(De)militarization

Fragile Democracy and the Militarization of Public Safety in Brazil

by

Jorge Zaverucha

The major crimes in modern societies are not the crimes per se but rather the fact that the fight against them will conduct these societies to totalitarianism.

—Nils Christie

As Pereira (2000: 228-229) reminds us,

The literature on democratic consolidation has devoted considerable attention to civil-military relations at the elite level and such matters as the preservation of military coup attempts and the reduction of military autonomy. In general, however, there is insufficient attention in the literature to the issue of the democratic control of everyday forms of state coercion. By “everyday forms of state coercion” I mean routine policing, intelligence work, and military operations that do not involve the seizure of the executive or the shutting down of other branches of government. Over time, changes in practice in these realms have the potential for the “hollowing out” of the democratic regimes from within, through the gradual expansion of the budgets, functions, and autonomy of the coercive institutions that engage in them.

This article calls attention to a related phenomenon that is also being disregarded by the literature on democratic consolidation: the militarization of the civil public space and, especially, of the security apparatus. Militarization must be understood as a process of adoption and use of military models, methods, concepts, doctrines, procedures, and personnel in police activities, thus giving a military character to public safety (and public space) questions (Cerqueira, 1998). Such a process also occurs in areas of nonpolice nature that affect the public space, such as the judiciary, politics, health, and others.


LATIN AMERICAN PERSPECTIVES, Issue 112, Vol. 27 No. 3, May 2000 8-31
© 2000 Latin American Perspectives
With the end of the cold war and in the absence of any border conflict, the Brazilian armed forces turned even more to their domestic affairs. Because these actions are performed within the existing legal structure, one might think that the military was subordinate to constitutional civilian control. However, this phenomenon is simultaneously corroding some institutions that are fundamental to the survival of the social pact, such as the police and the Constitution. Furthermore, it bestows on the military a power increasingly incompatible with its role as the defender of the external security of the country.

The militarization of public safety in Brazil did not happen by chance. It was constitutionally protected, and it has been occurring with increasing frequency at the federal and state levels, in governments of both the right and the left. Furthermore, it is supported by the political elite and the society as a whole. This article will explain why this situation persists today and how it jeopardizes democratic consolidation in Brazil.

PATTERNS OF REGULARITY

The federal and/or state military continues to be an important source of power in Brazilian politics, a power that is expanding toward the area of public safety. Since a regular pattern emerges between 1985 (the end of the military regime) and the present day, one cannot argue that the following examples are casual.

1. The 1998 Constitution includes in its title 5 (The Defense of State and of Democratic Institutions) three chapters: (1) The State of Defense and the State of Siege, (2) The Armed Forces, and (3) Public Safety. This means that our representatives were unable to produce a real departure from the military regime just replaced; the police continued, although to a lesser extent, to defend the state instead of its citizens. The Constitution’s framers mixed questions of an external nature with questions of public safety, that is, they made militarization constitutionally valid. Furthermore, they preserved the superiority in number of men, training, and firepower of the military police over the civil police. Up until 1969, it was the civil police (CP) who patrolled the streets and directed traffic with uniformed civil guards. They were responsible for the prevention and repression of crime and for the safety of governors and dignitaries. Today, the CP is nothing more than a judiciary police force (Barbosa, 1998).

Therefore it is no surprise that article 142 of the Constitution confers on the armed forces the responsibility for guaranteeing law and order. In other words, unlike the military in a solid liberal democracy, the Brazilian armed
forces have a constitutional orientation toward internal matters. This can be expected to have ramifications within the institutions responsible for public safety, especially because the state military polices (MP) and military fire brigades are still controlled by the army and in fact amount to ancillary forces and reserves.

After repeated episodes of police brutality, President Fernando Henrique Cardoso, through Portaria 369 of May 13, 1997, created a working group for the restructuring of the police forces. The ruling acknowledged "that today's institutional model for public safety was structured almost entirely during the authoritarian period, i.e., before the promulgation of the 1988 Constitution. This Constitution is the legal landmark of our new rule of law." Therefore, the model would have to be modified. This was pure fanfare, especially when one observes the identities of the members of the working group. Among those with practical experience in police matters were a member of the CP, one of the Federal Police (FP), a lawyer who had been secretary of public safety for the state of Rio Grande do Sul, and an MP colonel on reserve from Rio de Janeiro. Other members included an active-duty army officer from the General Inspectorship of Military Police Forces (IGPM) and four more officers (colonels and generals on reserve who occupied or had occupied governmental offices in the public safety area). Among the state secretaries of public safety then on duty, the only one selected was from Rio de Janeiro—Gen. Nilton Cerqueira, known for his policies of "shoot first, investigate later" and "rewards for acts of bravery." When the federal government set up this group it gave more power to the army than to the police to decide on the future of the latter. Thus, everything has remained the same, since the army does not want to lose control over the MPs.

2. In contrast to the militarized police forces of other countries, the Brazilian MP is inferior in status to the armed forces. It is an ancillary force of the army and is therefore subordinate to it, either operationally or in terms of personnel, during times of peace. Its effective force, ammunition, and organization are dependent on norms promulgated by the army. The MP imitates the model of the infantry battalion. It is governed by the criminal and criminal procedure codes of the armed forces; its disciplinary code is written in the same fashion as the disciplinary code of the army; Decrees 667 of July 2, 1969, and 88.797 of September 30, 1983, which regulate the MP, date to the authoritarian period of Brazilian history; and its intelligence services continue to be part of army intelligence.

Therefore, whereas other countries have police forces with a military structure, Brazil has a military structure, beginning with its name, acting as a police force. In Honduras, the military police was under the control of the army. After the 1963 coup against President Ramón Villeda Morale, in
August 1997 control over this police force was assumed by a national intervention board that is charged with demilitarizing it, transforming it into a national civil police.

Federal and state militaries that operate in the area of policing have a special jurisdiction. Indeed, in some circumstances, such as cases of felonies against civilians, if a soldier in the army’s police force and a soldier of the MP commit a crime together, the former will be judged by a military tribunal and the latter by a civil court, and they will be subject to distinct penalties in what can be characterized as a violation of the rule of law. This is a demonstration that two kinds of military officers are likely to perform activities connected with public safety (Zaverucha, 1999: 70). The Lord Mansfield doctrine, recognized in England since 1831, says that military forces may intervene in matters of public safety but always as representatives of public power and not as if they were at war. For this very reason, violations ought to be judged by civil courts (Engdahl, 1971: 35).

