Handbook for Military Support to Rule of Law and Security Sector Reform

Unified Action Handbook Series
Book Five

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UNIFIED ACTION HANDBOOK SERIES

This *Handbook for Military Support to Rule of Law and Security Sector Reform* is Book Five in a set of five handbooks developed to assist the joint force commander design, plan, and execute a whole-of-government approach. Included with the series is an overview J7/J9 Pamphlet, *Executive Summary of the Unified Action Handbook Series*, that describes the handbooks, suggests how they should be used, and identifies the significant interrelationships among them. The following is a short summary of each handbook:

Book One: ***Military Participation in the Interagency Management System for Reconstruction and Stabilization***

The handbook outlines joint force roles and responsibilities in the Interagency Management System (IMS) and existing interagency coordination authorities and mechanisms. It aligns with the *USG Planning Framework for Reconstruction, Stabilization, and Conflict Transformation.* It will also align with the *IMS Guide* under development at the Department of States' Office of the Coordinator for Reconstruction and Stabilization.

Book Two: ***Military Support to Essential Services and Critical Infrastructure***

This handbook defines services essential to sustain human life during stability operations (water, sanitation, transportation, medical, etc.), the infrastructure needed to deliver such services, and potential joint force responsibilities.

Book Three: ***Military Support to Governance, Elections, and Media***

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Book Four: ***Military Support to Economic Stabilization***

This handbook outlines joint force support to economic development. It addresses conducting a comprehensive economic assessment, employment and business generation, trade, agriculture, financial sector development and regulation, and legal transformation.

Book Five: ***Military Support to Rule of Law and Security Sector Reform***

This handbook defines the "Rule of Law;" explains the interrelationship between rule of law, governance, and security; and provides a template to analyze the rule of law foundation essential to successful stability operations.

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PREFACE

1. Scope

The United States Joint Forces Command (USJFCOM) *Handbook for Military Support to Rule of Law and Security Sector Reform* provides fundamental guidance, planning considerations, techniques, procedures, and other information for rule of law (ROL) issues that the joint force commander (JFC) and his staff may encounter in joint operation/campaign planning and in executing military operations such as theater security cooperation, foreign humanitarian assistance, stability operations, and peace operations. This handbook includes, within its definition of ROL, activities ranging across the functional spectrum of policing, management and oversight, and prisons; explains the interrelationship between ROL, governance, and security; and outlines the role of security sector reform (SSR) in building partner capacity to strengthen stability and ROL. Finally, this handbook provides a template to analyze the rule of law foundation essential to successful stability operations

2. Purpose

This handbook is primarily for commanders and planners, rather than for lawyers. It is a practical guide that provides templates, tools, best practices, and lessons learned for planning and execution at the theater-of-operations level and below. Its primary purpose is to aid US military commanders and planners to more fully understand their roles and tasks in establishing ROL in fragile states during stability operations, in failed states, or in occupied territory in the immediate post-conflict period. Planning and executing ROL efforts to support military missions and giving legal advice to the commander on those missions are two different functions. While legal professionals are critical participants in ROL activities to support joint operations, planning for operations which include tasks to restore or strengthen ROL is a commander and operational planner responsibility. For purposes of operational awareness and understanding, this handbook addresses many of the linkages between ROL and the legal issues that impact ROL considerations for planning and operations. This handbook supports operational planning that integrates the elements of operational law and other legal issues covered authoritatively in doctrine and discussed in other non-doctrinal publications.

3. Content

a. This handbook does not answer every question regarding ROL or SSR that may arise in military operations. Strengthening ROL can mean different things to different stakeholders, and the requirements vary depending on the specific operation and the political, geographic, and cultural context in which an operation takes place. This handbook provides JFCs and their staffs with ways to conduct mission analysis, assessments, and interagency coordination that will lead to more comprehensive approaches to build sustainable host nation capacity. ROL and SSR are not exclusively or even primarily military responsibilities; in most cases, these tasks require whole-of-

government engagement by multiple US Government (USG) agencies, as well as intergovernmental organizations (IGO) and other international stakeholders.

b. This handbook complements other ROL and SSR guidance, including the relevant joint and Service military doctrinal publications,[1] systems governing interagency processes, and civilian guides published by the Department of State (DOS), US Agency for International Development (USAID), and other USG agencies. Additionally, this handbook incorporates the interagency-accepted principles of SSR contained in the *Organization for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC) Handbook on Security System Reform.*

4. Development

a. JP 1-02, *Department of Defense Dictionary of Military and Associated Terms*, defines unified action as, "The synchronization, coordination, and/or integration of the activities of governmental and nongovernmental entities with military operations to achieve unity of effort." To this end, USJFCOM embarked on a multi-year "Unified Action" project to carry forward the principles of unified action through concept development and experimentation. This project focused on two lines of operations (LOOs) to achieve its objectives. The first line included limited objective experiments contributing to the implementation of the DOD work plan to support *National Security Presidential Directive 44* (NSPD-44). The second LOO included spiral events to produce a series of handbooks and overview (see inside of the front cover). The products of both LOOs were developed and validated through a rigorous process of experimentation conducted with military and civilian partners across the United States Government.

b. Development of this handbook involved close consultation with civilian agency, coalition , and nongovernmental partners over a four-year period. It is designed as "a military product for a military consumer," and while it is not a formal interagency product, the civilian agency partners were specifically asked to guide the authors in determining its contents in order to accurately represent a comprehensive, whole-of-government approach.

c. Within this approach, the non-military participants and contributors provided their perspectives, lessons learned, subject matter expertise, and experience in an effort to help users of this handbook understand the complexities of military operations that support and strengthen ROL and SSR, including the military's appropriate supporting, enabling, and condition-setting role in such operations. Input development included focused workshops, field testing and operational support; seminar war games, drafting conferences, academic studies, official USG reports, and a direct consultative process tailored to the content of each chapter.

[1] See e.g. JP 3-0, *Joint Operations*, JP 3-07, *Stability Operations*, JP 3-08, *Interorganizational Coordination During Joint Operations*, JP 3-24, *Counterinsurgency Operations*, JP 3-57, *Civil-Military Operations*, FM 3-0, *Operations*; FM 3-07, *Stability Operations*; FM 3-05.40, *Civil Affairs Operations* (2006); FM 3-05.401/MCRP 3-33.1A, *Civil Affairs Tactics, Techniques and Procedures* (2007).

d. The participants acknowledged that through current conflicts, the US military has developed considerable experience in areas traditionally viewed as solely within the civilian sector. Although necessity caused blurring of the military and civilian roles and missions, this handbook recognizes that the underlying authorities that govern US engagement in missions that include ROL and SSR have not changed. Most tasks assigned to a JFC will fall within a framework of authorities that directs civilian agency lead, i.e., the military typically will be in a supporting role for civilian-led ROL and SSR activities.

e. Given that the corpus of material on ROL is quite extensive, this handbook necessarily focuses on those areas lacking clear, practical guidance, approved doctrine, or operational understanding.

f. An important issue which arose during the drafting of this handbook is the widespread use of jargon and acronyms that may not translate particularly well between various USG agencies. Insofar as possible, the authors have attempted to improve the readability of this handbook by using common terms in plain English. This handbook also includes, in its glossary, some terms commonly used within the interagency and ROL/SSR community of interest that may not be familiar to military planners.

5. Application

This handbook is not approved joint doctrine, but is a non-authoritative supplement to current stability operations doctrine that can assist commanders and their staffs in planning, executing, and assessing ROL and SSR activities. The information herein can help the joint community refine stability operations doctrine, develop ROL concepts for possible transition into joint doctrine, and further the effectiveness of military support to ROL and SSR in joint operations. **This handbook is a guide and not a template**. **ROL and SSR activities are dynamic and complex; a step-by-step "how-to" manual is neither possible nor desirable**. Commanders and planners should consider the potential benefits and risks of using this information in actual operations. The opinions, conclusions, and recommendations expressed or implied in this handbook are those of the individual contributors and do not necessarily reflect the views of the Department of Defense, USJFCOM, or any other USG agency.

6. Distribution and Contact Information

a. Distribution of this handbook to USG agencies and their contractors is authorized. Other requests for this document shall be submitted to the Joint Warfighting Center (JWFC), Solutions Development, Attn: Maj Arnold Baldoza, 115 Lake View Parkway, Suffolk, VA 23435-2697; or by phone to Maj Arnold Baldoza at 757-203-3698.

b. Comments and suggestions on this important topic are welcomed. The JWFC Doctrine Development points of contact are Lt Col Jeffrey Martin, 757-203-6871, jeffrey.martin@jfcom.mil; and Mr. David Spangler, 757-203-6028, david.spangler.ctr@jfcom.mil.

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  - US Southern Command
  - US Pacific Command
  - US Strategic Command
  - US Special Operations Command
  - Combined Joint Task Force – Horn of Africa
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    - Center for Army Lessons Learned
    - US Army Peacekeeping and Stability Operations Institute
    - The Office of the Judge Advocate General
    - The Judge Advocate General's Center and School
    - Special Security Office
    - US Army Civil Affairs and Psychological Operations Command
    - US Army Military Police School
    - Provost Marshal General
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    - Office of the Judge Advocate
    - Missouri Air National Guard
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  - US Department of the Navy
    - US Second Fleet
    - US Navy Expeditionary Combat Command/Maritime Civil Affairs Group
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  - Joint Center for International Security Force Assistance
  - National Defense University
  - Defense Institute for International Legal Studies
  - Defense Threat Reduction Agency
- US Department of Homeland Security
  - Department of Customs and Border Protection
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  - International Affairs
  - US Coast Guard
- Central Intelligence Agency
- The Millennium Challenge Corporation
- US Department of Commerce
- US Department of Treasury
- US Department of Labor
- US Department of Energy
- US Department of Transportation
- US Environmental Protection Agency
- US Trade Representative
- US Department of State
  - Office of the Coordinator for Reconstruction and Stabilization (S/CRS)
  - Bureau of International Narcotics and Law Enforcement Affairs (INL), Office of Civilian Police & Rule of Law
  - Bureau of Political-Military Affairs (PM)
  - Bureau of African Affairs
  - Bureau of Near Eastern Affairs
  - Office of the Director of US Foreign Assistance
  - Bureau of Democracy, Human Rights and Labor
  - Bureau for Economic, Energy and Business Affairs
- US Agency for International Development
- US Department of Justice
  - Office of National Security Affairs
  - Criminal Division, incl. OPDAT and ICITAP, Counterterrorism, and Narcotics and Dangerous Drugs
  - Federal Bureau of Investigations
  - Federal Bureau of Prisons
  - Immigration & Customs Enforcement
  - Drug Enforcement Agency
  - US Marshals Service
  - Bureau of Alcohol, Tobacco and Firearms
- The Government Accountability Office
- The US Institute of Peace
- The Henry L. Stimson Center
- Institute for Defense Analysis
- The Swiss Army
- DPK Consulting
- Lockwood & Quackenboss, Inc
- Pennsylvania State University – Dickenson School of Law
- The International Committee of the Red Cross
- The Strategic Studies Institute
- The American Academy of Diplomacy
- Indiana University Maurer School of Law
- Federal Judicial Center
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- The World Bank
- The Johns Hopkins University – School of Advanced International Studies
- Business Executives for National Security
- The Overseas Private Investment Corporation
- INTERPOL
- The United Nations Department of Peacekeeping Operations
- The Pearson Peacekeeping Center
- Global Witness
- Transparency International
- DAI
- The Noetic Group
- L3 Communications
- The National Association of State Courts

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CHAPTER I
INTRODUCTION AND OVERVIEW

"[W]e thought that democracy was the highest priority and we measured it by the number of elections we could organize. In hindsight, we should have put the establishment of Rule of Law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts."

UN High Representative Lord Paddy Ashdown
***What I Learned in Bosnia* (2002)**

1. Background

a. The US military has discovered in the conflicts in Iraq and Afghanistan, as well as in numerous security force assistance engagements, that providing military training and equipment is often insufficient to achieve our security objectives of developing strong and democratic governments. It is important to understand that it is a daunting challenge for a HN to reform its security sector while providing for the security and well-being of their own people while, at the same time, engaging in operations as a reliable and capable partner to the US and the other members of the international community who wish to deter conflict and promote peace. Recent commitments have once again required the US military to support, or in other cases, to carry out, significant programs and operations to assist the HN in reforming its security sector systems in accordance with internationally accepted standards of the rule of law. A mistake often made during interventions is to attempt to eliminate functioning formal and informal systems that do not fit the western ideal, and immediately replace them with complex and unsustainable systems. Existing systems that general populations view as legitimate, adequate, and sustainable may allow the joint force to prioritize efforts toward other stability tasks, like reducing the drivers of conflict. Likewise, intervening entities sometimes attempt too quickly to re-establish pre-conflict systems that were in fact drivers of the conflict. A good up-front assessment, clear identification of drivers of conflict and HN institutional performance, dialogue with the general population, and consultation with other providers may provide a clearer way ahead. One opportunity the at the joint force will want to leverage is the "Golden Hour," when the populace is least resistant to changes brought in by external interveners, and is most receptive to the interveners' actions to improve conditions. This period, based on HN general population expectations and patience, usually last no more than a year.

b. To help the commander and staff engage effectively in this complex environment, this *Handbook* provides the joint force commander (JFC) and staff with a basic understanding of the concepts of rule of law (ROL) and security sector reform (SSR) as they apply to operations conducted by a joint force across the range of military operations. It defines and describes ROL and SSR and explains the interrelationship between ROL, governance and security; provides information concerning mission analysis and understanding the operational environment relating to ROL, SSR, and

addresses design[1] and planning considerations for operations dealing with the various elements of *the justice sector* and *security sector management and oversight*, as well as a number of special ROL issues the joint force is likely to encounter. It also provides objectives, conditions, enablers, and lines of effort to analyze the ROL foundation essential to successful stability operations.

2. The Military Problem

SSR and long-term stability are best built on a solid ROL foundation. Joint forces must support and strengthen the ROL in a manner that increases stability, prevents or resolves conflict, and advances US interests. Joint force support to ROL is an essential consideration in operational design for SSR. ROL operational design elements include:

a. resolution of varying perspectives on how to establish the "rule of law,"

b. clarification of military roles and responsibilities in ROL activities,

c. development of operationally specific measures of effectiveness (MOE), and

d. fostering HN respect for the ROL within the HN governing system.

3. Sustainability

Due to limited ROL support resources in both finances and time, military plans tend to focus on producing ROL short-term outcomes in six months to one year. However, historical analysis shows that sustainable legal reform programs typically need to run five to ten years. Likewise, because military commanders are results oriented, can operate independently, and desire rapid movement toward mission accomplishment, they often quickly develop and execute independent ROL programs. Both tendencies result in quick fixes that usually do not deliver sustainable results and can undermine long-term development efforts. To guard against these tendencies, military planners must be resolute in developing courses of action that create lasting and sustainable effects. Similarly, planners should coordinate military ROL support efforts with other agencies and organizations to ensure military activities support long-term programs and efforts.

Lack of ROL Program Coordination in Afghanistan[2]

CJTF-82 determined, before its arrival in Afghanistan, that [rule of law] was to be one of its civil affairs priorities. Each task force commander is committed to implementing [a rule of law] program during the deployment. This has placed understandable pressure on the commanders and their staff legal officers to initiate [rule of law] efforts, such as training programs for Afghan justice officials.

[1] See USJFCOM, Joint Warfighting Center, Pamphlet 10, *Design in Military Operations: A Primer for Joint Warfighters*, 20 September 2010.
[2] The Judge Advocate General's Legal Center and School, U.S. Army, Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, 2008, pages 228-229.

> Those training programs have not always been coordinated with the other [rule of law] actors, either in the U.S. government or the government of Afghanistan. This was due, in part, to the fact that the task force implementers were not aware of other programs or, if aware, did not understand the reasons for the comparatively slower pace of the civilian programs or the sensitivities of the host country participants and other international donors. During the [October 2007] OIG visit, civilian and military [rule of law] officials began to meet to improve this situation, but some tensions remain. The task force commanders are under pressure to implement programs and obtain visible results during their deployment, and because they work independently, their units can execute programs quickly. Their need to act rapidly and their tendency to operate unilaterally conflicts with the efforts of the U.S. mission, the government of Afghanistan, and the international community, who after several years of uncoordinated, sometimes unsustainable or redundant [rule of law] projects, have only recently agreed on the need to plan and execute programs under a common strategy.

4. Rule of Law Defined

a. "Rule of law" is often cited as being a very important strategic goal of the United States. The term "rule of law" is found numerous times in major official strategy documents, including the *National Security Strategy 2010*, the *National Military Strategy 2011*, National Security Presidential Directive (NSPD)-44,[3] and DOD Instruction 3000.05. However, none of these documents define ROL. There are numerous, and sometimes conflicting, definitions in use in the US government and the international community. Perhaps the most frequently used definition in the US government is one put forth by the UN.

United Nations Definition of the Rule of Law[4]

> The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

b. The US Army has adopted a definition[5] almost identical to the first sentence, and numerous other Agency/organization publications use elements of this terminology.[6]

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[3] National Security Presidential Directive (NSPD) 44, Subject: Management of Interagency Efforts Concerning Reconstruction and Stabilization, December 7, 2005. This Directive places the responsibility for coordinating the reconstruction and stabilization efforts of all US agencies, including DOD, under the Secretary of State. The Office of the Coordinator for Reconstruction and Stabilization is organized to carry out that function on behalf of the Secretary.

[4] USAID, DOD, and DOS *Security Sector Reform*, page 4, Jan 15, 2009. See also UN Doc. S/2004/616 (2004), para.6. See also UN Doc. A/61/636-S/2006/980 (2006).

However, this definition does carry some "western cultural" bias, which is discussed in Appendix B, section A.

5. Desired State

The desired state for ROL includes the following:[7]

a. **Just Legal Frameworks:** Laws are consistent with international human rights standards, legally certain, fair, transparent, and responsive to the entire population, not just elites. Primarily the HN populace determines if the frameworks are "just," not outside interveners.

b. **Public Order:** laws are enforced fairly, the lives, property, freedoms and rights of the whole populace are protected, criminal and politically motivated violence is minimized, and criminals are pursued, arrested and detained for trial.

c. **Accountability to the Law:** all members of the populace, public officials, and perpetrators of conflict-related crimes are held legally accountable for their actions, the judiciary is free from political influence, and mechanisms exist to prevent the abuse of power.

d. **Access to Justice:** all members of the populace are able to seek remedies for grievances and resolve disputes through formal or informal systems that apply just legal frameworks equally, fairly and effectively for all.

e. **Culture of Lawfulness:** The populace generally follows the law and uses the formal and informal justice systems to resolve disputes, rather than resorting to violence or self-help.

6. ROL Objectives

a. To move toward the desired state, some foundational pieces of a functioning ROL system must be in place. Planners use these foundational pieces effectively as objectives. Some of the interagency partners treat these as lines of effort (LOE). These objectives include:

(1) a functioning legal framework,

(2) a functioning justice architecture,

(3) a functioning, security architecture,

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[5] FM 3-07, *Stability Operations* (2008), Para. 1-40.
[6] See, e.g., the US Institute of Peace and US Army Peacekeeping and Stability Operations Institute, *Guiding Principles for Stabilization and Reconstruction* (2009).
[7] Adapted from Para. 7.3, US Institute of Peace and US Army Peacekeeping and Stability Operations Institute, *Guiding Principles for Stabilization and Reconstruction* (2009).

(4) adequate law enforcement,

(5) adequate corrections,

(6) adequate civil governance,

(7) integrated border management, and

(8) sufficient infrastructure and sustainability.

b. At the operational and tactics levels, one of the key considerations for planners is to determine "what is adequate, functioning, and sufficient." One mistake often made by interveners, during the early intervention in the post-conflict environment, is to attempt to immediately install and impose a western style of ROL, which may not be feasible in the existing circumstances. The insistence on imposing these new systems can undermine or destroy already functioning systems, and the effort itself become very destabilizing. The most important task for planners in the initial stages of intervention is to determine what is adequately functioning, what is not, and prioritize efforts to shore-up those foundational parts that are insufficient. Once stabilized, the system can then be carefully moved toward planting the seeds for democracy or other lofty ideals.

c. Some sample subordinate conditions to achieve these objectives are listed in Appendix A. The interagency often refers to these as "essential elements," which are used within and support the LOEs listed above. Appendix A also lists some enablers that support achievement of these objectives: strategic communication and perception management, sovereignty, human rights, and legitimacy.

d. In order to assess the current state of ROL, to determine deficiencies and prioritize efforts, some sample assessment factors is in Appendix F.

7. ROL Indicators

a. Although civilian and military ROL practitioners identify eight indicators that describe the ideal ROL system, realistic assessment shows that this ideal does not currently exist anywhere in the world. Therefore, just as recent lessons learned have shown, "planners need to determine what is 'fair enough' in the early stages of intervention, before host nation systems are fully restored or established."[8] Even further, planners must determine what amount of improvement serves as a realistic end state for operations. Appendix B discusses the critical importance in considering cultural context when making these decisions. These indicators can be utilized to assess progress toward reaching the desired state of ROL:

[8] *Rule of Law (RoL) and Security Sector Reform (SSR) in Stability Operations: Lessons Learned and Best Practices*, Thomas Dempsey, COL, USA (ret), 3 Jan 2010.

Rule Of Law Indicators[9]

1 -- The state monopolizes the use of force in the resolution of disputes.

2 -- The state is bound by law and does not act arbitrarily.

3 -- The state protects basic human rights.

4 -- Individuals are secure in their persons and property.

5 -- The law can be readily determined and is stable enough to allow individuals to plan their affairs.

6 -- Individuals have meaningful access to an effective and impartial legal system.

7 -- Individuals rely on the existence of legal institutions and the content of law in the conduct of their daily lives.

8 – Mechanisms are in place for the peaceful resolution of disputes.

b. The first seven of these indicators is described in detail in Chapter 2 of the *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates* (2010), but are listed as "effects."

c. These are not eight independent indicators, they are actually co-dependent. A state monopoly on force (item 1) is desirable only if the state itself is bound by law (item 2). All human rights must be protected (item 3) as military and police forces focus on protecting the person and property of individuals (item 4). A stable legal framework (item 5) is necessary but not sufficient by itself. People must also have access to legal institutions (item 6) and actually make use of them (item 7). Where disputes can be peacefully resolved (item 8), the state does not have to resort to force. Rule of law can be summed up in the adage, "a government of laws, not men." Individuals and groups do not "take the law into their own hands," and government officials operate according to legal norms and procedures, not arbitrarily. In reality, the ROL will exist in varying degrees in different contexts, or even in different areas within the same country or territory, which makes broad, strategic policy guidance difficult to apply on the ground.

d. Note that these indicators describe an ideal, almost utopian end state that does not exist in the US or any other developed country, much less in any conflict or post-conflict country. In real-world operations, interveners confront a plethora of institutions that are often dysfunctional, corrupt, and/or repressive. Civilian and military plans will therefore establish desired ROL conditions short of the desired state because of time pressures, limited resources, and conflicting national interests. Sample conditions that may be applicable at the operational and tactical levels are in Appendix A.

[9] These effects are largely derived from Jane Stromseth, David Wippman & Rosa Brooks, *Can Might Make Rights?: Building the Rule of Law After Military Interventions* (Cambridge: Cambridge University Press, 2006), 78.

e. While it may be desirable to move the HN in the direction of this ideal state, the military end state should not be an unattainable ROL utopia, but should focus on creating conditions that will allow the President to use other instruments of national power to accomplish national objectives rather than deployed military forces. While these indicators and the desired state described above should be carefully considered, they should be used intelligently to inform the design process so as to create operational and tactical conditions to achieve objectives that are attainable by the joint force. Guidance for developing pragmatic ROL objectives is contained in "Framing the Problem" in Chapter II, ***Situation Analysis***. Metrics that can be used to measure progress toward achieving such objectives are described in Chapter VII, ***Assessments and Metrics—Measuring Progress***.

8. LOE to Support ROL

Although establishing ROL will be an interagency effort lead by State Department, there are some lines of effort (LOE) that the joint force will typically be required to support:

a. countering transnational crime,

b. accountability, oversight and anti-corruption,

c. public information and public records management,

d. conflict resolution and peace implementation,

e. reconciliation and re-integration,

f. security sector reform,

g. demobilization, disarmament and reintegration,

h. intelligence and information sharing, and

i. use and integration of government contractors.

Appendix A lists some samples of the "essential elements" of these LOE.

9. Other Relevant Definitions

a. **Interagency partners will often use the term *Security Sector Governance*, which** refers to "the transparent, accountable, and legitimate management and oversight of security policy and practice." This is the definition in the USAID, DOD, and DOS, paper, *Security Sector Reform* (Jan 15, 2009). For clarity and to reduce confusion with other standardized uses of the term "governance," this handbook uses the phrase *Security Sector Management and Oversight* for this construct.

b. ***Security Sector Reform*** is "the set of policies, plans, programs, and activities that a government undertakes to improve the way it provides safety, security, and justice." (JP 1-02; source: JP 3-24) SSR[10] is the reform or development of the institutions, processes, and forces that provide security under the ROL in the HN. These include the military and police, intelligence services, border guards, and services responsible for the security of ports of entry. The objective is to assist HN governments to provide effective, legitimate, and accountable security for their citizens, accomplished in accordance with the ROL. In so doing, SSR assists these governments respond appropriately to threats within and outside their borders.

c. ***Rule of Law Systems*** are those functionally and behaviorally related interacting and interdependent elements of a society that resolve disputes, preserve public order, and provide regulation to the society. The elements of these systems include individuals, groups, institutions, laws, administrative processes and funding mechanisms, ROL systems are generally complex and adaptable systems of systems. Figure I-1 depicts a notional rule of law system. Note that the overall system is a construct of a number of other complex systems, each of which may be broken down as well. All these systems and their subsystems are interrelated; an action to change a small part of one will likely affect numerous other parts of the system and other systems. For example, changes in the law may require law enforcement to investigate corruption in the defense sector, which in turn will increase the responsibilities of the judicial systems to try high level corruption cases, and will put pressure on the corrections systems to deal with powerful individuals who are sentenced for violations of anti-corruption laws.

d. Joint forces plan and execute ***rule of law activities*** to assist the HN to administer, reform, rebuild, and support its ROL systems in order to achieve US military objectives as part of an overall USG plan for stabilization and reconstruction. They will normally be done in coordination with and in support of ROL activities conducted by other US agencies and/or international actors. Note that ROL activities are not a series of isolated activities, but must be viewed as a group of interconnected and mutually supportive actions that are planned and executed together to accomplish overall objectives.

e. It is important to recognize that "rule of law" does not refer to every *legal* aspect of operations. It is necessary to distinguish actions to support host nation systems from the legal advice needed to address the myriad legal issues facing US or Coalition forces in their conduct of operations, which are referred to as "operational law" by judge advocates. The latter issues include applicable national and international laws, rules of engagement, fiscal law, etc. While these legal restrictions hold interveners themselves as being subject to ROL, compliance with them is not discussed in this handbook. ROL activities addressed in this handbook are limited to those undertaken to establish or

[10] "Security sector reform" is also referred to as "security system reform," "security sector development," and "security sector transformation."

strengthen the ROL *within* the HN. Legal authorities and restrictions on US Forces are "operational law" and are covered thoroughly in existing publications.[11]

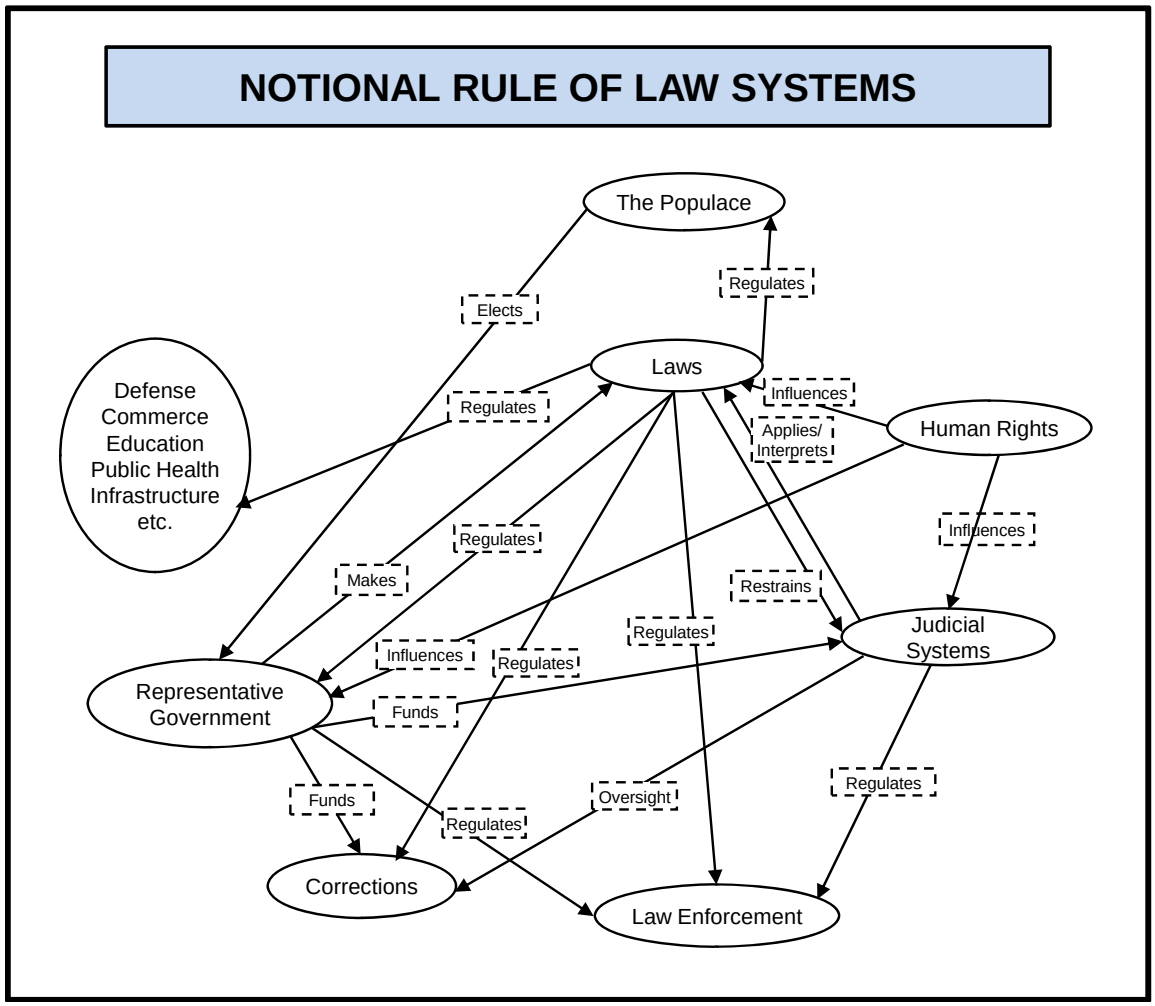

Figure I-1. Notional Rule of Law Systems

f. Operations to influence the legal systems of the HN are not above the law. Apart from US policy considerations, ROL activities themselves must be governed by ROL; actions must be reviewed to ensure that they comply with applicable provisions of US law, international law, and HN law, as well as UN or other international mandates that govern the intervention. Great care must be taken in determining which laws are applicable as they are often contradictory. "Such reviews must be done by or under the supervision of a military judge advocate or other attorney duly authorized to give legal advice to military commanders. Normally, the judge advocate tasked with being the legal advisor to the joint force commander is designated as the JTF Staff Judge Advocate (SJA), and is supported by other judge advocates and other personnel in the JTF SJA

[11] See, e.g., *The Operational Law Handbook* (2010), US Army Judge Advocate General's Legal Center and School, available for download at https://www.jagcnet.army.mil/8525751D00557EFF/0/A86D78669E17E6F9852574DA005E3ADF?opendocument;

section.[12] Advising the commander "requires impartiality, diligence, independence, moral courage, and intimate knowledge of the facts. It requires prudence in refraining from activities that could cast doubt upon impartiality."[13] Since the SJA and the judge advocates assigned to assist him/her in the SJA section have the obligation to give the JFC impartial and independent advice on the legality of ROL activities, they should not be tasked to plan and execute those operations. Instead, such operations should be tasked to a separate organization, such as a civil affairs ROL functional specialty cell.[14]

10. Relationship Between Rule of Law and Security Sector Reform

ROL and SSR are related but distinct concepts. Just like ROL activities, governments must conduct Security Sector Reform efforts "under the rule of law." Security sector reform efforts will include defense, police, border control, and other mechanisms to provide security, and will also include measures to ensure that fairness, accountability and transparency permeate the systems that govern the security sector. ROL measures to improve the justice sector also affect overall security sector reform, in that the courts provide oversight over the security mechanisms and security sector management and oversight institutions by adjudicating disputes and by applying criminal sanctions to those that fail to comply with the governing laws.[15]

11. SSR Responsibilities

a. According to the USAID, DOD, and DOS paper, *Security Sector Reform*, Jan 15, 2009, the roles and responsibilities of each agency are as follows:

(1) The *Department of State* leads US interagency policy initiatives and oversees policy and programmatic support to SSR through its bureaus, offices, and overseas missions.

(2) The *Department of Defense's* primary role in SSR is supporting the reform, restructuring, or re-establishment of the HN's armed forces and the defense sector.

(3) *USAID's* primary SSR role is to support governance, conflict mitigation and response, reintegration and reconciliation, and ROL programs aimed at building civilian capacity to manage, oversee, and provide security and justice.

[12] JP 1-04, *Legal Support to Military Operations* (March 2007), III-1(a).
[13] FM 27-100, *Legal Support to Operations*, Para. 1.2.5.
[14] JP 3-57, *Civil-Military Operations* (2008), page I-20, Para. I-4(a) (1) and (2). Under Army doctrine, civil affairs rule of law functional specialty cells are made up of judge advocates, law enforcement personnel, and others with relevant skills. Normally, the rule of law functional specialty cell will be led by the senior judge advocate assigned to the civil affairs unit. FM 3-05.40, *Civil Affairs Operations* (2006), paras. 2-19 and 2-23.
[15] See Sean Fate, "Securing the Future: A Primer on Security Sector Reform in Conflict Countries," US Institute of Peace Special Report 209, September 2008, p. 3.

b. Effective SSR programs also include other USG agencies that provide important capabilities. In particular, the Departments of Justice (DOJ),[16] Homeland Security,[17] Energy, and Treasury can play substantial or leading roles in the development and execution of SSR and ROL programs. These programs should be coordinated among the departments and agencies in Washington, D.C., as well as through country teams, consistent with DOS Chief of Mission authority.

12. Current Military Guidance on ROL Support

a. National Strategic Guidance

(1) ROL is addressed in both the *National Security Strategy 2010* and the *National Military Strategy 2011*. The *National Security Strategy 2010* says:

> "*We will undertake long-term, sustained efforts to strengthen the capacity of security forces to guarantee internal security, defend against external threats, and promote regional security and respect for human rights and the rule of law. We will also continue to strengthen the administrative and oversight capability of civilian security sector institutions, and the effectiveness of criminal justice.*"

(2) The *National Military Strategy 2011* expresses the relationship between military power and ROL:

> "*Military power complements economic development, governance, and rule of law – the true bedrocks of counterterrorism efforts. In the long run, violent ideologies are ultimately discredited and defeated when a secure population chooses to reject extremism and violence in favor of more peaceful pursuits.*"

b. Civilian and Military Responsibilities for Rule of Law

(1) ROL activities are part of a comprehensive, whole of government approach to stabilization and reconstruction. The State Department is the agency tasked with leading the development of reconstruction and stabilization strategies, and coordinating

[16] Within DOJ, relevant components may include the Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the US Marshals Service, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Prisons, as well as sections within the Criminal Division (the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Prosecutorial Development Assistance and Training (OPDAT)).

[17] Within DHS, principal agencies that contribute to SSR include the US Coast Guard (USCG), Immigration and Customs Enforcement (ICE), the Transportation Safety Administration (TSA), the Department of Customs and Border Protection (CBP), and others that have substantive overseas missions that contribute to strengthening the ROL and the conduct of SSR.

reconstruction and stability efforts of the USG.[18] US Military forces must be prepared to "support stability operations activities led by other US Government departments or agencies (hereafter referred to collectively as "US Government agencies"), foreign governments and security forces, international governmental organizations, or when otherwise directed."

(2) However, US Military forces must also be prepared to "lead stability operations activities to establish civil security and civil control, restore essential services, repair and protect critical infrastructure, and deliver humanitarian assistance until such time as it is feasible to transition lead responsibility to other US Government agencies, foreign governments and security forces, or international governmental organizations."[19] These activities include supporting ROL and SSR.[20] This is due to the fact that in many conflict and post-conflict situations, the US military will be the only US presence on the ground capable of planning and executing ROL and SSR missions. This is especially true during and immediately after major operations and campaigns. It is imperative that the JFC be prepared to plan and execute priority ROL activities when other agencies are underrepresented or unrepresented in the area of operations; however, it is also imperative that such operations be coordinated with the State Department and other relevant agencies to the greatest extent possible to ensure that the JFC's immediate actions do not compromise long-term policy goals.

(3) **Other Key Partners**. The Department of Justice also has a substantial ROL role, funded by foreign assistance (Title 22) funds from the Department of State. Other US civilian departments and agencies also participate in overall efforts to strengthen the ROL. International key partners include intergovernmental organizations, such as the UN and various UN entities such as the *UN Development Programme*, development agencies of other countries, coalition military forces and organizations, and various international NGOs. Key partners are the HN government and its various departments and agencies. Other key partners will be private sector individuals and groups, such as HN businesses, the representatives of international businesses, Civil Society Organizations (CSOs) and other NGOs operating in the HN. For a more detailed discussion of key partners and their roles in ROL, see Appendix G, *Key Partners in ROL*.

