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National Security Has Priority over the Rights of Citizens in PSYOP.

Dr. Glen Segell, FRGS, is Researcher at The Institute for National Security Studies Tel Aviv, Lecturer at Bar-Ilan University and Senior Researcher for the Ariel Research Center for Defense and Communication. He was Director of Research for the Information Operations Task Force in Iraq.

Introduction

In democracies such as the United States there are sometimes competing interests. This article considers that on the one hand psychological operations (PSYOP) conducted by the government is essential to national security. On the other citizens' rights to be protected against the same psychological operations (PSYOP) conducted by the government is also essential. When national security and when citizens rights are at stake then the competing interests issue is a fundamental debate that revolves around the role of government. Should government have priority to defend the collective society through PSYOP implemented to support national security interests or should government have priority to defend the rights of individuals. In the case of PSYOP this article finds that national security considerations have priority over the rights of citizens in PSYOP.

Government has determined the priorities and the facts speak for themselves. PSYOP implemented to support national security interests has been given a clear and unified objective compared to the laws protecting the rights of citizens. The laws are created, passed and implemented by government so it is clear that government has purposely ensured that there are disparate inconsistencies and incoherent vagueness in the law protecting the rights of citizens. This is evident in the dichotomy in the doctrinal publication "Psychological Operations" released by the Joint Chiefs of Staff;¹ in the contradictory amendments to existing legislation such as the Smith-Mundt Modernization Act of 2012 to update the Smith-Mundt Act of 1948; and in the different jurisdictions of the State Department, the Department of Defense and the armed forces. Various cases show support this for example the use of Video News Reports and the role of CNN employees. The law protecting the rights of citizens play second fiddle to national security considerations.

The prioritization of government of PSYOP implemented for national security interests over that of the rights of citizens is significant as it highlights the way in which democracies struggle to accommodate competing interests. There appears to be no options for a middle ground; if the rights of individual citizens are to be prioritized then national security could be compromised. If national security is compromised then the collective society is at risk; so the preference is to prioritize national security even if the individual citizen's rights are compromised.

To rejoin such a quagmire it is necessary to delineate PSYOP and the role it plays in national security. To show why national security considerations have priority over the rights of citizens practicalities have to be considered of what PSYOP is, who implements and practices PSYOP and why, who decides doctrine and policy, what is the law and who enforces the law.

What is PSYOP?

PSYOP applied by the US armed forces has its derivation as “perception management” defined as intending to “convey selected information and indicators to foreign audiences to influence their emotions, motives, objective reasoning, and ultimately the behavior of foreign governments, organizations, groups, and individuals.”² It has been applied in all wars and almost all military operations since World War II, and some before that. On the tactical level PSYOP units aim to induce or reinforce attitudes and behavior favorable to US objectives. The emphasis here is that wars are foreign and not domestic; and that the enemy and its population are dehumanized by governments so that voters will be more likely to support a war. States also portray enemy way of life and their governments as barbaric. People become things which can be slaughtered like animals. Such dehumanization and barbarism was the foundation for the religious wars of the Crusades, the colonial wars and occupations by European states of Africa, Asia and South America and the intra-ideological wars of Europe typified by World War II.

To be sure, the aggressive modern day battlefields of PSYOP include the Internet with its multiple applications and software enabling two-way communication; one-way broadcast via hundreds of TV stations available via satellite and cable, and even more radio stations, newspapers, leaflets and word of mouth. When deployed PSYOP units are classified as Special Operation Units operating as an integral part of strategy, especially in relation to broader information operations (IO).

Information has long been a key part of human competition; those with a superior ability to gather, understand, control, and use information have always had a substantial advantage on the battlefield. Information is both a critical capability and vulnerability across the spectrum of military operations. Where it is not possible to know the enemies motives or intentions then PSYOP is aimed at influencing them to turn the tide of the battle. Deficiencies in intelligence can be trounced by transforming the enemies intent, as was undertaken in Iraq.³

PSYOP provide a low-cost, high-impact method to deter adversaries and obtain the support of friendly or neutral target audiences. The effective use of PSYOP can provide asymmetrical advantages by exposing and exploiting adversaries’ resistance and psychological weaknesses to create uncertainty and ambiguity, thereby lowering their morale and will to fight and win. In combination with physical military operations, PSYOP can encourage popular discontent with the adversary’s leadership and degrade the enemy’s ability to conduct military operations. Hence the value of PSYOP is to both inform and to influence.