3. The number of federal military officers occupying administrative positions in governmental public safety bodies is increasing. President Cardoso, through a provisional measure, created and appointed a general on reserve to manage the Secretariat of Public Planning and Safety and the Department of Public Safety Affairs. The chief of the Military Office of the Presidency of the Republic (hereinafter Military Office), the active-duty general Alberto Cardoso, has the status of minister. He manages the Undersecretariat of Federal Civil Intelligence, controls the National Drug Control Secretariat, and manages the Executive Secretariat of the Chamber of Foreign Relations and National Defense of the Presidency of the Republic and the Executive Secretariat of the National Defense Council.

After the dismissal of the director-general of the FP, Vicente Chelotti, who disliked the idea of the interference of the armed forces in drug trafficking combat, General Cardoso increased his influence. For example, he supported the nomination of Pedro Berwanger for the superintendency of the FP in Rio de Janeiro (Folha de S. Paulo, April 29, 1999). He was also able to veto a nomination by the minister of justice for the position of head of the FP and suggested the nomination of the chief of police João Baptista Campelo, who seemed to him very flexible with regard to the role of the military in fighting drug trafficking. Campelo eventually took office but resigned three days later, having been accused of practicing torture during the military regime.

The retaliation from the FP came later. The FP started to investigate the Civil Intelligence Secretariat as possibly responsible for wiretapping telephone calls involving President Cardoso and his advisers during the bidding on TELEBRAS, Brazil’s public telecommunication company. In an official note, Gen. Cesário da Silveira Filho, chief of the Social Communication
Center, said that the army “reaffirms its full confidence in the honest conduct of General Cardoso and vehemently repudiates the insinuations made against our reputable military chief” (Folha de S. Paulo, June 5, 1999). The Office of the Prosecutor wanted to arrange a confrontation of witnesses between General Cardoso and one of his subordinates from Rio de Janeiro, a colonel, with a view to verifying contradictory stories about the episode of the wiretappings. But President Cardoso decided to restore Cardoso’s title of minister of state, thus avoiding any possibility of such a confrontation.

It was General Cardoso, instead of the Ministry of Justice, who negotiated on behalf of Brasília the end of the strike of the MP and the CP in 1997. He said that the MP had been “shot dead” when they violated their military duties. The activities of the Military Office had increased so much that at the end of March 1999 a deputy office for it was established under the command of an active-duty officer. For the first time in the history of the republic two generals were occupying the most important posts of the Military Office (Vasconcelos, 1999).

In the state sphere, generals on reserve occupy or have occupied the leadership of the Secretariats of Public Safety of Ceará, Rio Grande do Norte, Tocantins, Maranhão, Alagoas, Espírito Santo, Distrito Federal, Pará, Pernambuco, and Rio de Janeiro. In the latter, for the first time, the army, navy, and air force will have a seat on the just-created State Security Council. General Bueno brought to Pernambuco’s Secretariat of Social Defense three colonels—two to command the Directorate of Intelligence and the Directorate of General Administration and one to be the deputy secretary of defense. In addition, he brought four military assistants. As if this were not enough, he used article 10 of Ordinary Law 865/1999 to declare “of military nature or interest the positions ad nutum of the Secretariat of Social Defense, occupied by military employees.” This declaration created the legal basis for the nomination of active-duty military officers for positions in this Secretariat.

In the city of São Paulo, the commander of the Metropolitan Guard, a police force with a clear civilian character, is a reserve army colonel. In other states, these guards are commanded by officers—on reserve or active-duty—of the MP. The Metropolitan Guard of Rio de Janeiro is commanded by MP Col. Cesar Amêndola, who was one of the few military men to be convicted by a military inquiry during the military regime (the reason being assault and battery against a prisoner in his charge [Jornal do Brasil, May 1, 1999]). It is important to remember that the Metropolitan Guard has police power and that its objective, in accordance with the federal Constitution (article 114), is to protect city property, services, and facilities.

In Rio de Janeiro, the riot police of the Metropolitan Guard, called the Special Group for Urban Control, was trained by the First Battalion of the
army’s police at its headquarters in Barão de Mesquita Street. The first stage of this training program took place at the end of 1993, and the Eastern Military Command surrounded this program with absolute secrecy. The press was prohibited from covering it. The Metropolitan Guards received instruction regarding tactics in the area of civil disturbance control, techniques that were improved during the repression of public demonstrations and protests against the military regime of 1964. The army has been using these techniques against street vendors (camelôs) and invaders of municipal lands and in the repression of social conflicts.

The MP of Sergipe was commanded from 1995 to 1998 by an active-duty army officer appointed by the then-minister of the army, Zenildo Lucena. During the second term of the socialist governor Miguel Arraes, the head of the Secretariat of Public Safety was a reserve general, and the MP commander became an adviser for Arraes’s third term and served as liaison between Arraes and the army, especially during the strike of the MP in 1997. What is worth noting here is that these nominations of army officers have come from politicians of both the right and the left¹¹ and have not been challenged by public opinion, the media, or even academia. What is really important to conclude here is that the excessive military presence in public safety issues still remains.

4. The proposal of the governor of São Paulo, Mario Covas, on April 23, 1997, to modify paragraph 5 of article 114 of the federal Constitution reads as follows: “The military police, created to maintain public order and internal security [emphasis added] within the states, the territories, and the Federal District.” This proposal is a literal copy of article 13, paragraph 4, of the 1967 Constitution. The expression “internal security” is also part of article 3, paragraph 1, of Law 6.620 of December 17, 1978, the National Security Law (NSL) passed during the administration of President Ernesto Geisel (H. B. Cruz, 1997: 40). The expression “national security” was removed from the Constitution by Constitutional Amendment 1 of October 17, 1969, but retained by Decree Law 667 of July 2, 1969, which, among other things, defined the jurisdiction of the MP.

The doctrine of internal security was developed by the War College and reads as follows: “Internal Security includes all the processes by which the state protects itself against antagonisms and pressures of any origin, form, or nature that occur within it.” The defense that corresponds to internal security is internal defense, involving actions aimed at protecting internal security against internal enemies. Internal defense is therefore an instrument of national security. Covas’s proposal maintained the logic of the national security doctrine in its interpretation of matters of public safety. Although it had
the merit of returning the MP and the CP to their pre-1969 status, it did not mention the necessity of returning the MP to the Ministry of Justice.