(4) **Operational Coordination Processes**

(a) The DOS typically uses the Interagency Management System (IMS) to coordinate USG international stabilization and reconstruction.

[18] *See* NSPD-44, Management of Interagency Efforts Concerning Reconstruction and Stabilization, Dec. 7, 2005, and The Reconstruction and Stabilization Civilian Management Act of 2008 (Title XVI of the Duncan Hunter National Defense Authorization Act for FY 2009.
[19] Para. 4, DODI 3000.05, *Stability Operations*, September 16, 2009.
[20] *See also* Joint Pub. 3-0, *Joint Operations* V-25 (17 Sept. 2006, incorporating Change 2, 22 March 2010) ("US military forces should be prepared to lead the activities necessary to accomplish [stability operations] when indigenous civil, USG, multinational or international capacity does not exist or is incapable of assuming responsibility.").

(b) The Joint Interagency Coordination Group (JIACG) is an interagency staff group that establishes regular, timely, and collaborative working relationships between civilian and military operational planners. It is composed of USG civilian and military experts detailed to the CCDR and tailored to meet the requirements of a supported JFC.

(c) The Country Team, led by the Chief of Mission (Ambassador or other official), is the primary coordination mechanism between all US agencies operating in the HN, including the military forces under the JFC.

(d) The JFC's Civil-Military Operations Center (CMOC) is the joint force's primary coordination interface between the JFC and other stakeholders. Members of a CMOC may include representatives of US military forces, other governmental agencies, indigenous populations and institutions (IPI), intergovernmental organizations (IGOs), the private sector, and NGOs.

(e) Civil-Military Operations Center (CMOC) Justice Sector Functions

1. Monitor the activities of justice sector activities;

2. Analyze the effects of justice sector activities on the operational environment;

3. Connect justice sector participants and stakeholders who may be able to reinforce each others' activities;

4. De-conflict different programs conducted by various justice sector actors;

5. Develop cooperation between the military forces, US civilian agencies, contractors, and others engaged in justice sector activities;

6. Coordinate activities of participants in justice sector activities;

7. Mitigate the effects of justice sector actors whose agendas are in conflict with the HN development framework and/or US policy.

(f) Further Information. Further information on interagency coordination may be found in the *Handbook for Military Participation in the Interagency Management System for Reconstruction and Stabilization* and JP 3-08, *Interorganizational Coordination During Joint Operations*.

c. ROL/SSR Support in Stability Operations

Stability Operations

An overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.[21]

(1) Stability operations "are a core US military mission that the Department of Defense shall be prepared to conduct with proficiency equivalent to combat operations."[22] The interagency often refers to these as sectors. There are five stability operation functions:

(a) security,

(b) humanitarian assistance,

(c) economic stabilization/infrastructure,

(d) rule of law, and

(e) governance and participation.[23]

(2) ROL is a cross-cutting function in stability operation because ROL issues affect all aspects of stability. ROL systems provide essential order to a society, which is a fundamental requirement for stability. In conflict and post-conflict environments, ROL systems generally are degraded in their ability to provide order to the society: the police, courts and corrections systems may be unable to function because their buildings, equipment and records are destroyed, their employees are unable to work because of security concerns, or because they have underlying problems with lack of skills, corruption, or bias in favor of one group over others. Similar conditions may occur in the aftermath of natural and other disasters, or may come to exist through lack of resources and/or inept and corrupt governance. In such circumstances, the populace cannot rely on the normal institutions to provide safety for their persons and security for their property, so they must turn to alternates, such as tribal militias, warlords, even criminal gangs for protection and for resolution of disputes within the community. Ineffectiveness of the ROL systems increases the potential for violence, which in turn increases the level of instability.

[21] DODI 3000.05; JP 1-02; JP 3-0.
[22] DODI 3000.05, Para. 4(a).
[23] JP3-07, chapter III; see also FM 3-07, Stability Operations (2008), which has a similar discussion in Chapter 3, and the US Institute of Peace and US Army Peacekeeping and Stability Operations Institute, *Guiding Principles for Stabilization and Reconstruction* (2009), section 2.

(3) Stability generally requires that the populace tends to use non-violent dispute resolution processes rather than violence. ROL activities can create, strengthen and reform legal systems and other non-violent dispute resolution processes so as to reduce the likelihood of individuals and groups resorting to violence. ROL activities can also improve the ability of the HN government to govern fairly, effectively, and legitimately, thereby reducing conflict and enhancing stability.

d. **ROL/SSR as Part of Civil-Military Operations**

(1) Most ROL activities influence the HN government, civilian organizations and authorities, and the civilian populace, and are therefore civil-military operations (CMO). CMO are a commander's responsibility, in which he or she makes use of a broad spectrum of assets, including Civil Affairs, medical, legal, engineering, transportation, and military police, to achieve the overall mission.[24]

Civil-Military Operations (CMO)[25]

The activities of a commander that establish, maintain, influence, or exploit relations between military forces, governmental and nongovernmental civilian organizations and authorities, and the civilian populace in a friendly, neutral, or hostile operational area in order to facilitate military operations, to consolidate and achieve operational US objectives. Civil-military operations may include performance by military forces of activities and functions normally the responsibility of the local, regional, or national government. These activities may occur prior to, during, or subsequent to other military actions. They may also occur, if directed, in the absence of other military operations. Civil-military operations may be performed by designated civil affairs, by other military forces, or by a combination of civil affairs and other forces.

(2) Often, CMO requires more specialized technical skills normally provided by civil government. Civil Affairs functional specialists are technically qualified and experienced individuals who work in six functional specialty areas, one of which is ROL.[26] The ROL functional specialty section of Army Civil Affairs units includes judge advocates, public safety officers, and others with training and backgrounds in ROL-related fields.[27]

13. Unified Action

a. Understanding the obstacles to mission success requires coordination with non-military organizations from the beginning in order to develop a comprehensive picture of the operating environment. The process should consider the time horizons of different agencies, including civilian funding timelines, cost, and the processes used by civilian partners.

[24] See generally, JP 3-57, *Civil-Military Operations*.
[25] JP 1-02. SOURCE: JP 3-57.
[26] JP 3-57, *Civil-Military Operations* (2008), pages I-19 through I-21.
[27] FM 30-05.40, *Civil Affairs Operations* (2006), Paras. 2-16 through 2-23.

Unified Action Coordination Mechanism[28]

The national level synchronization was conducted through the Combined Joint Task Force – 82 (CJTF-82) Rule of Law Coordinator. He conducted daily coordination with the Standing Committee on the Rule of Law (SCROL) at the U.S. Embassy in Kabul. He further synchronized efforts across RC-East, ensuring that both brigade combat teams operating within the Command were achieving similar effects throughout their respective areas of operation. The CJTF-82 Rule of Law Coordinator also provided invaluable assistance in presenting our initiatives to the SCROL and garnering their support. Without his efforts, our efforts at the tactical level would surely have been stymied by U.S. and other national level agencies and organizations focusing their efforts on Kabul. To enhance future rule of law development activities at the operational level and below, we recommended that a rule of law fusion cell be created at the CJTF level. This cell would be comprised primarily of civilian legal experts with authority and funding to execute rule of law development projects focused on achieving short term effects while the SCROL continued with the development of a longer term development strategy to establish sustainable effects across the rule of law sector.

b. Appendix A lays out the objectives, conditions, enablers, and lines of effort for restoring and strengthening the ROL and conducting effective SSR. This framework can help define roles and missions among interagency, international and host nation actors, as well as assisting to determine task sequencing and the most appropriate use of resources. The appendix provides a list of eight objectives, four enablers, and nine possible lines of effort (LOE), which applies to some degree in almost any operation or assistance project. Each objective includes a list of conditions, and each LOE contains essential elements that should be present in a functioning HN ROL system. Not all objectives, conditions, or LOEs will be necessary in every operation. Additionally, objectives, conditions, and LOEs have different purposes. Some are primarily functional; some focus on capacity building. Several are more strategic in nature, and others address difficult issues of legitimacy and sovereignty that are essential to the ROL, but are difficult to define or quantify.

c. The conditions that support the objectives and Essential Elements within each LOE are not tasks and not addressed to military planners alone; most of the work will fall to civilian agencies. The conditions and Elements refer all planners to the questions they should ask at the beginning of planning, including: to what degree is a condition/element present and functioning in the HN's system of governance, justice, and security? Does an assessment to determine the state of the conditions/Essential Elements require further research or coordination? Finally, Appendices B through E contain planning considerations that planners should address in every SSR/ROL effort.

[28] The Judge Advocate General's Legal Center and School, U.S. Army, Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, 2008, page 262.

d. Planners will need to tailor the objectives, conditions, LOEs, Essential Elements, and planning considerations to the particular operation. None is prescriptive. Instead, they provide a framework for adapting planning to meet the requirements of a particular operation.

Example of the Use of the Rule of Law Objectives, Conditions, Enablers, and Lines of Effort (Appendix A) – USCENTCOM Assessment Team (2009)[29]

In the fall of 2008, General David Petraeus, Commander, US Central Command (USCENTCOM), formed a strategic assessment team to review the long-range regional strategic environment, policy, military guidance, and all existing USCENTCOM plans. GEN Petraeus directed that the ROL be examined along with Intelligence, Counterterrorism, Building Partner Capacity, Development, and other specialized functions. This approach reflected his opinion, based on experiences in Iraq and in writing counterinsurgency doctrine, that efforts to develop the ROL are a critical element to strengthen legitimacy of a host nation government and of US military forces engaging in counterinsurgency, counterterrorism, and cooperative security and engagement. The USCENTCOM team used major portions of the ROL Planning Framework [Appendix A] to analyze ongoing and future operations, which resulted in a written report that studied ROL development efforts, operational law themes, and legislative proposals. The ROL Planning Framework was first applied to guide an on-the-ground assessment of US counterinsurgency and cooperative security engagement in the USCENTCOM AO. Each line of effort was attached a specific set of rule of law objectives, and provided the organizational structure for proposed action plans. The Framework then drove the analysis of the regional assessment. As of result of its experience, the assessment team recommended that Commander, USCENTCOM adopt the ROL Planning Framework approach in his development of regional strategic plans, and that the ROL be a central element of all his plans in theater. As of the publication of this Guide, USCENTCOM has establishing [either "has established" or "is establishing"] a ROL coordinator to implement the recommendations of this assessment. GEN Petraeus also included operations to support the ROL in USCENTCOM's strategic approach to the governments of Afghanistan and Pakistan.

[29] Vignette provided by LTC Al Goshi, USCENTCOM Rule of Law Coordinator, member of the CENTCOM Assessment Team and principal briefer for the Rule of Law Assessment Team.

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CHAPTER II
SITUATION ANALYSIS

"Think as you work, for in the final analysis, your worth to your company comes not only in solving problems, but also in anticipating them."

Tom Lehrer

1. Analyze the Mission

As the JFC and staff conduct their mission analysis under the joint operation planning process (JOPP), they may discover that ROL requirements are regularly in higher level directives and may be specified, implied or essential tasks:

a. **Specified**. Because of the nature of the crisis, political decision makers often deem ROL very important and provide strategic guidance that contains a specific reference to the need to "strengthen ROL," or "restore the ROL," or "ensure that the ROL is observed." Because of the ambiguity of the term "ROL," such guidance will require careful analysis to ensure that the JFC understands the scope of the support required and activities/actions authorized to meet the mandate.

b. **Implied**. In some cases there will be no specific mention of ROL in strategic guidance or other guidance received from higher headquarters. However, most if not all stability operations will require a ROL component. Therefore, the JFC, the design team, and planning staff will need to evaluate the operational environment in terms of the five stability operations functions described above, including the ROL function. Generally, ROL activities can be useful tools to reduce the drivers of conflict and strengthen the legitimacy and capacity of the HN government, thereby increasing stability.

c. **Essential**. In some missions, establishing, reforming, administering and strengthening the ROL systems may be the primary means by which the JFC achieves mission success. For instance, the most important condition required for the desired system may be that the HN populace turns from individual and group violence and self-help to non-violent dispute resolution processes sanctioned by the HN government. In such cases, ROL requirements would generate essential tasks.

2. Understanding the Operational Environment

Understanding the operational environment is essential to applying JOPP and operational design to a mission. ROL systems are complex and adaptable systems of systems. In order to understand the operational environment, ROL systems analysis in many cases should frame it in terms of three separate types of systems: the **formal systems**, the **informal/social systems**, and the **accountability systems**. In addition to considering ROL systems, understanding the **drivers of conflict** and **host nation capacity** is also important. Analyzing these factors can allow the JFC, designers and planners to develop a contextual understanding of the operational environment, which will allow them to apply the design methodology to understand the relevant aspects of the

environment and distinguish them from those aspects which are not relevant to the mission. Because these ROL systems are complex, dynamic and adaptable, any understanding must be viewed as provisional, and must be subject to continual reassessment so that the JFC and the staff can develop a deeper understanding by reframing the operational environment, the problem, and adapting the operational approach.

a. **Formal systems** include law codes, government ministries, legislatures, executive agencies, courts, prosecutors' offices, prison systems, police forces, officially established procedures and practices, and similar elements and institutions. Legislation, executive orders, regulations, or other legally sanctioned means are the normal mechanisms to create the formal systems.

(1) Formal systems are usually the easiest to understand, because they normally exist and operate on the basis of documents recognized as being authoritative and legally binding. Formal systems are essential to the structure of the government of any nation-state, and require careful analysis. However, they are not always the most important type of system in terms of promoting reform.

(2) A brief discussion of formal and informal systems in the justice sector is in Chapter V, along with lessons learned and best practices. Each of the sections in Appendix D, "Justice Sector Design and Planning Considerations," has a more detailed discussion of formal and informal systems relating to criminal justice, civil justice, the judiciary, court administration, corrections, military justice, and traditional and informal justice.

b. **Informal/social systems**[1] include the social networks of individuals and groups by which societies, institutions and groups carry out their affairs. They may work within formal systems, or they may work in competition with them. Often, international agencies attempting to restore and reform the ROL systems focus on formal structures and processes, such as reforming criminal and commercial codes, rebuilding court houses, and making procedural codes more efficient. However, it is important to remember that individuals and networks of individuals are the means by which the formal structures operate, and identifying the key actors is critical to the intelligence preparation of the operational environment. This is "population-centric information," which has been identified as essential to successful counterinsurgency operations.[2] Properly understanding the relevant individuals and their relationships will frequently make the difference between supporting meaningful reform, and entrenching undesirable and dysfunctional processes and people.

[1] Note the difference between informal networks and systems as described here and traditional justice systems as discussed in Appendix D, Section G. Informal social networks underlie both formal justice systems and traditional justice systems and affect how they operate.

[2] See MG Michael T. Flynn, Capt Matt Pottinger, and Paul D. Batchelor, "Fixing Intel: A Blueprint for Making Intelligence Relevant in Afghanistan," *Voices from the Field*, the Center for a New American Security, January 2010, http://www.cnas.org/files/documents/publications/AfghanIntel_Flynn_Jan2010_code507_voices.pdf. At the time of the article, MG Flynn was the Deputy Chief of Staff for Intelligence for ISAF.

(1) Social scientists studying the operations of organizations in both government and the private sector have observed that formal organization charts only tell part of the story; in most cases, informal connections between members of the organization are actually how the organizations do the bulk of their business. In conflict and post-conflict societies, the formal structures of governance are to a great extent supplanted by illicit and informal power structures (See Appendix C, Section E). If the conflict has been going for a period of time, these informal systems can be quite efficient, effective, and widely accepted by the general populace. Additionally, the original formal system may in fact be one of the key drivers of conflict and attempting to re-establish it may cause further instability. Therefore, before planning ROL activities and SSR reform, understanding the existing post-conflict informal structures is critical.

(2) **Social network analysis (SNA)** is a technique for analyzing and depicting graphically in node and link diagrams the complex informal and social relationships between individuals. Business organizations often employ the technique, originally developed in the 1950s.[3] It has grown to include its own theoretical statements, methods, social network analysis software, and researchers. Analysts reason from whole to part; from structure to relation to individual; from behavior to attitude. SNA successfully supported the analysis of insurgent networks.[4] Social network analysis can support mapping the characteristics and group loyalties of key individuals in the justice sector systems.

(a) SNA is useful to analyze how ROL systems actually operate. It can identify bottlenecks which impede information flow and decision making, and make it possible to develop suggestions and programs to improve the efficiency and effectiveness of those systems. It can also identify those critical individuals who can be agents of change, not only for making the systems more effective and efficient, but also to address problems which impact on popular and international legitimacy, such as corruption.

(b) SNA is especially useful in systems that are rife with corruption, in that it provides a tool to understand the operation of bribery, position buying, nepotism, clientelism, and other such practices. In many cases, formal organizational structures and reporting relationships play limited roles in carrying out even the legitimate business of security management and oversight, or justice sector organization. The mechanisms for engaging in corrupt practices will often be the informal and social connections between those empowered by the formal systems, as well as others who are not necessarily in formal positions of power. Often, corruption will involve very widespread and strong social networks of individuals who trade favors and shield each other from discovery or adverse consequences.

[3] A good introduction to the use of SNA in business is Rob Cross and Andrew Parker, *The Hidden Power of Social Networks: Understanding How Work Really Gets Done in Organizations* (Boston, MA: Harvard Business School Press, 2004).

[4] For information concerning the use of social and network analysis in COIN, see FM 3-24/MCWP 3-33.5, *Counterinsurgency* (*The US Army-Marine Corps Counterinsurgency Field Manual*), especially Appendix B.

(c) SNA should not just concentrate on formal and informal networks within the HN government, but should also take into account how international interveners (coalition and other partners, international organizations, and NGOs) impact those networks. The analysis should also include US civilian and military interveners as well—all participants (HN, international, and US) and how they have become part of the larger network.

(d) SNA can be an elaborate, comprehensive analysis resulting from intensive research, or it can be a relatively simple mapping of individuals and their relationships observed during field interaction with HN and other counterparts. The important thing is that SNA can provide the planner and operator with critical information on the operational environment which can support mission analysis and the development of courses of action. As more relationships reveal themselves, continual updating is required. Understanding key participants and their relationships facilitates plan development and execution which prioritizes and focuses US influence where it can do the most good.

(3) A brief discussion of informal/social systems in the justice sector is in Chapter V. Each of the sections in Appendix D, "Justice Sector Design and Planning Considerations," has a more detailed discussion of informal/social systems relating to criminal justice, civil justice, the judiciary, court administration, corrections, military justice, and traditional and informal justice.

c. **Accountability Systems** are those systems that monitor the performance of government entities, including those for the justice sector and security sector management and oversight, to ensure that they operate fairly, effectively and efficiently to achieve their public purposes. These include internal and external organizations which conduct audits and include inspectors, review commissions, as well as the court system itself.

(1) Often, accountability systems are part of the structure of formal systems they audit. However, it is useful to view them conceptually as a separate type of system because they exist to oversee the operations of the formal systems, and often are the key to bringing about significant changes in the operations of formal institutions so that they comply with the ROL.

(2) It is not enough for reconstruction and reform efforts to build capacity; they must also build integrity. Corruption in a ROL system may be a driver of conflict, or it may contribute to instability by eroding the perception of legitimacy. Better facilities, technology, or technical training does not eliminate partiality, prejudice, impunity, bribery and other forms of corruption; in many cases, such efforts merely improve the efficiency of the corruption. Therefore, the systems which provide accountability to ROL systems are essential, and must be carefully examined, understood, and strengthened.

(3) Effective accountability requires a parallel, three-prong approach – **prevent, detect, and enforce**. The first measure in **prevention** is to incorporate, if possible, effective vetting processes (See Appendix C, Section C). Other important preventive measures include codes of conduct, conflict of interest and financial disclosure policies, and other anticorruption policies which set clear standards. Central to prevention is promoting and encouraging individual participants to internalize appropriate ethical principles so that they know, accept, and voluntarily comply with the standards. The dominant judicial culture is one of the most significant factors in preventing corruption in the justice sector. If the culture frowns on corruption, the public will view corrupt acts by individuals as shameful and anomalous behavior. Engagement should focus on developing this culture. **Detection** involves developing effective mechanisms to audit, inspect, and monitor the conduct of justice sector personnel to ensure compliance with preventive measures and standards, and to investigate aberrations. Transparency of judicial processes and security sector management and oversight, facilitates detection which makes it possible for the public at large, civil-society groups, and the media to identify problems and press for reforms. **Enforcement,** involves taking effective disciplinary measures against those who violate the standards, including both administrative and criminal remedies.

(4) A brief discussion of accountability systems in the justice sector is in Chapter V. Each of the sections in Appendix D, "Justice Sector Design and Planning Considerations," has a more detailed discussion of accountability systems relating to criminal justice, civil justice, the judiciary, court administration, corrections, military justice, and traditional and informal justice.

(5) Figure II-1 depicts the relationships between the three types of systems. The formal systems are usually established and relatively rigid. The Informal/Social systems are more adaptable, ambiguous, and amorphous. The accountability systems focus on monitoring and controlling the formal systems, but also have considerable impact on Informal/Social systems, particularly where they impinge on the formal systems.

d. Drivers of Conflict and Institutional Performance

(1) Fragile, failed, or formerly rogue states have conditions which create instability and which push competing groups toward violent conflict. Core grievances usually form the basis for the "drivers of conflict" and can include tribal or ethnic conflicts, economic and resource issues, competing territorial claims, greed, religious conflicts, or desire for power. One of the most critical steps in stabilization is to identify the real drivers of the conflict. Stabilization operations can then diminish the drivers of conflict, mitigate their effect, and strengthen HN institutional performance.[5]

[5] See FM 3-07, *Stability Operations* (October 2008), Paras 1-10, D-25 through D-27. For an in-depth discussion of drivers of conflict in conflict and post-conflict situations, see Michael Dziedzic, Barbara Sotirin, and John Agoglia, eds. *Measuring Progress in Conflict Environments (MPICE): a Metrics Framework for Assessing Conflict Transformation and Stabilization* (2010). The document is available at

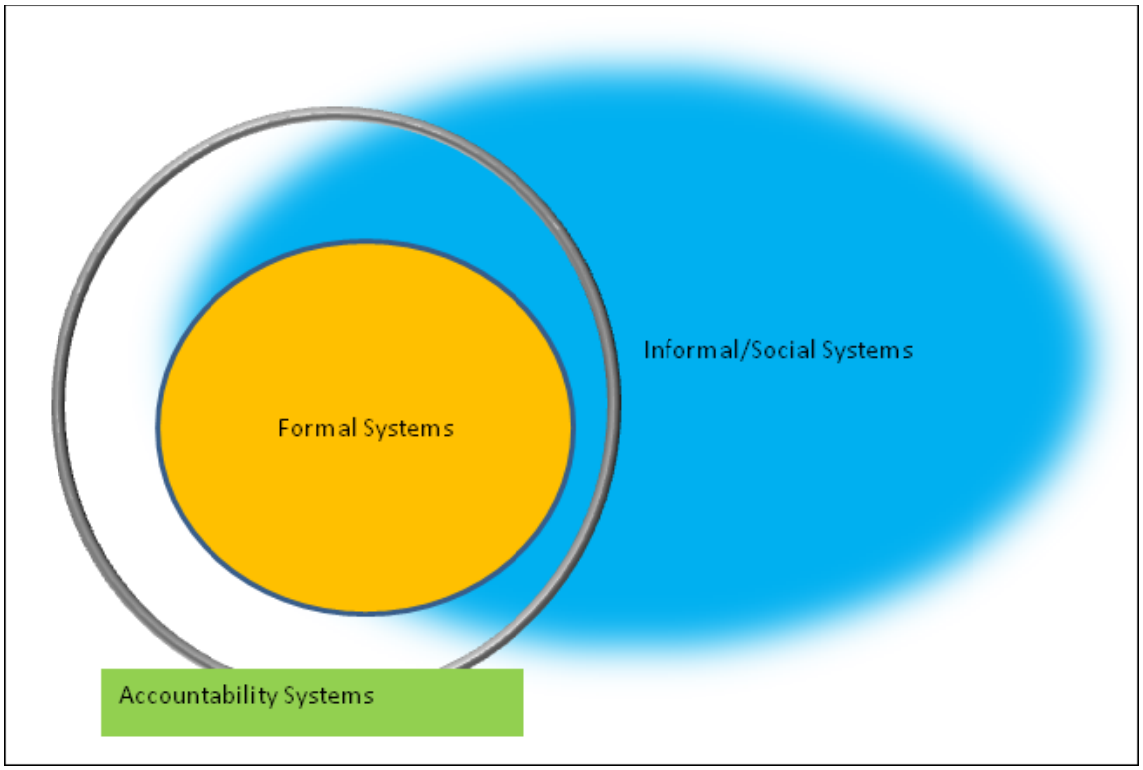

Figure II-1. Formal, Informal/Social, and Accountability Systems

(2) Dysfunctions in the ROL systems can be a driver of conflict or otherwise contribute to instability if the populace perceives the systems as being unfair, corrupt, or ineffective. Examples are:

(a) The populace perceives one or more of the ROL systems as being biased in favor of an ethnic, political, economic or other group.

(b) The populace perceives all or part of the ROL systems as being imposed by foreign power(s) and not in consonance with their core beliefs, attitudes and values.

(c) The populace perceives that the government is unable or unwilling to enforce the judgments of the judicial sector systems.

(3) One of the mail functions of ROL activities is also to strengthen the HN institutional performance. Some have made the case that we only achieve "Viable Peace" when the level of institutional performance meets or exceeds the level of the drivers of conflict.[6] Therefore, increasing institutional performance is just as important as diminishing the drivers of conflict, and should be done simultaneously.

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http://www.usip.org/publications/measuring-progress-in-conflict-environments-mpice-0. The section dealing with rule of law-related drivers of conflict is at pp. 30-38.

[6] Jock Covey, Michael Dziedzic, and Leonard Hawley, *The Quest for Viable Peace*, United States Institute of Peace, May 2005.

3. Framing the Problem

a. **General Objectives**. The joint force commander must attempt to understand each operational situation on its own terms, and cannot afford to apply preconceived methods reflexively. However, for design purposes, the overall objective of ROL activities is often to establish a set of ROL systems that are effective, efficient, locally legitimate, and internationally acceptable. Establishing these ROL systems can not only increase institutional performance, but can also reduce the drivers of conflict by providing legitimate and better alternatives. Some explanation of these criteria:[7]

(1) **Effective**. The management, oversight, and administrative systems must responsively manage required personnel, fiscal, and other resources so that the courts and other systems are able to function. The law enforcement systems must be able to protect the populace, deter criminal activity, identify and apprehend criminals. The justice systems must be able to resolve criminal charges and civil disputes, and must be able to enforce those decisions. They should also be a deterrent to criminal and other conduct which violates the system of rules.

(2) **Efficient**. The systems must be able carry out their essential tasks satisfactorily within culturally reasonable time frames, while operating within the constraints of the resources of time, money, and people that the HN society is able to make available for them. These systems should be sustainable without having to rely on extensive international aid.[8]

(3) **Locally legitimate**. All societies have an accepted set of rules and methods of adjudication and enforcement. The populace view of legitimate fairness will probably be based on the rules being in consonance with their moral views, and as being obligatory. Some examples of local views of legitimately fair include the fact that crimes are adjudicated and punished more or less the same for all groups; disputes between members of different groups will be adjudicated and the determinations enforced on the basis of the established rules, rather than group affiliation) and are administered effectively (e.g., the enforcement mechanisms work most of the time, even against the powerful and well-connected). The ultimate test of local legitimacy is the existence of a culture of lawfulness--which the majority of the populace generally chooses to make use of the established rules and adjudication and enforcement mechanisms, as opposed to turning to self-help or violence to solve problems. The conditions and strategic effects listed in Chapter I relate primarily to establishing local legitimacy.

[7] This section adapted from David S. Gordon, "Promoting the Rule of Law in Stability Operations: Myths, Methods and the Military," 1 *The Journal for Military Legitimacy and Leadership (February, 2009*), http://militarylegitimacyreview.com/wp-content/uploads/2010/08/Journal-on-Military-Legitimacy-and-Leadership_20093.pdf.

[8] See Andrew S. Natsios, "The Nine Principles of Reconstruction and Development." *Parameters*, Autumn, 2005, 4-20.

(4) **Internationally Acceptable**. Policy considerations of the donor nations significantly impact military interventions and civilian development programs. In many cases, there will be tension between what the international community wants and what the HN populace sees as legitimate. In effect, there will generally be an ongoing negotiation between internal and external actors regarding local legitimacy and international acceptability. There likely will be operational constraints imposed by strategic guidance and US policy on the JTF's operations affecting ROL systems.

(5) **Reduce the Drivers of Conflict**. The goal of an intervention is to produce stability, not Utopia. One of the most critical steps in stabilization is to identify the actual drivers of the conflict.[9] ROL activities should focus on both increasing HN institutional performance and reducing the drivers of conflict. However, trying to implement new ROL methods or systems can create (or exacerbate) drivers of conflict, if not carefully reviewed for local, cultural acceptability or sustainability. Likewise, prudent analysis determines what changes should affect which stakeholders and also attempts to anticipate their resistance or acceptance of proposed changes to the extant ROL systems. Mitigation measures may need to be implemented either before or simultaneous with implementation. Likewise, planners must intentionally design ROL activities to reduce the drivers of conflict, rather than haphazardly attempting to promote uncoordinated changes in the ROL systems that focus only on increasing HN institutional performance. In some cases, pre-conflict institutional processes were in fact drivers of conflict, such as a corrupt judicial system. In this case, a careful system review is needed before attempted restoration of that system.

b. **Formal ROL General Objectives**. Figure II-2 illustrates a different perspective on how the simultaneous focus on both institutional performance and drivers of conflict work together; by making the ROL systems more effective and efficient, they become better capable of providing the populace with a functioning alternative to violence. The drivers of conflict undermine efficiency, effectiveness, legitimacy and international acceptance. By reducing the drivers, the systems become more internationally acceptable; other nations and groups begin contributing the resources and personnel to strengthen institutions and improve the ROL systems in the HN. By increasing local legitimacy, the HN populace becomes more likely to accept the ROL systems and abide by the laws without coercion, thus creating a culture of lawfulness. Together, the effective, efficient, locally legitimate and internationally acceptable legs support strengthening HN institutional performance, which in turn leads to greater stability for the HN and greater legitimacy for the HN government. Note that each element supports the other elements; if any one of the four falls, the structure falls.

[9] See FM 3-07, *Stability Operations* (October 2008), Paras 1-10, D-25 through D-27.

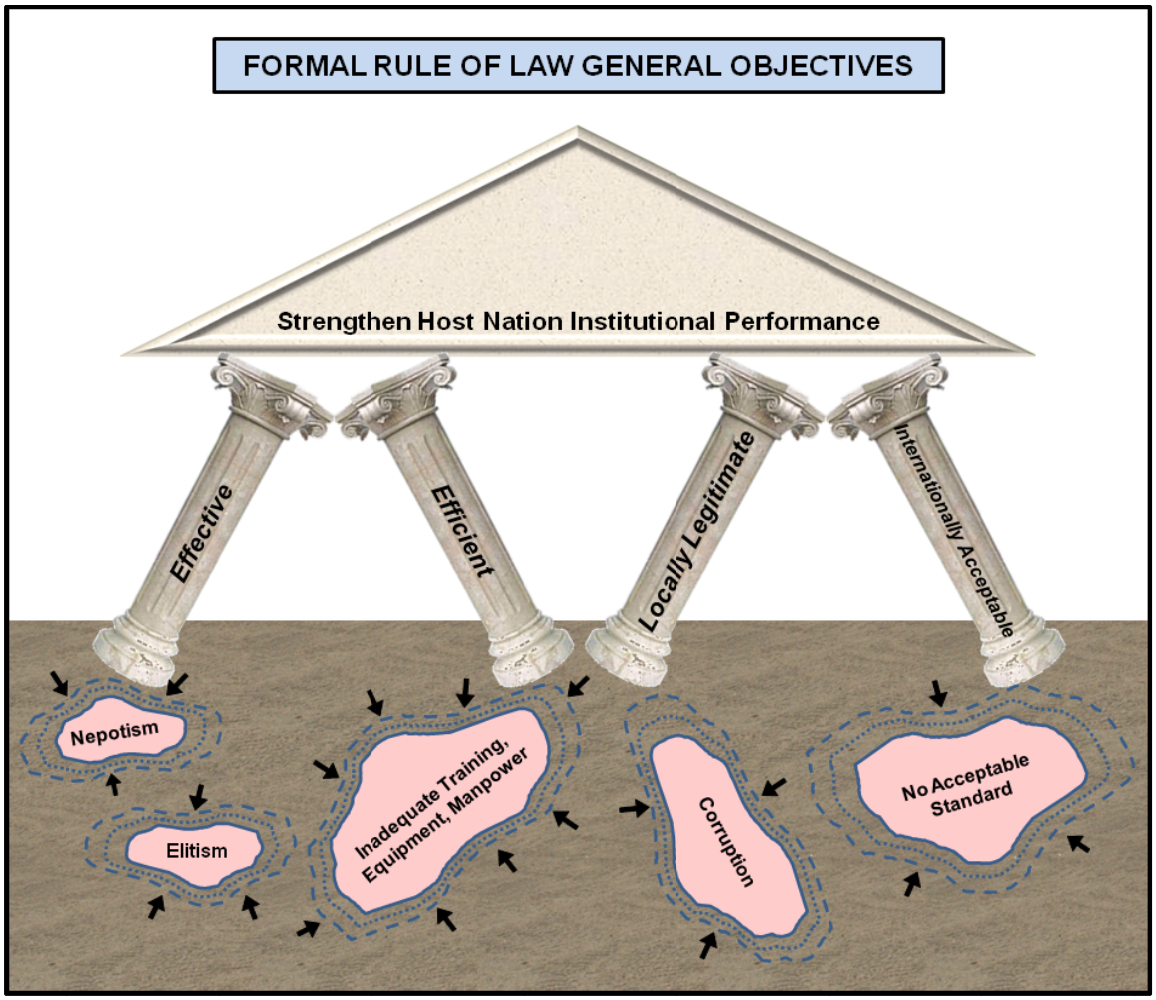

Figure II-2 Formal ROL General Objectives

4. ROL Activities Across the Range of Military Operations

a. The extent to which the joint force engages in ROL activities will vary across the range of military operations. The paragraphs below discuss some of the typical ROL support functions needed at varied points along the range of military operations. Likewise, Table II-1 below lists some of the typical ROL support tasks for shaping, combat, post-combat and stability operations.

b. In **military engagement, security cooperation, and deterrence**, the joint force will normally: a) conduct military-to-military engagement to promote respect for and compliance with ROL by the HN military; b) support development of HN security sector reform efforts to promote the ROL; and, c) when required, support US civilian agencies engaged in ROL activities.

c. In **crisis response and limited contingency operations**, the crisis may create conditions in which the HN police, judicial and other authorities are unable to provide public order, even with the assistance of US/international civilian agencies. The joint force may be required to provide interim law enforcement and judicial functions until

such time as the HN government is able to perform such functions. Normally, any such operations by the joint force are pursuant to an agreement between the US and the HN, or pursuant to an international mandate issued by the UN or a regional organization.

d. In **Major operations and campaigns**, the joint force may be required to execute on behalf of the US government all the legal duties required under the law of war as an *Occupying Power*, and must be prepared to provide all essential governmental services to the population of the occupied territory, including providing police and other security functions and administering the judicial system until such time as either civilian agencies can assume such responsibilities or they revert to the HN government agencies.

TYPICAL ROL SUPPORT TASKS FOR SHAPING OPERATIONS	TYPICAL ROL SUPPORT TASKS FOR COMBAT, POST-COMBAT AND STABILITY OPERATIONS
• Support improved functioning of criminal justice systems • Assist HN to resolve non-criminal issues that aggravate societal conflicts • Help improve management and administration of judicial systems • Enhance accessibility to justice mechanisms as an alternative to violence • Foster engagement with semi-formal and non-state institutions to strengthen ties with state institutions • Enhance the role of legal and judicial institutions in the oversight and accountability of security institutions • Support reform and development of HN institutions that govern the security sector	• Provide immediate restoration of public order • Secure records depositories, courthouses, and other justice sector infrastructure • Provide security for judges, prosecutors, defense counsel, and administrative personnel • Restore or perform essential police functions until they can be performed by local or international personnel • Restore or perform essential justice sector services until they can be performed by local or international personnel • Restore or perform essential detention and corrections functions until they can be performed by local or international personnel

Table II-1. Typical ROL Support Tasks for Shaping, Combat, Post-Combat, and Stability Operations

CHAPTER III
PLANNING

"The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law."

President Dwight David Eisenhower

1. Introduction

a. ROL activities are likely in support of any stability operation, and will affect all aspects of attempting to create, increase and maintain stability. However, ROL activities may also occur across any phase of the operation throughout the range of military operations. Operations to improve security will require consideration of ROL aspects of security operations by military and police, and development of the various institutions of the justice sector to support the security effort. Operations to restore or improve critical infrastructure will necessarily operate within the context of the governing HN laws. Efforts to improve health care, education, economic stabilization, and governance all involve the promulgation of fair laws that are effectively and equally applied. Stability operations, in general, and ROL activities in particular requires that the mission be analyzed, designed, planned and executed with appropriate regard to ROL.

b. This chapter addresses planning ROL and SSR support activities using the joint operation planning process (JOPP) and seeks to highlight fundamental concerns: How do the JFC and staff use operational art and design to understand and develop a strategy for ROL/SSR support activities? What are the typical objectives, enablers, conditions, and lines of effort when considering ROL and SSR activities? What are the unique considerations for ROL/SSR?

