

Background

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The War on Terrorism in Southeast Asia: Developing Law Enforcement

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It is a little-publicized fact that police have arrested more terrorists than military operations have captured or killed. Police in more than 100 countries have arrested more than 3,000 suspects linked to al-Qaeda,¹ while the military has captured some 650 enemy combatants.²

In Asia, police forces have detained far more terrorists than the military forces have detained, but most U.S. security aid is given in the form of military assistance. For example, in 2003, the United States provided \$20 million of military assistance to the Philippines while giving only \$2 million for law enforcement development.

This disparity is a direct result of Section 660 of the Foreign Assistance Act of 1961, which was amended in 1973 to prohibit the use of foreign assistance funds to train police.³ (See Appendix.) Various U.S. agencies train police and law enforcement officers, but only after Congress grants an exception. The consequence is that counterterrorism efforts in Southeast Asia lack clear policy on the role of the American assistance, clearly defined program objectives, unity of effort, and a means to evaluate the successes of individual programs.⁴

1. Peter Slevin, "U.S. Pledges Not to Torture Terror Suspects," *The Washington Post*, June 27, 2003, p. A1.
2. Francis Taylor, "Transcript: State Dept Official Says War Against Terrorism Continues," June 9, 2003, at usembassy.state.gov/tokyo/wwwwh20030611a6.html.
3. Public Law 93-189.

Talking Points

U.S. counterterrorism efforts in Southeast Asia lack clear policy on the role of the American assistance, clearly defined program objectives, unity of effort, and a means to evaluate the successes of individual programs. To improve the effectiveness of U.S. counterterrorism efforts, Congress and President Bush should do the following:

- Congress should repeal the prohibition on training foreign law enforcement agencies.
- The President should issue a directive giving one agency the responsibility of coordinating all foreign law enforcement development.
- Congress should refocus aid on law enforcement training and reform.

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To improve the effectiveness of U.S. counterterrorism efforts, Congress and the President should take the following actions:

- **Congress should repeal the prohibition on training foreign law enforcement agencies and offer guidelines to address human rights and democracy building concerns.**
- **The President should issue a directive giving one agency the responsibility of coordinating all foreign law enforcement development.**
- **Congress should focus aid on law enforcement training and reform.**

The Changing Terrorist Situation

Despite the many successes of the two-year war, terrorism remains a potent threat to international security. The U.S. Department of State has a list of over 100,000 names worldwide of suspected terrorists or people with contact with terrorists.⁵ Before the al-Qaeda camps in Afghanistan were shut down, al-Qaeda trained at least 70,000 people and possibly tens of thousands more.⁶ Jemaah Islamiyah, a terrorist group linked to al-Qaeda, is estimated to have 3,000 members across Southeast Asia and is still growing.⁷

American intelligence continues to receive, with varying degrees of credibility and specificity, information highlighting possible terrorist targets. Terrorists continue to target and threaten businesses and public sites deemed Western, such as the Marriott Hotel in Jakarta. In addition, Indonesia, Turkey, Saudi Arabia, and Pakistan—all Muslim countries—have suffered terrorist attacks directed against their own citizens.

The newest terrorist target may be global shipping. Southeast Asia, where the rate of maritime piracy is already the worst in the world, is particularly vulnerable to maritime terrorism. Lloyd's List reported that terrorists might be training maritime

pilots in the 600-mile-long Malacca Straits in order to capture a ship, pilot it into a port or chokepoint, and detonate it.⁸ Reports of missing tugboats have only aggravated these fears.

The Need for Law Enforcement Development

The U.S. Department of Justice emphasizes that effective law enforcement development means training not just police, but also the entire judicial system from police to judges to prisons.

The reason for the disparity between military and police efficacy in anti-terrorist operations is not military incompetence, but rather that police are the more appropriate instrument for fighting terrorists in most circumstances in Southeast Asia. With the exception of the Philippine terrorist organization Abu Sayyaf, none of the terrorist groups that concern Americans are fighting from jungle hideouts. Rather, Jemaah Islamiyah (JI), the largest and deadliest group operating in the region, operates underground. Many JI members reside in urban centers and rural religious schools. They are not being captured in military operations, but through police investigations.

