence perpetrated on civilians. However, since the Velvet Revolution in 1989 there has been minimal domestic deployment. The military is trained to be a defensive military, predominately engaged in law enforcement operations externally such as counterinsurgency and rule of law operations, as in Iraq (2003), and Afghanistan (2003).

In heightened security circumstances, such as terror threats, the military have been deployed alongside civilian police and been placed under police

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<sup>7</sup> Constitution of the Czech Republic Article 110.

command with irregular legislative provisions endorsing this arrangement. Training for joint operations is envisaged by instructions, although it appears to be discretionary with little publicly available detail. Use of non-lethal devices and operating in a civilian police model would appear to require more work. During the COVID-19 pandemic the military were called on in 2020 to patrol national borders.

As others note in this volume, legal terminology is often vague when it comes to domestic deployment. Terms such as ‘non-combatant activity,’ or ‘situation of non-military character,’ are adopted.

Bílková and Ditrichova Ochmannová conclude that Czechoslovak history has provided instances of the use of armed forces domestically in which challenges have been observed that are still arguably in need of attention, in particular adequate training for the different circumstances. However, the authors report an overall positive application of the legal framework for domestic military deployment. They note that ‘[t]here have been no attempts by the political leadership to use the armed forces for unlawful purposes and also no attempts by the armed forces to overstep the mandate given to them during domestic deployment.’<sup>8</sup>

### *Spain*

Unfortunately, not unlike other countries, Spain has a long and bloody history as it moved towards democracy. General Franco’s 40-year dictatorship saw heavy domestic military participation which was employed to eradicate dissent and maintain internal order. The road to democracy was not a smooth one after the dictator’s death. Challenges came from reforming the Armed Forces, the role of the Catholic Church, and the division of power and debate over a Monarchy or a Republic. The military institution had to be subjugated through the democratic principle of civil control of the military in a democracy.

Expósito considers the relationship between the military institution and the courts. This includes judicial control provided for in the Spanish Constitution Art 106. The disciplinary powers of the military in the Spanish Constitution Article 117.5 require ‘the exercise of military jurisdiction strictly within military limits.’ Although this is independent from the ordinary civilian court’s jurisdiction, it is incorporated under the Supreme Court (5th Chamber) and is bound by the sole jurisdiction of the Constitutional Court, which enforces fundamental rights under the Constitution.

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8 Bílková and Ditrichová Ochmannová, Chapter 5,119.

The Spanish military operates under the European Union generally as a peace keeping force in international military missions through its membership in the UN, OSCE and NATO. It also participated in the joint operations in Iraq in 2003. Spain's internal law was updated in 2005 to recognise its changing role, such as the preservation of international peace, thus moving away from the defence of Spain alone. A further modernisation was Spain following suit with those countries who moved the right to engage the military in deployment missions to the legislative arm rather than the executive.

The 2010 state of emergency is described by Expósito as one in which there was little hesitation in utilising the military in an air traffic control labour dispute through Royal Decree. The Ministry of Defence had temporary power over air traffic control, including being able to direct civilian air traffic controllers to carry out their jobs and subject them to military discipline.

The Armed Forces' role in the 2020 pandemic in Spain has never been questioned. However, Expósito argues that such missions with extraordinary reasons of necessity should always remain exceptional, given Spain's authoritarian history. Such vigilance is required to ensure resort to the military should not be habitual, with security problems often arising from military solutions.

### *Turkey*

Turkey's military remains high in the esteem of the Turkish people despite its long history of influence in the political arena. Civil-military relations in Turkey tend towards discussion of military coups rather than military involvement in domestic security issues or as aid to the civil power.

Genç Yılmaz and Ağkaya argue that the military call-out powers, promulgated in 1949 under Article 11D and 11J of the *5442 Numaralı İl Özel İdaresi Kanunu* (Special Provincial Administration Law No 5442), are both 'vast and vague' as they have been adjusted following military events. Law No 5442 enables municipal governors to request military assistance for law enforcement support, which is normally provided by the Gendarmerie General Command and the Police Organization, established within the structure of the Ministry of Internal Affairs. Ultimately, this system was seen to promote coup plots. Various coups have led to changed circumstances.