2. Mechanics Required for Planning ROL Activities

a. Figure III-1 identifies how operational art and design are used in planning ROL activities in support of the JFC's operations. The President and the SECDEF typically will establish a set of national strategic objectives where the JFC will have a supported or supporting role. In most cases, the joint force will be acting in support of other US agencies and other actors; however, the joint force must be prepared to lead stability operations, including ROL activities, until others are able to assume that function. During planning, the JFC should identify the military capability required to support other instruments of national power during each phase of a joint operation to reach the military end state. The JFC facilitates termination/transition and achievement of the end state by enabling civil authority in ways that create a stable environment. As discussed previously, this involves diminishing drivers of conflict and strengthening the legitimacy and capacity of the HN government.

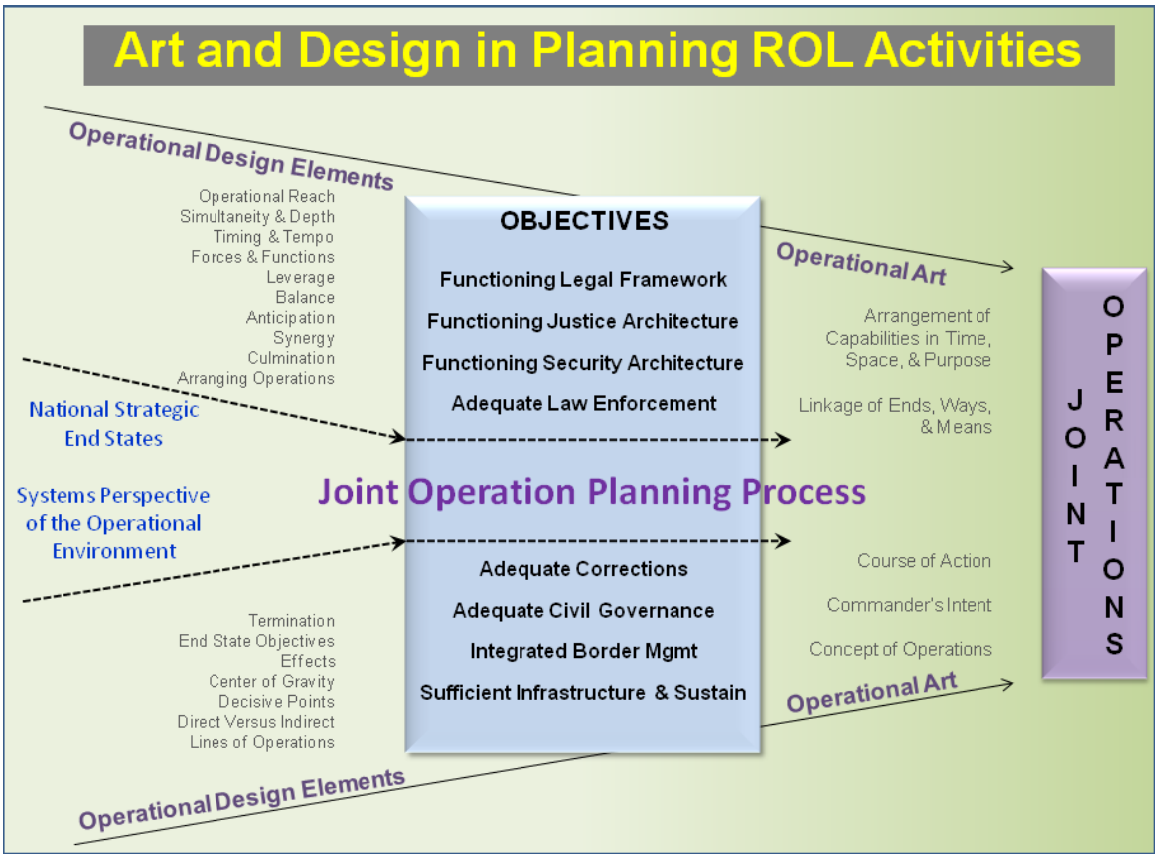

Figure III-1. Art and Design in Planning ROL Activities

b. Operational design enables the JFC and staff to shape the joint operation. JP 5-0 states that "a systems understanding of the operational environment considers more than just an adversary's military capabilities, order of battle, and tactics." Chapters IV, V, and VI, and Appendices C, D, and E explain the ROL systems that are part of the operational environment. The systems perspective includes understanding the role of ROL in the joint operation. At the same time, the JFC planner should understand that operational design and operational art are critical to creating an effective ROL strategy. In a fragile or failed state environment, strengthening the ROL can help create conditions in all sectors of development, and is often one of the most visible ways to promote the legitimacy of the joint operation and the host government in the eyes of its populace and the international community. In this context, the ability of US or coalition forces to conduct ROL and SSR support activities successfully can be critical to establishing a legitimate government and achieve mission objectives.

c. Appendix A, "ROL Objectives, Conditions, Enablers, and Lines of Effort," provides a flexible framework to facilitate collaborative planning with myriad interagency, multilateral, and HN partners. The ROL Framework identifies objectives, conditions, enablers and functional LOEs.

(1) These **objectives** focus on the components of national and local institutional structures and institutions, and the public knowledge and participation in them that are essential to enabling the ROL. Objectives and the supporting conditions help planners

focus on foundational ROL issues and develop capacity building strategies. They include:

(a) A Functioning Legal Framework

(b) A Functioning Justice Architecture

(c) A Functioning Security Architecture

(d) Adequate Law Enforcement

(e) Adequate Corrections

(f) Adequate Civil Governance

(g) Integrated Border Management

(h) Sufficient Infrastructure and Sustainability

(2) These **enablers** deal primarily with the political and strategic context required to enable or sustain the ROL system. ROL and SSR activities must align with this larger context if they are to be successful and sustainable. A solid JFC communication strategy in support of USG strategic communication efforts is essential to persuading the HN populace and its groups to rely on the ROL systems to resolve disputes, rather than resorting to violence. The **enablers** are:

(a) Strategic Communication and Perception Management

(b) Sovereignty

(c) Human Rights

(d) Legitimacy

(3) **ROL LOEs** focus on specific types of short and long-term ROL-related tasks and efforts that the JFC commonly has to support. They include:

(a) Countering Transnational Crime

(b) Accountability, Oversight and Anti-Corruption

(c) Public Information and Public Records Management

(d) Conflict Resolution and Peace Implementation

(e) Reconciliation and Re-integration

(f) Security Sector Reform

(g) Demobilization, Disarmament and Reintegration

(h) Intelligence and Information Sharing

(i) Use and Integration of Government Contractors

d. Figure III-1 show only the typical ROL objectives, but Appendix A discusses the objectives, conditions, enablers, and lines of effort in some detail. Planning is the process that synchronizes joint force means to create conditions to achieve objectives and reach the end state. The first step in JOPP is mission analysis, and one of the important pieces during this step is center of gravity (COG) analysis. For ROL activities, this analysis involves identifying the friendly and adversary centers of gravity and decisive points for ROL activities. The tools contained in this handbook for understanding the operational environment can aid COG analysis. Once planners identify the centers of gravity and decisive points, they continue planning to determine how to apply friendly capabilities (whether direct or indirect action) against the critical capabilities, requirements, and vulnerabilities. During this ongoing planning effort, planners use the timing and tempo of activities, leverage, simultaneity and depth, and other elements of design to develop the tactical, operational, and strategic courses of action.

e. The following vignette describes the application of the JOPP to develop objectives and desired effects. It is important for planners to keep in mind that ROL activities will probably be in support of DOS and other international organization efforts. Therefore it is imperative to coordinate with them up front. In that effort, you will quickly discover that there is a significant difference in terminology and overall approach. While we use objectives and effects/conditions, they use Lines of Effort (LOE) and Essential Elements (EE). Because they do not have the resources to develop detailed plans, timelines, and assessment mechanisms, their approach is one of encouraging all organizations to contribute toward completing EEs that support the LOEs. There usually is not as much regard to sequencing of EEs or LOE, as long as there is a sense of progress and unified action within the desired LOEs. However, this does not preclude us from conducting our normal planning, execution, and assessment efforts in accordance with doctrine. It does require us to closely coordinate, continually update, and maintain flexibility during execution.

Developing Objectives & Effects

SecDef recently directed the CCDR USXCOM to begin contingency planning for potential stability operations in the state of Brunzestan. A major focus of USXCOM's planning is to support US and coalition operations to develop ROL and security sector capacity/capabilities in the fragile state of Brunzestan. The populace of Brunzestan perceives the judicial system to be corrupt, inefficient, and a tool of the Wushtan ethic group to oppress the other ethnic groups in the country. The non-Wushtan populace has abandoned

reliance on the judicial system, and instead resorts to self-help, violence, and the leaders of armed groups, including the Elliadea insurgents, to punish crimes and resolve disputes. As a result, the government is unable to provide government services satisfactorily, and the country has been destabilized to the point where public order has broken down and much of the country is under the control of insurgents, warlords and criminal gangs.

The President's strategic objectives include stabilization of Brunzestan, conducting operations within a coalition of the willing, suppressing insurgent elements as part of the broader global war on terrorism (GWOT), and gaining support from the regional, theater, and international communities.

The Commander USXCOM and the US Chief of Mission agree that "legitimacy" of the intervening force and the host government is a critical vulnerability and enabler of the operation. USXCOM and the US Embassy Country Team have secured agreement with the Brunzestan President, Minister of Defense, and Minister of Justice to permit coalition operations for the purposes of rebuilding the security sector and judicial systems in a manner that comply with international law and the Brunzestan constitution. Based on the commander's planning guidance and mission analysis, the planning team developed three broad objectives:

1. The Brunzestan government is able to maintain public order and provide the populace with a fair and effective justice system.

2. The Brunzestan populace generally follows the law and uses government sanctioned formal and informal systems to resolve disputes.

3. The Brunzestan populace accepts the legitimacy of their government and the intervening forces.

The USXCOM planning team further determines the desired effects (conditions) to support these objectives:

Objective 1: The Brunzestan government is able to maintain public order and provide the populace with a fair and effective justice system.

E 1-1: Security forces and judicial systems institutions are in place and are properly resourced.

E 1-2: Security forces and judicial personnel are properly vetted, trained and provided security.

E 1-3: Accountability mechanisms effectively control corruption, favoritism, and inefficiency.

Objective 2: Brunzestan populace generally follows the law and uses government sanctioned formal and informal systems to resolve disputes.

E 2-1: Laws and legal processes are adequate, transparent, disseminated, and stable enough to allow individuals to plan their affairs.

E 2-2: The Brunzestan populace perceives the justice sector systems as fair, impartial, acceptable and effective ways to resolve disputes.

E 2-3: The Brunzestan populace relies on legal institutions and the content of law in the conduct of their daily lives.

Objective 3: The Brunzestan populace accepts the legitimacy of their government and the intervening forces.

E 3-1: The Brunzestan government understands that it is bound by law and does not act arbitrarily.

E 3-2: The Brunzestan populace perceives the government as being fair and accountable.

E 3-3: The Brunzestan government, assisted by intervening forces, is generally able to provide individuals security in their persons and property.

3. Prioritization of Key ROL and SSR Efforts

a. **Be prepared to seize the Golden Hour**. The US Institute of Peace has highlighted the importance of the period toward or right after the end of conflict, by designating it the "golden hour." As described by James Stephenson, "One term used in emergency medicine is the golden hour. The military learned in Vietnam that if a wounded soldier received medical treatment at a field hospital within one hour, he would probably survive. In post-conflict transition terminology, the golden hour refers to the first year after the end of hostilities. Unless the population senses steadily improving conditions in that first year, popular support for change and whoever is in charge declines, and the chances for economic, political, and social transformation begin to evaporate, enabling recidivism and even insurgencies."[1] ROL activities are imperative in the immediate aftermath of major ground combat operations, when it is essential to restore order to the civilian population in the vacuum that results from combat. Actions to consider include:

(1) Ensure control of and protection for courts and administrative buildings, police stations and detention facilities.

(2) Secure all record depositories for criminal cases, taxation, real and personal property registers.

(3) Immediately establish public order on the streets with patrols and checkpoints, and empower troops to suppress curfew violations, looting, vandalism, and acts of violence against the civilian population.

(4) Ensure there are safe and secure holding areas for detainees.

[1] "Losing the Golden Hour" James Stephenson, page 36

(5) Immediately ensure establishment of procedures for magistrate review of detainee cases to determine if each detainee should be held or released.

(6) Establish contact and build relationships with local judges, court personnel, police, records custodians, detention officials, at multiple levels to determine if and how they can return to their duties. In the meantime, US forces should be prepared to administer the justice sector and law enforcement systems until such time as US, international civilians, or local authorities can assume those responsibilities.

b. **HN Law Prioritization and Sequencing**. In general, the joint force must ensure immediate enforcement or establishment of three areas of HN law, in order of priority:

(1) **Detaining Civilians for Criminal Acts**. There is a distinction between the authority to detain "security detainees" – those who threaten military forces directly -- and other civilians who perpetrate criminal activity. Both issues will arise. In humanitarian operations, for example, foreign security forces often lack the authority to deal with criminal activity including theft, rape, and assault among refugee populations or others whom they are in place to protect. In stabilization operations, while it may be necessary to have separate authority and procedures for security detainees, use and support of the host nation's regular criminal process can strengthen the ROL and support the perception of legitimacy among the HN population. In any event, commanders and planners must consider the practical consequences of working with host government legal systems. If the HN legal system is corrupt, discriminatory, or generally operates in violation of internationally accepted human rights standards, then collaborating with the courts and police may prove counterproductive. Detaining civilians for criminal acts means that commanders may have to train their forces on how to preserve weapons, witness statements, photographs, and other evidence in a manner that is useable within the HN system. Bilateral, Status of Forces Agreements, or UN mandates may preclude direct engagement with the HN legal system. Regardless, the JFC needs clarity on this issue, and if guidance is not readily available, the question of how commanders on the ground should deal with civilian criminality needs to be quickly elevated until it is resolved. See Section C of Appendix B for more detail on dealing with HN law. See Section A of Appendix D for more detail on criminal justice system.

(2) **Property**. Host nation property law has both practical and political consequences. HN property law will dictate the process for obtaining real estate on which to conduct military training, build bases, courthouses, police stations, and prisons. It will dictate the ability to drill wells, and conduct other humanitarian engagement. Politically, property law is central to dispute resolution, conflict mitigation, and is almost always a central issue in post conflict when, for example, refugees and displaced persons return to find their homes occupied by former ethnic or religious rivals, or when a previous regime had seized private property for its own advantage. See Section A of Appendix E for more detail on property issues.

(3) **Revenue Collection**. Taxation, customs, and other revenue laws are particularly important and usually overlooked until gross misappropriation has occurred, or the HN cannot sustain HN forces equipped and trained by interveners. The determination of who collects and distributes government revenues becomes very important as well, e.g. the national government or provincial government. This determination may impact the ability of all levels of the HN government to fund military, civilian security, and ROL-related functions including security forces, judges, police, corrections officers, and the reconstruction of critical governance infrastructure. This is also a key issue when trying to ensure accountability and oversight of security-related expenditures, and limiting opportunities for corruption. See Section D, "The Role of Public Financial Management in Security," of Appendix C for more detail on this issue.

4. Establish a Time Horizon

a. General

(1) Time horizons will depend on the nature of the JTF's mission and whether the JTF's ROL engagements will be in support of the Department of State and other agencies, or whether the JTF must "lead stability operations activities to establish civil security and civil control, restore essential services, repair and protect critical infrastructure, and deliver humanitarian assistance until such time as it is feasible to transition lead responsibility to other US Government agencies, foreign governments and security forces, or international governmental organizations."[2]

(2) In cases where the JTF's ROL activities are in support of another agency, the appropriate time line will depend on the nature of the of the other agency's mission or program and their time line. Development agencies often work within a common time frame:

(a) Short Term: 3-18 months;

(b) Mid-Term: 18 months to 3-4 years;

(c) Long Term: 3-4 years to 10+ years.

It is important that military planners synchronize joint force supporting activities with those agencies' development plans, planning, and funding cycle.

(3) In cases where the JTF must lead stability operations until such time as it is feasible to transition to others, a pivotal factor is the time required for other US agencies, the host nation government, or others to deploy adequate resources to meet the requirements. Even though other agencies may lack capacity during the early part of an operation, it is essential to bring in the relevant agencies early and substantially into the planning process so as to ensure that the short-term actions of the military do not impede or undermine long-term USG goals.

[2] Paragraph 4, DODI 3000.05, "Stability Operations," September 16, 2009

(4) Generally speaking, planners determine time lines based on the initial assessment of conditions on the ground and must adjusted those as conditions change. However, in many cases, politically set timelines will govern, rather than conditions-based criteria. Often, decision makers intend such politically based timelines to act as a forcing function to put pressure on the host nation government or international actors to take actions they would not otherwise take, or would not take promptly. It is important for the JFC to ensure that political decision makers have accurate information concerning conditions on the ground in order to make realistic determinations on milestones for politically driven timelines.

b. **Key Planning Tasks by Phase**

(1) **Pre-deployment Phase**. Analyze the HN's existing ROL systems. Determine critical nodes, links, strengths and shortfalls. Determine the priority requirements and assets needed to establish an adequate civil security and civil control, including interim justice sector systems. Depending on the operation, the assets needed may be a small number of military personnel to support and augment civilian agency personnel, or the military may be required to deploy a sufficient number of trained personnel to administer HN ROL systems under an occupation. Coordinate with other US agencies and international partners to achieve unity of effort and implementation of long-term policy goals. Ensure identification of adequate planning resources, communication/coordination capability, and identification of stakeholder points of contact up front.

(2) **Early Intervention Phase**. The interagency and international aid community often referred to this as the "Golden Hour," when the populace is least resistant to changes brought in by external interveners, and is most receptive to the interveners' actions to improve conditions. It is important for the HN population to see HN government and joint force actions as capable, competent, trustworthy, and effective. Adjust plans, operations, and enablers to ensure that the populace sees that US forces are there to protect them and better their lives. Continue coordination and collaboration with other US agencies to support long-term USG policy goals.

(3) **Transition Phase**. Collaborate and coordinate with other US agencies, international partners, and HN authorities to prepare for HN/civilian assumption of primary responsibility for administering and reforming ROL systems. Design efforts to ensure the HN can sustain programs, people, and infrastructure without substantial foreign contributions. Also, give adequate attention to ensure sustainable reform for security sector management and oversight institutions. Support the ROL activities of other stakeholders as practical.

(4) Long-Term Reconstruction Phase. Many ROL and security sector reform efforts take years to achieve the desired results. Military ROL activities should create the conditions that facilitate long-term efforts conducted by others. While most military forces are likely to be re-deployed prior to or in the early part of this phase, the joint force

may be called upon to continue to support the efforts of other agencies, international actors, or the HN government in a reduced capacity.

5. Developing a Plan

a. JP 5-0 provides the fundamental techniques and formats for developing a joint operation plan. **The most important understanding and perspective that a JFC staff planner can have is that no other organization working with the DOD on ROL operation plans uses the same planning techniques and formats as the JFC, nor will any other organization follow the JFC plan**. If the JFC planner understands these perspectives, he or she should also appreciate that no other organization has the depth of experience or resources to perform such detailed planning or commit to its execution.

b. For the JFC to succeed, the JFC's plan must take into account ROL issues as perceived by outside organizations, such as DOS, USAID, US Embassy Chief of Mission, and the HN. In all phases across the range of military operations, the commander's communication strategy should include ROL issues, support US strategic communication themes, coordinate with civilian agencies and other partners operating within the HN. Coordinating mechanisms such as the JIACG and CMOC can help the JFC planner develop the necessary elements of the military's plan. JFCs direct planning when the JFC receives guidance to plan for military capability employment in response to a potential or actual crisis. Planners perform mission analysis using the JIPOE, operational approach, known facts, analysis of higher-level guidance, and developing assumptions to develop a mission statement, JFC's intent, updated planning guidance, risk assessment, and commander's critical information requirements (CCIR). JFCs should include an understanding of the national strategic end state in their planning guidance to ensure that joint forces understand how the condition of the HN ROL systems will affect the diplomatic, informational, military, and economic conditions at the conclusion of the operation.

c. The vignette below continues to show how after the Commander USXCOM identifies the JTF, their planners use the JOPP to develop the mission statement and the commander's intent. Note from the higher level guidance and identification of objectives and effects/conditions discussed previously, that ROL is a major focus of the operation and has an impact on the mission statement and commander's intent. In the beginning of JOPP, planners review the commander's guidance and, the J2 presents the joint intelligence preparation of the operational environment (JIPOE). The JIPOE includes an initial systems analysis of the operational environment, a review of Brunzestan laws, legal systems, and the impact of cultural, ethnic and religious factors, initial staff estimates and coordination with the US Embassy country team.

Identifying Specified and Implied Tasks for ROL Support

The following specified and implied ROL tasks supporting the stability operation include:

Specified:

(1) Deploy to Brunzestan locations as negotiated between US Chief of Mission, coalition force participants, and Brunzestan Ministry of Defense.

(2) Support host nation security sector forces in providing security for all persons, properties, and their basic human rights.

(3) Protect US and indigenous civilian personnel supporting USG agencies in this operation.

(4) When required, provide security for judges and other court personnel.

(5) Provide ROL and SSR education, training and assistance as requested by the US Chief of Mission.

(6) Support strategic communication efforts to ensure the US, regional, and host nation populations understand the legitimate presence of coalition forces.

Implied:

(1) Transition Brunzestan ROL and SSR assistance to other US agencies, intergovernmental organizations, HN institutions, NGOs and other such entities as are able to provide such assistance without US military involvement.

(2) Meet regularly formally and informally with coalition force counterparts and non-military agencies to assess the Brunzestan situation, develop comprehensive approach solutions, and measure progress of the operation.

(3) Assess and support requirements for educating, training and assisting Brunzestan military forces and civilian institutions to support the host government in providing for the peaceful resolution of disputes.

(4) Support US Embassy strategic communication efforts to educate the populace on the responsibilities of government judicial and security sector systems.

(5) Establish lines of communication for US forces that support the host country economy but do not place a burden on the populace.

Note how some of the specified and implied tasks for ROL support (above) made it into the commander's mission and intent statements for the overarching stability operation:

Commander's Mission and Intent Considering ROL

The Commander's Mission Statement:

"On order, USXJTF conducts operations as part of an international coalition to reestablish stability in Brunzestan, reduce insurgent threats, deny safe havens to international terrorist organizations, restore security sector capacity, rule of law, and legitimate government control over critical national resources. Be prepared to protect the sovereignty of Brunzestan, and increase legitimacy by assisting the Brunzestan government to administer, reform, and develop its judicial systems and security sector forces consistent with Brunzestan law, cultural and religious norms, human rights, and the rule of law. On order, USXJTF will redeploy forces when conditions no longer require US military assistance to support operations."

CCDR USXJTF issues his Commander's Intent:

"The purpose of this operation is to restore stability in Brunzestan and the legitimacy of its government by conducting stability operations and supporting security sector reform (SSR) in accordance with the rule of law. We will support HN security sector forces in providing security for persons, properties, basic human rights, judges/court personnel, and education, training and assistance as requested by the US Chief of Mission. As required, we will assist the Host Nation (HN) government to diminish insurgent threats and deny safe havens to international terrorist organizations. We must conduct our operations in a way that shows respect for Brunzestan law, cultural, and religious norms. We will be in support of the Department of State during this operation, and we will coordinate and synchronize our efforts with other USG and international agencies to support long-term goals and achieve the President's objectives. It is important that the regional nations do not oppose US/Coalition operations in the region and that they understand the value of ROL and SSR in preventing regional instability. All USXJTF staff and component commanders will understand the strategic communication themes in the appropriate annex and speak with one voice at all times. The end state for this operation is a stable Brunzestan with a just legal framework, public order, accountability to the law, access to justice, and a culture of lawfulness."

d. The following continuation of the vignette illustrates the determination of the centers of gravity and decisive points for the scenario.

Center of Gravity and Decisive Points

After careful analysis using input from subject matter experts and interagency partners, the JFC determined a friendly center of gravity is the Brunzestan judiciary. If the judiciary is secure, skilled in applying the law, impartial, not corrupt, and able to have its judgments enforced, then the Brunzestan populace will perceive the judiciary as a proper function of the government. This will foster the understanding that the judiciary operates to the

benefit of the people, and the populace will rely on the courts rather than self-help or strongmen.

Further analysis reveals the following decisive points:

- Security of the judiciary. Protect the judiciary from assassination and intimidation.

- The Brunzestan Judicial Academy. The Academy trains all judges. Strengthening the technical training will make the judges more competent.
- Strengthening the ethics training will help develop a judicial culture of impartiality and rejection of corrupt practices.

The Brunzestan High Council of Justice. Responsible for hiring, managing and disciplining all judges except for appeals judges and judges on the High (supreme) Court. It has often been subject to political pressures. Removing vulnerabilities to political pressure would strengthen independence.

Chief Judge Fustumata. Judge Fustumata is the Chief Judge of the High Court. He also is the chairman of the High Council of Justice, sits on the Steering Committee of the Judicial Academy, and related to the President. Judge Fustumata wields great influence, and appears favorably disposed toward reform efforts, even though they may change the balance of power in the country.

The Inspectorate of the High Council of Justice. The Inspectorate is the primary accountability system for the Brunzestan court system. It inspects all courts, audits their financial and record keeping, and investigates allegations against judges of incompetence and misconduct. It has sometimes been subject to political pressures. Removing vulnerabilities to political pressure would strengthen oversight.

Note: When coordinating with interagency and other non-military stakeholders, the term “essential elements” may provide more meaning and context for them than the term “decisive points.”

e. During course of action (COA) and concept of operations (CONOPS) development, understanding ROL and SSR desired and undesired effects/conditions across the range of civil-military operations can help develop alternative concept narratives and sketches. Military planners must also understand the limitations, constraints, and restraints imposed on the joint force and other civilian and military organizations through international, US, regional, and HN ROL agreements, norms, and institutions.

(1) The COA should identify **who** will be involved in the action, **what** action will occur, its purpose (**why**), **when** it will begin, and **where** and **how** it will occur. When considering ROL activities, the legitimacy of the COA as viewed by the HN and the international community is critical. A COA that supports ROL activities must be adequate, feasible, acceptable, distinguishable, and complete. It must be executable

within the JFC's guidance, resource and timing limitations, and balance the risks and costs of combined US civil-military actions with those of intergovernmental and NGOs to support the HN.

(2) During stability operations, as part of a coalition force, with DOS leading US efforts, the CONOPS should describe how joint force ROL and SSR support activities are integrated, synchronized, and phased to accomplish the mission with other USG organizations, HN forces, international organizations, and NGOs. Therefore, the joint staff must be continually aware of the civil-military objectives of all stakeholders (particularly the HN) and associated desired and undesired effects/conditions/EE concerning ROL and SSR. The example below continues the vignette with a much abbreviated sample of a JFC's CONOPS.

ROL Support Pieces of the CONOPS

As the USXJTF staff completes and coordinates the course of action, the Commander's Intent for each phase is developed:

"USXJTF will conduct the operation in three major phases:

- *Phase I, Deter. This phase begins with authorization for coalition forces to enter the country of Brunzestan. This phase main effort will focus on deployment, assessment, verification of scope of work/tasks, and establishing relationships with HN counterparts. The State Department has begun strategic communication efforts for maintaining Brunzestan's sovereignty and ensuring the population understands the impending legitimate presence of coalition forces and foreign agencies (including US) in the country. Although some political parties have spoken out against the deployment, there are no intelligence indications that there is a threat to coalition forces. During deployment, the JTF will coordinate with the country team to establish coordination contacts, forums with the HN, other civilian stakeholders, and military organizations operating within the HN. An assessment of HN institutional performance, verifying drivers of conflict, and division of tasks/responsibilities will be a top priority during this phase. All units are authorized to conduct emergency humanitarian assistance (HA) upon arrival, at the unit commander's discretion. I am willing to take risk in delaying offensive counterinsurgency and counterterrorism operations due to HA logistics burdens. This phase ends with the full deployment of coalition resources, assessment completion, task acceptance among coalition members, and initial integration with the HN counterparts and other stakeholders in the country.*

- *Phase II, Security & Stability. This phase begins with major coalition stability, counterinsurgency, and counterterrorism operations. This phase main effort will be to establish the conditions for a stable Brunzestan sovereign nation, lead by a legitimate government, providing basic necessities to the HN population, and acceptable standards of rule of law (ROL) and security sector reform (SSR). Key to an early end to this operation is finding and co-opting key influencers that may enhance or inhibit*

transfer of responsibility to the HN or other legitimate stakeholder. Intelligence sources have indicated the political, judicial, and security sector centers of gravity for enemy resistance to this stability operation.. JTF forces will take measured action against these COGs, but not at the jeopardy of long-term objectives. JTF will coordinate with the country team, HN, and other civil-military organizations within the HN to continually assess and modify activities that may place security and stability at risk. This phase ends with a secure and stable environment, with diminished drivers of conflict and increased institutional performance at high enough level that the government of Brunzestan is capable of providing for its own security.

- *Phase III, Enable Civil Authority. This phase begins with the government of Brunzestan assuming responsibility for its own security, and significant effort underway to bring ROL and SSR up to acceptable standards. This phase main effort will be to focus on establishing the necessary education, training and assistance programs for successful ROL and SSR. Programs will be coordinated, synchronized or integrated with other USG agencies and/or HN, international and nongovernmental organizations to the greatest extent feasible. Transition of ROL and SSR responsibilities to the government of Brunzestan as soon as prudent, with periodic oversight guaranteed by legitimate civilian authorities. I am willing to take risk in transitioning primary responsibility to the HN early, as long as we have the capacity to mentor, monitor progress, and authority to make changes. This phase ends with transition of all responsibilities to the HN, or other legitimate authority, and acceptable standards in place for ROL and SSR to include a just legal framework, public order, accountability to the law, access to justice, and a culture of lawfulness. "*

f. The plan/order is developed and reviewed according to JOPP (see JP 5-0, *Joint Operation Planning*, for specifics on developing an operation plan). JFC staffs should coordinate closely with the US Embassy country team to ensure achievement of US objectives within the HN. The plan includes tasks that encompass key actions that the JTF must perform to fulfill the CONOPS to create desired effects/conditions, achieve objectives, and reach the end state. Because ROL and SSR activities will typically be part of larger stability operations, it is imperative that planners identify key stakeholders up front, bring them into the planning process, and coordinate activities throughout execution.

6. ROL Stakeholders

See Appendix G, "Key Partners in ROL," for a detailed discussion of other participants in assessment, planning, and implementation of ROL activities with whom the JFC should coordinate/deconflict operations. Generally, the JFC should include the following organizations and type organizations in ROL assessment and planning:

a. DOS and USAID are the primary USG organizations that coordinate, lead, and plan ROL activities. The JFC must have a situational awareness of their activities and understand the structure designed to facilitate coordination among USG organizations in a comprehensive approach. The current USG coordination process for Reconstruction

and Stabilization (R&S) is the Interagency Management System (IMS). For detail about the IMS, see JP 3-08, *Interorganizational Coordination During Joint Operations*.

b. DOS and USAID are charged with different missions using different areas of expertise and capabilities not inherent in DOD. It is important to determine who will be the supported and supporting agencies for each ROL activity. The US Embassy Chief of Mission is the lead US representative in any country and regularly coordinates with the HN, international organizations, NGOs, and third countries operating within the HN. The US Embassy country team, made up of other USG agencies active in the HN, should become the JFC's primary point of coordination for any activity occurring within the HN. The JFC's best initial contact within the country team is the senior DOD representative, the Senior Defense Official (SDO), and members of the Security Cooperation Organization (SCO), who can provide the necessary link between country team experts and the JFC's staff.

c. The HN government and other significant indigenous organizations are equally important stakeholders. Ensure a US Embassy country team representative participates in any negotiations with the HN.

d. Intergovernmental organizations (IGO) who will be performing ROL activities within the HN. Coordinate with the US Embassy country team when contacting and working with IGOs.

e. Nongovernmental organizations (NGO) who may cooperate with the US military in ROL activities. Although, many NGOs will not work with US military representatives, the US Embassy country team can serve as an interlocutor in JFC-NGO cooperation. Civil Affairs personnel have significant expertise in these areas and would be valuable assets to the team. Normally, USAID is the primary interface between US government civilian and military agencies and NGOs; any contact with NGO's should be coordinated with USAID first.

7. ROL Design and Planning Considerations for HN Specifics

Designing a campaign with ROL elements requires that the planner consider three overarching ROL considerations for HN specifics. These are: a) the profound effects that culture, ethnic divisions and religion can have on selecting appropriate ROL and SSR activities; b) the fundamental question of what constitutes legitimacy as that term applies to both the joint force and the HN government; and c) the often complicated problems of dealing with HN law.

a. **Culture, Ethnic Differences, and Religion**. There is no place on the earth where there is not some concept of law. Every nation, tribe, and clan has some set of norms which they consider to be right and obligatory. The local culture and religion usually profoundly permeates these norms or laws. Culture, ethnic differences, and religion are all critical issues in population-centric operations such as stability operations, ROL, and SSR activities.

b. **Legitimacy** is a complex and overarching issue in all stability operations, especially those which affect ROL systems. Section B of Appendix B discusses legitimacy planning considerations in greater detail.

c. **HN law** is a very important consideration. The relationship between the JTF's operations and HN law will depend a great deal on the nature of the military presence and the political and social conditions within the HN. In most cases, when the JTF is invited by the HN government, we must work within the confines of existing HN law. In other cases, such as when acting as an occupation force, HN law may be applied, but will be subject to modifications allowed under international law. In yet other cases, HN law may be one of the drivers of conflict, and will require very sophisticated analysis and strategic guidance to determine proper COAs. Further discussion of this concern is found in Section C, "Host Nation Law," of Appendix B.

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CHAPTER IV
SECURITY SECTOR MANAGEMENT AND OVERSIGHT[1]

This is a crucial element in any part of security sector reform ... If you don't have civilian control ... the security sector reform will not succeed.

Adam Ingram

1. Purpose and Scope

This chapter provides a discussion on "security sector management and oversight" core areas where external assistance may be required to help strengthen national capacity to develop, manage, and utilize the components of a national security system.

2. Overview

a. Democratic and effective security sector management and oversight expands the concept of civilian "control" to include administration, management, fiscal responsibility, policy formulation, and service delivery. Sound management and oversight of the security sector requires accountability to civil authorities and civil society; competent civilian authorities; adherence to international and domestic law; transparency; adherence to the same public-expenditure management as non-security actors; accessible and impartial justice, and an emphasis on human rights. USAID and the OECD Handbook refer to security sector management and oversight as "**Security Sector Governance**" and define it as: the transparent, accountable, and legitimate management and oversight of security policy and practice.[2]

b. Security sector management and oversight also addresses issues such as the administrative capacity of security and justice institutions, including resource allocation and management, planning, strategic communication, gender policies, and information management. Security sector management and oversight benefits from other roles in providing justice, safety, and security including:

(1) Setting legal frameworks and minimum standards

(2) Registering, recording and disseminating judicial decisions

(3) Regulating, licensing, and monitoring justice and security services

[1] Much of the material contained within is derived from the *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, §5. (http://www.oecd.org/dac/conflict/if-ssr). (hereinafter cited as "OECD"). The OECD DAC Handbook was endorsed as a matter of policy by the US in 2006, and incorporated in part into the DOD, USAID guidance on Security Sector Reform (available at http://www.state.gov/documents/organization/115810.pdf.

[2] The definition and the material in the overview are adapted directly from State, DOD, USAID guidance on Security Sector Reform (available at http://www.state.gov/documents/organization/115810.pdf). However, they use the term "security sector governance" to mean security sector management and oversight.

(4) Enforcing human rights standards and behaviors

(5) Coordinating networks and partnerships with other service providers

(6) Exchanging information with other service providers

c. Engaging the host nation on management and oversight issues is an inherently political activity regardless of function or sector. Engagement is generally top-down, starting with national level engagement under civilian lead, although in extreme circumstances, military leaders have found themselves required to initiate such engagement. Where this occurs, it is critical that military members view these as temporary, and as condition setting efforts, rather than as a substitution for civilian lead engagements.

Example: Defense as an Entry Point for Management and Oversight Capacity Building in Uganda (2003-2008)[3]

In Uganda, armed violence and insecurity, particularly in the north and along its border with the Congo, was not only creating a security problem but was a primary contributor to poverty and inequality. Both the government and its development partners believed that the defense sector offered the most promising entry point for addressing the country's security problems, so from 2002 until 2004, the government of Uganda carried out a defense review with UK assistance. The comprehensive review was the first in Uganda's history and a politically sensitive and risky undertaking for both countries. The review sought to lay the groundwork for changes in how Uganda formulates and delivers defense and wider security policy by attempting to anchor the process more firmly in governmental planning and budgeting processes. The methodology drew upon current SSR thinking to develop a more holistic and developmentally sensitive approach to analyzing defense requirements. Close collaboration was required at both political and technical levels in order to manage the immense expectations generated by the review.

Approaching the problem from a governance (management and oversight) perspective paid big dividends. Priority was placed on developing an understanding of the role of defense in relation to other security actors, a clear description of the defense forces needed to fulfill this role effectively, and a plan for defense transformation set within the context of competing needs and resource constraints across the public sector. The defense work was then tied into the Ugandan Poverty Eradication Action Plan (PEAP) (2004-08), which highlighted commitments to regional security agreements, including small arms control. The PEAP was purposefully designed to increase awareness of the costs of armed violence, and awareness also of the positive dividends of military and police reform in relation to the enhanced safety of communities. The introduction of SSR as a priority issue in national development frameworks raised its profile among partner governments and donors. It also provided an opportunity to stimulate a more inclusive public debate on security issues.

[3] OECD at 97-98.

d. Because the same management and oversight standards apply at all levels of government, maintaining the civilian lead is particularly difficult at local or provincial levels where the environment may be completely non-permissive. An important synergy can take place if reform efforts nest defense-related activities within, or align with, civilian-led governance assistance. Near term, this approach enhances both governance and security. In the long term, defense institutions will be more accountable, sustainable, and well-managed.