In December 1998, the army announced a new control over the MP. A new organization chart was created for the Command of Land Operations. This command acts in accordance with ministerial guidelines and guidelines from the army high command, maintaining a link with the Military Area Commands and, through them, with the Large Units, Rapid-Response Military Organization, Special Action and Members of the Rapid Action Force, the Army Air Force Command, the Center for Evaluation of Training of the Army and Tank Instruction, and First Sub-battalion of Electronic Warfare (Noticiário do Exército, no. 9499, December 18, 1998).

The new structure of the Land Operations Command has two subcommands. The one that interests us is the Second Subcommand of Operational Planning and Use of Terrestrial Forces. This subcommand has five sections: Defense of the Country, Guardianship of Law and Order, International Operations, Complementary Actions, and Auxiliary Actions. The latter is charged with studying legislation, organizational charts, and proposals for the creation and/or elimination of units of the MP and military fire brigades, as well as controlling the soldiers and equipment of those auxiliary forces.

Therefore, certain tasks that used to be the responsibility of the Inspectorship-General of the Military Police, a bureaucratic agency of the Ministry of the Army in charge of overseeing the MP, began to be performed by an operational agency at a very high level. Thus, through this institutional change, the army has revealed its desire to increase its control over the MP and military fire brigades. In fact, after the MP strike in 1997, the army demanded a strengthening of the structure of the MP. President Cardoso even sent Congress a bill calling for the MP to be trained by the army.12 In other words, the project would reestablish the “military training + military regulation + military justice” trinity implemented by General-President Garrastazu Médici.

5. It is considered natural for the armed forces to intervene in the interest of the maintenance of law and order without accounting for its actions to the state. A remarkable example of this was the 1994 Operation Rio I, in which the armed forces employed their war doctrine, methods, concepts, and procedures almost without civilian control. Not even the governor or the top officers of the Rio MP participated in the fundamental decisions about the operation, and even now its costs are unknown. No soldier accused of a violation of human rights was punished, despite the fact that civilians had been arrested without any warrant or probable cause. The judiciary, in violation of the principle that everyone has the right to be heard by a magistrate, chose magistrates who were sympathizers with the armed forces to decide the cases and,
moreover, provided no public defender to civilians who were unable to pay for a lawyer—the majority (see Caldeira, 1996).

Complementary Law 69 of July 23, 1991, implemented during the Collor administration with the acquiescence of the military ministers, provided that federal troops might intervene in internal matters when asked to by the president once other means of maintaining of public order (i.e., the use of the police) had been exhausted. It was adopted after the incidents of 1988, when army troops killed three workers during a strike at the government-owned Companhia Siderúrgica Nacional in Volta Redonda, Rio de Janeiro. On that occasion the army did not wait for the police to act before it invaded the plant.

During the government of Itamar Franco, federal troops were used to contain a disturbance on the Rio-Niteroi bridge in May 1993 and in January 1994. Of the nine members of the Special Investigation Commission created by President Franco in February 1994 to investigate the misuse of public funds, three were military officers: Gen. Romildo Canhim, chair of the commission, Gen. Euclides Lima, the executive secretary, and Gen. Francisco Baptista Soares de Mello, a member of the Grupo Guararapes, consisting of reserve officers who had recently advocated the shutting down of the Congress.

In March 1994, soldiers acted again on an issue of public safety, this time against civilians demonstrating on the 30th anniversary of the military coup of 1964.

On May 11, 1994, Brasília woke up to 1,000 soldiers, tanks, and combat vehicles in the streets and helicopters hovering over the Esplanade of the Ministries. Right in front of the Planalto Palace (the official presidential residence) and the Federal Supreme Court, a demonstration of force was taking place—40 parachutists were climbing and descending ropes from the helicopters flying over Three Powers Square. The parachutists belonged to the Army Air Brigade from Taubaté, São Paulo, and were about to join the peacekeeping forces of the United Nations in Angola. One hundred soldiers from the army’s Special Operations Batallion, based in Rio de Janeiro and considered an elite unit, also participated in the operation (Jornal do Brasil, May 12, 1994).

The operation had the objective of surrounding the police headquarters and preventing the FP strikers from approaching the building. Because the strikers’ main demand was higher salaries, it was feared that the wives of the military officers residing in Brasília might join the strike. To avoid this problem the troops also occupied the residential area where most of the families of the military lived. General José Luis Lopes, who had headed the operation against the strike in Volta Redonda in 1988, told me that he had suggested that the minister of the army not make the same mistake as in 1988. His idea was
to start the intervention against the FP strikers, then commanded by the army reserve colonel Wilson Romão, with as much force as possible, and his suggestion was followed.

On March 17, 1995, when President Cardoso visited Rio de Janeiro, the army police joined the Rio MP in containing protests and demonstrations against him even though the latter could have performed this task on its own.

On March 28, 1995, federal and state governments agreed to revive Operation Rio I, which had expired on March 3. In contrast with the old one, this new operation, Rio II, had no termination date. The state government of Rio had, at least in theory, more participation, because the command of the operation was to be shared between General Abdias da Costa Ramos of the Eastern Military Command and the secretary of public safety of Rio de Janeiro, reserve general Euclimar Lima da Silva. In reality, this shared command placed the decision-making power in the hands of military officers, but even so, the two generals disputed control of the operation. General Silva said that the coordination of the operation had to be the responsibility of his office to avoid the direct involvement of the armed forces. Col. Ivan Cardozo, the spokesman for the Eastern Military Command, replied that the command of the operation should remain in the hands of an active-duty officer because, according to the Constitution, the military police is an ancillary and reserve force of the armed forces. Neither the minister of justice, Nelson Jobin, nor the governor, Marcelo Alencar, was able to clarify who would really be in command of the joint operations in Rio (Jornal do Brasil, April 1, 1995).

In May 1995 President Cardoso violated Complementary Law 69 when he sent army troops to recover the Mataripe oil refinery from the hands of strikers. General Antônio Araújo de Medeiros, Chief of the Fifth Military Command, which was responsible for the operation, said that “if necessary he would shoot to protect the facilities of the company” (Gaspari, 1995). In this case, the strikers, bearing in mind the deaths in Volta Redonda, did not resist, and the incident ended without casualties. This incident differed from the Volta Redonda situation in that in the latter the army was enforcing a judicial order.