The Turkish military's prominent role domestically has only seen change in 2010. The *Milli Güvenlik Kurulu-MGK* (National Security Council), from mid-1970, considered their role to be regime protector and authorised their own supreme decision-making. This is not aligned to the normal civil-military control principle. The MGK gained power, effectively operating as a 'parallel state'

to the civilian governments. Genç Yılmaz and Ağkaya argue that this created a unique situation in comparison to more advanced democracies, as the Turkish military had total autonomy in deciding when to engage in domestic situations. For instance, the 1997 coup led to the (*Emniyet Asayiş Yardımlaşma – Security and Order Assistance*) Protocol (EMASYA). Article 9 of the Protocol enabled military intervention without any civilian authority request for assistance. This was made possible by placing the Gendarmerie, a hybrid institution, under the Turkish General Commands of Staff until 2016. Military forces could be used domestically to address both political and industrial unrest. Once the military personnel were deployed, they had greater powers than the police. This Protocol enabled military domestic participation in security and was abolished in 2010 to increase the civilian control over the military, although aspects appear to have been renewed in current legal instruments.

In 2013, a protocol was signed as part of the *Peace Process* with the PKK, between the General Staff and the Ministry of Interior. These new laws have been criticised as essentially replacing one powerful security regime with another. However, the new laws grant civilian government authorities, namely the Ministry of Interior and the Council of Ministers, the power to decide when military forces should be utilised in terrorist incidents.

The Turkish experience shows the prominent role of the military and, like most countries the post 9/11 era, has seen requests for military backup during terrorist attacks become an increasingly normalised phenomenon. Humanitarian and crisis military assistance have been prominent in Turkey for earthquakes, fires, and floods. Some rural regions with impoverished local capacity have also had military assistance.

A concern for Turkey is its military operating in the domestic sphere when its focus remains on training for warfare and defence. Notwithstanding, the current legislation attempts greater civilian control of the military and this same legislation has expanded powers of search, seizure and control of movement in domestic security events.

### *United Kingdom*

De Vore and Finnegan's chapter provides an important tour of the historical development of the military and their role in the UK, as the UK, through colonisation, has had a major influence on the Commonwealth and common law countries. Many of the key principles of civil-military control have evolved out of the British experience.

De Vore and Finnegan differentiate Britain's military, describing the military as 'fulfilling different ... functions domestically than those of other

consolidated democracies.<sup>9</sup> This includes rescuing hikers and protecting fisheries, normally carried out by civilian organisations. They argue that despite the long historical development, with the majoritarian Westminster political arrangement, UK governments are empowered to substantially alter arrangements as needs demand. Notwithstanding, the historical trajectory has been to disengage the military from domestic law enforcement by providing civilian institutions, such as the police, and limiting how the military could become involved in domestic activities.

The 19th century recognised that using the military domestically should be minimised and only under control of the civilian institutions when civil power was not able to address the unrest. This eventually excluded martial law, such as punishing civilians under military law, and enabled governments to set down the limited circumstances in which it could use the military in a civilian emergency. De Vore and Finnegan confirm that as early as 1836 the British Attorney General and Solicitor General issued a joint opinion that martial law could only be justified during active conflict that prevented civilian courts from functioning.<sup>10</sup>

Challenges to this trajectory, however, included the 20th century use of ‘emergency powers,’ particularly after WWI in addressing labour strikes, and more recently the military aid to civil authorities, as growing functions. The use of military members in the UK against peaceful labour strikes was controversial and the military leadership argued against the practise, leading to a compromise in the *Emergency Powers Act (EPA)*, 1920, which provided military personnel as replacement labour while maintaining the right to peaceful strikes. De Vore and Finnegan note governments’ appreciation of being able to draw on emergency powers and although the EPA was last used in 1974, it remains an incorporated component in the *Civil Contingencies Act*, 2004.

De Vore and Finnegan observe the growth of the military’s domestic role, as it is called upon by politicians in stop-gap usage across all manner of challenges varying from terrorism to protecting fisheries, oil rigs and rescue operations. They note that the military has responded by establishing specialized institutions for domestic missions. As such, they support their view that the military’s functional expansion has produced a greater range of roles domestically.

