

# Civil Military Relations and Aid to the Civil Power in Canada: Implications for the War on Terror

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## Abstract:

I propose to explore the link between civil-military relations and aid of the civil power in Canada. There are several reasons for investigating this linkage. The first involves the fact that aid of the civil power is likely to be the most severe test of civil-military relations possible given that the military is potentially required to take action against its own citizens. This would suggest that for these operations to be successful, civil-military relations must be effective. This introduces the second reason for studying this linkage, as while Canada has had numerous occasions where aid of the civil power was invoked, Canadian civil-military relations do not enjoy a very high reputation for their general effectiveness or quality. While civil-military relations in Canada have never been so poor as to provoke either a coup or complete military collapse, they are rarely described in positive terms. Bland characterizes them as "floundering and uncertain"<sup>1</sup> while Haydon uses terms like "still developing" and "vulnerable to disruption."<sup>2</sup> This apparent paradox needs to be explored. The third reason involves the quite contrary approach of our US neighbour whose Posse Comitatus legislation prohibits the use of federal militaries in local law enforcement tasks primarily for its danger to the civil-military balance.<sup>3</sup> As Canada and the US respond to the terrorist threat, it would seem wise for Canada to examine the strengths and weaknesses of its civil-military relations especially as they relate to domestic operations. The fourth reason for doing this

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<sup>1</sup> Bland, Douglas, "The Government of Canada and the Armed Forces: A Troubled Relationship," David A. Charters and J. Brent Wilson, editors, The Soldier and the Canadian State: A Crisis in Civil -Military Relations? (Fredericton, NB: Centre for Conflict Studies, 1996): 27.

<sup>2</sup> Haydon, Peter T., "The Changing Nature of Canadian Civil-Military Relations in the Aftermath of the Cold War," David A. Charters and J. Brent Wilson, editors, The Soldier and the Canadian State: A Crisis in Civil-military Relations? (Fredericton, NB: Centre for Conflict Studies, 1996): 50-51.

<sup>3</sup> Hammond, Matthew, Carleton, "The Posse Comitatus Act: A Principle in Need of Renewal," Washington University Law Quarterly, 75 (2), Summer 1997: 2 of 25; I Feb 2004, <<http://law.lustl.deu/WULQ/75-2/752-10.html>> Whenever I use the convention 2 of X page, this denotes a web-based source where pagination is doubtful but this should guide the searcher tolerably well.

analysis is that it will shed light on longstanding concerns over Canadian command and control practices at the strategic level.<sup>4</sup> This is of direct interest to civil-military relations as the prevailing view suggests there is much confusion over the division of tasks between the military and civilian parts that make up National Defence Headquarters.<sup>5</sup> The final reason for examining this area is simply because I am unable to find a work that has looked specifically at this linkage despite these sharp disconnects and the potentially significant implications of them.

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<sup>4</sup> Canada, Commission of Inquiry into the Deployment of the Canadian Forces in Somalia, Dishonoured Legacy – The Lessons of the Somalia Affair, (Executive Summary) (Ottawa, PWGS Canada, 1997): ES 18-20.

<sup>5</sup> Bland, Douglas, Chiefs of Defence – Government and the Unified Command of the Canadian Armed Forces (Toronto: CISS, 1995): 204-208.

## Part I - Introduction

This paper will explore the link between civil-military relations and aid of the civil power in Canada. There are several reasons for investigating this linkage. The first involves the fact that aid of the civil power is likely to be the most severe test of civil-military relations possible given that the military is potentially required to take action against its own citizens. This would suggest that for these operations to be successful, civil-military relations must be effective. This introduces the second reason for studying this linkage, as while Canada has had numerous occasions where aid of the civil power was invoked, Canadian civil-military relations do not enjoy a very high reputation for their general effectiveness or quality. While civil-military relations in Canada have never been so poor as to provoke either a coup or complete military collapse, they are rarely described in positive terms. Bland characterizes them as “floundering and uncertain”<sup>1</sup> while Haydon uses terms like “still developing” and “vulnerable to disruption.”<sup>2</sup> This apparent paradox needs to be explored. The third reason involves the quite contrary approach of our US neighbour whose Posse Comitatus legislation prohibits the use of federal militaries in local law enforcement tasks primarily for its danger to the civil-military balance.<sup>3</sup> As Canada and the US respond to the terrorist threat, it would seem wise for Canada to examine the strengths and weaknesses of its civil-military relations especially as they relate to domestic operations. The fourth reason for doing this analysis is that it will shed light on longstanding concerns over Canadian command and control practices at the strategic level.<sup>4</sup> This is of direct interest to civil-military relations as the prevailing view suggests there is much confusion over the division of tasks between the military and civilian parts that make up National Defence Headquarters.<sup>5</sup> The final reason for examining this area is simply because I am unable to find a work that has looked specifically at this linkage despite these sharp disconnects and the potentially significant implications of them.

I will approach this analysis in five parts. After this introduction, Part II of the paper will examine: What does the theoretical literature say with regard to the linkage between civil-military relations and aid to the civil power tasks and is there a way of assessing the effectiveness of civil-military relations in that area? Given that Huntington and Janowitz discourage the use of the military in these types of tasks except as a force of last resort and focus almost all their interest on “professionalism,” I will have to establish some criteria for determining whether civil-military relations are effective or not. This will involve going beyond these leaders and examining Finer, Feaver, Avant, Kemp and Huddlin, Gibson and Snider, Bland and Foster to extract a framework for effective civil-military relations for these kinds of operations. What I will specifically seek out are those objective “standards” of “good civil-military relations” as suggested by Avant,<sup>6</sup> plus the “principles” within Bland’s “regime” for effective civil-military relations.<sup>7</sup> A particularly clear example of what I seek comes from Foster’s civil-military “expectations” where, for example, the military provide “unquestioned obedience” while the civilian leadership provides “clear strategic guidance.”<sup>8</sup> If each side of the civil-military divide meets the others expectations, both Foster and Bland suggest civil-military relations will largely be stable. I will add to these while also culling those elements that do not bear on the task of aid of the civil power.

Part III of the paper will answer: To what extent were these theoretical standards and expectations for effective civil relations satisfied or not during Canadian aid of the civil power

operations? After a brief review of the history, I will concentrate on the 1970 October Crisis and the 1990 Mohawk Warrior Standoff, noting that the first event involved an application of both aid of the civil power and War Measures Act powers. While the bases for these actions are fundamentally different, the events themselves are sufficiently close for the purposes of examining effective civil-military relations. The concentration here will be on how closely the civilian and military leadership followed the theoretical best practices for effective civil-military relations. Precision is needed here as the charges of problematic relations in these operations often lack precision. For example, Haydon states that the government's handling of the Oka crisis demonstrated "that the basic concepts and practical aspects of civil control of the military were not well understood" but the specifics are sketchy.<sup>9</sup> Using the standards developed in Part II, we hope to isolate the incidents that led to this assessment.

Part IV will answer: What were the origins of those civil-military problems and what must be done to eliminate them? Here I will concentrate less on the strengths and weakness of individual leaders and more on the machinery that supports them or not in providing effective civil-military relations. In this regard, Theriault suggests statute and political and military institutions all shape civil-military relations in Canada and I will begin this part by examining the role they played in creating any of the civil-military problems isolated in Part III.<sup>10</sup> I expect this part will also make recommendations on a series of strategic issues involving command and control, federal legislation, and the future pattern of aid to the civil power operations. These will hopefully bear directly on what needs to be done as the government seeks to expand the military's role in domestic operations to counter the terrorist threat.

The conclusion will draw out the very broad civil-military relations lessons that flow out from Canada's past aid to the civil power operations.

## PART II – THEORY

This part will determine what the theoretical literature says about the linkage between civil-military relations and aid to the civil power tasks. Further it will examine methods for assessing the effectiveness of those relations.