President Cardoso was to violate Complementary Law 69 again in October 1996, when 1,000 troops and 63 members of the FP displaced the miners who were illegally occupying an area that was to be explored by the Companhia Vale do Rio Doce, a public enterprise. This operation consisted of several days of military exercises nearby in a show of military might (Krieger, 1996).

In April 1997, Complementary Law 69 was again disregarded. A rally of the landless movement was scheduled to arrive in Brasília on April 17. On April 16 the buildings of the Ministry of Education and Sports were occupied by a battalion of the Army Presidential Guard (França and Mossri, 1997) and
the building containing the Ministry of Agrarian Policy was surrounded by troops. The problem was that the Brasília MP and the FP, respectively, were responsible for the external and internal security of those buildings. Only if both police forces were unable to perform this task was the army authorized to act. In this incident, however, the MP was used once again as a mere reserve of the army in time of peace, when the contrary should be the case.

The army again acted as a police force on November 8, 1997, when it occupied the railroad facilities of Vila Militar, Realengo, and Magalhães Bastos. On November 11, soldiers of the army’s First Engineers’ Battalion seized the Santa Cruz railroad station. The order for the occupation was issued by Gen. Valdésio Guilherme de Figueiredo, commander of the First Division, who was concerned about the presence of drug dealers in one-third of the railroad stations owned by Flumintrans in greater Rio. On the same day, in Realengo, soldiers armed with rifles and pistols and wearing ski masks began to apprehend suspects at the station. In accordance with article 5, 64, of the federal Constitution, “the arrested person is entitled to identification of those responsible for his arrest or for his police interrogation.”

The military’s autonomy was even more striking in Rio de Janeiro on November 22, 1997. When the sentinels in the vicinity of Villa Militar de Deodoro were robbed of their rifles, the army counterattacked, organizing a military operation in the shantytown called Muquiço. Having failed to find the stolen guns, the soldiers of the Eastern Military Command, wearing ski masks, descended on 12 shantytowns in the area in trucks with covered license plates, an Urutu combat vehicle, and even an M-13 tank. During these operations, drivers were forced to stop, identify themselves, and submit to a detailed search (O Globo, November 25, 1997). Women and schoolchildren also had to be searched, and many houses were violated.

This was a military operation simply to find two guns. The use of overwhelming force is an act of war, different from the activities of the judiciary military police. From this episode one can imagine what would happen if the army had to face urban guerrillas. Incidentally, the head of the Eastern Military Command at that time was the same general who had led the operation against the Volta Redonda strike in 1988.

The secretary-general of the Federal Council of the Brazilian Bar Association released the following statement regarding the Muquiço incident (Castro, 1997):

The residents of those shantytowns in the specific case of this military operation—and in the same way this systematically occurs in conventional police operations—were treated as if they were convicted persons. As usual, the constitutional principle of the presumption of innocence was disregarded because
the people involved in the incident were poor. [The defenders of rule of law] demand that the public powers, especially the president of the republic, from whom the prerogatives were usurped, take immediate action to reestablish public order.

President Cardoso was silent about the episode, and Governor Alencar considered the operation legal despite the fact that he had learned about it only a posteriori.

The Office of the Federal Prosecutor decided to investigate this military operation. A spokesman for the Eastern Military Command, Col. Hélio Borges, said that the operation had been based on several judicial orders. The federal prosecutor, Daniel Sarmento, wanted to know more about the nature of these orders—in particular, whether there had been authorization for soldiers in disguise to conduct searches and invade houses to find the guns. While Col. Borges informed the media that Military Justice had issued search warrants to the MP and that the army’s participation in the operation had been merely to provide logistic support, according to the parliamentary adviser of the Secretariat of Public Safety of Rio there had been no warrants (Versano and Conti, 1997).

No warrants were found with the MP, and on November 27 the prosecutors asked for the immediate suspension of the military action. They considered the action “very serious,” especially because it was “inflicted against poor people who do not have the means to defend themselves against the atrocities performed by heavily armed military authorities.” They ended by saying that the operation was “clearly illegal and abusive” and “absolutely unconstitutional” (Torres, 1997).

Only on the evening of November 26, five days after the operation had started, did the army asked Military Justice for a search warrant, which was granted on the following day by a judge of the Third Military Investigation Bureau. Even so, the warrant authorized the soldiers to enter only one house in Muquiço, one that belonged to a man known as Leandro who was a patient at the Instituto Padre Severino. The Eastern Military Command, through an official notice, explained on December 1 that the theft of the guns was a permanent crime and therefore “it was not necessary to have a previous judicial order to perform the urgent measure of searching houses. Additionally, it is important to say that, although unnecessary, in those situations we asked and received express authorization from the owner to search the house” (Jornal do Brasil, December 2, 1997). From the military viewpoint, the army “did not act outside the law or violate civil rights, especially because a military action had never happened; what had happened was a military police action.”
Military prosecutors from the Third and Fifth Military Prosecutor’s Offices of Rio de Janeiro issued a statement concluding that “the action of the army was performed within the limits of the law” (Noticiário do Exército, no. 9.337, December 5, 1997). Even if theft were an instantaneous crime and the receiving and concealing of stolen goods a permanent crime, certainly the whereabouts and identity of the receiver were unknown. Therefore the army could not simply start searching households without warrants, using tanks and combat vehicles as if they were instruments of military judicial police and as if it had taken these actions in accordance with the law.

Since May 1998 there has been a de facto intervention of the army in the south of the state of Pará. General Edson Sá Rocha, commander of the 23d Infantry Brigade of the Jungle, managed a committee consisting of representatives from the Ministry of Land Reform, the Ministry of Justice, the National Department of Highways, the Receita Federal (Brazil’s tax-collecting agency), the National Foundation for the Support of Indigenous People, the National Institute of the Environment, the Land Institute of Pará, the CP, and the Secretariat of Public Safety. The general gained powers to require explanations from all these agencies and to impose changes in operations that were judged ineffective. At the end of April 1999, with the arrival of 1,500 landless peasants in the city of Marabá, troops of the Infantry Brigade of the Jungle were present at the airport and set up roadblocks to search cars, buses, and trucks at strategic points (Jornal do Commercio, April 30, 1999).