The developing need for counter terrorism has resulted in many countries establishing specially trained forces, and the UK is such a country, responding to terrorism earlier than many. De Vore and Finnegan describe three factors as

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9 De Vore and Finnegan, Chapter 8, 210.

10 D.L. Keir & F.H. Lawson, *Cases in Constitutional Law*, 5th Edition (Oxford: Clarendon, 1967), 238.

working together to lead to the military developing a counter-terror unit: the respect held by the citizens for the military institution, their fear of terrorist attacks, and the military actively seeking the role. Interestingly, the last factor has increased the wealth of the military institution, which they suggest is a 'creeping ... limited militarization' of governance.

Military operations in response to climate-induced events have become commonplace, to the extent that several battalions are now on call in aid to the civil authorities. This has led almost seamlessly to military participation during the Covid-19 response with little civilian commentary. The 'situation normal,' as described by De Vore and Finnegan, portrays a selection of 'specialized domestic emergency services that happen to belong to the armed forces.'<sup>11</sup>

The UK history reveals a country prepared to respond to events in a pragmatic way that bends the law to its requirements rather than working within the constraints of the existing law. For instance, despite the constitutional legal position, it was not applied by politicians when it came to subjugating the Irish, or during other British colonial conquests. It should be noted that this practice is often accompanied by grand statements that the military is only operationalised domestically where 'the civil authority lacks the capacity to fulfil the task and it would be unreasonable or too expensive to expect one to be developed.'<sup>12</sup> However, the authors of this chapter suggest that the clear understanding of limiting military operations domestically is not followed by British institutions and the practices are constantly evolving, leading to an ever-changing situation that draws little commentary. In important areas such as martial or emergency law, leading to the trial of civilians by military tribunals, uncertainty prevails with conflicting practice. This impacts on other Commonwealth countries trying to draw on the UK's historical development when establishing important boundaries between individual rights and whole-of-society needs.

## Asia-Pacific

### *Australia*

During Australia's shorter history, use of the military domestically has evolved. The Australian Constitution has established that a state or territory in Australia's federal system must request military assistance before the federal

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<sup>11</sup> De Vore and Finnegan, Chapter 8, 236.

<sup>12</sup> Ibid.

government can activate military operations in the domestic sphere. Prior to the *Defence Act, 1903* (Cth) 2000 amendments the Constitution s 51 reinforced the requirement that a Governor of the state or territory proclaim the existence of ‘domestic violence,’ and the executive of that state or territory apply to the Governor-General of the Commonwealth for such a proclamation. The criteria on which this was based was left to the state or territory to determine. The *Defence Act* pre-2000 established the military could be called upon in times of ‘war or defence emergency,’<sup>13</sup> or where the Governor-General considered it ‘desirable for the defence of Australia.’<sup>14</sup>

Collins documents that since 2000, there have been three major amendments to the *Defence Act* that have changed the circumstances in which the military can be called upon, particularly domestically. These are situations involving security threats, with the world seen as unsafe and in need of ever greater protection from potential terror activity: in 2000, in response to Australia holding the Olympic games, in 2006 in response to Victoria hosting the Commonwealth Games, and again in 2018 following a terror related hostage situation in the Lindt Café in Sydney. These laws do not detract from the well-established ability for the Commonwealth Government to call on the military as exists under the Constitution s 119, which states: ‘... *on application of a state or territory*, the Commonwealth shall protect it against domestic violence.’ The executive power in the Constitution s 61 provides the legal foundation for sending military forces into foreign combat. For Australia, controversy remains around whether the legislature should be included in this decision making and more so, if s 61 is used to justify military domestic deployment.

The *Defence Act* Part IIIAAA allows for use of force for security purposes. Changes have included enabling the military to operate across multiple jurisdictions, including offshore, to give advance contingent authorisation for a military response to any land, maritime or aviation threats in pre-specified situations, and an altered consultation with state and territories. A state or territory does not have to exhaust its ability to contain ‘domestic violence,’ including threats against Commonwealth interests, before the military can be engaged.