The activities of influence allow the military commander to prepare and shape the operational battle space by conveying selected information and indicators to target audiences, shaping the perceptions of decision-makers, securing critical friendly information, defending against sabotage, protecting against espionage, gathering intelligence, and communicating selected information about military activities to the global audience. There are many techniques, some negative and some positive. For example propaganda offers negative connotations whilst conversely leaflets informing of impending air strikes have a positive value to reduce casualties in foreign civilian populations.

Executing and Supervising PSYOP

PSYOP is a tool of war but its use is also restricted and controlled by the laws of war. PSYOP by the US armed forces is governed by explicit legal authorities that direct and determine how the capability is utilized. This legal foundation establishes PSYOP as a communications means, and allows its integration with those strategies that apply the instruments of national power. The General Counsel, Department of Defense conducts legal reviews of all proposed PSYOP plans and programs for consistency with US public law, regulations, and internationally recognized legal standards as applicable.⁴

There is an outline for each planned PSYOP operation also known as a campaign. PSYOP must follow a clearly stated policy, doctrine and strategy and must have consistent core messages that flow from policy goals to be implemented as a Joint Task Force (JTF). Such a JTF should include control and coordination with other military units and planners such as Military Deception (MILDEC), Operational Security (OPSEC) and Electronic Warfare (EW); and planners in the fields of civic action such as Foreign Humanitarian Assistance (FHA), Civil-Military Operations (CMO), command, control, and communications and intelligence (C³I); and legal offices such as the Judge Advocate General (JAG); and physical operation planners and executors.

PSYOP cannot substitute for an incoherent policy or rescue a poorly executed plan. The conveyed message must be credible even if techniques used can include deception, propaganda and distortions of truth including falsehoods. The message must be reinforced with actions for they speak louder than words; a technique of "Say-Do." To ensure the PSYOP is an integral part of national security and in strengthening PSYOP coordinates with adjacent commands and civilian agencies, including the State Department, US diplomatic missions, the US Information Agency, and the US Agency for International Development.

PSYOP therefore seem to be an ideal way to enhance national security objectives at an affordable financial price with potential saving of lives. However legal issues arise when considering how communications are global and that it is very hard to confine a PSYOP operation or campaign to a specific geographic locality. Further not all of the enemies of the United States are outside of her sovereign borders. Such dilemmas are apparent in doctrines and in evolving legislation. Considering these finds that national security considerations have priority over legal considerations. The rights of individuals are dismissed for the sake of the security of the collective community. Individuals are illegally subjected to psychological influences by the military, for example not to support activist movements or organizations that the government deems subversive to the government.

The Joint Chiefs of Staff

The Publication of the Joint Chiefs of Staff states that "US PSYOP forces will not target US citizens at any time, in any location globally, or under any circumstances."⁵ However it also states "When authorized, PSYOP forces may be used domestically to assist lead federal agencies during disaster relief and crisis management by informing the domestic population."⁶ The publication also notes that it is permissible to deploy PSYOP as civil authority information

support elements (CAISEs); but only by broadcasting and disseminating public information; and only under direction and authority of a designated lead federal agency.⁷

Reading the epistle of the law in the doctrine, military forces and civilian authorities are permitted to inform the domestic population but without targeting them. They are permitted to inform the domestic population but without influencing them. Consequently and implicit is that PSYOP may be employed both during military operations as well as operations led by civilian agencies.⁸

Accordingly it is permissible to inform US citizens but not to influence them. There is nevertheless a fine line both in definitions and in implementation. It is not a simple matter to only inform because US citizens may unwittingly, unintentionally and unknowingly be influenced resulting from the inability to confine PSYOPS geographically. Global media broadcast over satellite and the Internet may not specifically target US citizens but it may be viewed by them and hence they may be influenced.

Ultimately the armed forces justify the distinction between inform and influence as the end state and not the means. So even if US citizens are subject to PSYOP they have not demonstrated through action that they have been influenced. The "Psychological Operations" doctrine released by the Joint Chiefs of Staff stipulates, "Every activity of the force has potential psychological implications. The slender distinction is manifest in the end-state to the same articulated goals."⁹ For example, victory can be achieved by removing an insurgent threat from Village X physically or by influencing population X in Village X to be neutral by PSYOP. In this way, US citizens in the US would not be party to such an action even if they were subject to the PSYOP, because they are not the target.

Evolving Legislation

Additional to the quandary in the doctrinal publication of the Joint Chiefs of Staff is that they are not the exclusive authority implementing PSYOP or supervising the legal environs. Debating the differences between informing, influencing and targeting is only one aspect of the law. PSYOP must also adhere to all domestic laws that include copyright law and broadcasting law; and hence is subject to all domestic Courts of Law.