Despite these promising successes, weak law enforcement has been the source of some of Southeast Asia's most spectacular counterterrorism embarrassments. On July 14, 2003, while Prime Minister John Howard of Australia was visiting Manila to discuss counterterrorism with President Gloria Macapagal Arroyo, Farthur Rahman Ghози, an Indonesian explosives expert and prominent JI member linked to a series of bombings since December 2000, walked away from his top-security Philippine prison cell along with two of his cell mates. After eluding an intense manhunt for three months, Ghози was killed by Philippine police on October 12, 2003.

4. See U.S. General Accounting Office, *Foreign Aid: Police Training and Assistance*, GAO/NSAID-92-118, March 1992, at archive.gao.gov/t2pbat7/145909.pdf.

5. Eric Lichtblau, "Administration Creates Center for Master Terror 'Watch List,'" *The New York Times*, September 17, 2003.

6. Senator Bob Graham (D-FL) was quoted as saying that "al-Qaeda has trained between 70,000 and 120,000 persons in the skills and arts of terrorism." Bob Graham, interview, *Meet the Press*, NBC, July 13, 2003.

7. Terence Hunt, "Bush Shows Resolve by Visiting Bali," *Chicago Sun-Times*, October 22, 2003, p. 36.

8. Lloyd's List International, "Asia Pirates Training for Terrorist Attack," October 15, 2003.

Also in July, Indonesian and Australian police raided JI safe houses in the Indonesian cities of Jakarta and Semarang, arresting nine JI members and seizing a considerable amount of explosives. Unknown to their Australian counterparts, the Indonesian police also recovered a meter-high pile of documents identifying politicians targeted for assassination and areas to be bombed, including the Marriott Hotel in Jakarta. Although the Indonesian police were warned that such an attack might occur, the Marriott Hotel in Jakarta was bombed a month later, killing 12 people. Neither the Australian nor the American government was aware of the captured documents until the Indonesian police revealed their existence in press interviews following the bombing.

In another incident in August 2003, Abu Bakar Bashir, spiritual and accused operational leader of Jemaah Islamiyah, was convicted for his role in the Bali bombing but received only a four-year sentence, which on appeal was reduced to three years. Although Indonesia's judiciary comes under frequent criticism for corruption, in this case, the light sentence is attributed to poor prosecution rather than judicial malfeasance.

The same law enforcement weaknesses exist in combating piracy and, by extension, maritime terrorism. According to the International Maritime Bureau, there were 344 maritime piracy attacks in the first nine months of 2003, compared to 277 in all of 2002, a jump of 19 percent.⁹ The pirates operate from ordinary ports and shores where statutory responsibility lies with the maritime law enforcement authorities (coast guard, marine police, and port police).¹⁰ Nevertheless, it is difficult to find any report of the Indonesian or regional police arresting pirates, and there is no sign that they have taken substantive steps to secure ports and seaways. This vulnerability to piracy is an open invitation to terrorists looking for an easy yet spectacular target.

What Should be Done

To assist law enforcement agencies in the region to fight terrorism more efficiently, the United States should add law enforcement assistance to its counterterrorism strategy. In many Southeast Asian countries, police forces are poorly trained and paid. Emphasis should be placed on establishing professional and accountable police forces, but law enforcement reforms should include more than equipping and training police. They should also include creating indigenous police intelligence units; sharing intelligence across national boundaries; reforming and training the judiciary; making treasury, customs, and immigration officials accountable; and establishing secure prisons.

Because of self-imposed obstacles in training and working with foreign police, the U.S. government has been delinquent in providing coordinated assistance to the region's law enforcement agencies. The biggest restriction is Section 660 of the Foreign Assistance Act of 1961, as amended, which prohibits the use of U.S. government foreign-assistance funds for training police and related programs.¹¹

In the late 1960s and 1970s, America was spending \$60 million a year to train police in 34 countries, but Congress became concerned about the lack of policy guidance and worried that some of the training was supporting repressive regimes.¹² Since then, safeguards and procedures for vetting training candidates have been put in place, but Section 660 is still law.

Over the years, Congress has recognized that this prohibition is too broad and has granted many exemptions, but this policy of making piecemeal exceptions has fractured and distorted U.S. efforts to support foreign police forces on counterterrorism. As one U.S. Department of Justice official lamented, "To develop policies and programs under a prohibition is impossible. We have to ask Congress for an exception to every change in circumstances."¹³

9. Andrew Guest, "Piracy Attacks Hit New High," *Trade Winds*, October 29, 2003.

10. Mark J. Valencia, "International Co-Operation in Anti-Piracy Efforts in Asia: Some Considerations," East-West Center, Asia-Pacific Area Network, February 20, 2001.