These security-related developments do not account for humanitarian and other emergency reliance on the military. In that domain, administrative rules govern six categories of Defence Aid to the Civil Community (DACC). These categories range from designated emergency assistance to non-emergency assistance. The ADF does not manage these disaster responses, other than

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13 *Defence Act* 1903 s 50D and s 50E prior to 2000.

14 *Ibid* s 50F prior to 2000.

the command and control of its personnel and capabilities. The three non-emergency categories address assistance for government departments or authorities, local government or organisations, commercial enterprises, non-profit organisations, or individuals or bodies in the general community, allowing requests for assistance from local commanders. The highest category is closest to security actions as it supports civil authorities in non-emergency law enforcement tasks such as assisting the police with drug raids or biker gangs.

Criticism has been directed at recent legislative changes providing increased flexibility, by enabling the Governor General to act on the advice of a single minister, the Minister of Defence, after consultation with the Prime Minister, to authorise the call-out of reservists through a notifiable instrument in certain situations. This avoids the Governor General having to act on the advice of the Executive Council, while the notifiable instrument sidesteps parliamentary scrutiny. The legislative amendments also seek to address potential liability of 'protected' personnel by a sweeping immunity from all civil and criminal liability, while acting in good faith in performance of duties during the period of the call-out. The immunity covers a broad range of personnel including employees of the Commonwealth or a Commonwealth authority or agency, or a foreign country's armed forces or police force.

Collins notes, as with many chapters in this volume, that criticism is often levelled at vague terms such as 'other emergency,' which are not clearly defined. Other safeguards are removed such as no requirement for a state or territory to be consulted, nor for publication of the ministerial direction, or for any time constraints on the directed call-out.

Collins argues that the call-out of military personnel across both security, humanitarian and disaster relief needs streamlining and clarity. Recent amendments have instead kept a complexity of different call-out provisions. The ever-greater engagement has seen military personnel training alongside civilian police, as well as doing joint exercises.

Concerns raised, mostly by legal scholars, have focused on the rule of law, constitutionalism, and individual rights. Initially there was a promise of regular review and a sunset clause. Now the legislation continues without a sunset clause, but an amplification instead of the call-out power that leaves room for future constitutional challenge.

Australia has had significant recent legal adaptations, leading to a greater operation for the military in the domestic forum and an increased intermingling between police and the military, from training through to operating together. This has been fast-tracked by the Covid-19 pandemic and increasing climate-related threats leading to increasing involvement from the military. These activities normalise the citizens' acceptance of military personnel on

their streets and in their towns. While the military draw great respect from civilians, there remains little discussion around such operations, despite a need to understand why clear civil-military guidelines exist.

### *Indonesia*

Honna asks and comes to an interesting conclusion in the Indonesian context: ‘what motivates political leaders to mobilize military forces to deal with non-military issues?’ He suggests the world’s third largest democracy, following the collapse of Suharto’s thirty-year dictatorship in 1998, faces a tussle between the police and the military due to an ‘inter-agency rivalry and a sense of crisis regarding organizational stability.’<sup>15</sup> Honna argues this creates a key motivation for the use of military call-outs. As a developing democracy, counter-terrorism is seen less as a capacity-resource, or even autocratisation, issue and more geared towards supporting army officers to secure positions and promotions via military expansion into non-defense sectors.

Key concepts for the military were reaffirmed during the Suharto dictatorship, such as confirming the military institutional role beyond defense of the nation to include *dwifungsi* (dual function) or responsibility for the well-being of the nation. This included military involvement in law enforcement, politics, civilian bureaucracies, and state-owned companies. It was rolled back post-Suharto to accepting the military as limited to national defense. The option of using the military in non-defense or ‘military operations other than war’ (MOOTW) is provided to the President as the supreme commander of the military, but this prioritises preventive measures over repressive ones, and the decision must be approved by parliament. The grounds for non-military operations such as humanitarian assistance (civic mission), assistance to police and civilian institutions, and for search and rescue for refugees and victims of natural disasters, remain vague. Honna argues that MOOTW was more about addressing intra-military politics than political ambitions.