Huntington and Janowitz are not immediately helpful as they concerned themselves primarily with the central paradox or "problematique" of civil-military relations where "because we fear others we create an institution of violence to protect us, but then we fear the very institution we created for protection."<sup>11</sup> That western democracies now no longer fear the danger of a coup is largely because their militaries have completely accepted the central principle of civil control of the military. According to Huntington, this level of civil control resulted from "professionalizing the military, by rendering them politically sterile and neutral."<sup>12</sup> Janowitz adds "He is subject to civilian control, not only because of the 'rule of law' and tradition, but also because of self-imposed professional standards and meaningful integration with civilian values."<sup>13</sup>

To reinforce the restraint professionalism provides, Huntington also calls for a general “minimizing of military power” with the emphasis here being on restricting the military’s political power.<sup>14</sup> He does this by limiting both its level and scope of authority. Limiting the level of authority provides a form of “vertical” civil control that ensures that the military does not have final authority and is subordinated to a hierarchy of, first, a defence minister, and, then, the head of government.<sup>15</sup> At the same time government will also limit the military’s scope by imposing “horizontal civil control.” Here the military is “confined within a limited scope by the parallel activities of civilian agencies or groups roughly at the same level of authority in government.”<sup>16</sup>

Huntington therefore implies that the military should not be allowed to stray far from its own area into that of the civilian police. Janowitz is far more direct in his opposition against using military in domestic policing operations, and he does so largely for civil-military relations concerns. He states “civilian supremacy in the United States has rested on the assumption that its national military forces were organized and controlled separately from the local and more decentralized police forces.”<sup>17</sup> He will, however, allow the use of the military in those tasks only “as the reserve instrument of ultimate legitimate force.”<sup>18</sup>

Later theorists were not content with these arguments and have argued we must go beyond basing effective civil-military relations on such abstract concepts as “horizontal control” and “professionalism.” Bland, for example, argues instead for a more complete “paradigm” of civil-military relations “that releases civil-military relations theory from the grip of undefinable ‘professionalism.’”<sup>19</sup> Given that Haydon and others lack precision in their critiques of Canadian civil-military relations, there is a strong argument for establishing more exacting standards for assessing them. Additional benefits of this approach stem from the fact that Canada, by employing its military in some 109 occasions in aid of the civil power or to quell insurrections,<sup>20</sup> has largely ignored Janowitz’ urgings to avoid the use of the military in these tasks as it also ignores Huntington’s rules on “horizontal control.” Therefore, examining alternate approaches seems prudent.

Foster certainly feels that there can be a prescription for good civil-military relations and it rests on the military, the civilian leadership and the people living up to each other’s expectations. Thus the civilian authorities expect the military to provide:

- operational competence,
- sound advice,
- unquestioned obedience,
- affordability, and
- political sensitivity - that is they must avoid activity which imposes political costs on the civilian leadership.<sup>21</sup>

In turn the military expects the civilian leadership will bring:

- executive competence –that is demonstrate ‘courage, decisiveness, integrity, and vision,’
- clear strategic guidance,
- political acumen – to get things done, and
- appreciation and support.

He points out the latter does not mean understanding but rather a general recognition of “the military’s purposes and uses, its capabilities and limitations, its needs and concerns...”<sup>22</sup>

Bland offers much the same approach, but his is significantly more developed. He argues that the division of responsibilities between the civilian leadership and the military is never sharp and instead a “shared responsibility is evident in all civil-military relations.”<sup>23</sup> What makes for effective relations in his view is a “civilian sanctioned guiding regime” that will set out principles, norms, rules, and decision-making procedures that manages this “sharing” of responsibilities. There are, however, basic principles and one of these is that the civilian authority must control policies dealing with:

- national goals,
- the allocation of defence resources, and
- the use of force.<sup>24</sup>

The military, on the other hand, should have authority over:

- military doctrine,
- discipline,
- operational planning,
- internal organization,
- promotion below the general and flag rank, and
- the tactical direction of units.<sup>25</sup>

Bland ultimately goes on to develop a total of 37 norms, rules, and decision-making procedures to support his regime.<sup>26</sup> The central point, however, is that Bland’s view precisely follows Foster’s theme that if expectations are fulfilled, civil-military relations are likely to be stable.<sup>27</sup>

One notes these more detailed lists also include major elements of Huntington and Janowitz theories. For example, Bland’s allocation of policies dealing with “national goals, the allocation of defence resources, and the use of force” to the political leadership is derived directly from Janowitz’s “three major devices of control.”<sup>28</sup> Further, the separation of responsibilities theme that overlies these lists directly reflects Huntington’s call for horizontal control. The significant resulting uniformity in views also allows me to condense the list for the purposes of assessing military operations in aid of the civil power with small risk. Therefore a combined list that focuses on this task and eliminates such peripheral items as “promotions” would contain:

The military is subordinate to the civil authority and provides unquestioned obedience

There must be a separation of responsibilities

The civilian leadership will control and provide clear strategic guidance on:

- national goals,
- the allocation of defence resources, and
- the use of force.

The civilian authority will recognize the military’s:

- purposes and uses,
- capabilities and limitations, and
- needs and concerns.

The military will control:

- military doctrine,
- discipline,
- operational planning, and
- the tactical direction of units.

The military owe the civilian leadership:

- operational competence
- sound advice
- affordability, and
- political sensitivity and political neutrality.

Caution will be required here because, as Bland points out, the division of responsibilities is never sharp. Further, it is unlikely that the 1970 October Crisis and the Mohawk Warrior incidents will provide all the background material needed to allow a full assessment in each of the areas on our list of standards. But as we examine aid to the civil power operations in the next part of this paper, this list will alert us to sudden disconnects, such as would be involved if the military provided “national goals” or the political leadership, the “tactical direction of units.” This suggests issues of command and control clarity will be of significant interest, as will issues of rules of engagement management if we are to trace who is actually authorizing the use of force.

### PART III – CIVIL-MILITARY OPERATIONS

This part of the paper will, therefore, examine the extent to which these theoretical standards and expectations for effective civil relations were satisfied or not during Canadian aid of the civil power operations.

#### History

The early history of aid of the civil power operations in Canada provides an almost complete revocation of traditional civil-military relations theory. In fact our first military was focused precisely in the domestic law enforcement area Janowitz discouraged. Thus in Canada we have the Prime Minister declaring in 1909 that the “principal object [of the Canadian militia] is ...the upholding of the civil power in the different parts of the Dominion.” Indeed, Canadian civil leaders regularly called out the militia and permanent force for “such routine duties as guarding a hanging or breaking up a boxing match” although strike breaking was the most dominant role.<sup>29</sup>

The loose criteria for applying military force to a civil problem stems partly from English common law and partly from the British North America Act that made law and order a provincial responsibility and the maintenance of the military a purely federal one. Thus the judges, wardens, mayors and councillors of our municipalities and provinces, lacking their own provincial armies and having very modest, ill-equipped police forces, had to be allowed access to the militia for suppressing riots and insurrections. The Militia acts of 1855, 1868, and 1904 codified this requirement until the aid of civil power provisions were transferred into today’s National Defence Act.<sup>30</sup>

The loose restrictions in statute combined with the politicians' readiness to apply military force to any domestic activity resulted in near total failure in almost every area of our theoretical standards and expectations. This is especially the case when combined with low military competence. Thus we cite the case of Captain Leckie and his bizarre performance in 1913 before a crowd of Nanaimo's strikers:

Swinging his kilt and singing quietly but in a most provocative manner, 'Who's the best man in this town, Captain Leckie, Captain Leckie; Who's the best man in this town' etc,<sup>31</sup>

Amateur conduct and provocations occasionally did lead to unnecessary Militia brutality as was claimed in Montreal in 1878, Hamilton in 1906, and Cape Breton in 1913. On other occasions the Militia's low level of skill and doubtful loyalties were well known to the leadership and as a result they were not called out in Belleville in 1876 to control a railway workers strike. During the 1894 Depression, the militia leadership itself signalled concern that the city regiments had degenerated into "social or political clubs or lodges of various societies" and could not, therefore, be relied on.<sup>32</sup>

To incompetence and occasional brutality, Morton would also lay a charge of partisanship. In his view "Political influences pervaded the Militia Department from top to bottom" from the very beginning of its history.<sup>33</sup> This influence remained at least until the late 1930s with General Ashton ascending to position of Chief of the General Staff in the late 1930's because he was "above all a good Brantford Liberal."<sup>34</sup>

The civil leadership obviously saw no particular difficulty in a politicized military and many benefits. In fact, Laurier's liberals are credited with helping "to make the Militia Department one of the most comprehensive engines of patronage in the government."<sup>35</sup> Yet the government's theoretical responsibilities to provide for the bona fide financial and personnel needs of the military were repeatedly ignored. In that the numerous municipal and provincial authorities that called out the militia were responsible for paying their costs and usually did not, the troops frequently were left without pay as the Federal government tussled with local governments for repayment. After waiting over two years, the men of a Halifax unit threatened to sue their own Captain for his failure to extract their pay from the local government.<sup>36</sup> Federal indifference to their condition was matched by a parallel inability to support them with coordinated manning policies. When civil servants serving in the militia were called out in Ottawa to "overawe strikers," they had their pay docked for not being at their desks.<sup>37</sup>

By the 1900s, the larger municipalities had created professional police forces for these and other duties and, as a result, had a declining need for the militia. However, for some tasks costs not principles were paramount. In the early 1900s, Sir James Dunsmuir, a coal baron, kept a force of militia and regulars on strike duty for over six months in the Wellington coalfields. Morton points out that his motive stemmed from the fact that "In British Columbia's high wage economy, soldiers at a dollar a day were cheaper than special constables and their uniforms commanded respect."<sup>38</sup>

The civil leadership's failures to provide the resources needed by the militia was matched by a parallel failure to take responsibility for errors or provide the direction on the use of force that is their theoretical remit. As a result of reports of militia brutality during efforts to suppress striking minors in Cape Breton, Prime Minister Mackenzie King was "acutely embarrassed."<sup>39</sup>

Yet before Parliament he did nothing about this other than to shift blame to the local judge who requisitioned the militia and raise the requisitioning authority from that of a magistrate to the level of a provincial attorney general.<sup>40</sup>

This reform did, however, prevent the municipalities from requisitioning troops. When combined with the increasing numbers of competent police forces in Canada and a rising recognition in the political classes that “Calling out the Army was bad politics,” this significantly reduced the number of requisitions after the first World War.<sup>41</sup> This was convincingly demonstrated during the depression when the Ontario government broke that pattern, called out the military in 1935, and was soundly defeated in the following year’s election. The expanding numbers of RCMP and municipal police officers had satisfactorily and occasionally brutally suppressed all other depression-era riots and disturbances without provoking voter backlash.