11. See U.S. General Accounting Office, *Foreign Aid: Police Training and Assistance*.

12. *Ibid.*

Section 660 also discourages accountability and leadership. Currently, at least five separate U.S. departments—Justice, Defense, State, Treasury, and Transportation—have some kind of exempted foreign-police training program. No agency has been singled out to lead or coordinate the efforts. Consequently, training is often duplicated or inappropriate for the police in a particular country. Because of the lack of national guidance, most law enforcement training is coordinated at the embassy level, without clear national guidelines. National policies on law enforcement assistance would ensure that the programs meet national objectives.

To deal with these ongoing problems and improve the effectiveness of U.S. counterterrorism efforts, Congress and the President should therefore take the following actions:

- **Congress should repeal the prohibition on training law enforcement agencies.** In the 2004 budget, Congress is again amending the prohibition on training police to grant the State Department greater flexibility, but that amendment does not end the ban. Congress should completely repeal the police training prohibition and instead issue guidelines that address human rights and democracy building concerns.
- **The President should issue a presidential decision directive on foreign law enforcement reform and training.** Under the current circumstances, law enforcement training may meet the needs of an individual agency or congressional constituency but still not meet American

national security goals. The President needs to appoint one agency, probably the Department of State, to lead the law enforcement development effort.

- **Congress should refocus aid from military assistance to law enforcement.** Anti-terrorist funding must focus on the security organizations actually fighting terrorism. Military aid to Southeast Asia may have political or operational objectives, but as long as the primary objective is combating terrorists, security assistance to Southeast Asia should focus on law enforcement development.

Conclusion

The war against terrorism has had its successes, but it is far from over. Al-Qaeda and its affiliate terrorist groups, such as Jemaah Islamiyah and Abu Sayyaf, are still at large and still dangerous.

The world's governments have taken actions aimed at severely crippling the terrorists, but much more needs to be done. Improving law enforcement and reforming judicial systems, if fully implemented, can change the face of the war and help lead to the end of terrorism as a major international problem.

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13. Interview with the author, August 6, 2003.

Appendix

Foreign Assistance Act of 1961, Section 660, as amended—Prohibiting Police Training

- a) On and after July 1, 1975, none of the funds made available to carry out this Act, and none of the local currencies generated under this Act, shall be used to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad.
- b) Subsection (a) of this section shall not apply—
1. with respect to assistance rendered under section 515 (c) of the Omnibus Crime Control and Safe Streets Act of 1968 with respect to any authority of the Drug Enforcement Administration or the Federal Bureau of Investigation which relates to crimes of the nature which are unlawful under the laws under section 482 of this Act;
 2. to any contract entered into prior to the date of enactment of this section with any person, organization, or agency of the United States Government to provide personnel to conduct, or assist in conducting, any such program;
 3. with respect to assistance, including training, in maritime law enforcement and other maritime skill;
 4. with respect to assistance provided to police forces in connection with their participation in the regional security system of the Eastern Caribbean states; or
 5. with respect to assistance, including training, relating to sanctions monitoring and enforcement;
 6. with respect to assistance provided to reconstituted civilian police authority and capability in the post-conflict restoration of host nation infrastructure for the purposes of supporting a nation emerging from instability, and the provision of professional public safety training, to include training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of civilian police roles that support democracy;
7. with respect to assistance provided to customs authorities and personnel, including training, technical assistance and equipment, for customs law enforcement and the improvement of customs laws, systems, and procedures.
- Notwithstanding clause (2), subsection (a) shall apply to any renewal or extension of any contract referred to in such paragraph entered into on or after such date of enactment.
- c) Subsection (a) shall not apply with respect to a country which has a long standing democratic tradition, does not have standing armed forces, and does not engage in a consistent pattern of gross violations of internationally recognized human rights.
 - d) Notwithstanding the prohibition contained in subsection (a), assistance may be provided to Honduras or El Salvador for fiscal years 1986 and 1987 if, at least 30 days before providing assistance, the President notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of this Act, that he has determined that the government of the recipient country has made significant progress, during the preceding six months, in eliminating any human rights violations including torture, incommunicado detention, detention of persons solely for the non-violent expression of their political views, or prolonged detention without trial. Any such notification shall include a full description of the assistance which is proposed to be provided and of the purposes to which it is to be directed.