Eight thousand rural workers held a rally in the streets of Recife on May 12, 1998, marching from the Parque 13 de Maio toward the Superintendency for the Development of the Northeast. The rally was protected entirely by the army, which even used a helicopter, with the help of the federal police but no involvement of the state police.

On May 26, 1998, President Cardoso ordered the army to protect trucks that were hauling food to be distributed among the victims of the drought in the Northeast (Jornal do Commercio, May 27, 1998). The troops that followed the convoy were supposed to supervise the distribution of food as well. Involving the army even though no convoy protected by either the FP or the Federal Highway Police had ever been pillaged was a show of force and a clear interference in the functions of the police forces.

Last but not least, it is worth mentioning an antismuggling blitz conducted on December 6, 1998, in the vicinity of the international airport of Galeão in Rio de Janeiro against passengers on international flights who had already passed through customs and been cleared. This joint operation, which was executed by the FP and troops of the Air Force Police, stopped all cars,
searching trunks and occupants, without any judicial order. Interestingly enough, in 1996 President Cardoso had sent Congress a bill that would have changed article 21 of the Constitution to increase the power of the air force in the battle against narcotics and smuggling in the port areas, correspondingly reducing the power of the FP.

6. As far as I know, no stable democracy makes the armed forces, through the Military Office, responsible for the security of the president of the republic and his family and for that of the top officers of essential agencies of the presidency and the respective presidential palaces and residences. Since 1985 the FP has gradually been losing ground to the military regarding the security of the president, and today its presence in this matter is merely residual. For example, it conducts the tracking of wiretaps and was designated to investigate who was responsible for throwing rocks at a bus in the presidential cortège in the city of Campinas Grande in May 1995. There are agents of the FP working on phone tracking in the Deputy Office of Security. The Battalion of the Presidential Guard (about 1,500 men) and the Cavalry Regiment of the Guard (about 1,300 men) are responsible for the security of the president and the vice president in Brasília.

The security of the private farm of the president is also the responsibility of the army (Jr., 1996). About 2,000 men, with tanks, combat vehicles, and transport helicopters, are in a state of permanent alert in case of an invasion of the farm by the Movimento dos Sem-Terra (Landless Movement—MST). If military intelligence should detect any activity suggesting an invasion, many military units would be simultaneously activated, among them the Battalion of the Presidential Guard.

Because of the constitutional change that provided for the possibility of presidential reelection, the Military Office had to develop a new kind of security system for President Cardoso during his presidential campaign for reelection. To this end some military officers were sent abroad to learn about security procedures for presidential candidates, especially in the United States (Moraes and Monteiro, 1998). In the United States, however, the security of the president is the responsibility of the Department of the Treasury. The Brazilian model, in its turn, has been imitated by the president of Peru, Alberto Fujimori.

7. Civil Defense, in charge of disasters such as floods, droughts, and avalanches, does not deserve its name, since it is militarized at the federal and state levels. In the states, it is managed by the MP or the Military Fire Brigades. This is not the case in any liberal democracy. Some coordinators of the federal Civil Defense are also army officers.

8. The National Security Law (NSL) is a legal ramification of the National Security Doctrine, the “ideological bible” of the military regime of 1964. It
provides for the political protection of the state or, better said, of an authoritarian state. The 1988 Constitution did not abolish the last version of the NSL, Law 7.170 of December 14, 1983. What changed was merely the jurisdiction over crimes, which was transferred from military to civil courts. However, because the country has no jurisprudence for political crimes, cases always end up being decided by military courts.

Gun smuggling has increased with the increase of the violence in Rio de Janeiro. Concerned about the creation of “zones of exclusion”—where state authority is practically absent—in the shantytowns of the city, the federal attorney Rogerio Nascimento decided to invoke the NSL in matters of public safety. The reason is that while article 34 of the criminal code establishes a penalty of four years in prison for gun smugglers, article 12 of the NSL establishes a penalty that ranges from three to ten years.

In August 1995, on the basis of the NSL, Nascimento had already initiated a criminal action against the reserve colonel-aviator Latino da Silva Fontes, who had been arrested with a shipment of 30,000 AR-15 and AK-47 rifle cartridges. He ended up being convicted of gunrunning and sent to prison for eight years. The judge who convicted him included in her decision the following statement from Gen. Golbery do Couto e Silva: “No one really knows when the peace ends and the war starts. This is another evidence, and a truly fatal one, of the general confusion of values that threatens to disturb Western civilization” (Otavio, 1997). Therefore, crimes against public safety were transformed into crimes against national security.

9. On September 23, 1997, President Cardoso sanctioned Law 9.503, which established the new National Traffic Code. Before the military regime of 1964, traffic policing was performed by the CP. Afterward it was transferred to the MP. The new code does not reestablish the status quo ante; it makes the military police forces of the states and the capital part of the National Traffic System (article 7, 6). Besides this, as in the 1966 code, it places a representative of the Ministry of the Army on the National Traffic Council, the highest normative and consultative organ of the system. The difference between the old and the new codes is that the position of this representative has been strengthened, since instead of 21 members the new council has 7 (article 10).

The question remains, why does the army have to participate in the decision whether the maximum speed should be 80 or 100 km/h?

10. On February 20, 1997, President Cardoso approved Law 9.437, which established the National Weapons System. Article 14 of this law says: “Arms found without registration and/or authorization will, after the elaboration of the expert report, be sent to the Ministry of the Army, which will be in charge of their final disposition.” The exceptions are the guns used in a crime, which
are to remain in the records department of the criminal court. Up until then, confiscated guns had been sent to the police station of the jurisdiction in which the confiscation occurred and in the case of an administrative action forwarded to the appropriate office of the Secretariat of Public Safety, which, in its turn, forwarded them to the Ministry of the Army. In Pernambuco, article 11 of State Decree 12,373, of April 30, 1987, stipulated that if the confiscation was due to judicial police action, the Criminal Procedure Code would apply.

In the majority of the states of the Northeast of Brazil, the MP declined to turn over the guns confiscated because of administrative offense to the CP, citing Portaria 342 of the Army of April 2, 1981, to the effect that guns legally confiscated by the military, customs, police, or legal authorities are to be sent to the Army Armament Deposit. According to the law any gun confiscation performed by the police is to be reported to this agency. Only the army and its ancillary forces (i.e., the MP and the Military Fire Brigades) are exempt from this duty. It is difficult to understand why the guns confiscated by the CP have to be registered but those confiscated by the MP do not, especially because police forces, both civil and military, need authorization from the army to buy even 38-caliber revolvers. The National Weapons System strengthened the process of militarization of public safety, giving importance to military organizations and reinforcing the internal orientation of the army with the acquiescence of the Congress and the president.