3. Key Partners and Coordination Processes

a. The US foreign assistance framework contains security sector governance (management and oversight) and identifies SSR as a key program area in support of the *Peace and Security* foreign policy objective, and security sector governance (management and oversight) as a program element in support of the *Governing Justly and Democratically* foreign policy objective.[4] At the national level, the Department of State leads strategic, operational, and performance planning of US foreign assistance, as well as foreign assistance planning and resource management across State and USAID. USAID's primary role is to support programs aimed at building civilian capacity to manage, oversee, and provide security and justice. Other USG departments and agencies provide important capabilities in the conduct of security management and oversight programs. In particular, the Departments of Justice (DOJ), Homeland Security (DHS), Energy, and Treasury may play substantial or leading roles.

b. In steady-state, bilateral relationships, security sector management and oversight-related activities that are coordination by the JFC with interagency partners and the Country Team will normally go through State and USAID programming cycles. Activities funded through national defense appropriations will not necessarily coincide with the State-USAID cycle. The most effective way for the JFC to influence or align with the civilian process is through early coordination, the conduct of joint civil-military interagency assessments, and inclusion of interagency partners in the JFC's mission analysis.

c. In stability operations, a strategic USG plan will frame decisions on programs. Interagency vetting and coordination of implementation proposals will occur through the channels created to expedite the execution of stability and reconstruction activities.

4. Implementing Security Sector Management and Oversight Assistance

The OECD, Development Assistance Committee (OECD/DAC) has identified six core areas that are often required to help strengthen host nation capacity. This work has had significant impact on US government SSR policy and practice. These six core areas, adapted for the JFC, are:

a. **Individual and Organizational Capacity and its Enabling Environment**

[4] The foreign assistance framework is accessible at http://www.state.gov/f/c23053.htm.

(1) "Capacity" is the ability of people, organizations and society to manage their affairs successfully and depends on more than just the experience, knowledge and technical skills of individuals. Capacity development is a much broader concept than training and technical assistance.

(2) Capacity development at the individual level depends heavily on the operation of particular organizations, influenced by the institutional framework and the structures of power in which those organizations reside. Formal and informal power structures and institutions shape and constrain the functioning of organizations. Capacity needs exist throughout the security and justice systems, not just within the executive and judicial institutions.

(3) Legislative, civil society and media capacity are important. Lack of capacity in these areas undermines initiatives in any of the main sectors of the security system.

(4) Capacity building contributes very little if the HN lacks the political will to improve its security sector. Without commitment to SSR, the result is often supply-driven technical assistance. Strengthening the capacity in partner governments and civil society to develop, manage and implement their own SSR should be a central aspect of all security and justice development programs. A key enabler to developing this political will may be a robust and well coordinated communication strategy that includes culturally-attuned messaging, key leader engagement, social media, visual information, interagency coordination, and two-way dialogue with the population.

b. **Legal Frameworks**

(1) Ensuring that the security and justice sectors operate within a clear and unambiguous legislative and legal framework is essential. That framework defines the parameters within which institutions operate; the checks and balances within the system; and the relationship between — and independence of — the various arms of government.

(2) Most countries have a written constitution which in steady-state operations serves as a basis for SSR planning. Constitutions typically define the role of the legislature regarding the passing of legislation, the approval and oversight of the executive and the national budget. All legislation derives its legitimacy from the constitution and the structure of governance that it establishes. At times, it may be necessary to change key parts of the constitution before substantial legal reform can occur. In Chile for instance, defense reform depended on successive revisions of the 1980 constitution in 1989 and 2005, and so SSR came in stages.

(3) In many countries, the challenge will be greater. In countries emerging from repressive regimes, existing legislation restricts people's rights and undermines the accountability and democratic oversight of security and justice institutions. A review of

the legal and legislative framework is therefore essential, as legislative change may be required to ensure effective and accountable security and justice services.

(4) In stability operations, it is often the case that governance has broken down or illicit power structures have exercised *de facto* rule. In the first case, there will not be a structure to build on. In the second, any structure would lack legitimacy. The challenge then is two-fold: building governance structures, and extending their oversight and control to the security sector.

(5) Appendix A, "Rule of Law Objectives, Conditions, Enablers, and Lines of Effort," identifies "**A Functioning Legal Framework**" as one of eight primary objectives containing approximately 18 supporting conditions. In terms of sequencing, this should be one of the first objectives covered in the mission analysis. If security sector management and oversight assistance is required, engagement to ensure that the legal framework is adequate to support planned activities should be one of the first actions taken.

c. Strategic Planning and Policy Making

(1) Any external assistance provided should support national structures that can coherently manage SSR. National ownership and leadership are essential for effective security and justice development. Providers should avoid creating an SSR process made up of stand-alone projects with little or no coordination or consideration of larger national frameworks. Strategic coordination is time consuming and hindered by differences in political and bureaucratic agendas, but it is essential for a successful reform process.

(2) Training partners in skills such as strategic analysis, policy formulation, strategic planning, organizational design, change management, evaluation and budgeting is a low-cost, high-impact investment in reform. Few processes do more to foster HN ownership of security sector reform than strategic planning. Initially, HN officials will see planning as a means to elicit resources for near-term needs from donors. Every requirement will make the priority list, but HN officials will resist making any hard decisions. When plans begin with rigorous threat assessments, over time priorities emerge from difficult trade-offs and it will become evidence that the HN government is taking ownership of SSR.

Example: Development of a National Security Strategy in Jamaica (2003-2007)[5]

In 2003, Jamaica decided to launch a process to develop the country's first comprehensive, whole-of-government National Security Strategy (NSS). This was developed during 2004-05 through a sustained process involving all potentially relevant branches of government and state agencies (many of which had not previously considered their role in promoting security), and consultations with civil society. A facilitator and a joint Canadian, UK and US

[5] *OECD DAC Handbook* at 91.

advisory team supported the process. The government initially planned to conduct a defense review but realized that the wide range of potential threats to Jamaica's national security — including organized crime, gang violence, socioeconomic problems and environmental disaster — required a broader approach. NSS strategic goals and priorities were developed according to all key threats, vulnerabilities and overall national priorities; and a detailed plan for implementation was developed. The NSS, which was approved by the legislature in 2007, includes a comprehensive range of reform programs, including changes in the division of responsibilities between the police and defense forces; a review of the criminal justice and law-making systems; reviews of several specific institutions, including the police and defense forces; major reform of intelligence systems; improved environmental and planning regulation; dismantling of organized crime groups; local crime prevention; and community development projects in target neighborhoods. To ensure inter-agency co-ordination and high-level political will, an Implementation Unit was established that reports to the National Security Council.

d. **Budgetary Processes**. The role of SSR and public financial management is very important. Appendix C, Section D, *The Role of Public Financial Management in Security*, addresses this issue in some detail.

e. **National Capacity to Manage Change**. It is important to foster a culture of change that addresses the attitudes and behavior of personnel in security and justice institutions. Training for managing change tends to aim at either senior managers or new recruits (both are important), but middle managers can be the key to sustainable success. Middle managers need the capacity to manage the processes of change and steer through reforms. Other areas of focus should include:

(1) Strengthening personnel management

(2) Encouraging continuity of staff

(3) Strengthening both national and local staffs and the pool of qualified personnel

(4) Building capacity for internal audits and reviews, and external oversight

f. **National Capacity to Monitor, Review and Evaluate**

(1) A culture of monitoring, assessment, review, and evaluation within national governments, parliaments, security and justice institutions, and CSOs is important to help ensure accountability, enhance oversight, and inform policy development.

(2) Supporting development of an oversight culture is a difficult task. Ownership and voice are often weak and sometimes missing altogether in national institutions, especially when these are new. This is often the case in stability operations. Monitors will find that their oversight is a threat to entrenched institutions. Security sector "incumbents" will resist oversight and change, and see themselves as owners of

national security assets. Although difficult, creating or nurturing national capacity for monitoring, review and evaluation provides the best chance for achieving the goals of SSR. In particular, improving host nation capacity to monitor, review and evaluate its own programs should aspire to achieve the following objectives:

(a) **Service delivery** - monitoring and evaluation can help ensure that security and justice providers address public needs.

(b) **Democratic governance** - monitoring, reviewing and evaluating can support transparent, accountable processes of decision making and program adjustment.

(c) **National ownership** - nationally conducted and led monitoring and evaluation can enable stakeholders to take the lead in shaping program design and direction.

(d) **Sustainability** - nationally owned processes of monitoring and evaluation can continue once donor assistance ends, and help ensure the continued development of the security system.

Institutional Funding and Sustainability[6]

In countries with emerging CSOs acting in the security and justice arena, it is important to ensure provision for core institutional funding. Although practice demonstrates that external partners are more disposed to support project-based activities, this limits CSOs' ability to engage in the longer-term and to develop or seize emerging opportunities in domestically driven security reforms. On the other hand, openness towards longer-term funding must be balanced with concerns of sustainability. There is a requirement for CSOs to develop balanced sources of funding in order to sustain their independence and avoid both donor fatigue and the appearance of dependence on a particular interest group (including foreign nations and the national government itself if it is a source of CSO funding). This can be done, for example, through harnessing the support of the private business sector and charity campaigns.

Section A, "Accountability and Oversight," of Appendix C covers in more depth implementing activities and programs to strengthen accountability and oversight in general. Accountability systems relating to each of the justice sector subsystems are discussed in each section of Appendix D.

5. Conducting a Security Sector Management and Oversight Assessment

a. Conducting an analysis of host nation capacity for security sector management and oversight begins with analysis of the conflict and political situation. Core information requirements should focus on the three themes: management and oversight capacity, political will (in particular, civilian command and oversight of security forces)

[6] The Judge Advocate General's Legal Center and School, U.S. Army, Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, 2008, page 123.

and the human and institutional capacity to manage change transparently and effectively. Because of the political character of this information, involvement of a representative of the Chief of Mission in planning the analysis is imperative.

b. For the JFC, the primary objectives of a security sector management and oversight assessment will generally be to focus on identifying the key problems that undermine the ROL and SSR, and understanding the role of defense in relation to security sector management and oversight as a whole. This requires significant interagency collaboration, and if possible, civilian lead. The following four steps illustrate the analysis:

(1) **Step 1. Consider the Political and Historical Context**. This step helps identify events that shaped the environment, such as a recent conflict or the creation of a new state. It also develops information on the country's legal and management and oversight traditions, the origins of its current laws, and the view of the host nation population toward security.

(2) **Step 2. Understand the Major Players and Level of Political Will**. No capacity building will accomplish much unless the HN government and the population at large have the political will to change. This step helps identify the roles, resources and interests of those who might potentially support reform as well as those who stand to benefit from retaining the *status quo*.

(3) **Step 3. Assess Management and Oversight Capacity**. This step provides for a structured assessment of the essential elements of security sector management and oversight capacity. As with the other steps, this is an overview of the issues that may be relevant to analysis. As planning becomes more detailed, the assessments should as well.

(4) **Step 4. Examine Program Options**. This step broadens assessments beyond merely looking at security force and justice institution building, and ties those activities into management and oversight programming. This step is important and requires substantial interagency involvement. It helps determine the extent to which the effectiveness of ROL and SSR-related activities and operations might increase by supporting other initiatives, such as political party development or legislative strengthening.

6. Lessons Learned and Best Practices

a. *Do not overlook the impact of non-state actors.* The extent of national government control and delivery of justice and security varies significantly in many countries. Unfortunately, in the post-conflict environment, non-state actors often provide the majority of services. This has significant implications for how national coordination bodies work. If service provision is decentralized, and the state is only one of a number of providers, then top-down bodies will have limited impact unless appropriately coordinated, organized, and empowered.

b. *Beware of overreliance on uniformed governance institutions.* In new and emerging democracies, there is often little civilian capacity to lead national strategic policy making, planning, or budgetary processes. Uniformed organizations often lead, develop and control policy, which can lead to perceptions of security as state-centric rather than a people-centered. Where uniformed officers fill the billets, the JFC staff can be useful interlocutors, impressing upon them the importance of developing civilian professionals in key planning and management positions.

c. *Maintain the balance between what should be legislated or regulated.* Regulations tell people how to comply with the law and define how state institutions will implement it. They tend to be more flexible, and as a result, it is easier to rely on them as a way to achieve faster results. However, developing legislative capacity -- especially to support the development and oversight of government, its effectiveness and its responsiveness to the needs of the people – provides more stability and is an essential part of any SSR process.

d. *Develop local governance structures to manage implementation.* Security and justice needs are often most acute at the provincial or community level. Too often programs designed in capitals did not include the involvement of local actors who will implement them in areas affected by armed violence. Local involvement in development and implementation, consistent with national objectives, offers opportunities to build public participation, local ownership, and facilitates direct civil society involvement.

e. *Human resources are a priority.* Overhauling the selection, appraisal and supervision of officers and officials can be central to effective and sustainable reform. Poor personnel management can result in low morale, enable corruption, and produce crippling inefficiency. Providing assistance to security and justice institutions to move towards a merit-based system of appointment and promotion is often necessary.

f. *Involve national actors and host nation CSOs in the review and evaluation of assistance programs, activities, and of the security sector itself.* Encourage host nation governmental partners and civil society stakeholders to participate in the review of assistance programs. This interaction will help foster transparency, ownership, and promote a culture of monitoring and review. Over the long term, management and oversight of the security sector requires civil-society groups that can help government bodies oversee the sector.

g. *Use international agencies to coordinate multi-stakeholder or multi-sector dialogue.* When trying to enable cross-sector SSR coordination within the host nation, international agencies are more like to have the necessary distance from HN politics than US government representatives who are involved in programming on the ground. As a result, they have a better chance of achieving a result that appears more equitable and less biased.

7. Further Detailed Information

a. The Unified Action *Handbook on Military Support to Governance, Elections, and the Media* covers "governance" comprehensively, addresses a wide range of development issues and is a valuable source for JFCs and planners.

b. Appendix C, "Design and Planning Considerations for Security Sector Management and Oversight," covers in more detail several areas where military engagement will have a significant effect on a host nation's security sector management and oversight capacity, or where effective governance is critical to the success of rule of law activities or SSR:

(1) Section A, "Accountability and Oversight," focuses on the role of accountability of the security and justice sectors based on transparency, responsibility, participation, and responsiveness to citizens.

(2) Section B, "Incorporating Anti-Corruption into Military Operations," provides a road map for activities that reduce the adverse effects corruption can have on host nation governance, especially with respect to the security and justice sectors.

(3) Section C, "Vetting," provides best practices for planning and conducting vetting of host nation personnel to enable greater accountability, strengthen anti-corruption activities, and promote improved competence in governance activities.

(4) Section D, Public Financial Management," explains the how budgetary processes influence the rule of law, oversight of security forces, and the ability of a host nation to sustain capabilities developed through military assistance programs.

(5) Section E, "Illicit and Informal Power Structures," addresses the influence of political and coercive power on operations to restore and strengthen the rule of law and to accomplish SSR. This section's structure and the assessment frameworks can inform mission analysis, key leader engagement, and intelligence support to rule of law activities.

(6) Section F, "Civil Society Organizations (CSOs)," explains what practitioners mean when they talk about "civil society." It provides a framework to assess the roles and capacity of the host nation's civil society, and to engage with and strengthen civil society so that it contributes to establishing and maintaining the rule of law.

CHAPTER V
THE JUSTICE SECTOR

Justice denied anywhere diminishes justice everywhere.

Martin Luther King, Jr.

1. Introduction

a. Justice sector systems are those systems in a society that provide for social order and stability by adjudicating disputes and enforcing those adjudications. The justice sector reduces crime and disorder, and serves as the primary method states use to manage conflict peacefully. The justice sector provides the state with a method of meeting human rights standards. A critical function of the justice sector is to provide oversight and accountability over the security and defense sectors, thereby providing an essential check and balance to the enormous power of those organizations empowered to use force.[1]

b. The JFC must be prepared to design, support, collaborate with, and, if necessary, lead activities involving other USG agencies, foreign governments and security forces, and international governmental organizations to support HN operations to administer, rebuild, reform, and assist judicial sector systems in order to increase stability, enhance the legitimacy of the HN government, and meet US obligations under international law. Likewise, the JFC may be required to conduct civil-military operations to administer HN justice sector systems, until civilian-lead capabilities are in place.

c. Figure V-1 depicts a notional justice sector system. The justice sector is a complex and adaptable system of systems made up of a number of other complex systems, each of which may be broken down into appropriate node and link depictions. Any action to change a small part of a component system will have affects on numerous other parts of the overall system. For instance, improving the ability of the police to detect and apprehend criminals will also require that prosecutors be prepared to process the additional cases, and the judiciary of judging a larger number of cases correctly and without significantly increasing the time to do so. In order to support the judiciary in dealing with the larger number of cases, the court administration and records systems must be able to manage a larger number of case files effectively and efficiently. The corrections systems must also handle a larger number of people in pre-trial detention and in post-trial confinement.

2. How Justice Systems Work: Understanding the Operational Environment

The justice sector is a complex system of systems, each interdependent upon the other systems, as outlined in Figure V-1.

[1] *OECD DAC Handbook on Security System Reform*, 182. http://www.oecd.org/dataoecd/43/25/38406485.pdf.

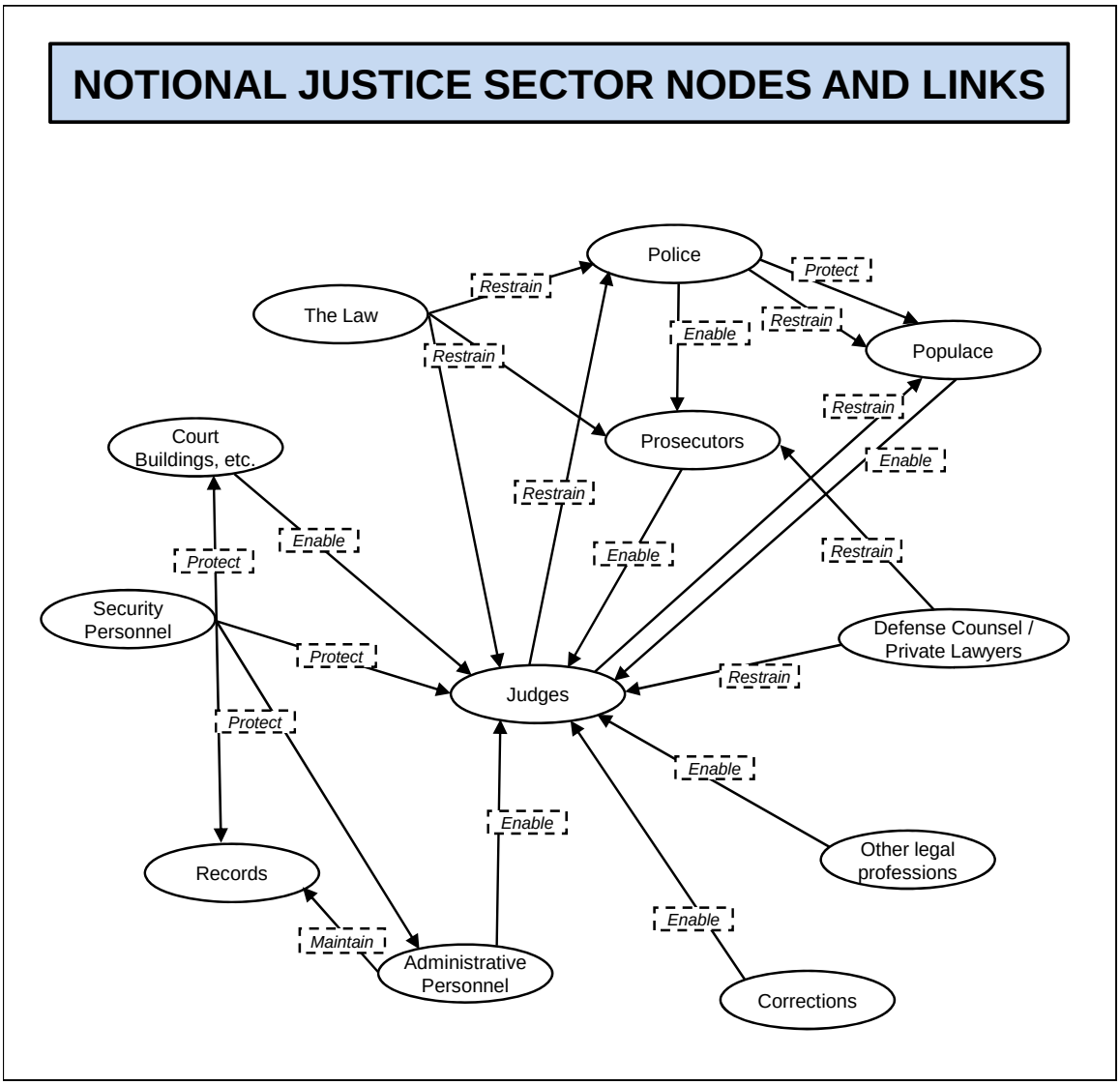

Figure V-1. Notional Justice Sector Nodes and Links

a. **Formal Systems**. Judges/courts are central to a formal justice system. Courts normally have jurisdiction based on geographical area, subject matter, and status of the persons appearing in the court.

(1) **Geographic Area Jurisdiction**. In the United States, we have courts with jurisdiction over a state, county, or a federal district. Many foreign courts have jurisdiction over a political or administrative division or subdivision, such as a province or district.

(2) **Subject Matter**. Some courts may try only criminal cases, and others only civil or commercial disputes. Still, other courts may try juvenile cases, domestic relations cases (divorce, child custody, etc.), trade cases, labor cases, inheritance cases, or other specialized types.

(3) **Status.** In the United States, we have some status-based courts, such as the military justice system. US law also has courts for members of Indian tribes. Some foreign systems have specific courts for religious and ethnic minorities which deal with issues such as domestic relations, property disputes, and inheritances.

(4) **Appeals Jurisdiction**. Most legal systems have methods to appeal the decision of a court. Many (but not all) systems provide for trial courts, an intermediate appeals court, and a court of final jurisdiction, such as the US Supreme Court or the French Court de Cassation. There may be appeals courts based on subject matter or on status.

(5) **Other important formal systems** are those dealing with criminal justice, civil justice, the judiciary, and court administration and support. These are considered in more detail in Appendix D, "Justice Sector Design and Planning Considerations," Sections A, B, C, and D.

b. **Informal/Social Systems**

(1) While the Western ideals dictate selection of judges, prosecutors, and administrators solely on merit, usually political, religious, ethnic, tribal, family, or business ties play a substantial role in the selection process for such positions in any country, including the United States. It is therefore important to understand the beliefs, attitudes, and values of key individuals in the justice sector and to understand their ties with family, tribal leaders, political parties, and other informal power structures. Such understanding can help ensure that reconstruction and reform efforts are effective and not subverted by an agenda contrary to US policy goals. Table V-1 shows eight steps for informal/social system analysis of the justice sector.

Eight Steps for Informal/Social System Analysis of the Justice Sector

1. Map the formal structure of the justice sector institutions, to include how other parts of the government (legislature, president, prime minister, other departments and ministries) affect their functioning.

2. Identify those positions which have the power to select and assign key personnel (judges, prosecutors, administrators, etc.)

3. Identify those positions which have a role in inspections and disciplinary proceedings against key personnel.

4. Identify those positions with the power to assign cases and other key tasks.

5. Identify the individuals who fill the positions in steps 2 through 4.

6. Do social network analysis on the individuals identified in step 5:

   a. Political affiliations?

b. Ethnic and family ties?
c. Patronage obligations?
d. Friendships and other influential relationships?
e. Other group loyalties?

7. Determine what effect the relationships identified in step 6 have on the administration of judicial sector institutions.

8. Determine how the relationships identified in step 6 can improve efficiency and reduce corruption.

Note: formal systems are a starting point for analysis—they can lead to important actors or relationships outside the formal systems.

(2) Interveners generally achieve positive justice sector effects by persuading key individuals within the sector's organizations to change their minds about how the various systems in the justice sector should operate. US military and other interveners influence these changes by personal meetings with influential HN personnel, providing training to HN personnel, and mentoring key individuals in the organizations. Frequently, the process of change begins by persuading key individuals that change is beneficial to their interests. Once they believe that changes are beneficial, they will support broader programs, such as training and mentoring. The goal is to reach a tipping point[2] at which enough individuals in the system accept the new concepts, which then permanently alters the culture of the organization. While building momentum for this culture of change, connecting "change agents" from different parts of the system with each other can foster information sharing, cross-organization cooperation, and accelerate acceptance of the new concepts.

Building Linkages in the Justice Sector—Afghanistan 2003

In early 2003, the Italian Ambassador called for an assessment of justice sector capabilities in the provinces and Kabul. The US military had already been developing such an assessment, and suggested that other stakeholders in judicial reform join with the US to form a collaborative effort. Sponsorship of the project was given to the Afghan Judicial Reform Commission, which was created by the Bonn Agreement, and major support was furnished by the Italian Justice Project and UNDP.

The Italian Justice Project developed and carried out a program to train and deploy Afghan assessment personnel, who were supplied by the Ministry of Justice, the Supreme Court, and the Attorney General's Office. There was extreme hostility between the personnel of the Ministry of Justice, the Supreme Court, and the Attorney General's Office at that time, to the extent that personnel from one organization were often forbidden from participating in training events at one of the other organizations. At the time the assessment

[2] In sociology, a "tipping point" is reached when a previously rare phenomenon becomes rapidly and dramatically more common. For a useful popular discussion of the phenomenon, see Malcolm Gladwell, *The Tipping Point: How Little Things Can Make a Big Difference* (New York: Little, Brown and Company, 2002).

commenced, members of the team from one organization would not even ride in the same vehicle with team members from one of the other organizations. However, as the assessment progressed, the team members were forced to work with each other to achieve the common goal; in so doing, they learned the benefits of information exchange and collaboration. An important by-product of the assessment was increased communication and collaboration between the three permanent justice sector organizations.

c. **Accountability Systems**. In addition to audits, inspectors, review commissions and other methods of accountability, effective appellate review processes, functioning defense counsel, the populace, CSOs and the media all serve to make the justice sector accountable, if information is made available for review.

3. Lessons Learned and Best Practices

a. *Efficient, fair, and effective courts and other dispute resolution methods are essential to effective COIN*. In COIN, the insurgency may be attempting to establish its legitimacy and undermine the legitimacy of the HN government by establishing shadow courts to deal with both criminal and civil issues. One way for an insurgency to replace the government is to deliver government services as well as or better than the government does. Operations which help make the HN justice sector less corrupt, more efficient, and fair in the eyes of the local populace strengthen the legitimacy of the HN government and reduce the legitimacy of the insurgency.[3]

b. *A justice system does not have to be like the US system to be legitimate*. Most US states follow the English **common law** tradition. Most European countries follow the Napoleonic **civil law** tradition, as does Louisiana. Many countries around the world adopted the civil law tradition in whole or in part. Two noticeable differences are that civil law systems do not employ jury trials (although they may have non-legally trained judges on a court panel), and the judge often has an active investigative role. There is nothing fundamentally wrong or inherently unfair about civil law systems—they are simply different ways to attempt to reach just decisions. Common law and civil law systems can both achieve justice and be abused. Planners of operations affecting justice systems must understand the nature of the HN system, and ensure that a legal advisor who is knowledgeable in the HN legal system reviews any actions affecting that system.

c. *Do not entrench interests that may stifle or undermine long-term goals*. Few development interventions are zero-sum events. If the intervention is simply to drill a new well, there are usually those who gain power and those whose loose power. Courts, police, lawyers, and the laws are usually the most potent mechanisms for wielding power in a society, and changes can have unintended consequences. If judges' independence is increased, it may inadvertently create a class of people who have their own agendas, biases, and allegiances, but which has no checks on behavior. If the police trained to be more effective at apprehending criminals without the necessary procedures in place for

[3] Frank Ledwidge, "Justice and Counter-Insurgency in Afghanistan: A Missing Link," *RUSI Journal*, Vol 154 No. 1 (February 2009), 6-9. See also Patrick Devenny, "All Available Tools: "Parallel Governance and Modern Insurgencies," *Small Wars Journal* 2009, www.smallwarsjournal.com.

guaranteeing human rights and assuring fair trials, they may simply become more efficient oppressors. It is necessary to have a solid understanding of the dynamics of how the justice systems function in the society before altering those systems.[4]

Ensuring Sustainability[5]

Additionally, the Iraqis would have to be prepared to assume responsibility for paying for the logistical support, since the US would not foot the bill for the facility indefinitely. While the US would fund the construction and renovation, there would be ongoing operating expenses for the housing and feeding of prisoners, judges, and staff. The officials stated they did not expect to resolve the details of ongoing funding until after the facility was actually set up. The officials then asked the ROLC if he was going to Baghdad to speak to Iraqi judicial officials there about providing the required support.

Throughout the process, the local judicial officials demonstrated the limits of their ownership over the project. The Iraqi officials were unprepared or unwilling to consider seriously the logistical requirements of the effort, even from a planning perspective. They assumed someone else, typically Coalition Forces, would simply handle the logistical details for them. Second, even in the area of coordinating with other Iraqis, they assumed Coalition Forces would take the lead. Overcoming both of these attitudes would be essential to a sustainable project that would survive beyond the eventual absence of US personnel.

d. *Justice sector reform is a long-term, labor-intensive process*. Reform efforts frequently suffer from inadequate personnel resources. Often there are only a few advisors whose contacts with HN counterparts are superficial. A much more effective method is to have teams frequently call on the local participants, spend time with them, build relationships of respect and trust with them, and learn their issues. These efforts must take place over time; there is no way to make the process instantaneous.

e. *Ensure there are adequate numbers of personnel with the appropriate ranks and skill sets*. Tactical encounters achieve strategic objectives. As in any other military operation, justice sector activities require sufficient numbers of the right personnel to execute the mission.

(1) **Numbers**. To influence meaningful change, there must be sufficient operators to have frequent, in-depth contact with their HN counterparts. Such contact allows the creation of mutual trust and respect, and fosters the conditions whereby the operators can influence and mentor their HN counterparts.

[4] David S. Gordon, "Promoting the Rule of Law in Stability Operations: Myths, Methods and the Military," 1 *The Journal for Military Legitimacy and Leadership (February, 2009*), http://militarylegitimacyreview.com/wp-content/uploads/2010/08/Journal-on-Military-Legitimacy-and-Leadership_20093.pdf.

[5] The Judge Advocate General's Legal Center and School, U.S. Army, Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, 2008, page 275.

(2) **Ranks**. Operators must interact with senior HN personnel as perceived peers or near-peers. It is disingenuous to expect junior US officers to successfully influence HN judges, prosecutors, ministers, and other senior officials.[6] There must be adequate numbers of lieutenant colonels and colonels and/or civilian equivalents. This does not mean that all operators need to be senior personnel, but lead personnel must have sufficient rank to influence HN decision makers.

(3) **Skill Sets**. The operator must have a good understanding of how non-US legal systems operate (comparative law), understand civil-military operations, know how development processes work, and have good skills in cross-cultural communication and mentoring. Merely being a US lawyer is not enough; justice sector activities require a multi-disciplinary approach.

f. *Justice sector activities must be holistic*. Justice sector systems do not operate in isolation. Any action affecting the judiciary will also affect court administration. Efforts to improve the criminal procedure processes will affect the judiciary, prosecutors, administrative personnel, and the police.

g. *Justice sector activities must be coordinated and synchronized in order to be effective.* While many different organizations (US, international, NGO) may carry out projects to improve the justice sector, these projects are frequently interrelated and have to be coordinated. Refurbishing the courthouse is useless unless judges are available, the courts and prosecutors will be idle and powerless if there are no effective police to keep order and arrest criminals, and the judges will not be willing to render judgments unless they are secure from retaliation. Synchronizing projects requires that most related projects become functional at approximately the same time. Otherwise, a created capability is useless until the supporting or follow-on capability is operational.

Gardez Justice Systems Project (Afghanistan, 2003)

In late June, 2003, The Chief of the US Office of Military Cooperation-Afghanistan (OMC-A), the Italian Ambassador, US INL, the Italian Justice Project, and others visited the city of Gardez in Paktia province, Afghanistan, to discuss security sector reform with the local leaders. The group determined that there were deficiencies in the administration of justice which were so severe that one senior member commented that "there is no law in Gardez."

OMC-A organized a coordination group for the organizations pursuing judicial sector projects in Gardez. This group consisted of the Italian Justice Project, which was developing a streamlined criminal procedure code and training judges and prosecutors to deploy them to Gardez; US INL, which was developing a police training facility and police training; USAID, which was refurbishing the existing courthouse; UNDP, which was attempting to rebuild

[6] See Michael J. Metrinko, *The American Military Advisor: Dealing with Senior Foreign Officials in the Islamic World*, PKSOI Papers (Carlisle, PA: Peacekeeping and Stability Operations Institute, August, 2008), https://pksoi.army.mil/Docs/Publications/PKSOI%20Advisor%20Handbook.pdf. The same general principle is usually applicable outside the Islamic world as well.

the local prison; and the International Legal Foundation, an NGO which was supplying qualified defense counsel for Gardez. UNAMA also participated in the group. The group had the goal of having a full judicial system (police, judges, prosecutors, defense counsels, court and judicial buildings, and court administration) functioning in Gardez by the end of 2003. As part of the project, the group developed a common information campaign to communicate to the populace about the project and its benefits to them. The group was largely successful in coordinating and synchronizing their projects so that they were completed and able to reinforce each other.

h. *Competent, disinterested legal advice for the project is imperative*. Programs to influence the legal systems of the HN do not have free rein to do anything the program managers may think appropriate. ROL actions must be reviewed to ensure that they comply with applicable provisions of US law, international law, and HN law. Such reviews must be done by or under the supervision of a military judge advocate (see e.g., 10 US Code Section 3037) or other attorney duly authorized to give legal advice to military commanders.

4. Further Detailed Information

a. There are a number of systems that make up the justice sector. These systems are very complex and interrelated. The planner should consider in particular the systems relating to criminal justice, civil justice, the judiciary, court administration and support, corrections, and military justice. Because many societies do not rely exclusively on formal court systems to adjudicate and resolve disputes, the planner should also consider traditional, informal, and alternative dispute resolution processes.

b. To understand the justice sector systems and design and effective plans to conduct ROL activities affecting the justice sector, the planner should consult Appendix D, "Justice Sector Design and Planning Considerations," for more specific information concerning these critical subsectors:

(1) Section A, "Criminal Justice," examines the systems that are used to investigate, adjudicate and impose punishments for crimes. It covers the formal, informal/social, and accountability systems particularly relevant to criminal justice.

(2) Section B, "Civil Justice," addresses the courts and related systems that resolve disputes between individuals, businesses, private organizations and government entities. These systems are often important for solving disputes peaceably and according to the law, as well as imposing a check and accountability measure on the operation of the government.

(3) Section C, "The Judiciary," examines the selection, vetting, training, compensation, protection and management of judges and similar individuals. Because their function is central to the operation of the justice sector, an effective, fair, and impartial judiciary is essential for establishing and strengthening the rule of law.

(4) Section D, "Court Administration and Support," deals with the infrastructure, records and case processing systems, security systems, and personnel requirements for administering a justice system. Activities to improve these systems often reduce or eliminate crippling inefficiencies and corruption.

(5) Section E, "Corrections and Detention," explains the infrastructure, logistics systems, records systems, administrative procedures, and personnel requirements for the operation of HN detention and corrections systems. Often, an ineffective and/or inhumane corrections system can undermine the legitimacy of both the HN government and the US forces by not removing dangerous persons from the community and by not respecting basic human rights as expected by the HN populace and the international community.

(6) Section F, "Military Justice," examines the issues of improving the systems for investigating, trying and punishing crimes committed by the HN military. Because of their ability to use force in addressing conflict in the HN, an ineffectively controlled and disciplined military is often a contributor to instability. Assisting the HN to develop an effective and fair military justice system will often enable the HN effectively reduce some of the most severe drivers of conflict.

(7) Section G, "Traditional and Informal Justice," examines the role that traditional and customary systems of resolving disputes play in many societies. Often, such systems provide effective and legitimate dispute resolution when more formal court systems do not exist or are ineffective. Understanding these mechanisms is a complex process, but important considerations in ROL activities to improve the delivery of justice.

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CHAPTER VI
SPECIAL RULE OF LAW ISSUES

Without reform and the rule of law, it is impossible to do the work …. They need to do their homework to make these conditions possible.

Abdel Shafi

1. Introduction

This chapter outlines special problems in ROL/SSR that are likely to exist in many military stability operations. Conflict and post-conflict situations will often create the conditions where these matters become significant; often, the failure to address these issues promptly and satisfactorily can increase instability and spawn additional drivers of conflict. Appendix E contains more detailed information.

2. Property Rights

a. Perhaps the most important and prolific collateral problem in conflict and post-conflict situations involves resolving property rights. Conflicts often create conditions where significant numbers of the populace flee their homes and property to escape the violence. In other cases, people may be forcibly dispossessed of their land and other property as part of programs of ethnic cleansing or redistribution of land and other assets. Squatters often occupy the property or it is given, with purportedly legal titles, to others so as to solidify political gains. In many cases, the distribution of property among different groups may have been one of the drivers of the conflict in the first place. When the conflict is in its termination stages, those who fled will usually attempt to return home and reclaim their property, which will produce further—often violent—conflict with those currently in possession.

b. The JFC and staff must understand property issues in order assist the HN in providing security to property claimants and to support efforts of the HN government and civilian agencies assisting the HN government to resolve property issues. The JFC may need to be prepared to conduct civil-military operations to assist, and if necessary administer, mechanisms to resolve property issues in order to establish civil security and civil control.

c. More detailed information is in Section A, “Property Rights,” of Appendix E.