The only other major change during this period was creation of the War Measures Act during the Great War. Issued in response to local magistrates’ failure to call out troops to defend Military Service Act offices from attack by the unwilling, the Act authorized the federal government to intervene during an insurrection.<sup>42</sup> Thus, it no longer needed to await a provincial invitation to quell a major disturbance if it chose to do so federally. The Act also gave the federal government near “dictatorial powers” of arrest, detention, exclusion and deportation.<sup>43</sup>

### October Crisis 1970

The post-Depression inactivity continued until well after World War II, and there were no aid of the civil power requests until early 1969 when troops responded to a brief strike by the Montreal police. Significantly a surge of some 34 Front de Liberation du Quebec (FLQ) bombing attacks in 1963 only involved the provision of Army Explosive Ordinance Disposal assistance as the province was confident in its provincial police and declined to request aid of the civil power. Nevertheless this provoked liaison studies between the Lesage government and the Army regional commanders, and the Army stepped up internal security training for the next five years.<sup>44</sup> Significantly, Maloney’s research demonstrates the federal government and DND, on the other hand, would not take clear notice of these events until 1969.<sup>45</sup>

They were provoked into action with the second spike of 137 FLQ attacks that began in 1969. Regional army planning had already assessed that the Front had adopted the Maoist five-state revolutionary war doctrine and was now at the third, or “armed resistance” point in the process.<sup>46</sup> The next stages of “Preparations for Mobile Warfare” and “National Liberation” would follow. At the 5 January 1970 Cabinet meeting that would prepare a response to this, Prime Minister Trudeau made it clear “no modern state would allow a threat of this magnitude to its unity and integrity without mounting a consistent and coordinated defence against it.” Maloney reports that aid of the civil power statutes were then briefed to prepare Cabinet for that eventuality. He also reports that the political leadership were “astonished” at the procedures as “they had not given it much thought” up to then.<sup>47</sup>

With the kidnapping of the British Trade Commissioner on 5 Oct 1970 immediately followed by that of the Quebec Minister of Labour, Ottawa ordered the start of Operation Ginger. This assigned regular troops to the protection of federal politicians, predominantly in the Ottawa area, but with some protection extended into Quebec. On 15 October, the Bourassa government submitted a requisition for aid of the civil power under the National Defence Act to

provide relief for its exhausted police. The Prime Minister responded by authorizing the more robust War Measures Act the next day and approving the parallel commencement of Operation Essay which would enforce it. That operation provided a massive show of military force to the citizens of Montreal, while also providing guards and search and cordon troops to assist the Quebec provincial police in tracking down the FLQ.<sup>48</sup>

Ultimately over 12,500 troops were deployed in this operation and they played the dominant role in forcing the independistes to choose democratic methods to achieve their aims. Throughout the operation the army displayed superb discipline with Charters reporting that only ten shots were fired, all warnings, and no casualties resulted.<sup>49</sup> This is indeed a significant improvement over past military performance in a complex, charged environment.

Political guidance and direction was also improved. The Prime Minister's commitment to the total defeat of the FLQ was made clear when he was asked how far he would go to defend Canada. His response "Well, just watch me" was consistent with his early cabinet direction and, his resolve would remain steady.<sup>50</sup> After he directed the Vice Chief of Defence Staff to have "tanks on all the bridges in Montreal and men all over the city to show these pipsqueaks who had the power," General Dare was able to convince him of a more orderly approach. Trudeau's reply "do as you think best, but we win" appears to be precisely the delegation of the tactical situation to the military sought by our standards.<sup>51</sup>

All was not perfect, however, and Bland points out that a parallel Treasury Board and Privy Council Office team also thought it was authority guiding the prime minister on use of force issues.<sup>52</sup> The chain of command down to the operational forces was no clearer. While Charter's account outlines a chain from the Quebec director of provincial police to the commander, Mobile Command, to the 5<sup>th</sup> Combat Group, it is not clear if this lasted much beyond the imposition of the War Measures Act which effectively supplanted provincial authority.<sup>53</sup> Maloney is probably more correct in his assessment that the forces' command and control suffered from there being two simultaneous operations – Ginger and Essay – operating in parallel and with occasionally overlapping operational areas.<sup>54</sup> The latter problem forced the fast creation of a MOU with the Quebec Provincial Police so federal protection could be extended to politicians in the western parts of Quebec. This impromptu fix did not solve the problem completely and he provides evidence of the federal government frequently misrouting its requests for vital point or VIP protection to the wrong commander.<sup>55</sup>

Operations Ginger and Essay also had separate rules of engagement although for a considerable period it was not clear who would draft them until Ottawa eventually took control of their issuing. This delay was potentially serious as Bland reports the troops bound for Ottawa under Operation Ginger arrived without them. In seeking advice from the RCMP on what to do when on guard after being approached by unknown individuals, they were told "shoot them, but let us know afterwards so we can clean up the situation."<sup>56</sup> Throughout this event, there is no evidence the civil leadership was ever involved in these ROE issues despite their theoretical responsibility for guiding the use of force.

Under these conditions the army's discipline and weapons control seem even more impressive. Yet Morton reports there was "no gratitude either from the government or from the people" for this effort, while Trudeau himself suffered a loss in standing.<sup>57</sup> For the next two decades the army progressively extracted itself almost completely from formal internal security

taskings, ceased crowd control training, and disposed of their special riot control equipment.<sup>58</sup> A host of reasons were behind this shift, and they include the creation of specialized RCMP Emergency Response Teams across the country specifically trained in the role, downsizing and budget cuts in the military, and an increasing realization that sending in the military was a less than an optimum response to civil unrest especially if it became a common or regular response. Morton concludes that the brutality provoked by the Militia's numerous strike breaking efforts in Cape Breton demonstrated "successive military interventions can escalate to violence."<sup>59</sup> By the 1980s the results of British Army continuous interventions in Ulster had reinforced this lesson decisively.<sup>60</sup>

During the same time the Mulroney government promised to review the War Measures Act in light of its "too broad and sweeping powers."<sup>61</sup> The resulting 1988 Emergencies Act now specifically matches the government's potential response to one of four potential circumstances or "emergencies." Therefore in responding to a "Public Welfare Emergency" – that is a natural disaster; or a "Public Order Emergency" – an internal security problem; the government no longer has the right of unlimited search and seizure. However, in the more serious event of an "International Emergency" – that is conflict with another nation short of war; or of an actual "War Emergency," it does have this right - along with a host of other measures including provisions for controlling the economy and requisitioning personal property.<sup>62</sup> The most significant change, however, lies in the fact that the federal government may not declare a Public Order Emergency for a single province – the disturbance must affect at least two. Thus, the unilateral option chosen by Trudeau in 1970 of declaring virtual martial law in Quebec via the War Measures Act - whether the province desired it or not - is no longer available. In essence, after 1988, the province could legally 'decline' such help, an option they did not enjoy under the earlier Act. If, however the province desires assistance it can still request aid of the civil powers using the traditional procedures laid down in the separate National Defence Act.

### 1990 Oka and Kahnawake

The Bourrassa government soon chose the traditional aid of the civil power route. In the face of Mohawk barricades, the killing of a Provincial Police Officer shot while trying to remove one, and the resulting massive transportation delays around Montreal, the province's Attorney General submitted a requisition for aid of the civil power support using the provisions of the National Defence Act on 6 August 1990. Over twelve army battalions were then successfully deployed to the Kanewake and Oka barricades.

The NDA procedures were followed in text book style in Morton's view with the provincial authorities correctly outlining the goals, while the CDS "determined the necessary level of forces, planned the execution, and decided on the timing."<sup>63</sup> Intriguingly, Charters points out it was the Prime Minister who signalled that the Army would take over the barricades, when this Act makes it clear that the CDS should have been the only one responding directly back to the provincial Attorney General. This is the first signal that all may not have unfolded in 'text book' style.