11. On June 19, 1998, President Cardoso signed a decree creating the National Antidrug Secretariat and a provisional measure creating a Federal Council of Narcotics with members from the high command of the armed forces. Both the Secretariat and the Council are under the command of the Military Office, which is headed by the active-duty general Alberto Cardoso. This means less power for the FP, which according to the Constitution is responsible for the repression of drug trafficking. The structure of the Secretariat is based on that of the U.S. Office of National Drug Control Policy, with the difference that in the United States the commander is a reserve general directly responsible to President Clinton.

For the first time the participation of army intelligence and troops in the fight against drug dealers was publicly acknowledged. The announcement followed a military operation that resulted in the seizure and destruction of clandestine cocaine laboratories in the "legal Amazon." The navy is now in charge of the interception of boats and ships on the Amazonian rivers and along the coast. The air force is looking forward to the inauguration of the Amazon Surveillance System, which will give it a larger role in these operations. Up until now, the army has been authorized only to give logistic support to the FP.
According to General Cardoso, this change took place because of “secret” instructions to the armed forces by President Cardoso in February 1996. According to the president’s reinterpretation of article 144 of the Constitution, the FP has no monopoly of the fight against drug dealers. On March 24, 1999, he announced the creation of the Federal Task Force for the Combat of Drug Trafficking, to be coordinated by the National Antidrug Secretariat. The army, the navy, and the air force will participate in this special 500-member group. Representative Tuga Angerami, of the president’s party, has proposed a constitutional amendment aiming to include fighting drug trafficking as one of the tasks of the armed forces.

12. Military officers are helping to investigate even cases of irregularities in public administration. In May 1997, President Cardoso made a de facto intervention into the public finances of the state of Alagoas, appointing the reserve colonel Roberto Longo secretary of the treasury when he might have chosen a technician from that agency.

In Pernambuco in February 1999, Governor Jarbas Vasconcellos for the first time in the history of the state nominated an active-duty MP lieutenant colonel as intervenor of the city council of Jaboatão, in metropolitan Recife, because of charges of corruption. When asked why he had chosen a military man for the job, the governor said, “Since there were more irregularities in the city council than in the city hall I decided that a military man was needed there” (Jornal do Commercio, February 20, 1999). In other words, a military man was needed to intimidate. The lieutenant colonel in question commented on his appointment that one of the duties of a police officer was to fight theft. He appointed four military officers to advise him, despite the notorious deficit of police officers working in the streets.

Because of accusations of corruption, the Ministry of Transport announced in April 1999 that the paving of two highways in the state of Acre would be done by the army. Later, for the same reason, he directed the army to build the West Water Main, designed to help fight the drought in the Northeast (Jornal do Commercio, June 27, 1999). The businessmen protested, saying that while on one hand governmental policy nowadays favors a “minimalist state,” on the other it was awarding responsibility for these projects to the army.

CONCLUSION

The military presence in domestic matters has been increasing. In 1997 federal troops left their headquarters to maintain law and order during a strike of the MP; the army controls the south of Pará. This is a de facto intervention.
forged to avoid bloodshed between the peasants and landowners and to avoid the creation of a “Brazilian Chiapas.” The main agency of civil intelligence is headed by an active-duty general. The National Secretariat of Public Safety is commanded by a reserve general, who therefore has access to the activities of the CP. Actually, the activities of the MP are already overseen by the army. The battle against narcotics has been militarized, and its control is in the hands of an active-duty army officer. Military men are heading the Secretariats of Public Safety and Transit Departments of various Brazilian states, and the Metropolitan Guards have been trained and commanded by either state or federal militaries. The control of registered guns, even those of the CP, and of guns without authorization and/or registration is performed by the army. The army has been asked to guard against organized or spontaneous pillage of warehouses and freight trucks and to distribute basic supplies and help in the battle against dengue fever. Furthermore, the army has distributed food and water to drought victims along with the new coins of Brazil’s latest currency (and this on the eve of the presidential elections),16 guaranteed public order during the 1998 elections in nine states, and commanded the security system for the First Summit of Heads of State from the European Union, Latin America, and the Caribbean in Rio de Janeiro in June 1999 (and here, as during the World Environment Summit in Rio in 1992, the “enemy” was also a domestic one) (Rossi, 1999; O Globo, June 25, 1999).

There is more: The navy and the air force control the country’s navigation and civil aviation, including flight and maritime accidents. There are already those who call this situation “feudal,” meaning that the military can be seen as a feudal landlord (C. Cruz and Diamint, 1998: 117).17 In other words, as guarantors of their own autonomy they are increasingly protecting public safety in lieu of the police forces, especially the CP. Besides, they perform functions that the civilian institutions are unable to perform.

The fragility of the Brazilian institutions jeopardizes democracy, since it makes the demilitarization of power more difficult. And the process of militarization is intensifying as criminality rises as a result of the social crisis arising from neoliberal economic policy and the corruption and impunity of the police. In times of social disequilibrium it is normal for the population to want more repression and punishment. The result is that the armed forces continue to be a great source of national power.18

The fact that the political elite have given up asking for the help of the armed forces, as there is no guarantee that they will intervene “surgically,” does not mean that the rule of law is strong. All this “feudalization” is taking place on the initiative of the civilian political elite, with the conscious support or acquiescence of the majority of population. This reveals a high degree of homogeneity between the governing elite and the military elite and the
existence of a militaristic political culture even after 21 years of dictatorship. This can be partially explained by the fact that killings and “disappearances” by the armed forces were few by Latin American standards and that the military modernized portions of the country. In other words, the armed forces emerged from the authoritarian regime without being perceived as so wildly violent or corrupt as their counterparts in other countries.

In a militaristic political culture, the professional qualities of the military are favorably contrasted with those of political leaders (Mares, 1998: 5). Former president Itamar Franco named nine ministers and one military vice minister to his cabinet. The way in which he chose his new transportation minister, Gen. Bayma Denis, revealed his position vis-à-vis the rather undemocratic nature of civil-military relations in Brazil: “I will not allow the ministry to be victim of birds of prey,” he said, referring to the civilian politicians (Veja, March 9, 1994).