3. Cultural Property: Protecting Arts, Monuments, and Archives

a. Ensuring protection of cultural property is important to ROL for several reasons. One very important reason is that treaty commitments under international law oblige the US to protect such property. Failure to comply with such obligations harms the legitimacy of both the US forces and the HN government.

b. Another reason is that cultural property is often very important to various groups within the HN, and its loss, damage, or destruction can become a driver of conflict and a means to harm other groups. In a number of instances, significant violence and instability have occurred because one group attacked the significant cultural property of another group.

c. A third reason is that illegal sales of cultural property can often be a tempting source of income for criminal enterprises, insurgent, and terrorist organizations. By effectively protecting cultural property, the JFC can reduce such criminal activity and strangle an important source of finance for other illegal, insurgent and terrorist activity.

d. More detailed information is in Section B, "Cultural Property: Protecting Arts, Monuments, and Archives," of Appendix E.

4. Contractors

a. Use of contractors to achieve ROL/SSR objectives is not abnormal. Contractors can provide sophisticated skills in ROL/SSR subject matter not normally possessed by military personnel. They are also very flexible and responsive to new or urgent needs, because the contracting company recruits, vets, trains, and supports them. Contract personnel are often quicker and easier to obtain, deploy, and use than civilians directly hired by the government. DOS and USAID heavily use contractors in ROL activities. Our international partners and the HN government itself also use them.

b. Contractors are also a component of the operational environment. In many cases, they are actively modifying the conditions that exist in HN ROL systems, and not always in ways consistent with US government objectives. Their activities may also be a driver of conflict, thereby increasing instability rather than decreasing it.

c. More detailed information is in Section C, "Contractors in Rule of Law Operations," of Appendix E.

5. Non-State Security Providers

a. Non-state security providers consist of a wide variety of security forces with varying degrees of legal status and legitimacy. In many cases, they are private security companies (PSCs) more or less regulated by the HN government. In other cases, they are local militias formed to protect communities, tolerated, and sometimes supported by the government. In other cases, they are armed groups of warlord forces, criminals, insurgents or other illicit power structures.

b. In many cases, they provide security to a particular community, political party, business, or social group, but unlike the police, their security is not for the populace in general. In many cases, these security providers provide a valuable, often essential service. The challenge is to bring such security providers into legal and practical

accountability for their actions in accordance with the ROL while retaining the element of security they provide.

c. More detailed information is in Section D, "Non-State Security Providers," of Appendix E.

6. Disarmament, Demobilization, and Reintegration

a. Disarmament, demobilization, and reintegration (DDR) is a process whereby former combatants are disarmed, removed from military or paramilitary groups, and returned to live and work as civilians in the community. Normally, the process is part of a negotiated settlement of an armed conflict, such as a peace or cease-fire agreement. The purpose of DDR is to secure the peace, promote public order, and security by removing arms and armed individuals from the environment and placing them in situations where they will be unwilling and unable to return to violent conflict. It is a complex process with political, military, security, humanitarian, and socio-economic dimensions, often managed by the UN or other intergovernmental organizations.

b. While the US military will rarely have a leading role in DDR, US forces will often be required to support DDR activities conducted by civilian agencies and international organizations. This can involve providing security for former combatants, securing depots of heavy weapons, collection and destruction of individual weapons, assisting in vetting former combatants for HN security forces, and other roles. DDR activities will often have an impact on establishing civil security and civil control, as well as on other stability operations with ROL aspects.

c. More detailed information is in Section E, "Disarmament, Demobilization and Reintegration," of Appendix E.

7. Humanitarian Operations

a. Humanitarian operations generate substantial ROL issues. Even when the humanitarian operation is by natural disaster rather than by conflict, the stresses of the situation often lead to corrupt practices and criminal activity. Large in-flows of relief supplies, aid workers, and money, coupled with a break down in the ability of the government to provide public order, create conditions where massive theft, fraud, bribery and extortion will occur. Exploitation or inadequate coverage of vulnerable populations (children, women, and minorities) is a risk.

b. ROL activities should take into account the security and other stresses on the HN ROL systems created by humanitarian operations. In particular, the JFC mission will likely include providing security for relief workers, relief supplies, and persons who need assistance. The JFC may also assist in developing accountability mechanisms that can insure that the military, police, customs officials, and other government employees do not take advantage of the situation and abuse their authority for personal gain.

c. More detailed information is in Section F, “Rule of Law Issues in Humanitarian Operations,” of Appendix E.

CHAPTER VII
ASSESSMENTS AND METRICS – MEASURING PROGRESS

Certainly, we've taken a lot of measures and we've made a lot of progress, but it is going to be really hard to say how much is enough. We're not at the end of it, we're at the start of it.

Jane Smith

1. Assessments

a. Conducting an operational environment assessment is the first step in understanding military support to ROL or SSR. A proper operational environment assessment provides the information required to understand the context in which campaign design takes place. It provides necessary and useful baselines for comprehending host nation needs; mapping US, donor, and host nation assets; identifying capacity gaps; and informing decisions at multiple echelons. These up-front assessments should identify priorities, strengths, shortcomings, and possible approaches to assistance or reform.

b. Because ROL and SSR are inherently political activities, actions taken in one sub-sector have far reaching effects in others. Therefore, it is critical that up-front assessment conduct, even at the lowest levels, be within a comprehensive framework, and in collaboration with other donors, interveners, and stakeholders. Operational environment assessments should also be coordinated with intelligence collection efforts to create a clearer understanding of the political context, as well as to identify threats to security and drivers of conflict, potential change agents, and the needs and attitudes of different stakeholders. From a military perspective, ROL and SSR progress assessments should analyze progress made during initial operations, and confirm whether the partner government is committed to reforms that strengthen management and oversight of the security system and improve service delivery within the security and justice sectors. Both type of assessment should propose areas where international support for security and associated justice and governance development will add value, and identify if more detailed sector-specific needs assessments are required (e.g. policing, prisons etc).

c. Host nation participation is vital. Wherever possible, partnerships with host government leaders who will ultimately lead and sustain the SSR process for up-front assessments are critical. When conducted jointly, the assessment process itself becomes the product because it actually builds host nation capacity to design, implement, and monitor its own development, and can serve as an important means to legitimize reform.

GUIDELINES FOR THE CONDUCT OF ROL AND SSR ASSESSMENTS

- A proper operational environment assessment provides the information required to understand the context in which the campaign will take place.
- Because ROL and SSR are such inherently political activities within the host nation, conduct assessments within a comprehensive framework and in conjunction with other donors, interveners, and stakeholders.
- Host nation participation is critical.
- Assessments, if conducted correctly, build interagency support for and consensus around the JFC's operations, and the process of planning and coordinating a ROL or SSR assessment should be viewed as being as important as the actual assessment.
- Conduct ROL and SSR assessments with a multi-disciplinary team.
- Consulting a wide range of international, government and civil society stakeholders is important to get a complete perspective of the local context, give the consultation process legitimacy, identify priority areas for assistance, and build sustained support for and ownership of the assistance program.
- Within the USG, assessments are highly political activities. Therefore, assessment frameworks need to be flexible and able to accommodate a variety of interagency tools and approaches.
- Support and coordinate assessments with intelligence.

2. Assessment Frameworks and Tools

a. There is general agreement among expert practitioners that there are no tools or frameworks that can substitute for knowledge and experience in the area of SSR and ROL. However, tools and frameworks are useful aids to help assessors. In addition to Appendix A, "Rule of Law Objectives, Conditions, Enablers, and Lines of Effort," the following represent some of the more useful assessment aids.

(1) *OECD DAC Handbook on Security System Reform (SSR); Supporting Security and Justice* (2007).[1] The OECD Handbook outlines some principles of comprehensive security system reform and provides general assessment frameworks for accountability and oversight, defense reform, intelligence and security service reform, integrated border management, police and justice reform, prison reform, private security and military companies, and civil society.

[1] *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* (2007). (http://www.oecd.org/dac/conflict/if-ssr).

(2) *Measuring Progress in Conflict Environments (MPICE); Metrics Framework for Assessing Conflict Transformation and Stabilization* (2010).[2] MPICE establishes metrics that provide both a baseline assessment tool and an instrument for practitioners to track progress through stabilization and ultimately to a self-sustaining peace. MPICE measures both drivers of conflict and host nation institutional capacity across the ROL, security, governance, economic, and social sectors of R&S operations. Though strategically focused, assessors can modify measures for application at the operational level.

(3) *Criminal Justice Sector Assessment Rating Tool* (CJSART).[3] An interagency process sponsored by the State Department's Bureau for International Narcotics and Law Enforcement Affairs developed CJSART. The CJSART, while expressly limited to the criminal justice system, provides a flexible framework that is easily adapted to almost any context.

(4) *Maritime Security Sector Reform Guide (MSSR).*[4] Developed by the Department of State/PM and USAID, the Maritime SSR Framework delineates essential components of national maritime security, including governance, maritime defense, response, safety, mobility, response and recovery, and maritime economy. It measures capacity development of regional judicial, legislative, regulatory, and coastal forces to protect against maritime threats.

(5) *Defense Sector Assessment Rating Tool* (DSART).[5] The purpose of the DSART is to assist policymakers and program managers to prioritize and administer assistance programs aimed at supporting states in reforming their defense sectors and achieving their security goals. The DSART complements the CJSART. It covers general characteristics of the host nation's defense sector; capabilities within defense; and special focus areas that address the defense sector's capacity to meet five specific threats – drug trafficking, terrorism and insurgency, piracy, border and maritime security, and instabilities arising after internal conflicts.

3. Information Collection and Establishing a Baseline

Comprehensive assessments require a large amount of information. Some of it can be collected through the intelligence system and gathered from interagency colleagues,

[2] Michael Dziedzic, Barbara Sotirin, and John Agoglia, eds., *Measuring Progress in Conflict Environments (MPICE); Metrics Framework for Assessing Conflict Transformation and Stabilization,* (Washington: US Institute of Peace: 2010), available online at http://www.usip.org/publications/measuring-progress-in-conflict-environments-mpice-0.
[3] The CJSART is contained in Annex 8 to the *USAID Field Guide: Assistance to Civilian Law Enforcement in Developing Countries* (January 2011), http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/AFieldGuideforUSAIDDemocracyGovernance%20Officers.pdf.
[4] The MSSR is available at http://www.state.gov/documents/organization/154082.pdf.
[5] The DSART is available at http://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR864.dsart.pdf.

coalition partners, and international donors. Other information is available using techniques such as content analysis, surveys and polling, statistics, and expert opinion.

a. **Content analysis**[6] involves searching media publications in order to gauge popular and/or elite impressions of an issue. It relies on readily available publications, such as newspapers and periodicals. It is labor intensive.

b. **Surveys and polling** involve conducting public opinion surveys/polls in order to assess how the public views a variety of issues. Surveys and polling can provide a useful overview of societal views, values, and can easily cover a large number of people, which provides more confidence in the findings. However, carefully design of surveys is critical to ensure that the sampled public is representative, survey questions are accurate, and untrained survey conductors don't lead to inaccurate responses. Among the US civilian interagency, USAID is particularly experienced and effective at conducting surveys and polling.

c. **Statistical analysis on quantitative data** uses a variety of statistics about security, standards of living, and economic development to assess the situation in a country. Statistics have the advantage of appearing to be a more objective way of assessing progress and provide a useful standard for comparing progress at two different times. However, it can be difficult to locate reliable indicators of the larger issue assessed and data manipulation can produce a variety of interpretations. It is not uncommon to find HN data manipulated for political or economic reasons.

d. **Experts** have the knowledge and experience to offer informed and useful opinions on a situation and can make sound qualitative judgments in a relatively short period. They may be used to study program documents, interviews participants, and make observations in the field. Using them entails creating a panel of independent, knowledgeable, and experienced experts to assess an issue of interest (e.g. the capacity of law enforcement agencies to perform essential administrative and bureaucratic functions). The reliability of the findings depends on specifying the evaluation criteria and data gathering methodology in advance. Additionally, experts may have political, economic, or personal agendas to advance. It is especially important that they be capable of independent judgment. They cannot be permanent employees of the contracting agency nor have a financial stake in the future of the program evaluated.

e. An effective assessment is one that is comprehensive enough to provide a complete "snapshot" of the status of host nation ROL and/or the capacity of the security

[6] The Fund for Peace's Conflict Assessment System Tool (CAST) uses content analysis to assess the degree to which drivers of conflict improve or worsen as well as to determine the strength of key institutions (based on three criteria: legitimacy, representativeness and professionalism). CAST scans data from over 11,000 sources (including reports from the media, government and NGOs). CAST currently evaluates a number of rule of law and human rights areas, including the degree of criminalization and corruption of the state and evaluations of the domestic police force, corrections system, and judicial system. CAST can be used for countrywide or province-level analysis.

sector to function effectively and in accordance with the ROL. The assessment should describe the deficiencies in a country's justice and security systems, including the objectives, conditions, enablers, and Lines of Effort (LOE) in Appendix A, "Rule of Law Objectives, Conditions, Enablers, and Lines Of Effort." It should also identify cross sector or sub-sector linkages where improvement in one sub-sector is or can have a positive synergistic impact in others. Conversely, the assessment should identify where degradation in one area is or can negatively affect another.

4. Relationship Between Assessments and Metrics

a. Assessments and metrics are interrelated concepts. An assessment gathers data about ROL and SSR systems, organizes the data, and interprets them in order to give commanders, staffs, and operators an accurate picture of what the ROL systems are, how they work, and identify strengths and weaknesses in the system. Broad and comprehensive assessments of ROL systems are essential to understanding the ROL operational environment. They form the basis of designing courses of action and ultimately developing and executing a plan to influence the HN ROL systems.

b. Metrics are used to measure change. In many fields, such as economics, engineering, agriculture, etc., it is possible to have metrics that simply count things. In other cases, metrics must be more sophisticated and complex, and are qualitative rather than qualitative.

c. Metrics must measure what is important, rather than what is merely countable. In many cases, measuring effectiveness will require developing and executing sophisticated attitudinal surveys, rather than simply counting courthouses, policemen, or persons put through training programs. Important results do not lend themselves to showing daily, weekly or even monthly progress and both those carrying out the operations and those evaluating the results need to bear in mind that a metric that easily and frequently calculated is usually a misleading one.

d. Monitoring and evaluation involves both qualitative and quantitative measurement. These are often termed "measures of effectiveness," and "measures of performance.

(1) **Measures of Effectiveness (MOE)**. MOE are often qualitative and represent the outcome or "customer view." They describe what it is we are trying to accomplish or the customer's expectations of a product, project, or system. When determining ROL or SSR MOE, the first question that the JFC planner should ask is, "Who is the principal customer" or "client" for the operation, because they determine what is it we are supposed to accomplish. They set the desired outcomes. What may seem self-evident may be a much more a complicated question on the ground. The real customer may actually be an Ambassador who is allowing the JFC to conduct capacity building activity solely to support the objectives contained in the Embassy's Mission Strategic Plan; it may be a United Nations activity that is responding to a specific limited mandate; it may be host nation leader whose idea of sustainable capacity is very different

from the JFC's. Either way, the planners must clearly understand customer identity and his/its view before committing to a set of MOE.

(2) **Measures of Performance (MOP)**. MOP are output measures or the corresponding view of the engineer, or the technical specification for a product, process, or system. MOP are typically quantitative and can consist of a range of values about a desired point or task accomplishment. These values are what one targets when designing a product, project or system desired by the customer. They are generally expressed as outputs, as opposed to outcomes. MOP measure task completion, while MOEs measure creation of much broader desired effects/conditions/outcomes. In ROL, MOP are commonly expressed in terms such as number of judges trained, courthouses built, police equipped, etc. Without corresponding MOE, MOP are usually insufficient and very often misleading descriptors of real capacity. It does not matter how many generators are installed in court houses if few people in the district regard the courthouse as a place to resolve disputes. It may be damaging to train judges if the instructors have no knowledge of the national laws and procedures, or oppose gender equality, religious toleration or other human rights principles. A courthouse may facilitate, but is not essential for effective justice; a competent judge sitting under a tree may render wise and just decisions. JP 5-0, *Joint Operation Planning*, has a more in-depth discussion of assessment, MOP, and MOE. The vignette below provides some examples for ROL measures.

Sample List of ROL Assessment Metrics

The MOE (are we doing the right things?) and MOP (are we doing things right?) for ROL must support the JFC's desired and undesired effects. A comprehensive assessment requires quantitative and qualitative data collaboratively developed from many sources, particularly from the JTF, the US Embassy country team, and the host nation. As an example, the JFC has approved the following MOE for ROL activities in Brunzestan.

The JFC's assessment MOP (was the action taken and completed to standard?) include:

MOP 1-1-1: Number of media releases that were broadcast/published explaining the legitimacy of presence of intervention forces

MOP 2-2-2: Number of media releases that were broadcast/published to educate the populace on responsibilities of government judicial and security sector systems

MOP 3-1-3: Number/level of security sector forces trained in ROL responsibilities

MOP 3-1-4: Percentage of forces trained in ROL in proportion to overall size of MODS military structure

The JFC's assessment MOE (are our actions producing the desired effects/outcomes?) for the legitimacy LOE include:

MOE 3-1-1: Ratio of indigenous population who agree that ROL is implemented favorably vice unfavorably

MOE 3-2-2: Number of reported incidences of ROL-category violations

MOE 2-1-3: Ratio of media outlets (or broadcasts) that are favorable to US intervention to those who are against US intervention

MOE 2-2-4: Ratio of protests for and against the host government

MOE 3-3-5: Relative capability of forces to conduct required stability operations, compliant with international and HN ROL parameters

The JTF will determine positive or negative trends by comparing individual measures over time and through sampling techniques. The JFC should approve a minimum and maximum threshold to determine if activities are achieving desired effects or need to be changed.

5. Key Performance Indicators: The Relation Between Metrics and Objectives

Metrics must be determined in relation to effects/outcomes and objectives. Planers must design metrics to measure progress toward creating effects/outcomes to achieve objectives to reach the end state. If the proposed effect/outcome cannot be effectively measured, it is not a valid effect/outcome and must be replaced. After developing a basic understanding of the operational environment, the processes and dynamics of the various ROL systems should be evaluated in terms of the five general objectives as described in Chapter II paragraph 3 above:

a. **Effective**. Activities to increase the effectiveness of HN ROL systems are perhaps the most easily quantifiable. Systems can be evaluated to determine where they are ineffective and why, and steps can be taken to improve their effectiveness. Example: The criminal justice systems in an Afghan province are ineffective in that they do not try, convict and punish criminals. The reasons that the systems are ineffective are that the judges are intimidated by local strongmen and afraid for their lives if they convict someone under the protection of a strongman. Even if they do convict someone, there is no prison or jail to confine them either before or after trial. Solutions are to develop security for the judges, and build a prison or jail for confinement of prisoners. A qualitative measure could be various judges' perception of their security environment (requiring surveys) or the quality of their judgments (requiring expert review). However, quantitative measures could be more efficient and effective in this case. Metrics for this sort of operation could be the number of judges killed or intimidated versus the number of judges that conduct trials, convict, and punish criminals.

b. **Efficient**. Activities to reach this objective are also easily quantifiable. In many cases, measures can focus on efficient use of the time, money, people and other resources the HN is able to sustain without extensive international assistance. Metrics for such

operations can be the number of people needed; time required, or funding needed to complete a certain set of tasks.

c. **Locally Legitimate**. This objective is pivotal. Here, the real issue is one of perception—if the local populace perceives the justice system and other ROL systems as being legitimate, then they are more likely to rely on those systems, rather than resorting to violence, self-help, or informal and illicit power structures. Metrics relating to this objective more readily lend themselves to qualitative methods, such as polling.

d. **Internationally Acceptable**. Likewise, metrics for this objective will likely be predominately qualitative measures, such as consulting with experts to determine if the international community perceives ROL activities to be in consonance with their expectations and goals. Quantitative metrics are also possible, such as amount of aid funding pledged and actually provided, number of personnel and other resources pledged and actually deployed to the HN, or the number of international programs begun and continued over time.

e. **Reduce the Drivers of Conflict**. This is the capstone objective from the military point of view. When interveners diminish drivers of conflict to the point where HN security forces can keep order without the support of US forces, most, if not all, military forces can redeploy, and US civilian agencies can continue to support ROL development in the HN. Measuring reduction of the drivers of conflict appears to be a mix of qualitative and quantitative measures. Examples of quantitative measures may include reduction in the number of incidents of violence, or reduction in the number of incidents in which HN security forces require the support of US or international military forces.

APPENDIX A
RULE OF LAW OBJECTIVES, CONDITIONS, ENABLERS, AND LINES OF EFFORT

1. Rule of Law Desired End State

a. **Just Legal Frameworks**: laws are consistent with international human rights standards, legally certain, fair, transparent, and responsive to the entire population, not just elites. Primarily the HN populace determines if the frameworks are "just," not outside interveners.

b. **Public Order**: enforcement of laws is fair; the lives, property, freedoms and rights of the whole populace are protected; criminal and politically motivated violence minimized; and criminals pursued, arrested and detained for trial.

c. **Accountability to the Law**: all members of the populace, public officials, and perpetrators of conflict-related crimes held legally accountable for their actions, the judiciary is free from political influence, and mechanisms exist to prevent the abuse of power.

d. **Access to Justice**: All members of the populace are able to seek remedies for grievances and resolve disputes through formal or informal systems that apply just legal frameworks equally, fairly and effectively for all.

e. **Culture of Lawfulness**: The populace generally follows the law and uses the formal and informal justice systems to resolve disputes, rather than resorting to violence or self-help.

2. Rule of Law Indicators

a. The state monopolizes the use of force in the resolution of disputes.

b. Individuals are secure in their persons and property.

c. The state is itself bound by law and does not act arbitrarily.

d. The law can be readily determined and is stable enough to allow individuals to plan their affairs.

e. Individuals have meaningful access to an effective and impartial legal system.

f. Basic human rights are protected by the state.

g. Individuals rely on the existence of legal institutions and the content of law in the conduct of their daily lives.

3. Objectives

These objectives provide the foundational pieces that are essential to an effective ROL system:

a. a functioning legal framework,

b. a functioning justice architecture,

c. a functioning security architecture,

d. adequate law enforcement,

e. adequate corrections,

f. adequate civil governance,

g. integrated border management, and

h. sufficient infrastructure and sustainability.

4. Enablers

These enablers deal primarily with the political and strategic context required to sustain the ROL system:

a. strategic communication and perception management,

b. sovereignty,

c. human rights, and

d. legitimacy.

5. Rule of Law Lines of Effort

These task-oriented lines of effort cover specific types of short and long term ROL-related efforts that the JFC is commonly called upon to support:

a. countering transnational crime,

b. accountability, oversight and anti-corruption,

c. public information/public records management,

d. conflict resolution and peace implementation,

e. reconciliation and re-integration,

f. security sector reform,

g. demobilization, disarmament and re-integration (DDR),

h. intelligence and information sharing, and

i. use and integration of government contractors.

6. Objectives and Supporting Conditions

a. A Functioning Legal Framework

(1) A fair and impartial legal framework that addresses the following: property rights, revenue generation, commercial activity, family law and domestic relations, anti-corruption, customary law, military justice, civil service, elections, criminal activity to include counter-narcotics and organized crime, civil dispute resolution.

(1) Legitimate processes for conflict and dispute prevention, resolution, mitigation and management.

(2) Understood and accepted cultural norms of "legality."

(3) Popular demand for the ROL.

(4) A legal framework that supports HN participation in international conventions, and is consistent with these obligations and international standards.

(5) Regulatory processes for essential services.

(6) Procedures for amending or generating laws.

(7) Legitimate legal foundation for chief executive and executive branch authority.

(8) Legal and regulatory foundation for national defense and security functions (maritime, air, and land protection).

(9) Rationality: Laws support desired HN governance objectives and effects transparency and accountability.

(10) Legal processes for peaceful transitions of authority at all levels of government.

(11) Public awareness, knowledge and acceptance of existing laws and cultural norms.

(12) Individuals within the HN rely on the existence of legal institutions and the content of law in the conduct of their daily lives.

(13) The international community perceives the laws and legal institutions within the HN as legitimate, and the international community is willing to assist the HN in strengthening the institutions and enforcing its own laws.

(14) Military-supported stabilization and reconstruction operations support a legal framework that provides the HN with the elements necessary to achieve ROL.

(15) Military actions taken within the HN demonstrate respect for the HN law and accepted customary legal traditions, and the HN population perceives actions taken by US personnel as lawful.

b. **A Functioning Justice Architecture**

(1) Rationality: Justice system is structured to support the ROL and the needs of the population.

(2) Public representation (prosecution/defense).

(3) Integrated police, courts and corrections.

(4) Government recognition and/or regulation and control of non-state, traditional, and customary justice mechanisms.

(5) Transitional justice mechanisms and processes (if applicable).

(6) Legitimate alternative dispute resolution mechanisms.

(7) Public awareness, knowledge and acceptance of State-sanctioned justice systems and institutions.

(8) Effective court administration.

(9) Effective case management systems.

(10) Judicial selection and training.

(11) Security for justice infrastructure (courts, records, prisons and jails, law enforcement facilities) and personnel.

(12) Judicial independence.

(13) Non-discriminatory public access to the justice system.

(14) Legal education and training.

(15) Understood and accepted cultural norms of "justice."

(16) Pre-trial detention and screening.

(17) Civic education that supports and informs public understanding and access to justice media and civil society organization (CSO) engagement on justice issues.

(18) The HN populace generally uses the formal and informal justice sector systems to punish crimes and resolve disputes, rather than resorting to violence or self-help.

(19) The HN populace generally perceives the operation of the justice sector systems to be a proper function of the government which generally operate for the benefit of all the populace.

(20) The HN populace in most cases voluntarily complies with the laws as interpreted and applied by the justice sector systems.

(21) The justice sector is capable of providing effective accountability and oversight to the security and defense sectors of the HN government.

(22) Auditing and other accountability mechanisms are in place and effectively provide oversight to all justice sector systems.

(23) The HN populace generally perceives the justice systems as effective, fair, impartial, transparent, free from corruption, and utilizes acceptable ways to punish crimes and to reform lawbreakers.

(24) The HN populace perceives the HN government officials and the individuals who control the justice systems as being themselves accountable to the law.

(25) The HN populace perceives the justice systems as enhancing their safety and security.

(26) The HN populace and foreign investors are willing to take economic risks based on their confidence in the ability of the justice systems to adjudicate and enforce their contractual and other rights.

(27) The HN populace perceives the judiciary and court personnel as competent, fair, impartial, independent, wise, and not corrupt.

(28) Judges adequately trained in the law and can properly apply the law to the cases brought before them.

(29) Judges, court personnel, and their families protected from violence, threats, and other forms of intimidation that would impair their ability to render judgments in accordance with the law.

(30) Members of the judiciary have both legal and de facto independence from the executive, the legislature, and other power centers that could compromise their impartiality.

(31) Court facilities provide adequate space, services, security and dignity so that courts may carry out their functions satisfactorily.

(32) Court record systems are accurate, current, and secure, have adequate retrieval mechanisms, and maintained by trained HN personnel without ongoing international technical support.

(33) Court personnel adequately trained in administrative procedures and carry out the tasks assigned to them.

(34) Traditional and informal justice systems do not enable and empower warlords, criminals, insurgents, and other non-compliant actors.

(35) The HN populace generally perceives the operation of traditional and informal justice systems to be complementary to the formal civil justice systems, rather than being in conflict or competition with the formal systems.

(36) The HN populace perceives the individuals who administer traditional and informal justice systems as being themselves accountable to the law and to the community.

(37) The individuals who administer traditional and informal justice systems have some knowledge of the formal law of the HN, and render their judgments in consonance with, or at least not in direct conflict with, the formal law.

(38) The HN populace is willing to take economic risks based on their confidence in the ability of traditional and informal justice systems to adjudicate and enforce their contractual and other rights.

(39) Accountability mechanisms are in place and effectively provide oversight to the traditional and informal justice systems.

c. **A Functioning Security Architecture**

(1) A national threat assessment.

(2) A national security strategy.

(3) Rationalized security force structure, jurisdiction and authorities tailored to the needs of the HN to deter, defeat, or dissuade internal and external forces that threaten the ROL.

(4) Professional, lawfully empowered civilian law enforcement institutions.

(5) Government regulation and control of non-state security actors (e.g. private security).

(6) Governance capacity to pass coherent security laws and budgets.

(7) Executive capacity to set coherent national security policy.

(8) Sufficient critical infrastructure to support national security objectives.

(9) Professional, adequate and sustainable armed forces (regular and reserve) that are tailored to the HN's security threats.

(10) Effective counterterrorism practices.

(11) Effective security for special events of national or local importance.

(12) Legitimate and regulated government militias, paramilitary units, and/or other special security forces (e.g. presidential guard).

(13) Civic education that supports and informs public understanding of public security services and accountability.

(14) Effective, credible, and integrated border management system.

(15) Effective, accountable intelligence services.

(16) Media and CSO engagement on security issues.

d. **Adequate Law Enforcement**

(1) Coordination with international police forces and/or coalition-formed police units (FPU) if present.

(2) Sustainable and rational recruiting programs, screening and vetting.

(3) Effective, integrated training.

(4) Special unit capabilities including rapid response, executive protection, organized crime and special forensics and investigative units as necessary to enforce the ROL.

(5) Effective investigation processes tailored to address actual criminal threats and the needs of the local justice system.

(6) Effective and accountable policing practices that are consistent with international norms and are acceptable to citizens.

(7) Intelligence support for policing activities.

(8) Secure physical infrastructure.

(9) Delineated administrative and regulatory investigative jurisdictions.

(10) Integration/de-confliction with functions of non-state security providers.

(11) Secure weapons caches.

(12) Regulated and secure freedom of movement.

(13) Regional/International cooperative agreements for law enforcement.

(14) Community based policing.

(15) Parliamentary or legislative oversight.

(16) Personnel and pay accountability.

(17) Strategic management.

(18) Accountable internal and external systems for addressing grievances and complaints.

e. **Adequate Corrections and Detention**

(1) Pre-trial detention process and procedures (admissions require valid and legitimate order from a competent jurisdiction).

(2) Effective prisoner classification and tracking systems which ensure transparency and accountability.

(3) Protection for vulnerable populations (i.e., juveniles, women).

(4) Prison administration and management.

(5) Standards of discipline and training for corrections personnel.

(6) Infrastructure, logistical, and transportation support.

(7) Reintegration focus: rehabilitation/parole/probation.

(8) Alternatives to incarceration.

(9) International engagement and cooperation.

(10) Multi-tiered penal system, to include temporary holding, pre-trial detention, and post-conviction incarceration.

(11) Rationality: Corrections systems structured to support actual needs and are integrated with the national justice and security architecture.

(12) Corrections facilities provide adequate space, services, and security with prisoners secured humanely.

(13) Prisoner record systems are accurate, current, and secure, have adequate retrieval mechanisms, and maintained by trained HN personnel without ongoing international technical support.

(14) Corrections personnel view themselves and HN populace perceives corrections personnel as being subject to the law, accountable for their actions, and obligated to be humane, fair, impartial to all persons of all groups, diligent, and not corrupt.

(15) Corrections personnel adequately trained in humane corrections procedures and effective administrative procedures to carry out the tasks assigned to them.

(16) Corrections personnel and their families adequately protected from violence, threats, and other forms of intimidation which would impair the effective discharge of their duties.

(17) Corrections facilities have adequate measures to limit collusion between corrections personnel and prisoners in illicit practices.

(18) Vetting, auditing and other accountability mechanisms are in place and effectively provide independent oversight over all aspects of corrections systems.

f. **Adequate Civil Governance**

(1) Secure governance infrastructure.

(2) Formal governing bodies at national and local levels that are accepted by the population.

(3) Formal governmental institutions that provide essential services (water/sewer/public safety, etc.).

(4) Public financial management/fiscal and budgeting capacity.

(5) Formal governing and service providing institutions that derive operating funds from taxes.

(6) A public treasury that is used to finance governmental operations.

(7) Professional staff (e.g., civil service) that are competitively hired to administer governmental functions.

g. **Integrated Border Management**

(1) Ability to maintain national boundaries and borders.

(2) Legislative or parliamentary authority.

(3) Airport security.

(4) Seaport and coastal security.

(5) Ground border units.

(6) Customs.

(7) Immigration.

(8) Airspace management.

(9) Legal, internationally recognized and defined borders (land, maritime, air, and space domains).

(10) International/regional treaties and agreements for border management.

(11) Legally defined responsibilities for customs, immigration, and border management.

(12) Ports of entry control and coordination.

(13) Accountability and oversight.

(14) Maritime security.

h. **Sufficient Infrastructure and Sustainability**

(1) Adequate facilities, installations and infrastructure to support the functions they represent.

(2) Critical infrastructure protection.

(3) State protection and regulation of critical natural and strategic resources.

(4) Civil service and public administrative capacity.

(5) Civic education, public information capacity and dissemination infrastructure.

(6) Legitimate and transparent revenue generation to support governance functions and essential services.

(7) Legitimate mechanisms to ensure peaceful transition of authority at all levels and governing institutions.

7. Enablers

a. **Strategic Communication and Perception Management**

(1) Media and CSO engagement.

(2) Synchronization with US interests in the assigned operational area.

(3) Public information programs and themes supporting the ROL.

(4) De-legitimization of the competitors and opponents to the ROL.

(5) Engaging and leveraging key influencers to promote ROL.

(6) Information campaigns designed to inform and motivate people to use State-sanctioned legal systems at the appropriate level.

(7) Assessments and polling.

(8) Synchronizing actions, images, and words to communicate credible and coherent messages.

(9) Routinely dialogue with locals to develop rapport, show concern, gain better understanding, and dramatically increase effectiveness of communication.

b. **Sovereignty**

(1) Secure and regulated ports, borders, territorial waters and air space.

(2) Secure critical governance infrastructure.

(3) Security forces that are accountable to government authority.

(4) A licit economic system.

(5) National integration into international systems, organizations, and conventions.

(6) Government control of under governed spaces.

(7) The ability to identify, deter, and defeat threats to sovereignty (including insurgents, terrorists, and pirates).

(8) De-legitimization of competitors and opponents to the ROL.

(9) Governmental capacity to control transnational crime, and cross-border illicit activities.

(10) State-controlled or regulated protection of natural resources.

(11) State monopoly on use or regulation of force.

(12) Illicit and informal power structures are contained, controlled, co-opted, or destroyed so that they do not undermine stabilization operations.

c. **Human Rights**

(1) International Conventions/treaties/agreements that the HN is a signatory that fosters participation in international conventions and assure that the legal framework is consistent with these obligations and international standards.

(2) HN constitutional and/or legal protections for individual rights.

(3) Historical and cultural norms for protection of human rights.

(4) Professional standards/codes of conduct for governmental (military and civilian) officials requiring respect for human rights.

(5) Societal expectations of government to respect human rights.

(6) Vetting and consistent human rights training and integration across security forces and justice providers.

d. **Legitimacy**

(1) Recognition of HN by other governments and international bodies (e.g. United Nations, European Union, etc.).

(2) Actual authority and recognition of that authority for US, coalition, and donor activities by the HN and/or other governments and international bodies.

(3) Acceptance by the American public of the basis for US activities directed toward assisting the HN.

(4) Perception by the HN population that the HN's governing authority derived from a lawful process.

(5) Consent by the HN population to the authority of the HN's governing body and acceptance of the obligations that come with consent.

(6) Actual Transparency – HN legal and governing processes are open, transparent, and designed to serve the public good, as opposed to the private interests of a few.

(7) Awareness by the HN population of the legal processes, and the perception that the peoples interests and values are effectively and equitably served.

(8) Consistency between legal standards and practices between national and local levels of government.

(9) Legitimate alternative dispute resolution mechanisms.

(10) The HN government, security forces, population, and the international community agree with the legality, the morality, and the rightness of the actions undertaken by intervening military forces.

(11) The political will necessary to achieve the operation's strategic end state is maintained

(12) The HN population recognizes the role of the military, and is willing to work alongside it to achieve (or not impede) operational success.

(13) HN expectations met, regarding the fairness and accountability of their government and the actions of HN or intervening forces.

8. Lines of Effort

a. Countering Transnational Crime

(1) National understanding and acceptance of the threat from transnational criminal activity.

(2) Formal acceptance of obligations under applicable bilateral and multilateral treaties and international conventions.

(3) A fair and impartial legal framework that addresses transnational criminal activity to include counter-narcotics, illicit trafficking, and organized crime.

(4) HN integration into regional activities for countering transnational criminal threats.

(5) HN capacity to provide law enforcement assistance in countering transnational crime.

(6) National law enforcement threat assessment that includes analysis of illicit actors, interests, and the security threat that they present.

(7) Mechanisms, processes, and authorities for handling information and intelligence that preserves the option for criminal prosecution (“Intelligence to evidence").

(8) Legal framework that allows for legitimate surveillance and tracking of suspects and illegal activity.

(9) Infrastructure, training, and equipment for detection, monitoring, surveillance, and tracking of suspects and/or illegal activity.

(10) Investigative, prosecutorial, and judicial capacity to support complex criminal investigations.

(11) Independent accountability and oversight of prosecutorial and judicial conduct and control of security forces engaged in countering transnational criminal activity and organized crime.

(12) Effective coordination processes between international actors and HN institutions responsible for dealing with transnational crime.

(13) HN law enforcement and judicial capacity to rapidly respond to immediate threats and support high risk operations.

(14) HN capacity to support extra-territorial judicial processes necessary to counter transnational crime (i.e. extradition, information sharing agreements, etc.).

(15) Security for key investigative, prosecutorial and judicial personnel engaged in countering transnational and organized crime.

(16) Concept of operations for detection and monitoring that are rationalized to the threat and HN capacity to execute.