Indeed, all clarity in command and control relations then disappears from the historical accounts. Charters largely agrees with the conceptual model in stating the Quebec Minister of Public Security's "link to the armed forces was direct, to the CDS himself." He then indicates that this link extended downward and:

The army operated through its own chain of command: from the CDS, through Lieutenant-General Foster (Commander Mobile Command/Eastern Region), to Brigadier-General Armand Roy (Commander 5th Brigade), then to all the units and personnel.<sup>64</sup>

Maloney outlines a quite different construct. After an initial meeting involving Premier Bourassa, the CDS and General Foster, Maloney reports the CDS “sat in on the national Cabinet meetings, while the Commander, Mobile Command, sat in on the provincial crisis cabinet meetings.”<sup>65</sup> The presence of General Foster in the provincial cabinet meetings renders doubtful the earlier claim that the operative link was from provincial Minister of Public Security “direct, to the CDS himself.”<sup>66</sup>

Bland’s account also makes it clear that the CDS and federal government were significantly more directly involved than either Morton’s or Charters’ idealized command and control descriptions suggest. Bland states:

...CF operations were controlled from NDHQ and sometimes in considerable detail...NDHQ became so sensitive to media reports about pending or completed tasks at the sites, many of which were inaccurate or concocted from rumours, that the CDS and the deputy minister began to insist on NDHQ clearance for the most trivial actions in the field.<sup>67</sup>

One must now turn to the political side of the relationship to explain why this level of tactical control needed to be held at NDHQ. In doing so, the similarities with the October Crisis are striking. Craig reports that again, twenty years after the October Crisis and after several months warning of Mohawk unrest, there was initially “genuine surprise” in Ottawa that a provincial government could requisition troops via the NDA.<sup>68</sup> Once this was recognized, the politicians then “expected almost immediate deployment” of the thousands of troops and their equipment.<sup>69</sup>

Yet Craig also makes it clear that the federal government, while wanting military haste, was avoiding putting itself formally in the command chain - “seemingly refusing to enter the fray.”<sup>70</sup> He and Bland both make the point that with the people of Quebec demanding “harsh” action against the Mohawk while popular opinion supported them in the rest of Canada, the federal government was in a “no win” situation and thus a low profile made sense.<sup>71</sup> Given that aid of the civil power legislation also only recognizes a command link from the provincial government to the CDS, there was additional merit in remaining on the sidelines.

However, that is not what seems to have occurred behind the scenes. Bland reports the CDS himself then had to resist the “considerable pressure” and “prodding” from both the federal and provincial governments to end the crisis rapidly despite the need for a prudent, measured and non-escalatory pace. In that limited sense, the need for the military to control the tactical direction of units was recognized and maintained. It was not, however, maintained in spirit as Bland then points out:

Mulroney agreed with de Chastelain that the CF could not attack the native positions but he wanted assurances that the commanders on the ground ‘were under control.’...This demand placed considerable pressure on field commanders because members of the PMO and PCO and the deputy minister were trying to second guess their command decisions.<sup>72</sup>

Thus we have NDHQ insisting on clearing even “the most trivial actions in the field.” The actual field Commander, Brigadier-General Roy, does not refute this. Rather, it is telling that his personal account of the events provides “lecons apprises”<sup>73</sup> on everything from media relations to civil police liaison without ever mentioning the command and control arrangements in this most complex of missions. Instead rules of engagement are listed as his greatest concern and it is through this indirect route that we get a sense of his frustration. He assessed that the higher intent was for his forces to use minimum force, and that meant they would have to be ready to “essuyer les premières pertes avant de réagir.”<sup>74</sup> Indeed, Bland confirms that the CDS had decided that “the natives had to be seen to fire the first shot.”<sup>75</sup> What concerns Roy, however, is that the ‘take the first hit’ ruling was absolute and not open to local modification even though the Mohawks were extremely heavily armed and deployed in a para-military posture. As was seen in 1970, there is again no clear indication of political involvement in the setting of these ROE.

### Summary

This brief review of Canadian aid of the civil power history, while not addressing every standard on the list developed in Part II, certainly highlights many of the specific problems behind Haydon’s earlier claim that “the basic concepts and practical aspects of civil control of the military were not well understood” during the operations at Oka.<sup>76</sup> It is also clear that while the history shows many weak areas in our civil-military standards there were also areas of strong performance. Moreover, the operations themselves were all ultimately successful.

The military is subordinate to the civil authority and provides unquestioned obedience

As an example, these cases provide no hint of any military challenge to civil control. The fact that the military may not have deployed as quickly as the political leadership wished was not due to disobedience as every author makes clear.

The military owe the civilian leadership:

- operational competence
- sound advice
- affordability, and
- political sensitivity and political neutrality

Equally, this history provides strong evidence of steady upward progress in the quality of the “operational competence,” “sound advice,” and “political sensitivity and political neutrality” that the military owes the political leadership. From the incompetent, sometimes brutal, and highly political militia seen at the start of Canada’s history, the last two operations showcased a thoroughly competent military at the tactical level. Given their early performance, the Army’s recent skills in de-escalating the situation at Oka and their consistently superb weapons control are nothing less than astounding. Further, partisan ties have been completely severed and the issue is simply no longer raised. “Affordability” was never a factor here as cost did not enter into these operations except for the early concerns over the municipalities paying the militia’s bills. In fact most of the problems are centered on problems arising from the “separation of responsibilities” and from the civil authority meeting its specific responsibilities.

The civilian authority will recognize the military’s:

- purposes and uses,

- capabilities and limitations, and
- needs and concerns

There are clearly problems here. The only progress that can be extracted from the history is that there has been a most welcome turning away from the military as the tool for suppressing every strike and riot towards employing the increasingly larger and more professional civil police forces. One hesitates here, as there are recent calls for increasing the use of the military in domestic operations post 9/11 including one suggestion that Canada's special forces take on a wide range of domestic law enforcement tasks to counter terrorists.<sup>77</sup> Therefore one cannot claim that this civil-military basic principle has suddenly taken hold in Canada. In fact it is all too clear that the political costs in terms of lost elections and the ready availability of civil police, usually hired for other purposes, had more to do with this positive trend than principles. Further, these recent trends suggest that when the military appears cheaper than police, there is a risk today's politicians are likely to be no more restrained than Lord Dunsmuir in applying them to a new domestic challenge if it keeps costs down.

Other parts of this standard are also in doubt. In both the October Crisis and Oka Uprising, the federal political leadership was successively unaware of aid to the civil power provisions despite several months of building tension. Yet when the troops were called, on both occasions the politicians expected rapid deployment to the amazement of both the military and the later chroniclers of these events. The next part of this paper will examine what lies behind this sustained unfamiliarity with military capabilities.

The civil leadership's recognition of the "needs and concerns" of the military may appear to be improved over the indifference they demonstrated when soldiers were left for up to two years without pay as a result of inter-governmental squabbling. Yet strains of this attitude may remain given that budget cuts were one of the motivations for the Army withdrawing from riot control in the 1980s. This kind of outright benefit is unusual and not typical of cuts. It suggests, however, a longer-term issue given that one may not wish these kinds of capabilities to progressively vanish more by wastage than by clear government design.<sup>78</sup> Therefore, the issue of "needs and concerns" will also be raised in the next part.

There must be a separation of responsibilities:

The civilian leadership will control and provide clear strategic guidance on:

- national goals,
- the allocation of defence resources, and
- the use of force.

The military will control:

- military doctrine,
- discipline,
- operational planning, and
- the tactical direction of units.

While "discipline" and "military doctrine" presented no issues, there were clearly problems everywhere else in this separation matrix. These likely constitute the most serious civil-military relations issues. As we have seen, Huntington and Janowitz argue for a clear separation to maintain civil control, while Foster and Bland argue this is needed so that

expectations can be framed and then fulfilled. It is also becoming clear that clearly separated responsibilities are the only way of establishing accountability. Getting this separation right is, therefore, central to effective civil-military relations.

The Prime Minister's setting of the national goals in these two incidents varied dramatically. Trudeau provided consistently strong and clear strategic guidance as he is also credited with turning over the details of the tactical direction of units to the CDS and VCDS. On the other hand, the Mulroney government was seen to initially avoid involvement and then, via both PCO, PMO, and NDHQ, observed to "second guess" events. While the two personalities may explain part of this, I doubt it. What is clear is that the War Measures Act allowed Trudeau virtually limitless power to intervene in Quebec. Mulroney, however, had to operate under the aid of civil power provisions of the NDA. As this restricts the responsible actors to the provincial attorney general who requisitioned the forces and the CDS who provided them, the Prime Minister should have remained on the sidelines. It is clear that this statutory removal of the head of government from the command chain during a large-scale military operation in Canada may need review given the terrorist threat and the fact that civil-military relations principles expect that he will always have the right to provide "national goals" during a major domestic operation. As a result, the statutes that bear on aid of the civil power will be reviewed in the next part.

One component of the NDA worked superbly and it needs no further review. The provision that all orders to the Canadian Forces "shall be issued by or through the CDS" resulted in the military having unchallenged control over the "tactical direction of units."<sup>79</sup> It certainly allowed General Dare in 1970 and General De Chastelain in 1990 to resist efforts to "pressure" the military to early precipitate action. The instances of the CDS, DM, and elements within NDHQ, "second guessing" and micro-managing "the most trivial actions in the field" during Oka must be viewed separately from this.