PSYOP is also required to adhere International Public Law, for example the Geneva and Hague Conventions. These international conventions preclude the injury of an enemy through "treachery" or "perfidy", including when the enemy is a US citizen or has dual citizenship for example terrorists. It is also a violation of Geneva Convention III to publish photographic images of enemy prisoners of war, even if they are interned within the United States and are US citizens or have dual citizenship.

There are laws to prevent the US government from using PSYOP against its own citizens. The problem is enforcing them given that they are probably breached by the very government agencies that are supposed to abstain from it. Proposals to amend and update the legislation don't appear to offer any substantial enhances. For example the Smith-Mundt Modernization Act of 2012 to update the Smith-Mundt Act of 1948.¹⁰

The 1948 Act prohibits the State Department's public diplomacy organs but to no other department or agency of the federal government from disseminating propaganda intended for foreign audiences domestically. The Armed Forces appear to consider that it also applies to their PSYOP activities.

The purpose of the amendment is to move with the times, technologically. The 1948 bill was drafted in a pre-satellite, pre-television, and pre-internet era. In today's world satellite and cable TV and instant online access to websites and videos from anywhere in the world, makes it impossible to segregate information into "foreign" and "domestic". The problem with the amendment is that there are no clear provisions, bodies or oversights for its enforcement and even the State Department itself seems unclear what bureaus are supposed to abide by it.

One possible way of crafting regulation is through funding as determined by legislation. The Smith-Mundt Modernization Act of 2012 echoed in the 2013 Defense Authorization Act states "No funds authorized to be appropriated to the Department of State or the Broadcasting Board of Governors shall be used to influence public opinion in the United States".¹¹ The origins of this notion date back to the 1913 Gillett Amendment, that states "Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."¹² Every annual appropriations bill passed by Congress since 1951 has included a stipulation that "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress."

The Department of Defense also has its own stipulation curtailing domestic propaganda through funding as determined by legislation. Codified in USC Title 10 Section 2241a, the relevant passage reads: "Funds available to the Department of Defense may not be obligated or expended for publicity or propaganda purposes within the United States not otherwise specifically authorized by law."¹³

Various Cases

One case pertaining to the fine-line in reading and implementing legislation is deciding if the President can advertise his ideas to influence public opinion on military inclined key issues in the same way as non-military topics. The Government Accountability Office repeatedly ruled that the Bush and Clinton Administrations' use of Video News Reports, (VNR) to influence public opinion on key military inclined issues was illegal domestic propaganda. However the White House dismissed the finding, arguing that the use of such reports was an issue of government intent, not legal restriction.¹⁴

Another case in question pertains to the Department of Defense, which in 2003 issued an "Information Operations Roadmap" detailing the Rumsfeld Department of Defense's PSYOP strategies. The document failed to cite any of the statutory provisions putting legal restraints on the department's ability to disseminate propaganda domestically, admitting that "information intended for foreign audiences, including public diplomacy and PSYOP, increasingly is consumed by our domestic audience and vice-versa."¹⁵

The Department of Defense has also argued that “the distinction between foreign and domestic audiences becomes more a question of US government intent rather than information dissemination practices.” Especially where there is homegrown terror organizations and foreign terror organizations operating on US soil. The document goes on to justify its actions because the internet is akin to an enemy weapons system and asserts that the “DoD’s ‘Defense in Depth’ strategy should operate on the premise that the Department will ‘fight the net’ as it would a weapons system.”¹⁶

US government implementation of PSYOP against US citizens is not just hypothetical. In 2000, it was revealed that CNN had employed active duty US PSYOP officers at its headquarters in Atlanta. It has since emerged that this was part of a larger program including other news networks that embedded PSYOP officers in various newsrooms across the country. To date there has been no legal action against the US government for this.¹⁷

Conclusion

This article commenced by noting that in democracies such as the United States there are sometimes competing interests. It debated on the one hand that psychological operations (PSYOP) conducted by the government are essential to national security. It also debated on the other hand the laws that grant citizens rights against the same psychological operations (PSYOP) conducted by the government. In the debate sustained with examples this article finds that PSYOP implemented for national security interests have priority over the rights of citizens.

The prioritization of government of national security interests over that of the rights of citizens is significant as it highlights the way in which democracies struggle to accommodate competing interests. There appears to be no options for a middle ground; if the rights of citizens are to be prioritized then national security could be compromised. If national security is compromised then the collective society is at risk; so the preference is to prioritize national security even if the individual citizen’s rights are compromised. The laws are created, passed and implemented by government so it is clear that government has purposely ensured that there are disparate inconsistencies and incoherent vagueness in the law protecting the rights of citizens. It is clear that government has selected that PSYOP implemented for national security interests has been given priority.