Setbacks to reform arose when Indonesia suffered a series of unfortunate terror attacks from 2002. Initial police success in curtailing terrorist activity was resented by the military, as it encouraged civil pressure to reduce the military to a traditional role in defense of the nation. The years during Yudhoyono’s (a former army general) reign (2004–2014) are portrayed as feeding the struggle between the police and the military. The military, particularly the army, had previously benefited from local commands that had engaged in profit making enterprises, such as security services. The activation of a need for security

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15 Honna, Chapter 10, 287.

following the terror attacks gave the military an opportunity to wind back reforms that had been moving to greater democratic civilian control.

Under Jokowi's current government, the anti-terror security laws have seen a return to a military model that Honna argues is driven by the military agenda of expanding jobs and promotion opportunities for officers. The 2020 pandemic has also provided an opportunity to justify counter-terrorism involvement related to civil unrest.

The issues presented are the creeping 'new normal' in which the military can justify non-military activity for military domestic operations as promoting civil-military cooperation, but without an understanding of the democratic principles that demand civil-military control. Many presidents in Indonesia have ultimately supported the military's role in domestic security. Honna differentiates Indonesia from Thailand where the military seek to influence civilian political activity, or The Philippines where military support is sought by a populist dictator bent on undermining democratic institutions through labelling protestors as terrorists. Furthermore, unlike the Czech Republic, which saw the disbanding of the military after the Velvet Revolution, in Indonesia, after the demise of a military backed authoritarian rule, the army was not reduced and this left 'a serious institutional crisis stemming from a promotion logjam'<sup>16</sup> with too many officers.

### *Japan*

Japan stands out among the country cases given the outstanding legal conundrum over the Japan Self Defense Force's (JSDF) very existence. The Japanese Constitution Article 9 clauses 1 (renunciation of war and threat or use of force as a means of settling dispute) and 2 (not to maintain land, sea and air forces for war or use of force) have been reinterpreted by successive governments to permit the creation of the JSDF for homeland defense and, *if necessary*, for maintaining public order. The JSDF's legal existence, roles and missions are defined by the JSDF Law, although its constitutionality remains publicly contested by legal scholars and in opinion polls. Kiba describes the JSDF's presence in disaster relief dispatches, such as the Great East Japan earthquake in 2011 and the Covid-19 pandemic response, as reducing public opposition and engendering public support for the JSDF as an institution.

Kiba's chapter argues that Japanese governments since 1997 have found ways to normalise JSDF's presence domestically by expanding legally permissible missions for which they can be dispatched. Under Prime Minister Abe, the

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16 Ibid 304.

Cabinet approved a package of measures for JSDF to defend an ally against an armed attack, in addition to providing rear area and logistical support to the US in operations surrounding Japan, and providing legal support for an increasing number of territorial defense operations, particularly addressing Chinese military activities in East China Sea. Although PM Abe's proposed amendments to Article 9 were ultimately withdrawn, his strong narratives on the imperative of national security raised public awareness of the JSDF's important role beyond disaster relief. The Parliament has reviewed national security operations mentioned in the JSDF Law (maritime security operations, destruction measures against ballistic missiles, and action against violation in air space) but not for disaster relief dispatch or those relating to civil protection and public security. There has not been any strong pushback from Parliament over these measures contained in the JSDF Law, although a recent pronouncement by the Prime Minister to enlist the JSDF for the Covid-19 vaccination process has invited criticisms.

Of the 19 types of domestic call-outs, the JSDF has not been dispatched for civil protection or public security. Disaster relief dispatch is the most common and mainly applied by local governments for emergency medical transport, firefighting, relief operations and search and rescue. The JSDF's dispatch for the Covid-19 pandemic response was a voluntary order from the Defense Minister, which saw soldiers providing logistical support for isolation and testing, and disseminating an information campaign to local employees. In Japan prefectural governors and mayors can request the Defense Minister for an JSDF dispatch for urgent cases, and they can dispatch the local JSDF units directly (notifying the Defense Minister after the fact). Kiba suggests that although local authorities are supposed to only call-out the JSDF where civilian agency capacity is not sufficient, in practice they do so routinely. The local authorities' loose interpretation of this last-resort test has never been publicly raised as challenges, procedures and timed entry/exit of JSDF units are locally negotiated.