Rather, this back channel 'command chain' and the numerous occasions of confused command structure suggest that the military, and potentially the public service bureaucracy within DND, have had great difficulty in setting and maintaining clear command and control arrangements. Certainly, achieving this is not easy when one must include links to provincial governments and their police. Yet given that our military is most commonly deployed overseas on UN or NATO missions under similar "dual authority" situations, one would have expected clearer arrangements might have been in place by Oka. Overall, there are shortcomings in the performance of the military's responsibility for "operational planning" as it bears on establishing a clear command and control structure – the first requirement of such planning. As a result, we will return to command and control and the role of NDHQ in the next part.

The "use of force" is in many ways a subset of this same issue. While the basic provision of rules of engagement was significantly improved over the two operations, Oka saw two military forces operating in the same area against the same threat with different ROE. This clearly flows from the command and control decision to operate two parallel operations in the same area, a risky but still workable command option. In doctrine, however, there is no occasion for issuing different ROE to one's own co-located forces given the potential for internal confusion and the possibility that the opposition will exploit the differences.

This was an operational planning error that is easily remedied the next time. Less amenable to repair is the fact that there appears to be no involvement of the civil leadership in providing strategic guidance on the use of force. All reporting makes it clear that the ROE originated from NDHQ in 1970 and from the CDS personally for Oka without any indication of the prime minister or defence minister having even been briefed. Even if they were briefed, the theorists have made it clear the political leadership provides the strategic guidance on the use of force. Common sense underlines this requirement - especially for operations in Canada. It seems impossible that the military could be involved in actions against its own citizens without the government formally authorizing the allowable level of force. The written record provides no evidence of this being done, and it may well have been the subject of verbal brief to the government. Yet this again is curious, as within the military verbal ROE simply do not count – they must be transmitted in written form to ensure clarity in transmission and to provide a record for accountability purposes. It is not conceivable that the civilian leadership could perform this function with some lower, looser, informal standard. Rather the evidence suggests they will have a weak understanding of military issues and allowing them shortcuts is, as a result, most unwise. Therefore this also must be reviewed in the next part.

#### PART IV – PROBLEMS AND SOLUTIONS

The task in this part is to examine the root causes of these civil-military relations problems and to recommend repairs. The focus will be on ensuring our house is in order to meet the new threat of terrorist attack as well as the traditional one of riots and insurrection. As such the emphasis will not be on the tactics or forces likely to be involved, but more on the political and military institutions and statutes that support (or not) effective civil-military relations.

In addressing this it is clear that these problems are sustained and thus not the result of malign intent or flawed personality. Rather their origins lie in system or institutional faults. In examining them a sound framework has been set by General Theriault who sought to explain the broad trends in Canadian civil-military relations in terms of the role statute and institutions played.<sup>80</sup> This section, however, will have a more narrow view than his given this analysis' focus on domestic operations.

##### Statute

This area is tackled first as the issues are clearest, and they are, potentially, the most amenable to reform as a result. As was demonstrated, the National Defence Act plays a significant role in protecting the key civil-military principle of having the military control the tactical direction of units. Theriault agrees and the expands on the Act's other benefits:

The legislation clearly provides for the necessary subordination of the political authority of the CDS and the Forces, while at the same time vesting in the position of the CDS a degree of autonomy necessary to preserve the non-political character of the Forces, and if necessary, to prevent their misuse.<sup>81</sup>

The Act's only defect lies in the right of the provincial Attorney General to requisition the military directly from the Chief of Defence Staff while leaving the federal government without any say whatsoever. Craig and others argue this was a necessary compromise given that the

Canadian constitution assigns the federal government control of the military while the provinces have responsibility for the administration of justice.<sup>82</sup> Despite the fact that a subsequent DND review examined the Act in 1973 and, finding no other workable solution, also recommended retaining it, this compromise is no longer realistic. Indeed it was abundantly clear the Mulroney government was necessarily and deeply involved in all aspects of the operations at Oka even if this was not made obvious to the public. Given the lack of any formal command link to the federal government in the Act, informal routes proliferated including the back-channelling of PCO, PMO, and DM “second guessing” downward to the operational units via NDHQ. Thus some of the convoluted chain of command constructions owe their origins to this need to construct a back door command chain behind the formal CDS chain to the operational units.

Yet the solution may not be to rewrite the NDA - a document praised by General Theriault for “the great care and subtlety” with which it “defines the relationship between civil authority and the military.”<sup>83</sup> Craig agrees and recommends attention shift to amending the Emergencies Act as “there is too much wrong with the Emergencies Act to leave it the way it is.”<sup>84</sup> His arguments are compelling and center on the fact that repealing the War Measures Act, while still retaining the NDA, took away the necessary federal override function that allowed Trudeau to direct events in 1970.

That is a province may still requisition aid of the civil power from the CDS directly, but the federal government cannot use the significantly more restricted provisions of the Emergencies Act to override, veto, or even question the provincial conduct of any public order emergency. This results from that Act’s restriction that states:

25 (3) The Governor in Council may not issue a declaration of a public order emergency where the effects of the emergency are confined to one province, unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

In addition, the Emergencies Act’s section 3 states the act only applies when the emergency “cannot be effectively dealt with under any other law of Canada.” Thus, the act allows a province to argue the disturbance is best dealt with under the National Defence Act’s Aid of the Civil Power provisions and to successfully resist federal efforts to invoke the Emergencies Act.

These restrictions within the Emergencies Act will continue to confound aid to the civil power and may limit the federal government’s options during a large-scale anti-terrorist event. While the recent Anti-Terrorist Act and Canadian National Security Policy give the federal government a clear leadership role in these events, it is significant that the Emergencies Act is still operative. In fact, the “Overview to the National CounterTerrorism Plan” produced by Public Safety and Emergency Preparedness Canada points out that the Emergencies Act remains still a central part of the federal counter terrorist response.<sup>85</sup> Further, the government’s ability to invoke the “exceptional powers” within it still relies on the affected province agreeing to its enactment if the terrorist problem only affects that single province. Indeed, Craig’s view that the “Emergencies Act is seriously flawed and should be amended” remains accurate<sup>86</sup>

## Political Institutions

This analysis demonstrated the political leadership had problems consistently providing the strategic direction needed for these operations, deciding on the level of force to be used, understanding the capabilities and limitations of the forces involved, and supplying the necessary resources. These represent their responsibilities in the civil-military relationship. In response to problems in setting strategic goals, the previous section recommended giving them more formal recognition in statute as to reinforce their right to give that direction.

Problems related to their weak understanding of fundamental military issues are less amenable to quick repair. It is also clear the civil leadership's failure to understand that the deployment of forces can never be immediate was not restricted to domestic operations. Using data from the Somalia Inquiry and Joint Staff Lessons Learned from the 1996 deployment to Zaire, Boulden demonstrates that the government decisions to participate in both operations may well have been made before any detailed military planning was undertaken as to feasibility or the time required to accomplish the move. The rush to be seen to be doing something in the face of great human suffering overrode realistic expectations. Bland certainly suggests the unnecessarily "rushed" Somalia deployment contributed to "ill prepared troops."<sup>87</sup> Finally, a Department of Foreign Affairs post-Zaire assessment is eerily similar to that reported for the Oka deployment:

"the speed with which they can deploy was poorly understood by some. Some Government leaders, humanitarian agencies and reporters demonstrated a fundamental misunderstanding of the speed with which the military can deploy. There was a clear expectation that armies would be fully deployed in theatre almost instantly after a political decision was made."<sup>88</sup>

Equally, problems with the provision of adequate resources for those operations are the result of longstanding political attitudes, with Mackenzie King declaring in 1937:

No person dislikes everything that has to do with expenditures of defense purposes more than I, [and] the members of my party in Canada all felt alike in this particular."<sup>89</sup>

Many would argue that same view exists today. But from a domestic operations point of view it is difficult to isolate any deleterious effect on past aid of civil power operations or potential dangers to future counter-terrorist missions as a result of cost, save the Army's welcome but possibly stealthy withdrawal from riot control training. Further, this standard cannot be pushed too far for resource allocation is, at the end of the day, the civil leadership's unquestioned right. One can, of course, hope for a better understanding of the military needs, but this aspect strays significantly from the topic at hand.

The civil leadership's responsibility to provide direction on the level of force is far more straightforward and this review has shown they provided little visible direction. Rather, the CDS authorizes the rules of engagement, and it may be that when cabinet is briefed on the overall concept of operations for the mission, they also receive an overview of ROE.<sup>90</sup> The costs of this casual approach to a serious issue were nicely outlined by this incident unearthed by the Somalia Inquiry. Their evidence shows that when Lieutenant-Colonel Matthieu gave the fateful orders group that extended his ROE and authorized deadly force against unarmed Somalis inside the Airborne Regiment's compound, he cited the well-publicized comments of the Minister of

Foreign Affairs – Barbara McDougall. The Inquiry reports she had “boasted that soldiers going to Somalia had been provided with ROE that permitted them to shoot first and ask questions later.”<sup>91</sup> The inquiry then notes the actual ROE were significantly more nuanced as to when deadly force could be applied. Further, Lieutenant-Colonel Matthieu had no justification for amending his ROE based on hearsay. Nevertheless, this incident does underline why the ROE procedures are formal and only transmitted in written form. It also suggests that political involvement in these decisions must follow an equally formal procedure and sign the ROE authorized.