This is a significant debate with findings since it questions the fundamental role of government. In democracies there is sustained interest that government is obligated to defend both the collective society through national security but it should also at the same time defend the rights of individual citizens. The difficulties in doing both simultaneously is to find the fine line in implementation PSYOP but also obeying the wording of the law to protect the rights of citizens. In the discussion this article provided evidence that the US armed forces, the State Department and other civil agencies are not legally permitted to target and influence its own citizens. However they may inform them and indeed are legally obligated to do so by virtue of democratic rights to keep all citizens informed of governmental activities.

It is this inherent difficulty of informing but not influencing where the rights of citizens are not protected. Should this be overcome, then the best of both worlds would coexist; national security

interests to protect the collective society at the same time as the protection of the rights of citizens. However no subject content of government supplied information can be so objective that would not lead the recipient to form an opinion. Further any PSYOP or information campaign requires a target audience when considering content; which is no more than a commercial marketing approach.

Government, the armed forces and the law are in a predicament over the end-state or objective of PSYOP; for it is in this end state that the rights of citizens are not protected. The armed forces claim that PSYOP only becomes a weapon if the objective has an end-state or goal to actively change a persons thoughts, perceptions or behavior against his will. The armed forces claim that PSYOP is not a weapon if the US citizen doesn't display an altered end-state; meaning he has not been influenced. However such rhetoric is a double edged sword. It could be argued that the absence of being influenced is indicative of a failed PSYOP rather than the intent to only inform and not to influence.

Hypothetically, should a US citizen be influenced, the paradox is determining who is the legal authority. The reason why issues of legality have not been at the fore of media attention is due to an absence of an enforcing authority. The various cases show that even with legislation, the government doesn't detain the government for contravening the governments rules and laws because the government is acting to guarantee national security. Hence the PSYOP operations have been prioritized over the rights of citizens through the indistinctness of informing, influencing and targeting, the lack of a singular law enforcing authority, dichotomies in doctrine and inconsistencies in amendments to legislation.

Until such matters are resolved, until it is possible to inform without influence and until applicable legislation is passed and enforced; the situation will persist that PSYOP in support of national security interests for good or for ill will have priority over the rights of citizens. A prescription for citizens who are not content is to lobby the democratic process to pass appropriate legislation; this would indeed be a test of democracy in such countries as the United States where there are sometimes competing interests.

Notes

¹ Joint Chiefs of Staff , *Psychological Operations*, Joint Publication 3-13.2, January 7, 2010.
<http://www.fas.org/irp/doddir/dod/jp3-13-2.pdf>

² Department of Defense, *Dictionary of Military and Associated Terms*, Joint Publication 1-02, as amended through 13 February 2013.

³ Glen Segell, Creating Intelligence: Information Operations in Iraq, *International Journal of Intelligence and Counter-Intelligence*, Volume 22 Number 1 (March 2009) pp. 89-109

⁴ Psychological Operations, op. cit. p. viii

⁵ Psychological Operations, ibid. p.I-3.

⁶ Psychological Operations, ibid. p.VI-1.

⁷ Psychological Operations, ibid. p.I-2.

⁸ Psychological Operations, ibid. p.I-3.

⁹ Psychological Operations, ibid. p.I-5.

¹⁰ HR 5736 IH 112th Congress 2d Session *Smith-Mundt Modernization Act of 2012*,
<http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.5736>:

¹¹ 2013 *Defense Authorization Act, Sec 208*. <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.4310>:

¹² 1913 *Gillett Amendment*, <http://academic.mu.edu/adpr/ekachai/chapters/Ch14.htm>

¹³ Department of Defense, *USC Title 10 Section 2241a* <http://www.law.cornell.edu/uscode/text/10/2241a>

¹⁴ James Corbett, *The Corbett Report*, November 6, 2012, <http://www.corbettreport.com/psyops-101-psyops-on-the-homefront/>

¹⁵ Adam Brookes, US Plans to fight the net revealed, *BBC*, January 27, 2006, <http://news.bbc.co.uk/2/hi/americas/4655196.stm>

¹⁶ Department of Defense, *Information Operations Roadmap*, <http://information-retrieval.info/docs/DoD-IO.html>

¹⁷ Project Censored, Army's Psychological Operations Personnel Worked at *CNN*, April 30, 2010 <http://www.projectcensored.org/top-stories/articles/3-us-armys-psychological-operations-personnel-worked-at-cnn/>