(17) Government sanctioned programs that diminish HN demand for drugs, illegal weapons, contraband, and other illicit goods and services.

b. **Accountability, Oversight, and Anti-Corruption**

(1) External effective civilian control and oversight of the security sector.

(2) Supporting civil and criminal legal framework.

(3) Transparency and access.

(4) Public auditing and accountability.

(5) Media and CSO engagement.

(6) Safeguards against executive and ministerial abuse.

(7) Safeguards against judicial corruption and abuse of power.

(8) Screening and vetting.

(9) The state is itself bound by law and does not act arbitrarily.

(10) US-provided military assistance is accountable and transparent, and used for its intended purpose, by its intended users.

(11) Reduction of illicit revenue streams that fund insurgents, terrorists, criminal networks and others.

(12) CSOs can, without retribution, monitor and oversee government policy and practice on security and justice issues.

(13) CSOs are effective advocates for accountable, capable security and justice services, and support professionalization of security and justice providers.

(14) Political, social, economic, legal, and environmental conditions for the establishment and nurturing of CSOs exist.

(15) HN legal and regulatory frameworks permit the creation, growth, and strengthening of CSOs.

(16) CSOs enable employment of legal, non-violent and non-disruptive methods to resolve disputes.

(17) Individuals and vulnerable populations are secure in their persons and property.

(18) Humanitarian aid delivered to disaster-affected populations with greater accountability and transparency.

(19) Disaster-affected populations understand what assistance they should be receiving, can participate in its planning and implementation, and can complain about misappropriated relief.

(20) Minimized the risk of humanitarian aid diversion and use to strengthen illicit and informal power structures.

c. **Public Information/Public Records Management**

(1) Effective and secure criminal and civil case management and court administration.

(2) Transparency and access.

(3) Means and authority to disseminate public laws and information.

(4) Effective and secure public records management and control.

(5) Government regulation and protection of personal information.

(6) Media and CSO engagement.

d. **Conflict Resolution and Peace Implementation**

(1) An effective, accountable system to address civil disputes.

(2) Illicit power structures are neutralized or controlled.

(3) Formal agreements/accords/treaties that define terms of peace settlement and power sharing are followed.

(4) Access to international and/or indigenous institutions that deal with conflict related grievances.

(5) Community/locally based initiatives are in place to address underlying causes of conflict.

(6) Citizens have the ability to resist manipulation and provocations of "spoilers."

e. **Reconciliation and Re-integration**

(1) Mechanisms in place for assistance of internally displaced persons (IDPs) and refugees.

(2) Legal/administrative mechanisms in place to adjudicate property claims.

(3) Institutions available that enable transitional justice processes (e.g., war crimes tribunals, peace commissions, etc.).

(4) Initiatives in place for fostering dialog between conflicting groups.

(5) Processes exist to facilitate community restoration.

(6) Legal/administrative mechanisms in place to adjudicate claims for reparations and/or restitution for conflict related damages.

(7) Memorialization available.

(8) Formal and informal programs exist to aid employment opportunities for former combatants.

f. **Security Sector Reform**

(1) Effective governance, oversight, and accountability of the security system.

(2) Security and justice services address the needs of the local population.

(3) Local ownership and leadership of the SSR process and development.

(4) Integration of capacity building programs across the following institutions and sectors: police, civilian oversight and accountability, civil society, prisons, legal and judicial reform, private security and non-state security providers, and border management.

(5) Sustainability.

(6) Coherent national security policy.

(7) Force structures in security and justice that are rationalized against the threat and the HN ability to sustain them.

(8) Public financial management and budgetary process to support and sustain reforms.

(9) HN capacity to monitor, review, evaluate, and sustain its own security capacity is strengthened.

(10) SSR activities supported by a HN national security strategy, HN strategies to support justice and ROL, and a national security threat assessment.

(11) Security and justice issues integrated into national development frameworks.

(12) National governing bodies and national strategies are inclusive and involve civil society and non-state actors.

(13) The HN populace generally perceives prompt and effective prosecution of military members for crimes committed against civilians, and in both military and civilian courts.

(14) The HN populace and military personnel perceive the military justice systems as being fair, impartial, transparent, and free from corruption and command influence, and are acceptable ways to punish crimes and to reform law breakers.

(15) Military personnel receive thorough training in their obligations concerning the human rights of the populace and their legal liabilities under military law.

(16) Military personnel view themselves as being subject to the law, obligated to respect the human rights of the civilian populace, and as being accountable for their actions in military or civilian courts.

(17) The HN populace and military members perceive the individuals who control the military justice systems as being themselves accountable to the law.

(18) Military judges and other legal functionaries adequately trained in the law and can properly apply the law to the cases brought before them.

(19) Military judges and other legal functionaries have adequate protections from command and other influences that would adversely affect their impartiality.

(20) Inspectors General, auditing and other accountability mechanisms are in place and effectively provide oversight to all military justice systems.

g. **Demobilization, Disarmament and Re-integration (DDR)**

(1) Formal agreements are used for disposition of combatants.

(2) Areas of cantonment for former combatants and/or weapons are adequate.

(3) Responsibilities are designated for monitoring former combatants.

(4) Responsibilities are designated for receiving and maintaining/disposal of weapons.

(5) Agreements specify rights, responsibilities, and what former combatants may or may not retain.

(6) Formal agreements specify former combatants rights of return and/or reclaiming property.

(7) Formal programs provide economic and re-settlement assistance for former combatants.

(8) Formal programs provide economic, medical, re-settlement and protection assistance for women and children associated with demobilized forces.

(9) The HN is able to control its sovereign territory.

(10) All parties fulfill their obligations under the peace agreement that settled the former conflict.

(11) Opposition armed forces that were involved in the conflict are dissolved or, if reduced or reintegrated into legitimate post conflict security forces, they are subject to government control.

(12) Demobilized combatants are able to become productive members of society.

h. **Intelligence and Information Sharing**

(1) Synchronize interagency information sharing mechanisms.

(2) Ensure appropriate mix of COMINT (communications intelligence); SIGINT (signals intelligence); ELINT (electronic intelligence); IMINT (image/imagery intelligence); and HUMINT (human intelligence).

(3) Implement surveillance activities that support ROL effects.

(4) Effective civil information and intelligence gathering/sharing.

(5) Public information on intelligence laws is disseminated.

(6) Reporting relationships/chain of command for intelligence services are clear and appropriate.

(7) HN freedom of information or public disclosure laws are effective.

(8) Bilateral information/intelligence sharing agreements with other countries or international/regional organizations are in place.

(9) Existing policies/regulations or requirements provide for information sharing between governmental agencies.

(10) A national threat assessment is conducted.

(11) International police cooperation is effective.

(12) HN laws regulate collection, storage, and dissemination of information by government institutions.

(13) Funding mechanisms provide for intelligence services.

(14) HN intelligence services target core domestic issues/threats.

(15) HN legal system protects citizens against inappropriate intelligence activities.

i. **Use and integration of Government Contractors**

(1) HN laws regulate use of nongovernmental personnel to carry out security functions (e.g., private security, private military).

(2) Laws regarding use of force by nongovernmental security forces are effective.

(3) HN has adequate capacity to monitor and regulate nongovernmental security forces.

(4) Degree to which existing nongovernmental security forces are aligned or identified with former combatants (e.g. warlords) is diminished.

(5) Formal agreements regulate nongovernmental security forces to be employed by third party nationals operating in the HN.

(6) Public perceive that nongovernmental security forces are adequately regulated and legitimate.

(7) Capacity and coverage of nongovernmental security forces compared with public forces is appropriate.

(8) Contractors are used as a force multiplier to perform ROL tasks when requirements for expertise and resources make it more efficient and effective to use them.

(9) Consideration for the use of appropriate contractors integrated into the earliest stages of mission analysis and course of action development.

(10) Contractors, to the extent practicable, make use of HN personnel and subcontractors, so as to contribute to the economic stability and growth of the HN.

(11) Coordination mechanisms used to deconflict the ROL activities of contractors, US and other militaries, US and international civilian organizations, nongovernmental organizations, and HN government entities.

(12) The HN populace perceives contractors as being accountable to the law and enhancing their security and social and economic well-being.

(13) The HN government perceives ROL activities done by contractors as working to achieve their development objectives and as being appropriate expenditures of donor contributions.

(14) ROL activities done by contractors focus on actions that contribute to stability and reducing the drivers of conflict.

(15) ROL activities done by contractors contribute to the achieving of the strategic, operational, and tactical objectives of the United States Government.

(16) Auditing and other accountability mechanisms effectively provide oversight for ROL activities done by contractors.

(17) HN is able to control and regulate the use of force within its sovereign territory.

(18) Jurisdictional gaps between public and private security forces are addressed before problems arise.

j. **Property**

(1) The property dispute resolution system processes cases efficiently.

(2) The populace uses the property dispute resolution system as opposed to self-help in the majority of cases.

(3) The populace perceives the property dispute resolution process as being effective, efficient and fair to all parties.

(4) The police and other local authorities effectively enforce property decisions and in the majority of cases protect persons who attempt to exercise their property rights.

(5) The majority of dislocated civilians are able to return home and resume their lives with little to no dependence on humanitarian aid.

(6) Accountability mechanisms are in place and function effectively to minimize corruption in property records and adjudication systems.

k. **Cultural Property: Protecting Arts, Monuments, and Archives**

(1) Looting stopped or diminished of cultural property from archeological sites, museums and other sources, as far as practical.

(2) Conflict over contested cultural sites (significant to two or more identity groups) has substantially diminished or stopped.

(3) Significant cultural property protected from vandalism or politically motivated damage or destruction.

(4) The HN populace perceives that US forces respect their culture and the physical symbols of that culture, and will safeguard their cultural property.

(5) The international community perceives that the US military forces comply with cultural protection responsibilities under international law.

(6) Insurgents, criminals, and other non-compliant actors denied financial resources from the illegal sale of cultural property.

APPENDIX B
CROSS-SECTOR DESIGN AND PLANNING CONSIDERATIONS

SECTION A. CULTURE AND BIAS

1. Cultural Context

a. One very painful lesson learned from the long military engagements in Iraq and Afghanistan is that it is imperative to understand, respect and work in consonance with the culture of the peoples in the area of operation. Often, US interveners, both military and civilian, have assumed that they understood the problems facing the HN, and that the way ahead was to simply implement the same sort of solutions that would work in America. Indeed, the solution we often have tried is to bring in experts with a great deal of experience in the American way of doing things, but who have little to no understanding of how other societies with different cultures handle similar problems. In some fields, such as water treatment systems, electrical grids, or road and rail networks, it may be possible to translate concepts, techniques and processes from the US or other developed countries into workable solutions for HN problems without a great deal of difficulty; water and electricity work the same in Topeka and Kabul.

b. However, social relationships play a big part in law and governance, which vary much more widely than do the principles of physics and engineering. The cultures of the populace form the foundation of law and governance. Culture, when it comes to understanding the ROL systems of a foreign country, cannot be viewed as minor cosmetic differences which overlie universally held beliefs; rather, the beliefs, attitudes and values of the HN culture can create profound and deep differences in the way a HN person perceives very fundamental concepts such as right and wrong, truth and fallacy, logic and illogic. For instance, in Western societies, we tend to place our faith in abstract ideas, usually formulated as sets of written rules and concepts. We talk about "defending and protecting the Constitution," or about "the law as being supreme." In many other cultures, there is no real loyalty to an idea; rather, a person is loyal to a family, tribe, or ethnic group because the group protects him and gives him his identity, and because he believes he owes a duty to the group. Although these group loyalties do exist in our culture, they do not reign supreme. In other cultures, the law, as an abstract, is not supreme; while the group will be governed by norms of conduct, the survival of the group is what is important, and the norms generally will be what will insure the survival of the group, even at the expense of the individual. Thus, our efforts to instill loyalty to the HN constitution or a respect for individual rights will very often not only be very strange and incomprehensible, but even illogical and absurd to members of the HN populace, security forces, and even members of the judiciary and legal professions.

c. Figure B-1 shows the relationship between an individual, his or her family, clan, and community, and some of the various factors that affects his or her behavior. The basic elements of ROL—the laws, institutions, and government power contained and limited by the laws and institutions are often separated from individuals and their social and cultural environments.

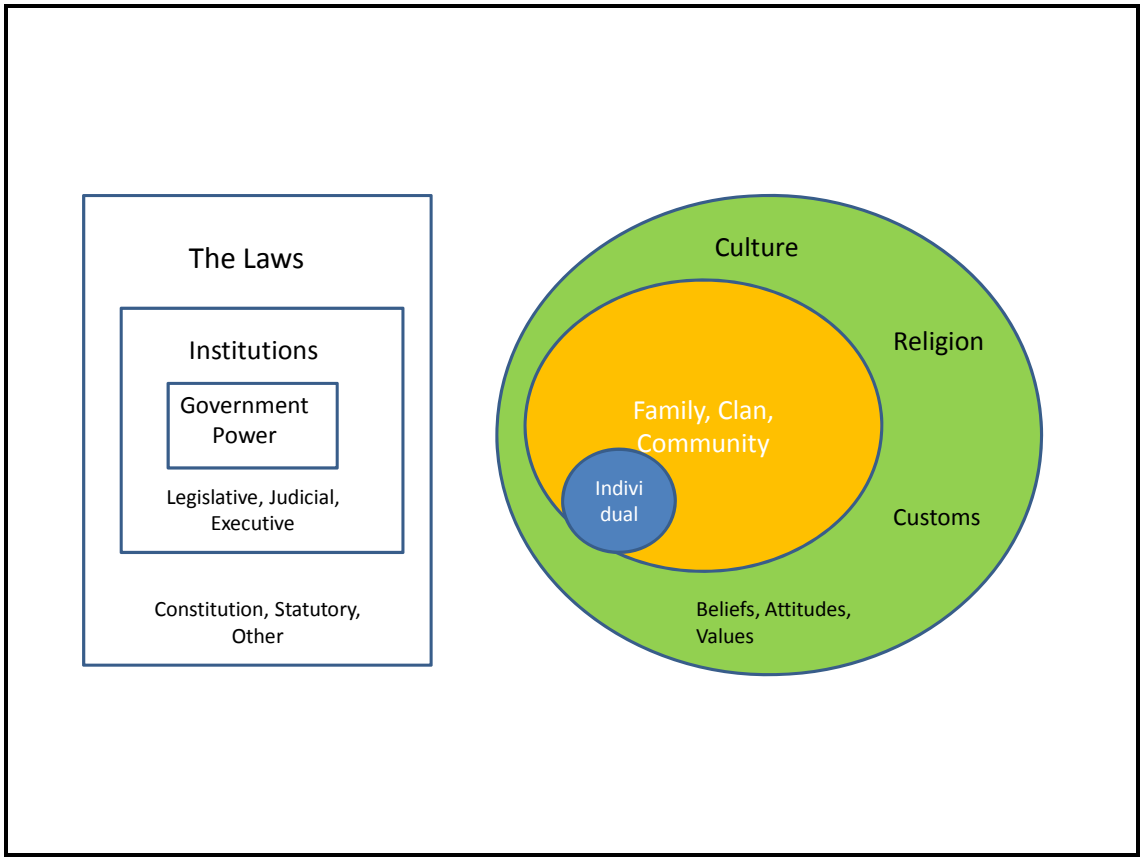

Figure B-1. Rule of Law and Culture, Ethnicity, and Religion

2. Ethnic Divisions

a. In many cases, ethnic divisions play a primary role in drivers of the conflict. The conflicts in Bosnia-Herzegovina between Serbs, Croats, and Bosnians; between Albanians and Serbs in Kosovo; and between Turks, Kurds, and Armenians in Turkey are well-known examples. Often, ethnic divisions shape the ROL systems of a HN, and inequities in those systems may be an important driver of the conflict. Restoring these pre-conflict systems would cause significant instability and could destroy a fragile peace. For a discussion of how ethnic divisions may be a factor in problems with HN legal systems, see Section C, "Host Nation Law," below.

b. Another aspect of ethnic divisions is that an ethnic group may prefer a strong traditional, customary systems and codes of conduct which provide order within the group. One example is the *Pashtunwali* of the Pashtuns of Afghanistan and Pakistan. Often such codes are implemented in the group's communities by customary and informal justice systems. Rather than moving to eradicate these informal systems, in many cases interveners may instead take actions to reform and strengthen such systems so as to resolve disputes and increase stability. Such systems are examined in more detail in Section G, "Traditional and Informal Justice," of Appendix D, "Justice Sector Design and Planning Considerations."

3. Religion

a. It is essential for the planner and operator to understand the problems of the HN's ROL systems from the point of view of the HN populace. Often, religious views heavily influence the viewpoint of the individuals and their communities. If planners and operators do not know why and how religious beliefs are important in HN culture(s), they may fail to interpret properly the responses of the HN populace to US military actions.

b. Similarly, Western biases concerning religion will often prejudice the planner's and operator's analysis of the HN culture and limit, often fatally, his or her capability to understand the ideas which govern the thought processes of individuals in the HN. Belief in secularism dominates America and the developed western nation's public life, which holds that religion is a private matter, and should not have any role or consideration in public matters, including the functioning of ROL systems. The view of secularism is that any sort of religious belief may be tolerated, but it must affirm (or at least does not go against) the fundamental tenants of secularism, including the tenant that religious belief is irrelevant for public affairs. Adherents of the secular faith deem these fundamental tenants to be self-evident truths, although unproved in any empirical manner.

c. Those inculcated in the secularist world view often unconsciously assume that others from different cultures also "really" believe that religion should not be anything but a private indulgence; thus, when confronted by HN people who make decisions based on their religious beliefs, secularists will look to find other explanations, such as political ideology, economic privation, or other motivators acceptable in the context of secularism. They have difficulty understanding that people can and do make political and legal decisions based on their religious beliefs. In contrast, a majority of the world actually sees religious belief as the bedrock of all political and legal thought.

d. In order to design campaigns to influence HN ROL systems so as to accomplish US objectives, planners and operators must be able temporarily to suspend their own beliefs about religion, and attempt to understand how and to what degree religious beliefs affect the political and legal thought of the HN populace.[1]

4. United States and International Cultural Biases

a. The biggest conceptual barrier to conducting effective ROL activities is the inability of Western interveners to understand that what they subconsciously believe to be universal are in reality the products of their own culture, and are not only not accepted by the populace of the HN, but will seem to them as outrageous violations of what they see as obvious truths. At best, this barrier will make it difficult, if not impossible, for the interveners to understand what will actually work to modify conditions in the culture they are attempting to influence. At worst, their efforts may be seen as trying to impose foreign ideas on an unwilling populace, may create a new driver of conflict, or rekindle the historical hatred toward colonialism.

[1] Department of the Army, GTA 41-01-005, *Religious Factors Analysis* (January 2008).

b. The basic concept of "rule of law" itself is fundamentally culturally biased. While the UN definition quoted in Chapter I may seem self-evident to those who have internalized Western social ideologies, commanders, planners and operators need to be aware that many intelligent, well-intentioned people in non-Western societies will find the very concept of "rule of law" to be completely contrary to their fundamental cultural beliefs about religion, politics, and society.

c. This does not mean that commanders, planners and operators should ignore or downplay ROL. In many cases, promoting ROL is part of the US policies that the military deploys to advance. However, commanders, planners and operators should look at their own beliefs objectively,[2] and see them, not as unalterable truths that every intelligent, well-intentioned person on earth already accepts, but as ideas in the marketplace, which others may or may not accept. We should also bear in mind that part of our own Western ideology is the right of the people of the HN to self-determination. By our own standards, the people of the HN are entitled "to freely pursue their economic, social and cultural development."[3] This is not to say that we cannot achieve eventual and lasting change, since cultures and laws do change over time, and in many cases do so because of outside influences. However, lasting change only occurs when the HN populace accepts and adopts the ideas, not by imposition from external sources.

d. Figure B-2 shows the interaction between ROL activities and their effect on the individual's social and cultural environment. Note that the ROL elements are transparent—they should change the society and the culture, but they should not replace or destroy them.

[2] The idea of looking at one's own beliefs objectively as a requirement for examining other social systems was substantially developed by the sociologist Max Weber in the early 20th century. See his *Essays in Sociology*, New York, Oxford University Press, 1946.

[3] "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." UN International Covenant on Civil and Political Rights, Article 1, Paragraph 1. 999 *UNTS* 171, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec. Entered into force for the US 8 Sep 1992, 2010 *TIF* 377.

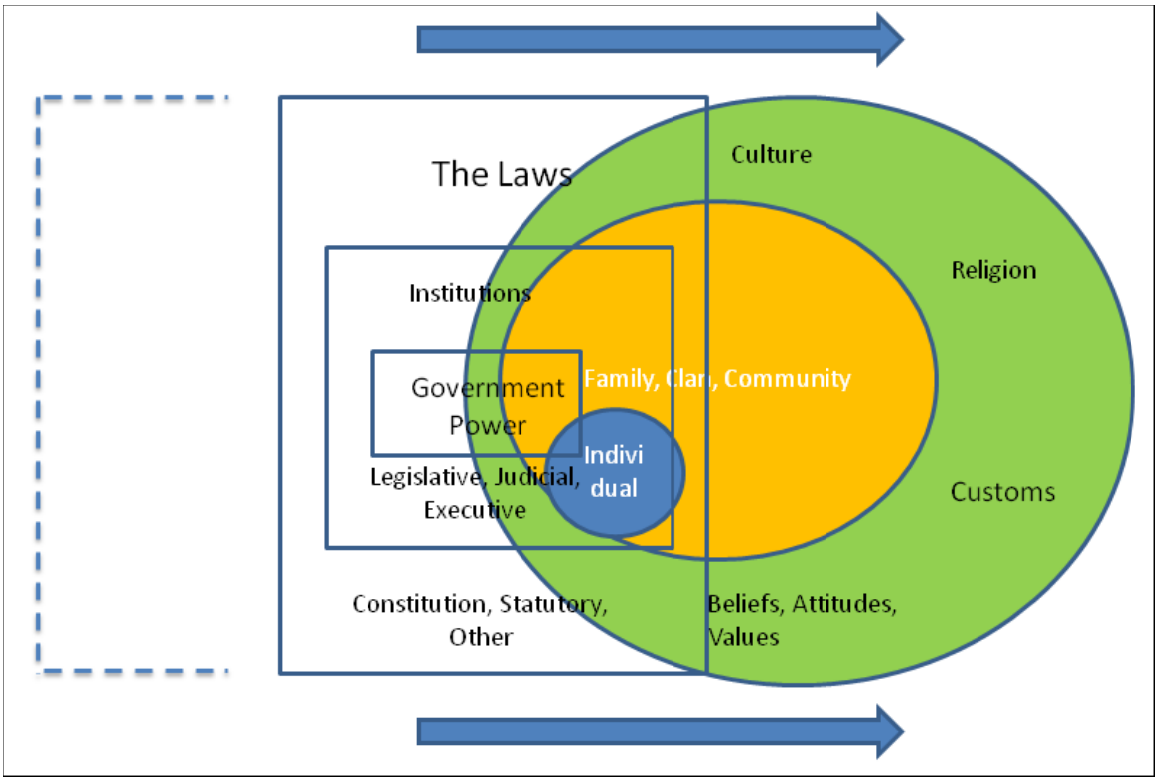

Figure B-2. Rule of Law Activities and their Effect on the Social and Cultural Environment

SECTION B. LEGITIMACY

1. Introduction

This section provides a basic overview of the concept of "legitimacy" as it applies to the intervening force, a HN government, and its security forces. Whether the HN population views a military intervention as legitimate from the outset, or whether it begins under a cloud of skepticism or hostility, affects the operation and the JFC's ability to support operations to restore or strengthen the ROL. This section offers several ways to understand the meaning and importance of legitimacy that planners can apply to a full range of military operations. It also summarizes the major elements of legitimacy as an enabler together with key planning considerations. The commander who fails to understand the meaning and importance of legitimacy does so at his peril.

2. Definitions

a. **Legitimacy** is difficult to define with precision. It finds diverse expression in different norms and deeply held notions of justice and behavior, which are not necessarily universal. There are also different parameters when applied to different entities and within varied circumstances. *Black's Law Dictionary*, for example, defines "legitimacy" as "lawfulness,"[4] which means different things in different systems or cultures. As applied to the political behavior of a government, *The Oxford Companion to the Politics*

[4] Bryan A. Garner, ed., *Black's Law Dictionary*, 8th Ed., (West, 2004) 920.

of the World refers to legitimacy as a "designated rule according to law in contrast to arbitrary rule or tyranny."[5] From a personal sociological perspective, legitimacy is a state of being "which arises from voluntary obedience to a leader, a tradition, or a legal code."[6]

b. **Legitimacy**, for the purpose of this handbook, refers to that of the intervening force, HN government, and its forces. Doctrinally speaking, it is one of the twelve principles of joint operations listed, but not defined, in JP 3-0, *Joint Operations.* This is due to the fact that the Webster's definitions are adequate.

c. In COIN and stability operations, the intervening force must support the legitimacy of the HN government. Public opinion of its legitimacy is critical, and weakened if the intervention appears permanent or supplanting a legitimate HN government. Formal authority and legitimacy, and the perception of authority/legitimacy are separate, but closely related issues. Planners must consider both in planning, support them through a good communications strategy, and routinely assess them during execution.

The Importance of Ensuring "Actual" Authority: Lessons from Disaster Response to the Tsunami (2004-2005)[7]

During 2004 and 2005, the US Military was called upon to provide substantial support to relief operations in the Indian Ocean. In several instances, US planners assumed that other donors, who were providing critical relief supplies that were to be delivered with US assistance, were in compliance with host nation law and had the authority to operate within host nation sovereign territory. This was not always the case.

The most visible issues concerned the entry of international relief goods and equipment. For example, a year after the tsunami in Indonesia, an estimated 217 containers of tsunami relief aid were reportedly still with customs authorities in port outside Jakarta and a further 232 containers and 58 vehicles were in a similar predicament elsewhere. Similarly, at one point during the relief operations in Sri Lanka, over 100 relief containers were stranded at the port in Colombo awaiting inspection and approval from different government ministries. Many food items perished before they could be distributed and other items, such as tents and body bags, were no longer needed.

These types of problems are by no means unique. They may arise in part due to manpower issues associated with the crush of incoming relief, but the

[5] Joel Krieger, ed., *The Oxford Companion to the Politics of the World* (Oxford: Oxford University Press, 1993) 533.

[6] Max Weber, *Law in Economy and Society* (Cambridge, MA: Harvard University Press, 1954), 31, cited in Thomas K. Adams, "The Establishment of Order and the Rule of Law: Legitimacy in the Traditions of Non-Traditional Operations (NTOs)," in Max G. Manwaring and Anthony J. Joes, *Beyond Declaring Victory and Coming Home: The Challenges of Peace and Stability Operations* (Westport, CT: Praeger, 2000), 42.

[7] V. Bannon and D. Fisher, "Legal Lessons in Disaster Relief from the Tsunami, the Pakistan Earthquake, and Hurricane Katrina," *American Society of International Law Insights*, Vol. 10, Issue 6 (15 March 2006).

inflexibility of normal customs and import regulations or the confusion arising from the hasty adoption of impromptu procedures frequently also have a role. For military planners who are either charged with ensuring the direct delivery of relief supplies, or who are assuming that NGOs and other donors will be able to operate within the battlespace in a conflict or post-conflict situation, the question of donor authority to deliver relief supplies and services should be addressed, country by country, and, if necessary, donor by donor, before support-related operations begin.

3. Planning for Legitimacy as an Enabler

a. Appendix A, "Rule of Law Objectives, Conditions, Enablers, and Lines of Effort," identifies legitimacy as an enabler because of its overall importance to military support for ROL activities. Planning for legitimacy means orchestrating operations so as to establish and maintain the legitimacy of the intervention and to support the legitimacy of the HN government. Planning addresses two issues: *What* must interveners do to establish legitimacy? *How* must operations be conducted to support perceptions of legitimacy?

b. The JFC must also distinguish "strategic legitimacy," the justification for intervention as spelled out in policy for the operation, and "operational legitimacy," the on-going legitimacy accorded to the interveners in view of the way they carry out the operation. Commanders at all levels have an obligation to assert and protect the legitimacy of operations, or "operational legitimacy." Overzealous use of force can undermine even the most legitimate intervention. Actions on the ground should demonstrate considerations of proportionality. All military operations should discriminate clearly between combatants and non-combatants, and any use of force should be proportional only to the military end and avoid unnecessary collateral damage.

c. These are not just legal obligations. Restraint and focused application of force are critical to sustaining the support of both HN and US populations.[8] Both concepts are difficult to apply in irregular warfare, or conflicts in which combatants wear no uniforms and operate from population centers. Even so, as summarized in JP 3-0, "Security actions must be balanced with legitimacy concerns. . . . Restricting the use of force, restructuring the type of forces employed, and ensuring the disciplined conduct of the forces involved may reinforce legitimacy."[9]

4. Planning for Legitimacy in Security Sector Reform

Military support to SSR requires special attention to the issue of legitimacy. Particularly in post-conflict operations, there is a tendency to address immediate security imperatives by quickly training and equipping HN security forces. However, haste in building competent forces often results in minimal vetting, ignoring public perceptions of

[8] LtCol James W. Hammond (CAN), "Legitimacy and Military Operations," *Military Review*, (July-August 2008), 64.
[9] JP 3-0, *Joint Operations* (17 September 2006, Incorporating Change 2, 22 March 2010), p. A-4.

culpability, overlooking gender disparity, and neglecting accountability processes that counter corruption and the abuse of power.

5. Lessons Learned and Best Practices

a. *Conduct interagency coordination on legitimacy at a senior level and early in the process.* Planning for legitimacy and understanding the perceptions within the operational environment is an inherently political activity. Planners should coordinate with the Command's Political Advisor to ensure that actions are within actual campaign authority. Coordinate or partner with development agencies, such as USAID, to conduct HN population polling and surveys (and the NGO and IO partners with whom USAID traditionally works) in order to gauge the acceptability of likely operations or approaches to dealing with a problem.

b. *Integrate the lawyers.* Planners should resist the tendency to plan first and then have lawyers review the plan after it is underway. Legitimacy has a strong legal component, easily undermined by work-arounds. Understanding the limits of actual legal authority, and the risks if ignored, requires sophisticated analysis. Bring in the legal professionals up front.

c. *Recognize that lack of legitimacy in one operation will impact operations elsewhere*. How the United States conducts operations in one part of the world has a direct impact on perceptions worldwide. With limited ability to communicate complex messages to distant and disparate populations, there is little opportunity to distinguish one operation from another, or even to explain events after they have happened.

d. *Leaders at all levels must reinforce legitimacy as a core business for all combat forces.* Tactical actions, rules of engagement, and guidelines for interaction with the civilian population should all support the legitimacy of US actions and respect for the legitimacy of the HN authorities. Regardless whether an operation is conducted under occupation law, or is entirely in support of HN authority, if the HN population does not consent to the authority that is being exercised, they will not be willing partners in enforcing the ROL.

e. *Do not overlook non-state security actors when analyzing the legitimacy of host nation authorities, coalition partners, and other donors.* In many countries, non-state actors provide the majority of security. As a general rule, the population will not distinguish between non-state actors behavior and that of state security forces. For more on this subject, see Section D, "Non-State Security Providers," of Appendix E, Special Issues in ROL/SSR Design and Planning."

f. *Integrate Strategic Communication into planning early and develop a comprehensive communications strategy*. The continuous, rapid communication flow in the information environment, facilitated by modern technological advances and media distribution methods, requires responsive, agile processes and capabilities to preserve and enhance the credibility and influence of the United States. Effective strategic

communication requires synchronization of crucial themes, messages, images, and activities with other nonlethal operations to inform and influence selected audiences in support of US national interests. For more information on this subject, see the *Commander's Handbook for Strategic Communication and Communication Strategy*, version 3.0.

SECTION C. HOST NATION LAW

1. Legal Restraints

a. There will be policy constrains and legal limitations under US domestic law that impact the extent to which the JFC can engage with the HN legal system. Furthermore, ROL activities must themselves be subject to the ROL.[10] This section provides an overview of legal and policy limitations that may impact the JFC's interaction with the HN system in order to alert planners to the issues. Ultimately however, the JFC needs to have a clear legal opinion that is consistent with US policy and fully coordinated with relevant civilian agencies. Implementing forces must readily understand the legal opinion, and all actions must be consistent with this coordinated legal guidance.

b. One of the most important initial steps in planning any HN engagement is determining how the US will operate within the HN legal framework. Without understanding the detailed inner-workings of the HN legal system, the JFC could end up facilitating corruption, fueling internal drivers of conflict, or enabling wide-spread criminal activity. A solid understanding of HN law is essential whether the mission is to assist the HN in building indigenous security capacity; to conduct joint operations with HN forces; or to administer, restore, or reform HN laws and legal systems as part of civil-military operations.

c. International law is very clear: *the law of the HN at the time of the intervention applies until such time as legally permitted processes modify it.* In general, any modification of HN law must be in accordance with the HN's own constitution and other governing legal framework, except where international law permits other processes, such as those authorized in accordance with military occupation or a specific UN mandate. These exceptions are rarely applicable, and then only temporarily or under extreme circumstances.

[10]There are many legal considerations which, while not directly connected to ROL activities affecting HN legal systems, nonetheless impact on the JFC's ability to conduct such operations. Such considerations include rules of engagement, procurement law, Status of Forces Agreements, and disciplinary actions against US military personnel and persons accompanying the force. The first source of information concerning these topics is the JTF SJA. A very important reference is the *Operational Law Handbook*, International and Operational Law Department, The Judge Advocate General's Legal Center and School, US Army.

Determining Host Nation Law in Conflict: East Timor (1999) [11]

East Timor was ruled by Portugal from 1642 to 1974. In 1975, after Portugal abdicated control, Indonesia invaded and annexed the country, and twenty-five years of armed conflict between Indonesian forces and an insurgent group, FALINTIL, followed, during which time, up to one-fourth of the Timorese population may have been killed. The UN intervened, and in 1999, in a UN-monitored referendum, the majority of East Timorese voted for independence from Indonesia. Indonesian forces and their supporters responded by committing many atrocities. In response, the UN authorized a force under Chapter VII to restore peace, and created the UN Transitional Administration in East Timor (UNTAET). The UN mandate gave UNTAET executive and legislative power in East Timor.

UNTAET recognized Indonesian law as the law of East Timor insofar as it was consistent with international law. This decision was made in part because the few available Timorese judges and lawyers had been trained in Indonesian law and forcing them to learn a new system while attempting to restore a disrupted and backlogged justice system would have been too great a burden. As most Timorese relied on traditional justice mechanisms for dispute resolution, there was little popular opposition to using Indonesian law in the formal system, and the decision contributed significantly to the restoration of order and governance in the post conflict period.

2. Considerations for Host Nation Law Impact on Operations

a. Understanding the HN legal framework requires analyzing the legal code and mapping the existing legal institutions, systems, and processes. It is not enough to know constitutions, codes, and regulations. It is equally important to understand the processes for creating, changing, applying and enforcing the law, as well as understanding the public's perception, understanding, and acceptance of the systems.

b. Often, HN law is unclear and institutional capacity to enforce the law is uncertain, particularly in countries whose legal systems have evolved through colonialism, prior occupation, conflict, and political upheaval. In many cases the law may seem clear, but common usage may make enforcement difficult or inappropriate. The following are issues that the JFC may encounter early in the planning process:

(1) *What is the authority of the military to arrest civilians for criminal acts?* This is a threshold question in any operation where the military may find itself enforcing HN law. Joint force training to execute that authority appropriately is essential.

(2) *Host Nation law may lack legitimacy.* If the HN populace does not perceive a body of law as legitimate, validly imposed, moral, and obligatory; then it will be

[11] Ronald A. West, "Lawyers, Guns, and Money: Justice and Security in East Timor," in *Constructing Justice and Security After War*, ed. Charles T. Call (Washington: US Institute of Peace, 2007), 313-350; 314-317, 324.

unenforceable and ineffective absent extraordinary measures. In conflict, the population may also be divided as to their perception as to which laws are legitimate, and if the population does not view enforcement bodies such as the police and the judiciary as fair, impartial, competent, and substantially free from corruption, then the legal system as a whole will be undermined. In such instances, interveners will have to take extreme care to ensure transparency and accountability of their own actions and those of the HN officials whom they appear to support. Where there is conflict or confusion over what laws apply, the temporary use of internationally–accepted legal codes, appropriate to the HN legal system, may be an important tool for filling gaps in knowledge, understanding, and acceptance.

(3) *The existing law and/or legal system may be itself a driver of conflict.* Laws, law enforcement, and law makers are frequently the catalysts for, or reasons behind conflict. For example, a conflict may be between rival ethnic groups in which one controls the legislative process and has created laws which discriminate against the other. Even where the laws may appear to be non-discriminatory, the dominant group may have used its power to ensure that judges, prosecutors, police chiefs, and other key enforcement personnel were selected primarily, if not exclusively, from the dominant group. Regardless whether the appointees actually use their power in a discriminatory fashion, or perceived as doing so, the effect is the same. Conflict is exacerbated, and if the system does not have a solid structure for dispute resolution, it can escalate quickly.