Within the JSDF, there are expressions of discontent over perceived abuse of local dispatches of this kind and overuse of its resources for this type of mission instead of territorial defense, which they think is more important. Kiba puts forward the interesting proposition that as JSDF personnel and the public become more used to the former's territorial defense missions, the future may portend more restricted utilisation of the force for domestic response, and perhaps more political debates over the JSDF's core task.

### *The Philippines*

The legal bases for mobilizing and deploying the Philippine armed forces domestically are framed within the challenging task of reimposing civilian

control, given its history of political involvement during the Marcos dictatorship and coup attempts in the late 1980s. Civilian control, however, is primarily centred on putting limits on presidential power to call-out the forces, as they largely make this decision as commander-in-chief. The 1987 Constitution sets the permissible circumstances for a national emergency; lawless violence, invasion or rebellion; and Martial Law. Congress defines the parameters of a national emergency (to include catastrophic disasters, pandemics and the like) but the President has discretion whether or not to use the military.

Unlike Martial Law, which is limited to six months (extended with congressional approval), the President mobilises and deploys the troops to respond to the communist and separatist rebellions and does not need congressional approval (save for financing requirements for government paramilitary forces). In addition, the President as commander-in-chief is legally permitted, and has routinely tasked the military, with humanitarian assistance/disaster response; to monitor elections; and to support law enforcement operations, and government development programs.

Local authorities (Mayor and Governor) can directly request nearby units for assistance during disaster and other local emergencies, and for the creation of auxiliary units to address terror or insurgent threats. The military has only been called-out twice under a national emergency directive (December 1989 coup; Covid-19 pandemic), three times under Martial Law, and more frequently on other domestic missions. Congress has not questioned these domestic call-outs, but the Supreme Court has issued rulings on the constitutionality of Martial Law declarations several times. There has not been any deployment of troops to enforce public order, i.e. suppress lawless violence. Hall notes that, in general, public pushback is more pronounced around issues of human rights violations committed by deployed troops.

Given this legally permissible context, the military is largely configured for domestic deployment; its territorial commands are structured primarily to respond to internal security threats and the wide variety of non-traditional missions assigned to it by the President. Its units are configured to 'plug-in' to various local government coordination platforms for disaster response, development and internal security. It also enjoys a wide operational latitude in counterinsurgency and counter-terror operations, and is adept at civil-military coordination at the local level.

Hall argues that the President's centrality in authorising domestic call-outs and his wide discretion in decision making leads to instrumentalisation of the armed forces, and the shoring up of executive power vis-à-vis other political institutions. This is evident under President Duterte who has called-out the military more than any other President to support controversial programs like

the war on drugs. The militarised approach to the Covid-19 response reflects his preference for the military as ‘go-to government implementor,’ and his appointments of ex-generals in the Cabinet. The military was mobilized and deployed in large numbers in Metro Manila and Cebu to enforce lockdown measures, and they were assigned a myriad of other tasks (securing quarantine control points, hospital and isolation facilities; surveillance and contact testing; enforcing local curfew and safety protocols) in support of the police. The pandemic deployment has embedded military units further into local governance and amplifies dangers already noted e.g., human rights violations, graft, corruption and entanglement in illicit economies. These sustained domestic deployments erode professional capacities and performance of what the military institution considers its core tasks, namely internal security and territorial defense.

### *Thailand*

Chamber's chapter invites the reading of Thailand's domestic call-out laws as a series of historical shifts, not towards more democratic civilian control but increased nuancing on how the military continues to dominate Thai politics by displacing, converting or layering.

The Thai military has a pronounced domestic involvement, in tandem with its history of intervening in politics. A host of security laws – *Martial Law Act*, *Anti-Communist Act*, *Internal Security Act*, *Ministry of Defense Act* and *Emergency Decree* – provide legal bases for military dispatches in cases of war, insurrection or to suppress anti-government forces. The military's legal remit under these laws is extensive, including military takeover of civilian government, recruit/train and organize civilians to military service for counterinsurgency, for public order operations, warrantless arrest, and holding of civilians for prolonged periods, and civilian trials in military courts. While the laws invest the Prime Minister and Defense Minister with the authority for counterinsurgency, in practice the military command enjoys wide operational latitude. Military commands have organised right-wing paramilitary units, placed local police and civilian bureaucracy under their operational control, and carried out community development initiatives, with little national government oversight. The *Internal Security Act* (2006) invested the army-controlled Internal Security Operations Command (ISOC) with the task of guaranteeing domestic stability, which the junta-dominated Cabinet interpreted as taking control in preventing, suppressing, eradicating and mitigating occurrences of domestic instability. The military is also legally allowed to undertake action to deter domestic unrest, terror activities, suppress rebellions and impose Martial Law in their areas of operation. This role is not directly legislated but derived from