Yet is it likely that the political leadership will change its approach to such matters as ROE and costs? Will they become more familiar with the military’s broad capabilities so they can fulfill their part of the civil-military balance? History would suggest this is unlikely and in General Theriault’s view this is because:

...effective political control of the military requires a great deal more than the kind of weak, inconsistent, reactive and insufficiently informed leadership that nearly inevitably results from the structural shortcomings of the political control machinery we have in Canada.<sup>92</sup>

Rather, Bland and Graham suggest that political indifference to military issues is the norm in Canada and a wise military accommodates itself to this. One can see this very clearly in the case of ROE. If the political leadership is disinterested or avoids the responsibility for this critical issue, the military steps in “by default if not by design” and the CDS starts issuing ROE on his own.<sup>93</sup> There is in fact a pattern or cycle where, due to the absence of sustained political direction, the military leadership assumes “a significant degree of independence and discretion” to achieve day-to-day defence goals.<sup>94</sup> Eventually, however, a crisis erupts, and the pattern alters dramatically with the civil leadership correctly demanding full engagement notwithstanding its demonstrated lack of familiarity with most of the machinery it expects to control.

Thus, Graham posits two contexts for civil-military relations in Canada:

-Peacetime periods characterized by ‘political indifference to the detailed implementation of policy’ and a strong desire to minimize expenditures.

-Periods of crisis or war, during which the government expects to exercise continual political direction and control. Cost considerations will be of lesser importance during these periods.<sup>95</sup>

Graham also makes clear that there will only be one national command system to support these two sharply different contexts and that it must be capable of transitioning gracefully from a peacetime to a crisis posture.

### Military Institutions

Given the strong likelihood that political indifference will extend to the point of not participating in the design of the national command system, Graham acknowledges that the military will end up developing it in the end.<sup>96</sup> This is troubling, as history has shown that they are not very adept at this. Further, the single occasion where a political leader did focus his energies on this task produced mixed results as well.

Byers points out that Hellyer and the Glassco Commission, with little hard evidence, raised “doubts as to the reality of civilian control” within the Department of Defence.<sup>97</sup> The resulting integration of the armed forces and creation of a single Chief of Defence Staff would, in the Minister of National Defence’s view “permit an effective exercise of civilian control and, equally important, civilian direction in the carrying out of defence policy as laid down by the government.”<sup>98</sup> In addition to unification and the creation of the CDS position, his reforms also involved a significant expansion of the Deputy Minister’s power and staff – “a strong civil staff” was desired.<sup>99</sup>

Hellyer never imagined that these civilians would support operational decisions; rather their focus was the long range, administrative management of “requirements” and “resources.”<sup>100</sup> Regrettably, the military within NDHQ also had little direct involvement in military operations as a result of the assigning of a large part of the most combat ready units to either NATO or NORAD. The Glassco commission therefore reported that Canada would “exercise little direct control over operations” assigned to our forces and, as a result, the “headquarters organization in DND is one of support rather than operational command.”<sup>101</sup> Our increasing contributions to UN-commanded peacekeeping operations further reinforced NDHQ’s focus on administrative matters and ensured the officer corps was far more versed in the operational doctrine of alliances and peacekeeping than in the command of national operations.

The confused chains of command and back channel links seen during the Quebec Crisis and the Mohawk uprising are not, therefore, surprising. Weak command and control structures were, in fact, common. A 1985 internal CDS sponsored study concluded “NDHQ could not be relied upon to produce effective operational plans or to be an effective base for the command and control of Canadian Forces in operations.”<sup>102</sup> A study for the DM and CDS produced in 1992 came to much the same assessment: “the evaluation [showed] there is a critical need for a simplified command and control structure, one which will bring to an end the current adhoc approach.”<sup>103</sup>

Finally the Somalia Inquiry’s description of that operation’s command links is disturbingly similar to the command by back channel and selective micro-management seen during Oka:

...officers declared for example, that the chain of command was too convoluted; that too many officers at NDHQ were involved in the vetting of what should have been routine demands; that senior staff officers at NDHQ were calling the CAR [Canadian Airborne Regt. in Somalia] directly or vice versa.<sup>104</sup>

That this situation occurred during a US-led, UN operation suggests one cannot lay all the blame for our command failures on a lack of experience in commanding national operations as we seem to have serious problems in multinational operations also. It is also clear by the number of studies that the importance of clear chains of command is well fixed in the minds of the DND leadership. As the Somalia report notes “clear chains of command ...have been the hallmark of civil-military relations and military organization for centuries.”<sup>105</sup>

Rather, the cause of our command problems is that we have not recognized Graham’s two separate contexts of civil-military relations as we designed our command and control links. That is NDHQ, with its combined civil-military make up and ‘strong’ DM, is well suited for

Graham's "Peacetime periods" but not his "Periods of Crisis and War" when an unfamiliar civil leadership suddenly engages itself with military issues and expects instant answers to all manner of issues. As seen during Oka, they focused heavily on media responses. The military chain of command apparently did not put an equally high priority on this issue, and thus back door channels appeared to serve the civil leadership's needs.

Graham's approach was to make NDHQ capable of doing both jobs well. Numerous operations and equally numerous studies have, however, failed to provide this holy grail of a command and control system that can satisfy two sharply different civil-military contexts. Bland suggests a return to a Canadian Forces Headquarters that is organizationally separate from NDHQ and charged to "conduct centrally directed military operations."<sup>106</sup> NDHQ, on the other hand, would focus on defence policy, procurement and administration.

He does not go far enough. Rather we must look at the example of our closest allies who face the same civil-military needs. In the US, the Pentagon is only allowed to control a single operation and that is the Single Integrated Operational Plan for total nuclear war. By congressional mandate all other operations must be controlled by a unified commander – all of which are well removed from Washington. Thus the defence of North America will be controlled by NORTHCOM in Colorado Springs. In the United Kingdom, Whitehall controls nothing and all operations are commanded from their Permanent Joint Headquarters in Northwood, some forty nautical miles from London.

Physical separation by at least forty miles does nothing more than force priority setting, and thus it eliminates the ad hoc and the back door. By controlling all communication links to the theatre, it forces those not in the command chain to decide if that nagging little question for the operational commander is worth driving forty miles to get to the communications node. One can, of course, call from ones' office but this does not have the legitimacy of calling from the operations centre. Further, going to the operations centre allows the casual visitor to become roughly acquainted with the tactical picture and, as a result, he is less likely to appear uninformed. But with CFHQ geographically separate from NDHQ that will not be the decision, and instead that query will have to be passed to the CFHQ where it will be prioritized with every other bright idea that occurred that day and, optimally, only the most key will wend their way into theatre.

Today, every staff officer and ministerial assistant is ten minutes away from the communications lines to theatre. Further he can preface his call with "This is NDHQ speaking ...". As a result, advice, comment and questions on topics as disconnected as media responses and field hygiene are sent to a theatre commander's staff dressed up as direction. They will have no idea of these items ultimate priority and neither will they know whether the CDS himself is personally seized of the issue. Yet because "NDHQ called" those in theatre must accept that the query came in his name.

We must cease pretending in Canada that we have found a unique solution to the longstanding international problem presented in making one headquarters do two incompatible tasks. It may be cheaper, but it is unworkable from every aspect of civil-military theory.

## PART V - CONCLUSION

This analysis of the civil-military relations in support of aid to the civil power has demonstrated once again that civil control of the military in Canada is firmly established. By applying civil-military relations theory to the domestic operations, this paper has also shown one can isolate problems in the civil-military relationship in reasonably precise terms. The analysis of the Quebec and Oka crises certainly revealed that the desired separation in responsibilities between the civil and military was rarely achieved. Further, the civil leadership provided inconsistent performances in providing strategic direction, authorizing the use of force, being aware of basic military capabilities, and, at times, recognizing resources needs. The military leadership, while being obedient, tactically competent and non-partisan, consistently failed to provide an adequate command and control plan. The root causes of these weaknesses were then traced back to inadequate statutes, an unworkable headquarters arrangement, and longstanding political indifference to defence issues. Solutions were suggested that might overcome the latter by revising statutes and the command structure significantly.

The student of Canadian defence history will not be surprised by any of these findings as they are typical of most modern accounts of DND activity. It is precisely because these problems extend well beyond the specifics of aid to the civil power that this paper is confident in recommending a significant overhaul of the Emergencies Act and the creation of a CFHQ that is organizationally and, most critically, geographically separate from NDHQ. Further, these fundamental repairs have a far better chance of preparing Canada to meet the new challenges of domestic terrorism than any ad hoc plan to employ the military in law enforcement tasks.