The Law as a Driver of Conflict - The Law in Kosovo (1999-2008) [12]

On June 10, 1999, following the NATO air campaign, the UN Security Council passed UN Security Council Resolution 1244, which placed Kosovo under a transitional UN administration (UNMIK), and authorized KFOR, a NATO-led peacekeeping force. Initially, the UN declared that the laws of the Federal Republic of Yugoslavia and of the Republic of Serbia would apply in Kosovo, except when they conflicted with international human rights standards or the UN mandate. This was unsatisfactory to Albanian Kosovar judges and prosecutors, who associated Serbian Law with Serbian oppression. The Albanian Kosovars wanted to return to the legal code in effect prior to 1989, when Kosovo enjoyed substantial autonomy before the Serbian-dominated government imposed greater and discriminatory controls over the region. This was unacceptable to the Serbs. In an effort to address the grievances of the Albanian Kosovars, the applicable law under UNMIK became: "the regulations promulgated by the Special Representative of the Secretary –General and subsidiary instruments issued thereunder, and the law in force in Kosovo on March 22, 1989." The results were mixed. While some of the Albanian Kosovars were mollified, the law in Kosovo "became an almost unfathomable combination of old law, international and European human rights conventions, UNMIK regulations, and police directives" and has yet to be reconciled. Kosovo law remains in flux, and the international community has been unable to fully extricate itself from engagement in the HN legal system as a result. Kosovo is

[12] Robert Perito, *Where is the Lone Ranger When We Need Him?* (Washington: US Institute of Peace, 2004), 207-208.

also instructive because it illustrates that even with planning and considered compromise, total success may not be achievable. The JFC needs to be able to anticipate that eventuality.

(4) *Determining the law in conflict*. Who chooses what law applies? The nature of the conflict and the relationship of the legal system to the conflict may determine how the choice is made. When the law is an issue, the determination as to what law will apply in the territory may be a negotiated part of a peace accord. If the intervention is under UN authority pursuant to Chapter VII, the UN Security Council Resolution authorizing the intervention (or an ancillary Resolution) may also address issues with the HN legal structure and specify the roles and responsibilities between civilian and military authorities. Within the USG, the National Security Council, through its interagency coordination processes, will establish policy regarding the US view of the applicability of HN law, which will in turn guide the JFC.[13] In cases where there is not clear guidance from higher authorities, or when the guidance may not be specific enough to be readily applicable to operations on the ground, the JFC must identify the specific issues, request guidance from higher headquarters, and conduct close coordination with civilian interagency partners. Without a clear determination of applicable law and policy level concurrence, accurate mission analysis and course of action development will be based on speculation, and likely be unexecutable.

Determining the Law as Part of an International Process–Afghanistan (2001)[14]

In December, 2001, after the US and its Northern Alliance allies ousted the Taliban from control of Afghanistan, representatives of the Afghans, with the assistance of the international community, developed the Agreement on Provisional Arrangements in Afghanistan ("Bonn Agreement"). The Bonn Agreement governed during the transitional period until a new Constitution was adopted and a permanent government installed. As an interim matter, the Bonn Agreement adopted the Constitution of 1964, except for the provisions regarding the monarchy, executive and the legislature, and other provisions that were inconsistent with the totality of the Bonn Agreement itself. The Bonn Agreement also affirmed application of existing laws and regulations to the extent that they were not inconsistent with other Bonn Agreement provisions, international legal obligations to which Afghanistan was a party, or applicable provisions of the Constitution of 1964, and gave the Interim Authority the power to repeal or amend those laws and regulations. The Bonn Agreement also required the Interim Administration, with UN assistance, to create a Judicial Commission "to rebuild the domestic justice system in accordance with Islamic principles, international standards, the ROL and Afghan legal traditions.

[13] This is particularly important when dealing with nation's whose legal system the US regards as contrary to basic human rights, or the establishment of which the US opposed.

[14] Agreement on Provisional Arrangement in Afghanistan Pending the Re-Establishment of Permanent Government Institutions ("Bonn Agreement"), December 5, 2001, http://www.un.org/News/dh/latest/afghan/afghan-agree.htm.

The Bonn Agreement accomplished two major objectives. It provided a clearer statement of the law for coalition forces and international donors, and enabled the Transitional Government to function until a new Constitution was adopted and elections held. During the transitional period, laws were enacted, amended or repealed by executive authority of the president pursuant to the Bonn Agreement, which made it possible to successfully reform laws and institutions disrupted by over twenty-three years of war. The process by which the Bonn Agreement was achieved, illustrates an NSC-led US engagement that provided the framework within which the subsequent military engagement with the Afghan legal system had to take place.

(5) **Hybrid Systems**

(a) Most nations based their legal systems on the European civil law tradition, the Anglo-American common law tradition, or a religion-based system such as *Shari'a*. However, it is common to find hybrid systems that combine vastly different legal traditions into a national legal framework that can be confusing for those who are not accustomed to practicing or living in such a system. Hybrid systems often result from historical factors, such as where a modern nation, previously colonized by two or more European powers, borrowed elements of the legal system from each. Or, a sovereign territory, created out of two or more separate political and legal entities, resulting in a merger of both complimentary and competing legal concepts. Development assistance has an impact as well. Advisors often have a bias toward their own system, and elements of that system make their way into the HN legal structure as a result. In other cases, the HN government made a decision to import elements of a foreign system to improve or reform the current system. In Latin America, for example, several nations have converted their civil law-based, inquisitorial system of criminal justice into an adversarial system built on the US model as part of an effort to increase accountability and lessen the pressure from narcotics traffickers and insurgents on investigating judges. HN systems may also incorporate elements of religious law, traditional legal systems, and ethnic or religious minorities may have separate and distinct laws applicable to them which govern such issues as marriage, divorce, children, inheritances, and property law. Section G, "Traditional and Informal Justice," of Appendix D, "Justice Sector Design and Planning Considerations," discusses traditional and informal justice in more depth.

(b) Within hybrid systems, there will generally be rules and procedures embedded in HN law and practice to guide the determination of which type of law is applicable in a given case. It is essential to bring in consultants that have *current* knowledge of the system *and* the way it is applied in general practice at all levels of government. Finding qualified consultants is, in and of itself, a major challenge that must be addressed early in the planning process.

(6) **Competing Systems**. When two or more groups are fighting to establish control over the same territory, the conflict is rarely if ever purely military. The warring factions will also seek to develop and implement all the instruments of government power, such as an executive branch, a legislature, a court system, and a body of laws. Warring factions may base their law on a system generally accepted prior to the conflict,

but often one or more factions may seek to impose a new and revolutionary system, such as a socialist system or one based exclusively on an interpretation of Islamic law. Where competing systems exist, the decision by an intervener to enforce a particular law or support an institution assumes disproportionate political importance.

(7) **No Effective Formal System**. In failed states, there is often such a breakdown of society that there is no apparent effective legal system. For instance, in territories controlled by armed groups, the only rules that exist may be the *ad hoc* decisions of a warlord or militia leader. Upon neutralization of the armed leadership, it may be possible to reinstate a legal system that previously functioned in the territory, or rely on the traditional systems that continued to function in the absence of state authority. In other cases, it may be necessary to impose an internationally developed model code and interim institutions until the HN is able to develop functioning institutions to make and enforce laws on its own.

Absence of a Functioning Legal System -- Somalia[15]

As opposition to his government proliferated in the late 1970s and early 1980s, the Somali regime of Siad Barre increasingly subverted or ignored the legal system so that by the late 1980s, Somalia had become a police state, with citizens facing police and legal action solely for political reasons. After Siad Barre fell in 1991, the new authorities promised to restore equity to the legal system, but this goal has yet to be realized. Crisis conditions, including wide-spread famine, inter-clan fighting, absence of a government authority and general lawlessness, continued to prevail in Somalia in May 1993, when the United Nations Operation in Somalia II (UNOSOM II) began operations. Prior to its withdrawal in 1995, UNOSOM II assisted in rebuilding some of the Somali police and courts but in the end, the UN's "ambitious plan to rebuild the internal structures of a functioning State did not prove possible in the face of the inability of the Somali factions to come to terms with each other…"

Civil war has continued and the country remains fragmented. Formal justice systems have been administered sporadically under different regional governments, which have led some to argue that Somalia has no functioning legal system. In reality, however, the fragmentation of the formal system has led to a resurgence of informal structures and traditional tribal dispute resolution systems that have filled some of the void, but at the same time, the prevalence of informal structures has also undermined efforts to restore a functioning central government.

(8) **International Law**. Often, the HN will be party to various human rights and other international conventions which may affect its domestic law. While those agreements can be an important modifier to HN law, it is not always possible to assume that those obligations automatically apply. Many nations, including the US, have opted out of specific provisions within treaties, and others require national implementing legislation before treaty obligations become part of the domestic law. Planners need to

[15] DOD, *Somalia: A Country Study*, 1993 and UNITED NATIONS OPERATION IN SOMALIA II, available at http://www.un.org/Depts/DPKO/Missions/unosom2b.htm.

determine to what international conventions (including human rights conventions) the HN is a party, and how those obligations influence HN domestic law.

(9) **US Policy Considerations**. US military conducts ROL activities generally within the context of stability operations. Under current US policy, the Secretary of State should lead an interagency process developing plans governing such operations. These plans may establish significant constraints and restraints on the JFC, create military and civilian supporting and supported relationships, and codify specific roles and missions assumed by allied and coalition partners, international organizations and NGOs.[16] Congress may also set specific parameters within laws and appropriations that may constrain both the JFC and civilian interagency partners.

(10) **Nature of the Contingency Operation**. The nature of the contingency operation will dictate the framework and specific engagement with the HN legal system.

(a) **Occupation**. If the JFC is operating as an occupying power under the law of armed conflict, he will have wide-ranging executive power over occupied territory and the civil populace in it. In effect, the occupying power assumes all governmental authority within the occupied territory. However, this authority has significant limitations under the law of armed conflict,[17] which defines how an occupying force should treat the laws and legal institutions of the occupied territory. The Hague Regulations state, for example, that the occupying authority "shall take all measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[18] Essentially, the occupying power must leave HN law and related systems in effect unless they pose a threat to the security of the occupying power, its personnel, or its property, or violates the standards of the law of armed conflict or other requirements of international law, such as internationally accepted human rights standards.

Geneva Conventions and Engagement with the HN Legal System

- Penal laws of the occupied territory remain in force, except that they may be repealed or suspended by the occupying power when they constitute a threat to the occupant's security or an obstacle to it applying the Civilians Convention. Art. 64.
- The courts of the occupied territory shall continue to function in respect of all offences covered by the existing laws, unless their functioning threatens the security of the occupant or its ability to apply the Civilians Convention. Art. 64.

[16] See JP 3-16, "Multinational Operations," Mar 7, 2007, located at http://www.dtic.mil/doctrine/jpoperationsseriespubs.htm.
[17] See e.g., Regulations Respecting the Laws and Customs of War on Land, Annex to Convention (IV) Respecting The Laws and Custom of War on Land, the Hague, 1907, commonly called the Hague Regulations; and Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Geneva Convention IV), commonly called the Geneva Civilians Convention.
[18] Art. 43, the Hague Regulations.

- The occupying power may impose penal laws on the populace to enable the occupant to meet its obligations under GC, to maintain orderly government in the territory, and to ensure the security of the occupying power, its personnel and property. Art. 64.

- Penal provisions enacted by the occupying power do not come into force until they have been published and brought to the knowledge of the inhabitants in their own language. Art. 65.

- The laws in force in the territory in which they are detained shall apply to internees, subject to other provisions in Articles 117 through 126.

(b) **Operations Authorized by United Nations Mandates**. Generally, when a nation commits the use of its military forces in support of a peace keeping or other or similar operation, it does so based on the legal authority of the UN and on its own internal legal authority to carry out the UN decision. In authorizing such actions, the UN will issue its mandate through the UN Security Council, which can authorize coercive action in a sovereign nation. The Security Council is empowered to authorize a range of actions, to include economic sanctions, blockades, humanitarian assistance or even the use of military force. Mandates typically are based upon Chapter VI, "Pacific Settlement of Disputes," and/or Chapter VII, "Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression," of the UN Charter.

UN Mandates, Peacekeeping Operations, and Criminality – Rwanda (1993-1994)

One of the most prominent examples of the problems that can arise in the implementation of a UN mandate occurred in Rwanda, in 1994 during the genocide of between 800,000 and 1,000,000 Rwandan Tutsis and Hutu moderates. The United Nations Assistance Mission for Rwanda (UNAMIR), initially a piecemeal force of 2500, was hampered from the outset by resistance from numerous UN Security Council members who were reluctant to become involved. The UN and its member states appeared largely detached from the realities on the ground. In the midst of the crisis, Lt. General Romeo Dallaire was instructed to focus UNAMIR on only evacuating foreign nationals from Rwanda. The change in orders led Belgian peacekeepers to abandon a technical school filled with 2,000 refugees. After the Belgians left, Hutu militants waiting outside entered the school and massacred those inside, including hundreds of children. Four days later the Security Council voted to reduce UNAMIR to 260 men. At one point, Lt. Gen. Dallaire learned from an informant of major weapons caches and plans by the Hutus for extermination of Tutsis. Dallaire made immediate plans for UNAMIR troops to seize the arms caches and advised UN Headquarters of his intentions, believing these actions lay within his mission's mandate. The following day he was told that the outlined actions went beyond the mandate granted to UNAMIR under Security Council Resolution 872, and he was instructed instead to inform the Rwandan President. Thus, no action was taken and the weapons were later believed to have been used in the genocide. Following international reaction to the

magnitude of the deaths, the UN underwent significant reforms in the way mandates are designed. The political constraints remain, however, and continue to have an effect on the ability of UN forces to address criminality during peacekeeping operations.

(c) **Peace Keeping Operations (PKO).**[19] A PKO is an intervention authorized under authorities found in Chapter VI and Chapter VII of the UN Charter. A PKO differs from a peace enforcement operation (PEO) authorization in several ways. The main distinction is that a peacekeeping authorization is based largely on the consent of the HN (or its principal factions) to the presence of UN member forces to assist in its stabilization efforts. PKO authorization implies that the HN's laws are still functioning and intact, even if the country has no present capability to enforce those laws, and any ROL activities must be conducted with the assent of the HN parties.

(d) **Peace Enforcement Operations (PEO).**[20] Unlike PKOs, a peace enforcement operation under Chapter VII can occur without the consent of the HN. As a result, PEO are more likely to trigger the entire body of the law of war. A peace enforcement action may lead to the complete dissolution or breakdown of the previous regime, prompting a need for the wholesale re-establishment of the ROL and the institutions that support it. The decision regarding the application of an appropriate legal framework will likely be in the mandate issued by the UN Security Council. For the US participants, such issues addressed in policy and strategic direction are typically implemented through plans developed through a whole-of-government process.

3. Lessons Learned and Best Practices

a. *JFC ROL engagements with HN legal systems can occur throughout the full spectrum of operations.* The JFC typically supports activities affecting the HN legal system during all phases of joint operations. Although more limited in scope, engagement can occur during steady-state operations, such as where the JFC assists in US-sponsored efforts to reform defense legislation, military justice, or defense-related procurement laws and practice. The JFC may also be called upon to partner with USAID, the Departments of State, Justice, Treasury, and others in specific lines of activity that target corruption, illicit trafficking, or financial crimes. While the JFC's involvement will be within the defense sector, there may be significant overlap between military and civilian activities such that close coordination is required.

b. *The JFC and planners cannot focus on formal legal systems and ignore traditional and customary law.* US forces must engage influential informal bodies with key leader engagements. During stabilization operations, gathering information and intelligence on the local leaders and elders can pay huge dividends and help ensure success in a ROL mission. Section G, "Traditional and Informal Justice," of Appendix D, "Justice Sector Design and Planning Considerations." addresses informal and traditional justice mechanisms in greater detail.

[19] United Nations Charter, Chapters VI and VII.
[20] United Nations Charter, Chapter VII.

c. *Understanding HN law requires skilled personnel who understand legal systems different from American systems.* An intervener is unlikely to become an expert in HN legal systems and legal culture, but success in ROL activities requires the ability to distinguish between secular and religious law, common law systems (like those of the US and the UK) and civil law (Napoleonic) systems (common in Latin America and other parts of the world). Failure to understand the HN legal mind-set and outlook can result in futile efforts to implant alien and ineffectual systems. In defining essential ROL elements or effects for a particular operation, the art is to be able to translate outcomes into terms that fit the HN legal landscape. This is not just a job for lawyers. In many instances, the best authorities will be practitioners in banking, investment, business, and the extractive industries.

APPENDIX C
DESIGN AND PLANNING CONSIDERATIONS FOR SECURITY SECTOR REFORM MANAGEMENT AND OVERSIGHT

SECTION A. ACCOUNTABILITY AND OVERSIGHT

1. Purpose and Scope

This section provides an overview of oversight and accountability, with focus on their relationship to the defense sector, and the military role in supporting strong accountability and oversight within a national system. The chapter also explains the role of accountability and oversight in SSR.

2. Definitions

a. **Accountability** in government is as an active system that holds government officials answerable for their actions when they are illegal, unethical, or otherwise contrary to the ROL and the public good. In a democratic system, transparency, responsibility, participation and responsiveness to citizens are foundational for accountability in the security and justice sectors. Accountability is vital in building a firm foundation for defense budget planning and program implementation.

b. **Oversight** refers to the review, monitoring, evaluation and investigation of government agencies, entities, programs, and policies, to ensure compliance with the country's laws and to ensure agencies are carrying out their assigned tasks. Legal authority for conducting oversight flows from the host nation's constitution and resulting laws. Oversight institutions use several fact-finding techniques, including audits, inspections, evaluations, and investigations. The Organization for Economic Cooperation and Development (OECD) identifies "six pillars" of oversight and control:[1]

(1) Internal controls (published standards),

(2) Executive control,

(3) Parliamentary/legislative oversight,

(4) Judicial review, and

(5) CSO oversight.

c. In general, the role of the military in accountability and oversight will be on fostering effective oversight over the host nation's defense institutions and armed forces. However, military and other security forces may assume a more active role in leading reform and ensuring accountability, especially in non-permissive environments. In Iraq,

[1] *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, p. 112. (http://www.oecd.org/dac/conflict/if-ssr)

for example, in the absence of sufficient civilian expeditionary capability, DOD Inspectors General found themselves conducting capacity building within nascent Iraqi civilian agencies, including the Ministries of Finance, Oil, and the Interior. Even when nonmilitary agencies are present, the security situation may still require extensive military support to civilian efforts in the form of technical support, security, communications, and training. Military to military Theater Security Cooperation (TSC) activities are the primary means to support steady-state military engagements. The military role should always be closely coordinated with other USG and international agencies, and nested within larger governance development programs wherever possible.

3. Key Interagency Partners and Coordination Processes

a. Within a semi-permissive or permissive environment, the military will usually be in a supporting role for the US civilian agencies. Thus, the US Embassy's Country Team is the critical point of entry for the military planner at the operational level. Depending on the country and US policy objectives, there may be a ROL coordinator in the Embassy. More likely, there will be several agencies that mange programs that touch and concern accountability and oversight. Key personnel may include the USAID Mission Director, Treasury Attaché, FBI Legal Attaché, and occasionally, a resident legal advisor (RLA) or intermittent legal advisor (ILA) from the Department of Justice. The following table summarizes the US agencies that are most likely to be involved in accountability and oversight overseas:

USG AGENCY	PRINCIPAL FOCUS
USAID	Assessments; Governance development programs
Department of State (INL)	Assessment; Diplomacy to support international standards; Assistance programs
Department of State (Regional bureaus, DRL, EEB, IG)	Monitoring programs; Obtaining international support; Advising on inspection techniques
Department of Justice	Office of Prosecutorial Development Assistance Team (OPDAT) carries out institutional capacity building focused on judicial, prosecutorial and legislative assistance
Government Accountability Office (GAO)	Setting standards for audits in its "Yellow Book"
Federal Bureau of Investigation (FBI)	Training
Department of Treasury	Assessments and training

Table C-1. US Agencies Having Accountability and Oversight Responsibility Overseas

b. There are a number of international organizations, including the World Bank, International Monetary fund (IMF), and NGOs that work to promote accountability and build capacity. The World Bank in particular has published standards for host nations and international donors. One of the key organizations promoting professional

accountability standards is the **International Organization of Supreme Audit Institutions** (http://www.intosai.org), organized into regional organizations and 188 National Audit Offices or Supreme Audit Institutions (SAIs).

Example – The Impact of Lack of Accountability and Oversight in East Timor[2]

In 2006, four years after achieving independence, East Timor was shaken by a crisis within its military and police. Tensions within the army and between the army and the police sparked violence that resulted in at least 38 deaths and the displacement of about 150,000 people. In addition, half the army had deserted or been dismissed and the police had been partially disbanded before order was restored. A Special Commission of Inquiry (COI), carried out by the UN High Commission for Human Rights, found that one of the underlying causes of the crisis was weak accountability systems within the police.[3] The Ministry of Justice had established a Professional Ethics Office and an Inspectorate but these institutions were undermined by lack of resources and political interference. One of the COI's key recommendations was that "robust and independent" police and military oversight mechanisms be established to investigate complaints of police and military misconduct. In 2008, the International Crisis Group reinforced the recommendation to the government of Timor-Leste, pointing to a lack of transparency and orderly arrangements in political control as well as parliamentary and judicial oversight of both the military and police.

4. Lessons Learned and Best Practices

a. *Civilian oversight and control of the defense sector is a vital element of SSR and a fundamental of effective governance*. The primary agent of civilian oversight and control within the defense sector is the ministry of defense. The primary agent to oversight and control over law enforcement agencies is usually the ministry of interior or the ministry of justice. These ministries normally operate through structures that provide political direction and accountability within the executive branch and accountability and oversight by the legislature.

b. *Do not overlook the role of the legislative branch*. Parliaments, legislatures, and other representative governing bodies are potentially important elements in accountability and oversight through such mechanisms as control of defense budgets, appointment of senior government officials, promotions of military officers, and the ability to hold public hearings on defense and security issues. Additionally, legislative committees on defense offer an entry point for both assessment and engagement. If such bodies do not function effectively, there will be a direct, adverse impact on security institutions.

[2] International Crisis Group. *Timor-Leste: Security Sector Reform*. Asia Report No143, January 17, 2008.
[3] Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste. Geneva: October 2, 2006, p. 58. (www.ohchr.org/documents/countries/COI/Timor-Leste.)

c. *Identify and partner with existing donors*. As a military planner, identify the US civilian agencies, other donor nations, international organizations and NGOs who are already involved in fostering accountability, oversight and SSR in the host nation, and develop appropriate engagement strategies for partnering or synchronizing with their work.

d. *Let assessment results drive the plan*. Base plans on solid, comprehensive assessments. Find existing oversight institutions and mechanisms to leverage as entry points to make needed changes and improvements.

e. *Develop a relationship with the host nation IG or assist in the formation of the IG if one does not exist*. Audit agencies, Inspectors General (especially Military IG systems), and investigative commissions have the potential to create long-term institutions that strengthen and sustain the ROL. They allow for responsible change within the system of government and permit the adaption of accountability into the HN culture.

f. *Consider the role of military courts*. Military courts and military justice systems can play a key role in fostering accountability within the defense sector. When military courts function properly, they can play a particularly strong role in strengthening both the host nation's civilian justice system overall, and its military justice system in particular.

g. *Select metrics wisely*. Security conditions may well pressure the JFC to push for near term, measurable results from oversight institutions. However, near-term results may be misleading in that they arise out of coercion, donor (as opposed to host nation) activity, and do not demonstrate seriousness about long-term reform. More effective indicators of success are those that seek to measure sustainability, respectability, professionalism, education, independence, and integration of efforts.

h. *Remember that* o*versight is an inherently political activity*. Public debate on defense policy, transparent mechanisms for procurement, and competent legislative oversight committees are helpful for improving oversight and transparency, but they are also checks on political and financial power. As a result, there will be substantial resistance from individuals and factions that see their power base eroding or constrained. For more on this topic, see Appendix C, Section E, "Illicit and Informal Power Structures."

SECTION B. INCORPORATING ANTI-CORRUPTION INTO MILITARY OPERATIONS[4]

1. Purpose and Scope

a. This section will provide a defense-focused overview of the problem of corruption and how to deal with it. Experts estimate that in many parts of the world, almost 80% of all corruption emanates from the defense sector.[5] This takes two forms – the opportunistic misappropriation of direct foreign military aid, and the internal corruption that is endemic in an unchecked, unaccountable security sector. The effects of both types of corruption can be devastating. Military corruption undermines public trust and confidence in the state-sponsored security system, diverts scarce resources, and enables terrorists, armed opposition groups, and organized criminal elements to arm themselves by siphoning weapons, money and materiel from the legitimate security system.

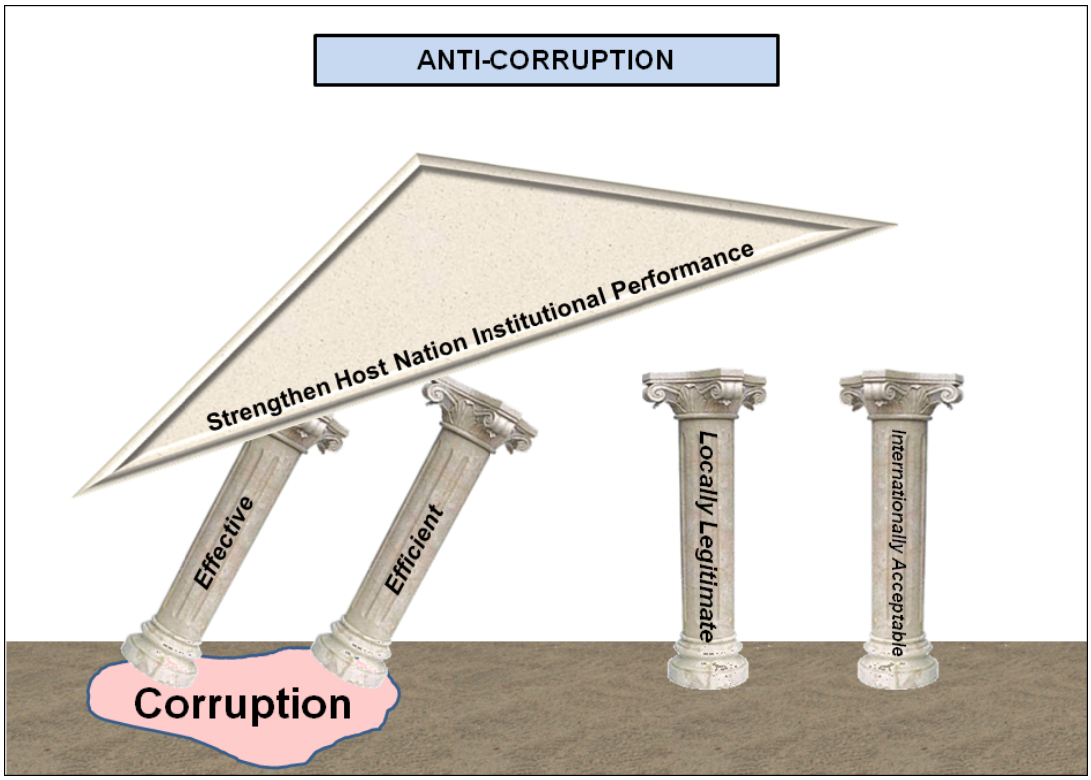

Figure C-1. The Effects of Corruption on the Five General Objectives

[4] This chapter was developed primarily through a series of three Unified Action workshops sponsored by US Joint Forces Command in 2008 to look at the issue of military support to accountability, oversight, and anti-corruption. The workshops were co-sponsored by US Africa Command and US Southern Command, and co-hosted by the DOJ, DHS, the DOS – INL, USAID, and the Office of the Dept. of Defense Inspector General.

[5] Joint Forces Command Interagency Mission Analysis Interim Workshop Report, "AFRICOM Support to Law Enforcement – Counternarcotics, Counterterrorism, and Transnational Crime Workshop" (7-8 April 2008) (presentation by Dept. of Justice, Criminal Division).

b. Figure C-1 portrays the effects of corruption on achieving the five general objectives stated in Chapter II, paragraph 3. Corruption has a significant impact on all ROL and SSR activities, and is therefore an important consideration when designing and planning any sort of ROL/SSR operation.

2. Overview

a. There is no legal definition of "corruption," but there are agreed upon standards for anti-corruption. The absence of an official, international definition is an advantage in that a strict definition would enable corrupt actors to tailor their activities so that what they are doing would fall outside the bounds of the "legal" definition. The US State Department uses a broad, working definition of corruption as: "the abuse of entrusted power for personal or private gain."[6] It relies on the provisions of special treaties and conventions to define the standards for countering such abuse.

b. There are several types of corruption. They include petty individual corruption (*e.g.* minor bribes), bureaucratic corruption (e.g., contracting kickbacks), criminal corruption (*e.g.* extorting regular pay-offs from criminal gangs), and political corruption (e.g., manipulating criminal investigations, carrying out, or covering up political killings).[7] A common misunderstanding is that petty corruption is unimportant, but in fact it can have serious impact. In 2004, for example, two Chechen women, following common practice, bribed their way through Russian airport security in Moscow for the equivalent of $34.00 after terminal police had identified them as suspicious persons. The women subsequently blew up two passenger airplanes, killing themselves and 88 others.[8]

c. Similarly, there is the misperception that standards for corruption are relative – that they do not apply in certain cultures or contexts. While context is important, that does not mean that there are no standards. There are several international agreements adopted by a large percentage of the UN member nations, and by most countries with which the US has military- to- military relationships. The US uses these instruments to determine the standards to which we hold our partners. The major international agreements and conventions on anti-corruption include:

(1) OECD DAC Governance Network-Collective Action Against Corruption;

(2) OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention);

(3) UN Convention Against Corruption;

(4) UN Convention Against Transnational Organized Crime (UNTOC); and

[6] Id.
[7] United States Agency for International Development, "USAID Program Brief: Anticorruption and Police Integrity." Washington, DC: May 2007, p. 3.
[8] C.J. Chivers, NY Times, *Russians Cite Porous Security in Terrorist Bombings of Two Planes* (September 16, 2004).

(5) Stolen Assets Recovery Initiative (StAR).

d. Additionally, US laws such as the Foreign Corrupt Practices Act of 1977 have not only influenced the way that US corporations operate overseas, but have furthered a culture of accountability and oversight within the nations in which they operate. These instruments provide sufficient standards so that the US is able to take the approach that it is assisting the host nation to implement the standards to which it has agreed under international law, rather than standards that the US is arbitrarily imposing. Defense-related activities undertaken by the JFC should echo and reinforce this approach.

e. There are three prerequisites to a successful fight against corruption:[9]

(1) Political will to combat corruption;

(2) Public investment in the fight against corruption in that the public that makes clear to leadership that corruption is unacceptable and makes its views known and enforceable; and

(3) In post-conflict, the end of fighting and establishment of relative security. This is particularly important when the conflict has ended in stalemate.

f. If these elements are present, the host nation government may limit corruption if it focuses on building:

(1) A trustworthy and effective criminal justice system with an independent judiciary;

(2) A transparent and accountable political process;

(3) A stronger and more capable public administration, with barriers to cronyism and nepotism;

(4) Government accountability to public opinion (via responsible, free media and open elections);

(5) A sustainable and legitimate government revenue stream; and

(6) Effective government regulation and stimulation of an open market economy.

[9] Alix J. Boucher, William J. Durch, Margaret Midyette, Sarah Rose, and Jason Terry, *Mapping and Fighting Corruption in War-Torn States*. The Henry L. Stimson Center, Stimson Center Report No. 61. March 2007, p. x.

Example: Political Commitment and Anti-Corruption in Hong Kong (China)[10]

Faced with what was viewed as a major corruption problem, especially in the police force, the Hong Kong Government passed strong anti-corruption legislation and established an "Independent Commission Against Corruption" (ICAC) in 1974. Besides investigating and prosecuting cases, the ICAC recommended changes to government procedures, established training programs for civil servants, devoted substantial attention to public awareness through the media and conducted outreach programs with community organizations and professional groups. The ICAC established local offices where its staff worked with local council members and representatives of civic organizations to develop trust and collect information. Six bodies with membership that included auditors and accountants associations were responsible for overseeing various ICAC activities. As the result of ICAC's efforts, corruption levels were significantly reduced.

3. Military Support to Combating Corruption

a. Although defense is only one element of the host nation's security system, the positive and negative impact the JFC can have on strengthening the six elements listed above is disproportionately large. In non-permissive environments, the military may have to lead reform efforts. Even when civilian agencies are present, the security situation may require extensive military support if civilian efforts are to succeed. During peacetime, military engagement through Theater Security Cooperation plans provide opportunities to build host nation capacity and a culture of accountability.

b. There are three potential sources of corruption in the defense sector:[11]

(1) Defense officials (ministerial and military staff),

(2) Defense institutions (ministries and the armed forces), and

(3) political contexts and controls.

[10] Willy McCourt, "Efficiency, Integrity, and Capacity: An Expanded Agenda for Public Management" in *Performance Accountability and Combating Corruption*, Anwar Shah, ed. (World Bank: Public Sector Governance and Accountability Series), 2007, pp. 49-50.
[11] Transparency International. *Addressing Corruption and Building Integrity in Defense Establishments*. TI Working Paper No. 2, 2007, p. 3.

DEFENSE OFFICIALS	DEFENSE INSTITUTIONS	POLITICAL CONTROL
Failure to observe agreed standards of business conduct	Profiteering from procurement	No agreed-upon defense policy
Bribery of public officials to bend rules (*e.g.* avoiding army service; getting preferred postings; small scale bribery)	Profiteering from soldiers' payroll	Under-estimated or off-budget defense spending
Requiring cash or services (including sexual services and labor) to pass security and other checkpoints	Improperly diverting Income from state-owned assets	Dishonest leadership and illicit or secret power networks
Refusal to enforce standards of discipline or behavior	Self-serving use of budgets and resources (*e.g.* paying consulting fees to one's self and cronies; appropriating or leasing cars, apartments, equipment and other goods for personal gain)	Involvement in elections and politics and misuse of power to influence legislation and parliamentary investigations
	Receiving benefits from private defense companies	Corrupt judicial processes
	Misuse of reward, promotion and disciplinary processes	Organized crime links
		Control of intelligence and misuse of related powers
		State capture and the de facto illicit takeover of defense

Table C-2. Causes of Corruption in the Defense Sector by Source

a. Fighting police corruption is also essential for effective SSR. Larger systemic problems are almost always behind police corruption. These problems include lack of overall transparency, the absence of checks and balances, weak ROL and fragile institutions.[12]

b. There are two broad approaches to fighting corruption: **prevention** and **enforcement**. **Prevention** focuses on corruption as a symptom of poor governance and addresses it by attempting to deal with the systemic causes of corrupt behavior. Although

[12] *USAID Program Brief: Anticorruption and Police Integrity*, p.1. See p. 3 for a table delineating types and examples of corrupt police behavior.

prevention is usually a long-term effort, short-term gains can emerge**.** **Enforcement** emphasizes criminal or administrative punishments as well as strengthening the investigation and prosecution processes that make punishment possible. The following table lists some of the available assistance programming tools.

PREVENTION	ENFORCEMENT
• Access to info laws & implementation • Tax & customs reform; Procurement reform • Budget transparency & financial management • Parliamentary oversight • Judicial reform • Supreme Audit Institutions & line ministry auditors, IGs • Deregulation and privatization • Electoral and political finance reform • Asset declaration regimes • Extractive Industries Revenue Transparency • Civil Service reform/professionalization • Adoption of international standards (UNCAC, regional conventions)	• Investigation & prosecution ➢ Special courts ➢ Special investigator ➢ Prosecutor units ➢ Some anti-corruption agencies • Judicial reform • Auditors • Legal reform (making corruption a crime, establishing sanctions, etc.) • Administrative sanctions in civil service

Table C-3. Programming Activities for Addressing Corruption

4. Key Interagency and External Partners

a. When coordinating with the civilian agencies, it is critical that planners understand that there is an important distinction between anti-corruption activities that are prosecution or law enforcement-focused, and those that are development-focused. For those that are prosecution-focused, the lead agencies will likely be the agencies and bureaus within the Departments of Justice and Homeland Security, acting in an extension of their domestic law enforcement authority. Development-focused activities will likely be under the direction of the relevant functional bureaus within the State Department and USAID. This is a critical distinction as not only may the timelines, and activities of these agencies be disconnected, but their authority to plan, coordinate, and share information with the JFC may be constrained. Table C-4 below shows key USG partners and their focus areas.

USG AGENCY	KEY FOCUS
Department of State (INL)	Principal USG agency for anti-corruption; heads up diplomatic efforts and provides linkages to other USG actors that deal with anti-corruption issues
Department of State (regional bureaus, INR)	Monitors and assesses impact of corruption on the stability of states
Department of State (EEB)	Deals with private sector anti-corruption issues
USAID	Prevention through projects that deal with systemic causes
Department of Justice (OIA)	Administers the International Criminal Investigative Training Assistance Program (ICITAP); Assists countries implement the UN Anti-Corruption Convention (OPDAT)
Department of Justice (Fraud Section)	Enforces Foreign Corrupt Practices Act (FCPA)
Department of Commerce	Deals with private sector anti-corruption

Table C-4. US Agencies Involved in Anti-Corruption

b. International organizations play a major role in anti-corruption efforts. The World Bank's Department of Institutional Integrity Control acts as the IG for the Bank and applies both a proactive and reactive approach to investigate allegations of fraud and corruption. The Bank looks carefully money allocation processes, project planning, and implementation processes. This has had a positive effect as increased amounts of oversight impact program implementation, staff training, and measure of effectiveness development.

c. The JFC should also consider engagement with two of the major NGOs that take active roles in international anti-corruption efforts: **Transparency International (TI)**[13] and **Global Witness (GW)**.[14] A TI-led initiative called Defense against Corruption, for example, combats corruption in the international official arms trade. TI assists developing states through the provision and implementation of practical tools that prevent and combat corruption in the defense and security sectors. TI has developed a set of indicators to complement the anti-corruption guidelines of UNCAC, and TI's reports and surveys are a good source for military planners assessing the risks of corruption affecting operations or cooperative security engagement. GW seeks to expose the corrupt exploitation of natural resources and international trade systems and was the first organization that sought to break the links between the exploitation of natural resources and conflict. GW has effectively worked with peacekeepers in Africa and elsewhere.