The perception that the military is less corrupt than the police also explains the advance of the active-duty generals in the area of public safety. This tendency is apparent at both the federal and the state level, even in states governed by left-wing parties. The more robust the military political culture, the more fragile is the liberal political one. The recurrent presence of nepotimonalist culture also helps to explain this reality, because the military is perceived as part of the governmental machinery, subordinated to the civilian government, and therefore part of the governing elite. The government wishes to have the military as part of its political alliance, since it is a source of power capable of intimidating civilian rivals. This is the reason the presence of the armed forces increases in intensity during times of socioeconomic distress, when the military acts to defend the interests of those who support the status quo.

The problem is that the military has its own definition of democracy, one that differs from the liberal perspective of developed countries. According to the military, it was responsible for the establishment of the republic. Since then the armed forces have directed their attention toward domestic affairs. According to this organic-corporativist vision, the military has the responsibility of defending the state; if it does not do so it will amount to a band of mercenaries in its own country (Gomes, 1999). Furthermore, civilians are seen as immature, undisciplined, untrained, and/or prone to corruption and must therefore be guarded or protected by those who know what is the best for the country.

In a democracy, power is not granted to the strong; rather, strength is placed at the service of power. The 1988 Constitution confers the task of upholding it precisely on those who are most prone to violate it (Zaffaroni, 1995: 37). This is a partial contradiction. The armed forces, asked by the
political elite to act for them in the public safety area, continue to perceive themselves and not the legally vested political powers as the primary enforcers of law and order in the country. Treating crime as a military problem rather than a social problem only helps to strengthen the military presence in the political arena, making it more difficult to address the problem through structural changes.

Police forces continue to be poorly paid, trained, and equipped. They have lost their credibility because of their inefficiency and the incidence of corruption and criminality among their members. Therefore the police are part of the problem rather than of its solution. It has become common for reserve or active-duty police officers to cross the line between legality and illegality, becoming delinquents trained at the taxpayers’ expense. Under pressure, governors have asked for the help of the military without assessing the long-term consequences of this strategy. If this situation does not change and the police can no longer be an instrument of the state, the only alternative is to give the armed forces this role. Here the danger is that the federal troops may also be corrupted as their role in fighting crime, especially drug trafficking, increases.

There is no sign of a change in public policy. According to Abdala (1999),

Army, navy and air force together have the third biggest budget of all the ministries, behind only the Ministries of Social Security and Health. The armed forces, excluding the military cabinet and the high command, will be able to expand this year by R$16.4 billion while the Ministry of Education will have only R$10.6 billion. The majority of the resources of the armed forces is destined for the payment of social contributions and personnel. Last year the armed forces spent R$56 million on explosives and ammunition, equivalent to double what the Ministry of Health spent on advertising its program of aid to the elderly or what the Ministry of Social Security spent to fight child labor.

The federal government is, however, avaricious about the police, even though the country has not been involved in an external conflict since the Paraguay war.

With the aggravation of public safety issues, the practice of Social Hobbesianism is increasing, and there are calls for more vigorous repression of crime at the expense of human rights. Brazil has high rates of homicide compared with those of Colombia, though unlike the latter it is not involved in a civil war. This represents a failure in the process of institutionalization of conflict, since the legal boundaries of the social contract are commonly violated. Violence is the visible face of this institutional failure, which manifests itself in an increasing wave of crime. "In all these cases, the essence of violence is the
absence of legitimating rules to which the actors can refer—in that sense the silence that prevails when only the gun speaks” (Elster, Offe, and Preuss, 1998: 27).

The idea of the contractualists was that individuals would give up part of their freedom in the interest of a collective contract. The major goal was to guarantee to all participants the highest human good: the right to live. Therefore, civil liberties came before political and social liberties, as is explained by Marshall (1970). For example, the bill of rights of the French Revolution defended the right to freedom, property, and security. The way to guarantee life would be through individuals’ right to security. Without security there is no life, and without life there is no democracy.

The problem is that in Brazil political rights were acquired before civil ones, and this created the illusion that an orthodox coup d’état was unlikely and consequently the rule of law in Brazil could be taken for granted. What really happened, though, was that the governing elite lost confidence in an explicit intervention of the military in politics after the former had been in power for 21 years. Besides, the elite felt less threatened after the fall of communism.22 This does not mean that civil rights were reestablished and the presence of the military in public safety activities is constant. On one hand, the governing elite does not want a direct presence of the military in the major political arena, but on the other it also does not want to be deprived of military protection. Therefore it supports a military presence as a power factor.

The lack of protection for the most elementary of a citizen’s rights, such as freedom of movement, shows the fragility of certain institutions. Oversight and accountability in the public safety apparatus and its ramifications need to be strengthened. Therefore the advance of militarism in the area of public safety is an indication of the fragility of the “illiberal” Brazilian democracy.23 It demonstrates that Brazil still has a long way to go toward a liberal and social democracy.

NOTES

1. For a more detailed analysis of the constitutional articles that allow the militarization of the public space, see Zaverucha (1998).

2. In Brazil, the adjective “Civil” of the term “Civil Police” has a nonmilitary meaning. In the case of the Spanish Civil Guard one can see that the origin of the word “civil,” civitas, civitatis, “citizen,” prevails. That is to say, it means the “guard of the citizen,” despite the fact it is exercised by militaries.

3. The state military police (MP) of Rio de Janeiro after General Cerqueira took office began killing with an intensity never before seen during the postauthoritarian era. Between Janu-
ary and May of 1995, the killings committed by the MP averaged 3.2 persons per month. After Cerqueira’s inauguration as head of the Secretariat of Public Safety of Rio (June 1995-February 1996) the number of killings rose to 20.55 per month (Folha de S. Paulo, April 8, 1997).

4. Article 3 (a) gives the MP responsibility for uniformed policing, replacing the civil police (CP). The MP has more manpower than the army.

5. Article 62 of the 1988 Constitution: “In important and urgent cases, the President of the Republic may adopt provisional measures with the force of law and shall submit them to the National Congress immediately, and if Congress is in recess, a special session shall be called to meet within five days.”

“Sole paragraph—Provisional measures shall lose effectiveness from the day of their issuance, if they are not converted into law within a period of thirty days as from their publication, and the National Congress shall regulate the legal relations arising therefrom.”