You must not take the militia seriously, for though it is useful for suppressing internal disturbances, it will not be required for the defence of the country, as the Monroe Doctrine protects us from enemy aggression.<sup>107</sup>

Sir Wilfred Laurier

## Endnotes

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- <sup>1</sup> Bland, Douglas, "The Government of Canada and the Armed Forces: A Troubled Relationship," David A. Charters and J. Brent Wilson, editors, The Soldier and the Canadian State: A Crisis in Civil -Military Relations?, (Fredericton, NB: Centre for Conflict Studies, 1996): 27.
- <sup>2</sup> Haydon, Peter T., "The Changing Nature of Canadian Civil-Military Relations in the Aftermath of the Cold War," David A. Charters and J. Brent Wilson, editors, The Soldier and the Canadian State: A Crisis in Civil-military Relations?, (Fredericton, NB: Centre for Conflict Studies, 1996): 50-51.
- <sup>3</sup> Hammond, Matthew, Carleton, "The Posse Comitatus Act: A Principle in Need of Renewal," Washington University Law Quarterly, 75 (2), Summer 1997: 2 of 25; 1 Feb 2004, <<http://law.lustl.deu/WULQ/75-2/752-10.html>> Whenever I use the convention 2 of X page, this denotes a web-based source where pagination is doubtful but this should guide the searcher tolerably well.
- <sup>4</sup> Canada, Commission of Inquiry into the Deployment of the Canadian Forces in Somalia, Dishonoured Legacy – The Lessons of the Somalia Affair, (Executive Summary) (Ottawa, PWGS Canada, 1997): ES 18-20.
- <sup>5</sup> Bland, Douglas, Chiefs of Defence – Government and the Unified Command of the Canadian Armed Forces, (Toronto: CISS, 1995): 204-208.
- <sup>6</sup> Avant, Deborah, "Conflicting Indicators of 'Crisis' in American Civil-Military Relations," Armed Forces and Society, 24 (3), Spring 1988: 381.
- <sup>7</sup> Bland, Douglas L., "A Unified Theory of Civil-Military Relations," Armed Forces and Society, 26 (1), Fall 1999: 12, 15-19.
- <sup>8</sup> Foster, Gregory D., "Combating the Crisis in Civil-Military Relations," The Humanist, January/February 1998: 7-9.
- <sup>9</sup> Haydon: 50.
- <sup>10</sup> Theriault, General (Ret'd) G., "Democratic Civil-Military Relations: A Canadian View," Jim Hanson and Susan McNish, eds., The Canadian Strategic Forecast 1996: The Military in Democratic Society, (Toronto, Canadian Institute of Strategic Studies, 1996).
- <sup>11</sup> Feaver, Peter D., "The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control," Armed Forces and Society, 23(2), Winter 1996: 150, 154.
- <sup>12</sup> Huntington, Samuel P., "Ch. 4: Power, Professionalism, and Ideology: Civil-Military Relations in Theory," The Soldier and the State: The Theory and Politics of Civil-Military Relations, (Cambridge, MA: Belknap Press of Harvard University Press, 1957): 84. He goes on: "This produces the lowest possible level of military political power with respect to all civilian groups."
- <sup>13</sup> Janowitz, Morris, The Professional Soldier: A Social and Political Portrait, (Glencoe, IL: The Free Press, 1960): 420.
- <sup>14</sup> Huntington: 84.
- <sup>15</sup> Huntington: 87.
- <sup>16</sup> Huntington: 87-88.
- <sup>17</sup> Janowitz: 419.
- <sup>18</sup> Janowitz: 420.
- <sup>19</sup> Bland, "A Unified..." : 21.

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<sup>20</sup>Craig, Superintendent E.P., "In Light of Oka: A Need to Re-examine Aid of the Civil Power," Unpublished Thesis, (Kingston, ON: National Defence College, April 1991): 7

<sup>21</sup> Foster: 7.

<sup>22</sup> Foster: 8. I did not include Foster's expectations of and by the people as many are duplicative and Foster himself admits elements of these are not "clear" and, as a result, he does not complete the exchange matrix of the people and government.

<sup>23</sup> Bland, "A Unified:" 15.

<sup>24</sup> Bland, "A Unified:" 19.

<sup>25</sup> Gibson and Snider provide a responsibility matrix for civil and military leaders that is so close to Bland's it need not be repeated here other than to point out they suggest the use of force, as in "rules of engagement," is a responsibility shared between the civil and military leadership. See Gibson, Christopher, and Don M. Snider, "Civil-Military Relations and the Potential to Influence: A Look at the National Security Decision-Making Process," Armed Forces and Society, 25-2, Winter 1999: 195.

<sup>26</sup> Bland, Douglas L., "Patterns in liberal democratic civil-military relations," Armed Forces and Society, New Brunswick: 27 (4), Summer 2001: 4-6 of 7. 11 Mar 2004,

<<http://www.proquest.umi.com>>

<sup>27</sup> Bland, "A Unified:" 17. Considerable balance is required in applying the various civil-military relations theories offered here. Avant provides very credible critique that these "expectation" theories rely too heavily on a hard separation of responsibilities between the military and the political leadership. See her: Avant, Deborah, "Conflicting Indicators of 'Crisis' in American Civil-Military Relations," Armed Forces and Society, 24 (3), Spring 1988: 375-388. On the other hand I was not happy to proceed further down the "concordance theory" route suggested by Rebecca Schiff. This latter approach significantly downplays the 'separation theory' advocated by the traditional theorists for a significant more 'shared' or "cooperative" framework wherein the military and civilian leadership generally have a less clear separation of responsibilities. Her arguments are initially compelling but her case studies fail to support them. I am, therefore, not ready to incorporate her views. See Schiff, Rebecca, "Civil-military relations considered: a theory of concordance," Armed Forces and Society, 22 (1), Fall 1995: pg. 7. It seems wise, therefore, to go no further than Foster and Bland have gone in the examples here.

<sup>28</sup> Janowitz: 363-366.

<sup>29</sup> Morton, Desmond, Ministers and Generals – Politics and the Canadian Militia 1868-1904, (Toronto, Univ of Toronto Press, 1970): 15.

<sup>30</sup> Craig, Superintendent E.P., "In Light of Oka: A Need to Re-examine Aid of the Civil Power," Unpublished Thesis, (Kingston, ON: National Defence College, April 1991): 6-7.

<sup>31</sup> Morton, Desmond, "No More Disagreeable or Onerous Duty: Canadians and Military Aid of the Civil Power, Past, Present and Future", David B. Dewitt and David Leyton-Brown, editors, Canada's International Security Policy, (Toronto, ON: Prentice-Hall Canada, 1995): 134.

<sup>32</sup> Morton, 'No More Disagreeable...': 134.

<sup>33</sup> Morton, Ministers... : 16.

<sup>34</sup> Morton, Desmond, "Military Leadership and Change in the 1990's -Presentation to the XIII Annual CDA Institute Seminar:" p 5 of 8, 10 Mar 2004 <<http://cda-cdai.ca/library/morton.htm>>:

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- <sup>35</sup> Morton, Ministers... : 19.
- <sup>36</sup> Morton, Ministers... : 40.
- <sup>37</sup> Morton, Ministers... : 104.
- <sup>38</sup> Morton, "Bayonets...": 31
- <sup>39</sup> Morton, "Bayonets...": 33.
- <sup>40</sup> Morton, "Bayonets...": 32.
- <sup>41</sup> Morton, "Bayonets...": 33.
- <sup>42</sup> Morton, "Bayonets...": 32
- <sup>43</sup> Craig: 9.
- <sup>44</sup> Maloney, Dr. Sean, "A 'Mere Rustle of Leaves': Canadian Strategy and the 1970 FLQ", Canadian Military Journal, 1 (2), Summer 2000: 72-73. Major General Loomis suggests a rather more involved effort took place that completely dedicated the CP to meet the Quebec challenge involving the wholesale transformation of the Army and the reworking of the department capital plan. I have, however, followed the tone of Maloney and Morton and largely discounted the Loomis view. See Loomis, Dan G., Not Much Glory: Quelling the F.L.Q., (Toronto, ON: Deneau, 1984): 110-127.
- <sup>45</sup> Maloney, "A 'Mere Rustle of Leaves'...": 74-76.
- <sup>46</sup> Maloney, "A 'Mere Rustle of Leaves'...": 72.
- <sup>47</sup> Maloney, "A 'Mere Rustle of Leaves'...": 76.
- <sup>48</sup> Maloney, Sean, "Domestic Operations: The Canadian Approach," Parameters, 27(3), Autumn 1997: 140.
- <sup>49</sup> Charters, David A., "From October to Oka: Peacekeeping in Canada, 1970-1990", Marc Milner, editor, Canadian Military History: Selected Readings, (Toronto, ON: Copp Clark, 1993): 377.
- <sup>50</sup> Charters, "From October to Oka": 375.
- <sup>51</sup> Bland, Douglas, Chiefs of Defence – Government and the Unified Command of the Canadian Armed Forces, (Toronto: CISS, 1995): 190. I am a whole hearted-proponent of the "long dark night of spirit" school when it comes to interpreting Trudeau's relationship with the CF, (and you have no idea how much it pains me to state the above.)
- <sup>52</sup> Bland, CDS: 141-2.
- <sup>53</sup> As Craig makes clear in his Craig, Superintendent E.P., "In Light of Oka: A Need to Re-examine Aid of the Civil Power," Unpublished Thesis, (Kingston, ON: National Defence College, April 1991): 9, 12.
- <sup>54</sup> Maloney, "A 'Mere Rustle of Leaves'...": 80.
- <sup>55</sup> Maloney, "A 'Mere Rustle of Leaves'...": 81.
- <sup>56</sup> Bland, CDS: 189.
- <sup>57</sup> Morton, "Bayonets...": 33.
- <sup>58</sup> Roy, Brigadier-General J.A., "Operation SALON," Canadian Defence Quarterly, 13 (4), Spring 1984: 17.
- <sup>59</sup> Morton, "No More Disagreeable...": 143.
- <sup>60</sup> For a full discussion of the practical costs of military internal security operations see: Davidson-Smith, Lieutenant-Colonel G., "The Military in Aid of the Civil Power: Limits in a Democratic Society," Canadian Defence Quarterly: 30-32.
- <sup>61</sup> From their 1987 Defence White Paper as cited by Maloney, Sean, "Domestic Operations: The Canadian Approach," Parameters, 27 (3), Autumn 1997: 142.