an interpretation of the *Ministry of Defense Act* by subsequent junta leaders seeking control through the Defense Council platform.

By contrast, the *Emergency Decree Act* (2005) authorises the Prime Minister to declare a state of emergency. This authority permits the Prime Minister to limit exercise rights, prohibit movements of people, and force evacuations, for which he can choose whether to dispatch the military or the police. The military dispatch for the Covid-19 pandemic response was in line with this emergency decree, although the military's role was to support the police in enforcement. Unlike internal security dispatches, for which ISOC is given de facto operational control, for the pandemic response the control was handed over to governors.

Chambers argues that the Thai military, through its control over the decision-making apparatus (Defense Council, Internal Security Operations Command), and directly through the junta, continues to draw and redraw the boundaries of legally permitted tasks. Monarchical support to the military's robust political involvement ensures this dynamic is likely to continue for years to come.

## Conclusion

The chapters in this volume reveal the diversity in legal frames for military involvement in domestic contexts. They also call attention to three corollary inquiries: (1) distinction between external defense and public security, which forms the traditional functional divide between the military and police; (2) permissiveness and restraint in using the military to aid the police and civil authorities in public order and safety, including assistance during calamities and disasters; and (3) civilian control mechanisms in place (on the President, Prime Minister, Cabinet, secretaries, legislature or local authorities) for each type of domestic mobilization deployment.

Established democracies like the US, Canada, Australia, Japan and some European countries have more defined parameters for domestic utilisation of the armed forces, which include lodging of requests by civilian authorities and executive discretion whether or not such deployment will take place. With the development of policing and inter-agency cooperation in these settings, military domestic deployment may seem less contentious. However, serious threats like terrorism, organised crime, population migration or catastrophic events (including disasters and pandemics) invite tensions for their claimed civil-military divide.

For Latin American countries, and for The Philippines, Indonesia, Thailand and Turkey, threats to public order are often seen as a pressing concern for

national governments, and in some cases public support exists for utilising the military as opposed to the civilian police, while in other cases this is not so. The law says one thing, but in practice the government is animated by different incentives and structures.

Most countries in this volume have laws that provide justification for out-of-the-norm military domestic deployment in emergency situations; there is a wide variation among countries as to what situations constitute regimes of exception, and the degree of permissibility accorded to each situation. For many countries, there is no restraint for the military to render humanitarian assistance to affected populations. Others have stringent requirements, such as requests from civilian authorities, last resort, and placing military units under police command-and-control. They also point to the centrality of executive power where the emergency powers to deploy the armed forces domestically generally rest. Increased parliamentary delegation of emergency powers to the President or Prime Minister point to dangers of democratic erosion, even an authoritarian slide. It also calls into question the long-term effects of these all too frequent domestic deployments, even when ostensibly not involving force, to military doctrines, training, professional capacities and identity.

Lack of clarity and debate around the incremental, but relentless incursions of the military institution into the civilian domestic domain requires attention. The normalising of this evolving situation loses sight of history and the reason for clear boundaries between the civil authority and the military. A constant vigilance requires clear understanding of the development of a civil-military control principle, its reason for existing in democracies, and a healthy discussion to reflect on where it now sits as countries make pragmatic adjustments in order to keep laws flexible, vague or even non-existent, as this suits the political domain in navigating the legal domain. Further research is required to understand the motivations leading to the blurring roles between civilian and military institutions such as the police and the military. This volume expands understanding, for example about personal gain of members of the military.<sup>17</sup> If such factors are motivators, then democratic control needs strengthening.

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<sup>17</sup> See e.g., UK, Turkey and Indonesian chapters.

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