6. The Department of Highway and Railroad Police remained under the command of this Secretariat. These two police forces are uniformed and civilian in character. This Secretariat was replaced by the National Secretariat of Public Safety, also commanded by a general on reserve, Gilberto Serra, who had just finished a term in the leftist government of Cristóvam Buarque. In accordance with Carta Polis no. 479: 12, Serra maintained control of the Reserve Service of the Military Police of the Federal District, which was responsible for political espionage with regard to labor unions, the landless movement, and even state representatives from the party of the governor, the ‘Workers’ party (Partido dos Trabalhadores).

7. Collor abolished the National Information Service, which was managed by a general, and replaced it with the Secretariat of Strategic Affairs, which was managed by a civilian. President Cardoso re militarized the civil intelligence service when he removed it from the latter and placed it under a general on reserve and later an active-duty general. This case is unique in the democratic world.

8. The governor of Roraima promptly invited Campelo to return to his position of Secretary of Public Safety, and General Cardoso congratulated the governor on his decision.

9. President Cardoso in June 1999 abolished the position of Ministry of the Army, Navy, and Air Force in creating the Ministry of Defense. Cardoso is therefore the only general who is a minister.

10. Following a request from the Southwest Military Commander, President Cardoso on April 1, 1999, awarded a decoration to the mayor of São Paulo, Celso Pitta, because of his good relationship with the army. This happened less than 24 hours after the president had called the corruption scandals in the prefecture of São Paulo “shameful” (Oliveira and Braga, 1999).

11. Besides Arraes, the governors of Espírito Santo, the Federal District, and Rio de Janeiro were from left-wing parties.

12. When it was created by Decree 317 of March 12, 1967, the Inspectorship-General did not have this task. It was after Decree 61.245 of August 28, 1967, that it first assumed it. This was maintained by Decree 667 of July 2, 1969, but the federal Constitution of 1988 abolished such control. President Cardoso, who was one of the Constitution’s framers, changed his mind.

13. Collor was the only president to respect this law.

14. In this case it was the governor of Rio, Leonel Brizola, who asked the Eastern Military Command for more troops, and the request was accepted without even asking for the authorization of President Franco. The Complementary Law was violated twice (“A força das armas,” Veja, February 2, 1994; “Manifestação anti-revisão interrompe a Rio-Niteróí,” Folha de S. Paulo, January 24, 1994).

15. The region called the legal Amazon is composed of the following states: Acre, Amapá, Pará, Rondônia, Roraima, and part of the states of Mato Grosso, Tocantins, and Maranhão.
16. For a different view about President Cardoso, see Oliveira (1998: 32): “My central thesis is that President Cardoso is creating a new pattern in the relationship between the political authority and the armed forces.”

17. The Venezuela of Chavez is becoming a paradigmatic case of this “feudalization.”

18. For a different viewpoint, see Hunter (1997: 23): “At the risk of exaggeration, conditions of the 1980s and 1990s have rendered the Brazilian military somewhat of a paper tiger.”

19. During the celebrations of the 109th anniversary of the proclamation of the republic in Brazil, the army issued the following statement (Notícida do Exército, no. 9.474, November 15, 1998, emphasis added):

In harmony with the national will, manifested through important civil and military leaderships, Marshal Deodoro da Fonseca commanded a pacific movement and decreed, on the afternoon of November 15, 1889, the end of the last monarchical regime of the Americas. The Brazilian republic was born. Proclaimed through the sword of Floriano, the republican system of government was consolidated through the decisive action of Marshal Floriano Peixoto, who would succeed Deodoro in the presidency. The country lived, in those times, another crucial moment in its evolution, and it found in its army a protagonist that did not hesitate to act in accordance with the social consensus—which has always been the case throughout the history of this country. Knowing that it has contributed to the advent of this new era, the Brazilian army congratulated the nation which it always has served and has never failed on another anniversary of the proclamation of the republic.

20. The first version of the 1988 Constitution took from the armed forces the responsibility for maintaining law and order. Immediately, the then-minister of the army threatened to suspend the debates. Intimidated, the framers reintroduced this role of the armed forces in article 142.

21. It is not by chance that the Pinochet and Sandinista Constitutions also confer on the army the responsibility for preserving law and order.

22. Up until 1964 the pattern of the armed forces was only to intervene, resolve the crisis, and return power to the civilians. This pattern was interrupted when the military remained in power from 1964 to 1985.

23. By this I mean that all the formal electoral practices of liberal democracy are followed, but soon after their election the candidates attempt to mutilate the political and economic freedoms (Zakaria, 1997).

REFERENCES

Abdala, Isabela
1999 “Furos na defesa.” Isto É, April 8.
Barbosa, José Edson
Caldeira, Cesar
CASTRO, Reginaldo Oscar de  

CERQUEIRA, Carlos Magno Nazareth  
1998 “Questões preliminares para a discussão de uma proposta de diretrizes constitucionais sobre a segurança pública.” Revista Brasileira de Ciências Criminais, no. 2 (April-June), pp. 139-182.

CRUZ, Consuelo and Rut Diamint  

CRUZ, Hermes Bittencourt  

ELSTER, Jon, Claus Offe, and Ulrick K. Preuss  

ENGDAHL, David E.  

FRANÇA, William and Sônia Mosstri  
1997 “Medo de ato violento reforça segurança.” Folha de S. Paulo, April 17.

GASPAR, Elio  

GOMES, Oswaldo Pereira  

HUNTER, Wendy  

JR., Policarpo  

KRIEGER, Gustavo  

MARES, David R.  

MARSHALL, T. M.  

MORAES, Marcelo de and Tania Monteiro  

OLIVEIRA, Eliézer Rizzo de  

OLIVEIRA, Ribamar and Isabel Braga  
1999 “FHC decide condecorar Celso Pitta.” O Estado de S. Paulo, April 2.

OTAVIO, Chico  
Pereira, Anthony

Rossi, Clóvis
1999 "Estado de sítio." Folha de S. Paulo, June 25.

Torres, Sergio
1997 "Procuradoria pee que Exército deixe favelas." Folha de S. Paulo, November 28.

Vasconcelos, Adriana
1999 "General apresenta nova estrutura da Casa Militar e o novo chefe de segurança de FH." O Globo, April 1.

Versano, Fábio and Luciana Conti

Zaffaroni, Eugenio

Zakaria, Fareed
1997 "The rise of illiberal democracy." Foreign Affairs 76.

Zaverucha, Jorge