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62 Significantly the right to invoke conscription by order in council is specifically denied. See War Emergency para 40. Revised Statutes of Canada, 1985 “Emergencies Act” R.S., 1985, c. 22 (4th Supp.) 8 Mar 2004, <http://laws.justice.gc.ca/en/E-4.5/49010.html> >. My examples rely heavily on Maloney, “Domestic Operations...”: 143.

63 Morton, “No More Disagreeable...”: 143.

64 Charter: 382.

65 Maloney, “Domestic Operations...”: 146-147.

66 Intriguingly Maloney and Charters both base their conflicting claims on interviews with General Foster. See Maloney endnote 57 and Charters endnote 67.

67 Bland, CDS: 199-200.

68 Craig: 11.

69 Craig: 11 and this is reinforced in Roy, Brigadier-General J.A., "Operation SALON," Canadian Defence Quarterly, 13 (4), Spring 1984: 18.

70 Craig: 11.

71 Bland, CDS: 199, and Craig: 18. Roy also points out the Mohawks enjoyed a 52% popular support rating. See: Roy 17.

72 Bland, CDS: 199-200.

73 Lessons learned. Roy: 18.

74 Suffer the first losses prior to reacting. Roy: 18.

75 Bland, CDS: 199.

76 Haydon: 50.

77 La Carte advocates the use of Special Forces in domestic law enforcement “reconnaissance and surveillance,” “HUMINT,” and, significantly “SOF direct action missions” – but only when WMD are involved. See La Carte, Donald A., Lt.-Col., “Asymmetric Warfare and the Use of Special Operations Forces in North American Law Enforcement,” Canadian Military Journal, Winter 2001-2002: 29-31. Wattie notes a plan to involve the reserves and See: Wattie, Curtis, “Reservists touted as terrorism fighters,” National Post, 8 Jan. 2004: A1, A4.

78 I have not been able to identify any DND policy direction that ordered this leading to the conclusion that the task indeed wasted away without any overall direction guiding the process.

79 Canada, National Defence Act, R.S., 1985, c N-5; updated to January 1991 Part II, Article 18 (2) and Part VI Aid of the Civil Power, articles 274-285; updated to August 31, 2003, 19 Mar 2004. <http://laws.justice.gc.ca/en/N-5/84610.html>

80 Theriault, General (Ret'd) G., "Democratic Civil-Military Relations: A Canadian View," Jim Hanson and Susan McNish, eds., The Canadian Strategic Forecast 1996: The Military in Democratic Society, (Toronto, Canadian Institute of Strategic Studies, 1996): 4-12.

81 Theriault: 6.

82 Craig: 13-15.

83 Theriault: 7.

84 Craig: 22.

85 Canada, PSEPC, Overview to National Counterterrorism Plan, (psepc, DG NSD), 15 Oct, 2004, at [http://www.psepc-sppcc.gc.ca/publications/natoa\\_security/pdf/terrorism\\_arrangement\\_e.pdf](http://www.psepc-sppcc.gc.ca/publications/natoa_security/pdf/terrorism_arrangement_e.pdf). At pages 5-21, 5-22.

86 Craig: 24. Again, Maloney appears to disagree fundamentally with Craig and I. He suggests no changes to our legislation and supports it arguing it is “simple, straightforward, and flexible

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while incorporating important safeguards for the civil population” in comparison with the US’ more “convoluted” legislation. Our Emergencies Act may indeed be better than US legislation but see the end note just before that reveals some of the approaches he uses to support the “flexibility” of that legislation. Further, civil-military relations are not central to his argument. Indeed he finds the US continuing fixation on a clear separation of the military away from law enforcement via the Posse Comitatus Act “outdated” as he argues at the same time for quite dramatic involvement of the military in domestic law enforcement as “investigators and informants.” See Maloney, “Domestic Operations...”: 149-150.

<sup>87</sup> Bland, “Who decides what...”: 13 of 23.

<sup>88</sup> Boulden, Jane, A National Security Council for Canada, (the Claxton Papers), (Kingston: Queens Univ, 2000): 27-28.

<sup>89</sup> Cited in Bland, “Who decides what...”: 12.

<sup>90</sup> The process of the CDS drafting the ROE and then briefing the concept of operations to Cabinet is well explained by Colonel Fenton. I suggest they are briefed on ROE at the same time only because it is logical to do so and because ministers do seem broadly familiar with them during many operations. I have no evidence to support that. It is unlikely we could access the Memoranda to Cabinet that would contain the proof needed. See Fenton, J.I., Colonel, Hail to the Chief: Strategic Command of the Canadian Forces, National Security Studies Course paper, Toronto, Canadian Forces College, page 5 of 12; 12 Mar 2004, <<http://wps.cfc.forces.gc.ca/papers/nssc1/fenton2.html>>

<sup>91</sup> Canada, Dishonoured Legacy – the Lessons of the Somalia Affair, (Report to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, (Ottawa: Public Works and Government Services, 1997): 659-660.

<sup>92</sup> Theriault, General (Ret'd) G., "Democratic Civil-Military Relations: A Canadian View," Jim Hanson and Susan McNish, eds., The Canadian Strategic Forecast 1996: The Military in Democratic Society, (Toronto, Canadian Institute of Strategic Studies, 1996): 10.

<sup>93</sup> Graham, Ross, “Civil Control of the Canadian Armed Forces: National Direction and National Command,” Canadian Military Journal, Spring, 2002: 27.

<sup>94</sup> Bland, “Who decides What...”: 38.

<sup>95</sup> Graham: 26. In the first section he quotes from: Bland, “Who decides What..”: 50.

<sup>96</sup> Graham: 27.

<sup>97</sup> Byers, R.B., “Canadian Civil-Military Relations and Reorganization of the Armed Forces: Whither Civilian Control?” Massey, Hector, Ed., The Canadian Military – a Profile, (Canada –no city given: Copp Clarke Publishing, 1972): 200. See especially his data of page 204 and thereafter which demonstrates the groundless nature of Hellyer’s claim of a loss of civil control.

<sup>98</sup> Byers: 200.

<sup>99</sup> Byers: 201.

<sup>100</sup> Byers: 201.

<sup>101</sup> Glassco Commission, cited by Bland, CDS: 12.

<sup>102</sup> Cited in: Canada, Commission of Inquiry into the Deployment of the Canadian Forces in Somalia, Dishonoured Legacy – The Lessons of the Somalia Affair, (Executive Summary), (Ottawa, Public Works and Government Services, 1997): ES-19..

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<sup>103</sup> Cited in: Canada, Commission of Inquiry into the Deployment of the Canadian Forces in Somalia, Dishonoured Legacy – The Lessons of the Somalia Affair, (Chapter 2), (Ottawa, Public Works and Government Services, 1997): 420.

<sup>104</sup> Canada, Dishonoured Legacy, (Chapter 2): 422.

<sup>105</sup> Canada, Dishonoured Legacy, (Chapter 2): 425. See also his views in Bland, CDS: “The system of command of the CF in peacetime, crisis and war, therefore, is an essential component of national civil-military relations. If the system of command is not precise then accountability and parliamentary control of the armed forces also fail.”

<sup>106</sup> Bland, CDS: 204-208.

<sup>107</sup> Bland, Douglas, “Who decides what? Civil-military relations in Canada and the United States.” Canadian – American Public Policy, (Feb, 2000, Iss, 41): 9 of 22. 9 Mar 2004, <http://gateway.proquest.com>

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