[13] www.transparency.org
[14] www.globalwitness.org

Example: **Programs that Combat Conflict-Related Corruption -- the Extractive Industries Transparency Initiative**

With the goal of reducing corruption, the Extractive Industries Transparency Initiative (EITI) is a voluntary coalition of governments, companies, civil society groups, investors and international organizations with a robust but flexible methodology that ensures an international standard is maintained by participating nations. EFTI works with governments in resource-rich countries through the verification and publication of company payments and government revenues from oil, gas, and mining. Increased transparency through EITI makes citizens aware of revenue information and puts them in a position to place increased pressure on their governments to ensure that the benefits of the industry are getting to the people and are not diverted to illicit personal or private gain. The State Department's Bureau for Economic, Energy and Business Affairs (EEB) and Bureau of International Narcotics and Law Enforcement Affairs (INL) work with nations to implement the Initiative and to convince other nations to join the process.

5. Evaluating the Problem of Corruption and the Need for Anti-Corruption Programs

There are several sources to go to for indicators of corruption in a country.[15] An initial step should generally be a legal-institutional framework analysis, followed by an analysis of the political-economic dynamics and stakeholders in the system. Where possible, the JFC should first consult with other US agencies and international organizations that may have already conducted this analysis for the country and then focus on the specific areas within which the military will be working.

6. Lessons Learned and Best Practices

a. *Facilitate an Interagency Planning Team.* Corruption is a cross-cutting issue for most types of operations. Therefore, consider facilitating an interagency planning team to conduct risk analysis, look for potential entry points to strengthen anti-corruption efforts, and leverage potentially supporting diplomatic, development and law enforcement activities in order to increase accountability in the defense sector.

b. *Build strategic partnerships.* Know the USG agencies, international organizations, NGOs, and businesses that are already involved in anti-corruption activities in the host nation, and create mechanisms for information sharing and coordination. Incorporate partnering considerations into key leader engagements.

[15] See e.g. World Bank Control of Corruption Indicators, http://info.worldbank.org//governance/wgi/index.asp; Global Integrity, Global Integrity Index (http://report.globalintegrity.org) (The Global Integrity Index offers a narrative description broken down by component area, along with their quantitative index.)

Example – EUCOM Engagement in the Caucasus (2003)

As part of a larger effort to create a regional strategy for military support to energy security, EUCOM developed a series of activities to study the security issues surrounding the Baku-Tbilisi-Ceyhan (BTC) pipeline, which runs from the Caspian Sea through Azerbaijan, Armenia and Turkey. One of the concerns was the potential impact of corruption on the ability of the host nations to secure the flow of oil and gas to Western Europe in the event of a crisis. To ensure that it was addressing the problem correctly, the EUCOM J5 reached out to British Petroleum (BP), which was the corporate head of the BTC Consortium, the European Union, and the NGOs, Human Rights Watch, Freedom House and Amnesty International, all of which has studied the issue and had been engaged with the governments of all three of the pipeline countries. To facilitate dialogue, EUCOM conducted series of offsite coordination meetings and key leader engagements, including meetings with the security chiefs of the major oil companies, and a planning conference in which information and ideas were exchanged with the stated purpose of assisting EUCOM in having a plan that would support greater transparency and accountability in the region. The success of this planning effort was due in large part to the Command's commitment to the issue combined with complete transparency in its dealing with the NGOs.

c. *Do no harm*. Avoid entrenching already-corrupt players whenever possible and avoid obvious, easy moves that do not really change the situation but damage the credibility of US efforts.[16]

d. *Determine if the host nation is ready for anti-corruption reforms before attempting to impose them*. A failure to properly assess readiness will not only lead to mission failure, it may also reinforce perceptions in the host nation that anti-corruption is too difficult or too politically costly.

e. *Watch out for differences in sequencing and timelines between military and civilian programming*. True development programs will generally have a long term focus and designed to execute over a five-seven year period. They will seldom meet the near term, security-driven requirements of the JFC. The need to build host nation security capacity to address near term threats may limit the JFC's ability to rely on civilian interagency partner activities.

f. *Military procurement fraud is a logical entry point*. Specifically incorporate training on procurement fraud into "train and equip" packages and benchmark assistance against objective progress in procurement accountability and enforcement.

g. *The JFC will have core competencies resident on the staff that can be key enablers for interagency efforts – use them*. In addition to the oversight capabilities resident in the Inspector General's office, relevant skills on staff include accountants

[16] Mathisen, Harald. *Addressing Corruption in Fragile States: What Role for Donors?* U4 Issue No. 1, 2007, p7. (www.u4.no/themes/fragile-states/introduction.cfm)

(especially forensic accounting), contract managers, and trainers. These individuals are valuable for planning efforts on anti-corruption.

h. *Leverage international agreements to which the host nation is party*. Framing anti-corruption policy and programs within the context of already accepted international conventions, such as the UN Convention against Corruption, accords with US policy, and may make suggested reforms more politically acceptable to the host nation.

i. *Political commitment is an absolute pre-requisite for sustainable progress*. If political will or capacity is absent, build strict accountability mechanisms into near term assistance programs and provide specific and enforceable oversight into the assistance package at all levels of command and throughout all phases of the assistance.

j. *Plan to be proactive*. If plans are dependent on or only reactive to allegations of corruption, then execution will be limited to the "low-hanging fruit" and the real underlying causes of corruption or gaps in enforcement capacity will remain.

7. Further Information

The Unified Action *Handbook on Military Support to Governance, Elections, and the Media* contains a more detailed discussion of the effects of corruption on governance in general.

SECTION C. VETTING

1. Purpose and Definitions

a. Especially after periods of extended conflict, confidence in the integrity of public servants forms the foundation for governmental legitimacy, accountability, and trust. This is increasingly important for those public servants that make up the security sector. Where human rights abuses, corruption, and abuse of power have become widespread among the providers of security, restoring their legitimacy is one of the most critical elements of stabilization and long term security sector reform (SSR). Vetting current and prospective members of security institutions can play a pivotal role in restoring that legitimacy.

b. **Vetting,** in the context of security assistance, is assessing the integrity of individuals to determine their suitability for public employment. **Integrity** refers to individual adherence to international norms and standards for professional conduct, to include respect for and compliance with ROL frameworks, respect for human rights, avoidance of financial improprieties, and resisting other forms of corruption in the discharge of public duties. Effective vetting programs go beyond basic background checks to cull out known human rights violators. Successful vetting excludes or removes individuals with demonstrable shortcomings from public service, sets the conditions to

establish or re-establish civic trust, and builds or restores legitimacy within public institutions.[17]

2. Legal Requirements: "Leahy Vetting"

a. In addition to conducting vetting to ensure legitimacy and improve effectiveness, US agencies that conduct Security Force Assistance (SFA), including the Department of Defense, are constrained by statutory vetting requirements. These "Leahy Amendment" restrictions require a determination that host nation recipients of SFA have not been guilty of "gross violations of human rights." The Leahy Amendment restricts provision of funds to units of foreign security forces when the US Department of State has credible evidence that the unit has committed gross violations of human rights. Both the DOS Foreign Operations Appropriations Act and DOD Appropriations Act have a similar provision each year.

b. Coalition-led or host nation vetting programs may or may not meet the statutory provisions governing US activities. The US Chief of Mission is normally the decision authority for determining whether a vetting program meets Leahy requirements. Commanders must comply with the statutory provisions governing SFA activities that they or their components are conducting, and ensure that their programs are cleared by the proper US representatives within the Country Team.

3. Key Interagency Partners and Coordination Processes

a. The US lead agency for policy and for Leahy Amendment compliance is the Department of State. Depending on the scope of US foreign assistance, DOD vetting programs should be nested within interagency-led SSR, anti-corruption, and governance development programs. Disconnected DOD vetting will adversely impact the civilian-led SSR and long term governance development programs.

b. The most direct way to determine the agencies involved in vetting is to ask the Defense Attaché at the US Embassy. The US may not have the overall lead, and may act in a supporting role to other partners and international organizations such as the United Nations, European Union, and SSR-focused NGOs. Private sector government contractors and CSOs often carry out actual vetting activities. All these factors differ from country to country, so it is important to determine the stakeholders for each situation.

4. The Military Role in Supporting Civilian Vetting

The US Military does not typically have the lead on vetting but may have significant involvement in the process. Military forces have capabilities that can support vetting programs, especially in non-permissive or difficult operating environments. The military can support its civilian partners by providing security, logistics, communications, intelligence, and/or administrative support that may not be available from any other

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source. Commanders should be aware of the impact that successful civilian vetting programs can have on broader SSR and stability operations.

5. Designing Vetting Programs

a. Each vetting program requires an assessment to determine requirements, develop standards to evaluate vetted personnel, and design the process. At a minimum, the process must identify what institutions, positions or individuals will be vetted; the consequences of vetting outcomes, both positive and negative; at what point vetting will be undertaken and how long it will continue; the legal mandate and ROL framework that provides the underlying rationale and legitimacy for vetting; and how that vetting program relates to broader SSR activities being undertaken within the host nation.

b. The UN *Rule-of-Law Tools for Post-Conflict States*[18] provides one model for developing a vetting program that divides vetting programs into two broad categories – Review and Reappointment/Appointment.

(1) **Review Vetting**. Review processes vet existing employees or security force members to determine whether those members will continue to serve. Review vetting is appropriate when the existing host nation security sector retains sufficient functionality and legitimacy to provide a foundation for effective reform. Review vetting is appropriate when the vetting population is clearly established, vetted individuals typically have an established record of performance in the desired positions, and the vetting process itself can proceed with reduced "start up" costs by using existing administrative structures.

(a) Review vetting presents greater challenges in several areas, however. The impact of unfavorable review vetting outcomes will typically involve, at a minimum, the dismissal of the individual involved. For this reason, there must be clearly established legal mandates and clear and consistent application of vetting standards to maintain the legitimacy of the vetting process.

(b) Due process is especially important when outcomes involve administrative dismissal or criminal prosecution. While due process requirements may significantly slow implementation, they are essential to establishing the underlying legitimacy of the process. Due process requires vetting on an individual basis: dismissal or approval of entire groups based only on party, faction, ethnic affiliation, or geographic origin can undermine and discredit the vetting program.

(2) **Reappointment/Appointment Vetting**. Reappointment (or appointment) vetting is required when security sector institutions have collapsed entirely, are so dysfunctional or lacking in legitimacy that they do not offer an adequate foundation for SSR, or a new force must be built. Peace agreements may also require this form of vetting. Reappointment vetting supports the complete reconstitution of security

[18] Office of the High Commissioner for Human Rights, *"Vetting: an operational framework," Rule-of-Law Tools for Post-Conflict States,"* New York: The United Nations, 2006.

institutions. It will typically involve much larger vetted populations to establish an adequate recruiting base. Vetting may occur in several stages, beginning with vetting for recruitment eligibility, followed by more in-depth, comprehensive vetting undertaken as individuals compete for accession to the new ministry or police force. The determination of eligibility for recruitment vetting may become an important element of the reappointment vetting process, and may be the subject of sensitive political negotiations in states experiencing or emerging from periods of extended conflict.

Example: **Review Vetting in El Salvador (1992-1993)**

The Peace Agreement that ended the Civil War in El Salvador in 1992 called for a complete restructuring of Salvadoran military forces. Part of that restructuring process consisted of "Purification," requiring "evaluation of all members of the armed forces by an ad hoc Commission." The Agreement directed that the Commission should be an independent and impartial body, operating with the official sanction and a legal mandate from the Salvadoran President, and specifically established the standards that would be applied. The Commission exercised powers to transfer or fire vetted officers and the process was monitored by the UN Mission to El Salvador (known by its Spanish acronym ONUSAL), which at its peak had close to 1,000 observers in the country divided into three contingents: human rights, military, and police. The Salvadoran President began the required purge of military officers accused of human rights abuses and corruption in early January 1993. By February 1993, the military had lowered force levels from wartime high of 63,000 to the level of 32,000 vetted individuals as required in the Peace Accords -- nine months ahead of schedule. The Salvadoran program is widely considered to have been successful and remains one of the few vetting initiatives in which a Latin American military submitted to external review.[19]

6. Lessons Learned and Best Practices

a. **Do No Harm**. Mismanaged or ineffective vetting programs can exacerbate existing problems in the security sector, or introduce new ones. Second and third order consequences of vetting programs are not always intuitively obvious, especially to a foreigner. Vetting can directly influence the distribution of power in a political system. By influencing who receives a position within state security services, vetting can affect one of the most common sources of political patronage in most governments. Vetting program designers should carefully examine the broader social, political and economic contexts within which vetting will go forward.

b. **Ensure Host-Nation Ownership**. Vetting programs offer important opportunities to demonstrate host nation capacity. Thus, a vetting program which has a legal basis that is perceived as legitimate, uses processes which give due process to individuals, enforces recruitment and retention standards, and accurately identifies and excludes human rights violators provides a highly visible example of good governance.

[19] Rubin Zamora with David Holiday, "The Struggle for Lasting Reform: Vetting Processes in El Salvador," in *Justice as Prevention*, pp. 89, 94-95.

HN authorities should participate in the establishment and design of the vetting process including: i) defining vetting objectives and standards; ii) establishing the legal mandate; iii) determining measures to guarantee due process; and iv) protecting due process. To the extent feasible, HN stakeholders should participate in investigations and interviews. Leaders, institutions, and CSOs should also participate in determining final vetting outcomes. HN partnership is even more critical in recovering failed states than states with functional and legitimate governments. Exclusion of host nation authorities, regardless of how problematic those authorities are, will fundamentally undermine the process of failed state recovery.

c. **Balance support of HN ownership against the need to avoid arbitrary or partisan interference with vetting implementation**. Vetting is a highly visible process with significant consequences that are easily discernable by host nation populations. Where HN government legitimacy is problematic or contested, measures to support host nation ownership must be crafted in ways that preserve the integrity of the vetting process.

d. **Link Security and Justice**. Vetting is one of the principal ways to re-establish linkages between security and justice. While the primary focus of vetting is to prevent future abuses by public servants, failure to address past abuses identified through vetting can perpetuate a culture of impunity and can undermine the legitimacy of the broader SSR agenda. Adding a robust justice and reconciliation component to vetting programs, with appropriate due process safeguards, can enhance the legitimacy of that program and strengthen legitimacy and functionality of the entire reform process.[20]

e. **Balance Operational Support with Institutional Reform**. Integrating the vetting process with broader institutional reforms, will preserve the legitimacy generated by the vetting process over time. For example, failure to provide adequate compensation to successfully vetted security forces can encourage the re-emergence of corruption. Not effectively reforming recruiting processes may undermine the objectives of vetting by allowing the later accession of recruits who do not meet the standards established in the initial vetting process.

f. **Foster Transparency**. Vetting processes lend themselves to manipulation and partisan interference. Transparency in the design and implementation of vetting programs provides a necessary hedge against these risks. Planners can enhance transparency by public dissemination of clear vetting goals, standards, and processes, and allowing the public is to participate in the process. Media and other civil society organizations can be useful to establish the transparency of vetting processes.

g. **Determine the applicable ROL framework**. Where ROL is weak or the HN lacks sufficient legal structure, there will be unique challenges for determining vetting due process standards and procedures. HN legal frameworks are usually preferable, but they may lack both legitimacy and functionality. Vetting programs may need to create or import ROL frameworks, which should, as much as possible, adapt to the unique

[20] See Pablo de Grieff, "Vetting and Transitional Justice," pp.523-537 in *Justice as Prevention*.

requirements of the host nation. Selection of an appropriate legal framework can have far-reaching policy ramifications. Commanders should ensure that they specifically consult with the Chief of Mission on this issue.

h. **Vetting in non-permissive environments involves greater risks**. Vetting will sometimes be required during armed conflict. Such instances offer unique challenges to assessment, design, and implementation of vetting programs. Risks associated with vetting of armed security forces are significantly higher and vetting program designers must plan accordingly.

(1) In non-permissive environments, the use of lethal force, either in a military or a civil law enforcement context, will be a relatively common occurrence. Poorly vetted security forces are more likely to engage in human rights violations or respond with disproportionate force, especially where that has previously been the norm. Extended internal conflict tends to produce factionalized security services whose loyalty and reliability are questionable at best. When such forces find themselves in contact with armed, non-state security actors or violent criminal groups, lack of effective vetting can have immediate and devastating impact. The loss of legitimacy resulting from such incidents typically incurs greater costs in non-permissive than in semi-permissive or permissive environments. Host nation governing institutions already suffering from a legitimacy and functionality "deficit" as a result of high violence levels tend to be more vulnerable to further erosion in those areas.

(2) Trust and perceived impartiality are especially critical to vetting during conflict. In communities experiencing or recovering from periods of extended violence, military forces may have a difficult time establishing trust and impartiality. This may be especially true where individuals being vetted were previously regarded as enemy combatants. Avoid making vetting a punitive tool in a counterinsurgency or foreign internal defense campaign.

(3) Those who are reconstituting armed security forces must not sacrifice vetting for expediency and time. Vetting for security forces that are expected to come under fire must be thorough and uncompromising, and focus on the relationships of vetted personnel with the opposing elements they may encounter in the field.

Lessons Learned - Vetting in Non-Permissive Environments: Iraq Security Forces (2005)

The reconstitution of Iraq provides several examples of the negative impact of insufficient or ineffective vetting, and demonstrates that the failure to vet the integrity of recruits can result in the infiltration of criminals, insurgents, warlords, and other undesirables into the state's security apparatus. In many cases, Iraqis were left out of the vetting process, including identification of standards, and as a result, US efforts failed to account for cultural issues, such as the significance of tattoos as a mark of criminality. The insurgent tactic of infiltrating the security forces and corrupting its personnel became almost commonplace, with catastrophic results for Iraq. The populace distrusted Iraqi

security forces and the Iraqi government, and coalition forces distrusted their Iraqi counterparts, delaying the safe transfer of security responsibilities to Iraqi forces. The problem was exacerbated when on 22 February 2006, insurgents posing as Iraqi police officers destroyed the Golden Mosque in Samarra, one of Iraq's holiest Shiite shrines. What could have been attributed to a one-time security failure was instead used to affirm the negative public perception of the new Iraqi police, and the incident set off further sectarian violence.

i. **Vetting in recovering failed states is the most complex and resource intensive situation**. State failure poses a special challenge to SSR in general and vetting in particular. State failure also generates the greatest need for vetting, but conditions make the implementation much more difficult.

(1) State institutions are likely to be completely dysfunctional. Records will not be available. Administrative capacity will be non-existent, and will need to be imported or developed in place by external partners. Supporting infrastructure -- roads, telecommunications, power, medical facilities, etc. -- will be damaged or completely dysfunctional. Thus, those conducting vetting may need to anticipate methods of proceeding without them.

(2) Vetting investigators will need to rely on face-to-face interviews to collect the information needed. Measures to protect the confidentiality of information may be critical to full disclosure of potentially negative information, especially after high levels of violence and human rights abuse. The need for confidentiality must be balanced against the requirements for transparency and due process.

Best Practice -- Vetting in Failed States: Liberia (2005-2006)[21]

By the end of the Liberian Civil War in 2003, the government had collapsed in its entirety. Institutions were dysfunctional or non-existent, and administrative records in both the private and public sectors had been almost entirely destroyed. Even with 15,000 UN Peacekeepers, fear, suspicion and uncertainty permeated the nation. In an effort to rebuild public trust in the New Armed Forces of Liberia (AFL), the US instituted one of the most comprehensive vetting programs ever undertaken.

The vetting program for the new Armed Forces of Liberia included a robust strategic communication program, coordinated between the US Embassy and the Liberian Ministry of National Defense. The goals and standards of the program were disclosed to the public via official statements, press releases and radio interviews with key Liberian government officials. To conduct vetting, the US brought in professional law enforcement investigators from the US, UK, Australia, and elsewhere to form investigative teams that were joined with a Liberian counterpart familiar with the communities in each region of the country. After preliminary records review, investigators conducted in-depth interviews of each applicant. The teams then contacted family members, former teachers and employers, neighbors, associates and prominent community members for

[21] Findings of the US SSR Assessment Team for Liberia, September 2007.

face-to-face interviews about the vetted individual. The interview results were maintained in a secure file, with access limited to the investigative team. Human rights organizations were furnished the names and photographs of vetted individuals, and notices of recruits were publicly posted to elicit input from the population. The process was costly and time consuming, but generated quality recruits that had the trust and respect of the general population, as did the process itself.

Vetted individuals that were disapproved by the vetting process included several candidates that were well-connected with the new political leadership. Their disqualification provided a highly visible example of Liberian commitment to SSR, and the vigorous and uncompromising vetting program played a central role in restoring legitimacy of the AFL in the eyes of the public.[22]

j. **A critical first step to effective vetting in recovering failed states is to identify who to partner with on the host nation side**. This is usually a policy-level decision. JFCs should actively seek guidance on host nation vetting partners from the Office of the Secretary of Defense through the Geographic Combatant Commander, and should fully coordinate the implementation of that guidance with the US Chief of Mission in that host nation. Host nation vetting partners may change over time in transitioning states as external partners help restore host nation sovereignty, and as host nation political transitions take place.

SECTION D. THE ROLE OF PUBLIC FINANCIAL MANAGEMENT IN SECURITY

1. Definitions and Scope

Public financial management includes all phases of the budget cycle, including the preparation of the budget, internal control and audit, procurement, monitoring and reporting arrangements, and external audits. It seeks to achieve overall fiscal discipline, distribution of resources to priority needs, and efficient and effective allocation of public services. [23]

a. The linkage between Security Sector Reform (SSR) and Public Financial Management (PFM) is very important. The United Kingdom's Department for International Development (DFID) has identified "Strengthening Financial Management Systems" as one of the seven possible entry points with the greatest potential for external actors to influence SSR.[24] Financial management in the security sector is important for several reasons:

[22] For an excellent discussion of vetting in failed and weak states, see Sean McFate, "The Art and Aggravation of Vetting in Post-Conflict Environments," *Military Review*, July-August 2007, p. 81.
[23] United States Agency for International Development. "Workshop Summary: Linking Public Financial Management (PFM) and Security Sector Reform (SSR)" Washington, D.C.: USAID, 2006(?), p. 1.
[24] Department for International Development, *Understanding and Supporting Security Sector Reform*, London: DFID, 2002, p.19.

(1) The security sector shares many of the characteristics of other sectors of government and the citizens of a country will benefit when the security sector follows the same set of rules and procedures used in the financial management of the rest of the government. Financial management of the security sector, however, is often ignored when other parts of the government are strengthened.

(2) Security bodies that are not subject to sound financial management often negatively affect the overall quality of democratic governance.

(3) Security bodies that do not practice sound financial management are usually highly cost-ineffective and limit the government's ability to carry out broader economic and social development programs.

(4) The opportunities for corruption are especially great if security bodies can act with impunity.[25]

b. DFID identifies several important prerequisites for any effective reform of financial management within the security sector:

(1) Where necessary, a process agreed upon with International Financial Institutions and donors to reform and strengthen financial management and information systems, both within finance ministries and different branches of security forces.

(2) Individual security ministries (defense, interior, and any others) that can take the lead in developing initial budget projections in collaboration with the services under their authority.

(3) Finance ministries with the necessary skills and political backing to have access to security budgets and the ability to make an adequate assessment of funds effective disbursement to the appropriate level and accounting. Outside scrutiny is particularly important in the context of a reform process.

Example – The Americas' Accountability/Anti-Corruption Project (AAA Project)[26]

Established in 1989 as USAID's first program explicitly designed to fight corruption, the Regional Financial Management Improvement (RFMI) project worked with Latin American countries to strengthen accountability and audit practices. Renamed the AAA Project in 1992, it has been the source of many innovations and programs to combat corruption in Latin America and the Caribbean. Among its accomplishments have been the wide diffusion of a common financial management reform model in nearly every country in Latin America and the adoption of uniform standards in accounting and auditing

[25] N. Ball, T. Bouta and L. van de Goor, *Enhancing Democratic Governance of the Security Sector: An Institutional Assessment Framework*, The Hague: Clingendael Institute, August 2003, p.74.
[26] United State Agency for International Development, *Promoting Transparency and Accountability: USAID's Anti-Corruption Experience*, Washington D.C.: USAID, January 2000, pp. 2&18.

among professional organizations in the region. These strengthened financial management systems have been important elements in anti-corruption efforts in the region.

2. Assessing Public Financial Management in the Security Sector

Five components are central to the analysis of the quality of financial management in the security sector: (1) strategic planning; (2) reviewing previous year performance; (3) determining what is affordable; (4) sectoral allocation processes; and (5) effective and efficient use of resources.[27]

3. Lessons Learned and Best Practices[28]

a. **Use existing partners**. As a military planner, the first step is to know the USG agencies, international organizations and NGOs who are already involved in SSR and Public Financial Management in the host nation and to coordinate closely with those who have the same objectives.

b. **Link external financing to the national budget process**. If possible, disburse funds in a way that links easily into the host country's budget cycle. Consider mechanisms to overcome disbursement lag times so that progress within the security sector and with other sectors can be better timed and aligned.

c. **Build on local structures**. Local solutions may lead to improved short-term stability and may be more cost-effective. In many countries, especially in Africa, traditional institutions provide justice where access to central government institutions may be limited by geography, affordability, or language. These mechanisms may also be less expensive.

d. **Develop appropriate standards**. Do not be wed to US and international standards but be flexible to adapt appropriate systems that will work locally.

e. **Develop integrated security and development approaches**. SSR and PFM should be incorporated into the national development agenda.

f. **Marry long-term development with short-term results**. SSR is a very long-term process, but conflict-affected countries need immediate security. It is important to design short-term deliverables that do not undermine long-term development and institution-building.

[27] Ball, *et. al*., *Enhancing Democratic Governance of the Security Sector*, p. 75.
[28] USAID, *Linking Public Financial Management and Security Sector Reform*, pp. 4-5.

Example – Strengthening Public Financial Management in Liberia[29]

In August 2003, a peace agreement established the National Transitional Government of Liberia and the UN deployed a 15,000-strong UN Mission in Liberia (UNMIL). In support of rebuilding Liberia's criminal justice system, two programs were initiated, one by USAID and the other by the World Bank, that focus on public financial management to promote transparency and accountability in government, with the ultimate goal of reducing corruption. The USAID program, the Liberian Forest Initiative (LFI), focused on a major source of legitimate revenue for the new government. To ensure transparency, the LFI proposed creation of a review committee including government, civil society and the donor community, which in turn recommended creation of a Forest Reform Monitoring Committee (FRMC). After initial resistance, the Liberian Government in 2006 established the FRMC and established a mechanism for civil society to monitor the timber sector.

The World Bank's Governance and Economic Management Assistance Program (GEMAP) has the objectives of improving accountability and financial management, improving budgeting and expenditure management, improving procurement practices, establishing effective anti-corruption processes, supporting key institutions, and building capacity. International monitors were installed at various levels of government with binding signing authority over expenditures. GEMAP's implementation is overseen by a committee chaired by the president, with a vice-chair appointed by the International Contact Group for Liberia. A civil society representative is also included in the committee. Full transparency is required in all activities, with records of events, meetings and decision distributed electronically and in print.

While the jury is still out on both these programs, they have had a measure of success in creating public financial management systems with more transparency and accountability that should assist in the building of a more capable, sustainable public administration.

[29] Alix J. Boucher, William J. Durch,; Margaret Midyette, Sarah Rose, and Jason Terry, *Mapping and Fighting Corruption in War-Torn States*. The Henry L. Stimson Center, Stimson Center Report No. 61. March 2007, pp.51-55.

SECTION E. UNDERSTANDING AND DEALING WITH ILLICIT AND INFORMAL POWER STRUCTURES[30]

"In war nothing is more important to a commander than the facts concerning the strength, dispositions, and intentions of his opponent, and the proper interpretation of those facts."

President Dwight David Eisenhower

1. Purpose and Scope

If one refers back to the definition of "rule of law," outlined in Chapter I as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws . . ." it is easy to understand how power structures that fall outside of a formal, transparent, and accountable governing system can quickly undermine efforts to strengthen and restore the ROL. The challenge for the JFC is how, as an outside military force, he can understand the illicit and informal power structures that impact ROL in the host nation, and then deal with those structures appropriately in a way that facilitates near term security imperatives without empowering structures that undermine long-term stability. The purpose of this section is to provide the JFC with a basic understanding of informal and illicit power structures and their potential impact on the operational environment. The section offers possible approaches for dealing with different types of structures.

2. Definitions

a. **Informal Power Structures** include a broad range of socially and culturally embedded hierarchies. These include structures which often existed prior to the formal state institutions of modern government or created as a way of consolidating power within specific factions or groups. *They may be licit or illicit*, but planners must anticipate and understand their impact on the effects/conditions that an operation is designed to create. Informal power structures may both complement and compete with formal governmental organizations.

[30] The material in this section was developed through a concept development partnership between Mr. Michael Dziedzic of the United States Institute for Peace, Mr. Michael Miklaucic of the US Agency for International Development, and Ms. Michelle Hughes, Mr. Clifford Aims, and Mr. David Gordon, General Dynamics Information Technology, working on behalf of USJFCOM. Between November 2005 and November 2008, the three organizations, together and individually, conducted several workshops and writing conferences with leading analysts, practitioners and academicians. The information derived from those events, as well as the authors' own research and writings, are reflected in this chapter. Mr. Miklaucic is the original author, with material contributions by Ms. Hughes and Mr. Gordon as contributing authors and editors. The authors also acknowledge the influence of Covey, Dziedzic, Hawley, ed., *The Quest for Viable Peace*, US Institute of Peace Press, Washington, DC, 2005.

EXAMPLES OF INFORMAL POWER STRUCTURES	
• Political Parties • Religeous Institutions, Councils, etc. • Tribal Structures • Voters' Leagues	• Labor Unions • Professional Regulatory Bodies and Benevolent Societies • Lobbyists and Special Interest Groups

Table C-5. Examples of Informal Power Structures

b. **Illicit power structures** are entities that seek political and/or economic power through the use of violence, often supported by criminal economic activity. The leadership of these structures may be within or parallel to the state, or they may constitute an armed opposition to it. Illicit power structures operate outside the framework for establishing and maintaining the ROL, and erode that framework. Though often referred to as "non-state armed groups," this term is incorrect since it would exclude illicit organizations such as the *Janjaweed* in western Sudan or the *Interahamwe* in Rwanda, which are not detached from the state.

EXAMPLES OF ILLICIT POWER STRUCTURES	
• Taliban (Afghanistan) • Al-Qaeda in Iraq (Iraq) • Janjaweed (Sudan) • Lord's Resistance Army (Uganda) • FARC (Colombia) • Revolutionary United Front (Sierra Leone) • Sendero Luminoso (Peru) • Kosovo Liberation Army (Kosovo) • Movement for the Emancipation of the Niger Delta (Nigeria)	• Islamic Movement of Uzbekistan • Moro Islamic Liberation Front (Philippines) • Jemaah Islamiyah (Indonesia) • Liberation Tigers of Tamil Eelam (Sri Lanka) • Abu Sayyaf Group (Philippines) • Mafia in Italy • MS-13 (El Salvador) • Medellin and Cali Cartels (Colombia)

Table C-6. Examples of Illicit Power Structures

3. Understanding Illicit and Informal Power Structures' Impact on the Operational Environment

a. Illicit and informal power structures can either obstruct or reinforce efforts to stabilize the environment. Some profit from conditions of sustained conflict while others may have conflict resolution objectives that are directly opposed to those that underpin a specific operation. Without challenging US military forces directly, illicit and informal power structures have the potential to undermine or support the basic purposes for which the elements of US national power are applied. Including illicit power structures in the overall estimate of the situation is essential to understanding the impact and influence they have on the operational environment. Without this understanding, the JFC will be unable to develop means of influencing or neutralizing these structures to meet the overall short- and long-term objectives for the region.

b. The commander must also understand the power structures he is likely to encounter in order to understand the risks inherent in possible courses of action. Action in the absence of analysis is often counter-productive; in certain cases, it may even strengthen illicit power structures and increase the harm they may do to the goals of reconciliation, stabilization, development, democracy and peace. Furthermore, if planners overlooked the threat, private militias, rogue intelligence networks, or criminal enterprises may undermined or directly threatened our forces and actions. Finally, illicit power structures disrupt legitimate processes of governance and create an environment in which peace settlements will seldom prosper, and democracy and development cannot succeed.

Three Case Studies: **Rwanda, Afghanistan, and Colombia**

1. The *Interahamwe* in Rwanda: The *Interahamwe* was a key organization in the genocide that convulsed Rwanda in spring 1994, responsible for brutally massacring hundreds of thousands of ethnic Tutsi civilians. It exercised the same merciless violence against Hutus who were viewed as Tutsi sympathizers, and massacred them by the thousands as well.[31] The *Interahamwe* was an illicit power structure with an ethnically-based world view, motivated by grievance, which exerted coercive power with extreme violence. The *Interahamwe* is instructive not only because of the extremity of its violence, but because it operated not in opposition to state authorities, but rather in collusion with them to eradicate its ethnic rivals, thus creating a parallel system working in tandem with the state in a genocidal spasm of violence.

2. The *Taliban* in Afghanistan: After years of lawlessness and factional fighting in Afghanistan the *Taliban* achieved absolute power in the 1990s through its persuasive appeal to the Afghan populace, particularly in the Pashtun regions. The initial attraction was based on their strict adherence to Islamic law and practice, their opposition to the lawlessness of the warlord period they brought to a close, and their rejection of official corruption. The *Taliban* were able to win control of much of the country in a relatively short period of time quite easily, "with Mujahedeen warlords often surrendering to them without a fight and the 'heavily armed population' giving up their weapons."[32] Although the *Taliban* later turned to highly repressive practices of governance, their relatively rapid ascent to power represents an example of the power of normative messages to influence events and developments.

3. The Drug Trade in Colombia: Throughout the 1970s and 1980s the drug trade in Colombia was dominated by two cartels; the Medellin Cartel (known for its infamous leader Pablo Escobar) and the Cali Cartel. While the Medellin Cartel was renowned for its brutality and its war against the Colombian government, the Cali Cartel controlled its environment through bribery and other economic inducements, with over 2800 employees on its payroll at one point. One of the Cartel's leaders said, "we don't kill judges, we buy them."

[31] See Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: 1999), and Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories from Rwanda* (New York: 1998).
[32] Ahmed Rashid, *Taliban* (New Haven: 2000).

While the Cali Cartel leaders did not seek political power *per se*, instead seeking only to influence or induce those in political power, the effect on the Colombian government, which had focused its efforts on the more obvious tactics of the Medellin Cartel, was similar – it was rendered unable to govern in the vast majority of the country. The Cali Cartel is an example of an organization whose primary modus operandi was inducement or remuneration.

4. Analyzing Power Structures

Understanding illicit and informal power structures requires multidimensional analysis. If the focus is limited to a single aspect, attribute, or dimension of a power structure, the resulting analyses, and more importantly, courses of action, can lead to ineffective or even counter-productive responses and effects. The methodology presented in this chapter fuses several important defining attributes, which will lead to a flexible, yet nuanced framework for analysis that is more comprehensive and effective. The key is in four critical differentiators: a) Objectives; b) Motivations; c) Behavioral Modalities; and d) Morphologies. Viewing these as critical information requirements, and addressing them in courses of action to neutralize the effect that illicit power structures have on the operating environment, can bring success.

a. Objectives – What does a power structure intend to do to attain power, and what will it do if it succeeds?

(1) The first critical attribute of an organization is its view of the world in which it resides *and* the world in which it seeks to reside. This is expressed most clearly in its objectives, which translate into answers of what it intends to do to attain power, and what it will do after it attains power.

(2) Distinguish illicit power structures by two inherently conflicting types of objectives:

(a) The destruction of the international order, or its component parts – including individual states – and its replacement with an alternative order; and/or

(b) Re-distribution of power, position and resources within the existing state in the interest of the members of the illicit power structure.

(3) Both objectives can evolve and change over time, and, though they are inherently conflicting, may co-exist within the same organization at different levels or even within the same level. Indeed, they may even compete within a single power structure, thus creating opportunities for exploiting the internal inconsistency and weakening the organizational structure.

(4) When the ideology, intentions and objectives of a power structure are fundamentally at odds with the underlying rule-based system of sovereign states, then accommodation satisfactory to both the major state powers and the illicit power structure is unlikely. For example, it is hard to imagine how groups seeking to do away with the

state system altogether, such as those promoting a global proletarian revolution or a global Islamic caliphate, will accept any long-term outcome based on the modern system of individual sovereign states. It is also difficult to imagine that political compromise with the ruling state authority is possible with an organization that espouses an unwavering commitment to the destruction of the state. Those opposed to the existing system that will not compromise within the context of that system referred to as **"intransigent,"** "revolutionary" or "absolutist." However, that does not mean that there may not be accommodation with the more moderate factions within the power structure that could neutralize its ability to carry out its agenda.

(5) Illicit power structures that do not fundamentally oppose the existence of the state, but rather wish to achieve a better position within the state, classified as having **"limited"** objectives. They might wish to reform the state in the larger public interest, or exploit the state to pursue narrow parochial interests. The tactics and strategies to counter them must differ accordingly.

INTRANSIGENT ORGANIZATIONS	LIMITED ORGANIZATIONS
Isolation, strangulation	Engagement, negotiation
Exploit internal inconsistencies	Exploit internal inconsistencies

Table C-7. Tactical Approaches to Address Objectives

b. **Motivation – Why are they doing what they're doing?**

(1) A common mistake is to assume that combatants have as their objective conflict resolution, peace, the cessation of hostilities, or broader social aspirations such as reconstruction, stabilization, democratization or development.[33] In fact, some combatants, often in the form of illicit power structures, benefit substantially from conflict and therefore protect their material interests by fueling and sustaining conflict. These are often termed "conflict entrepreneurs." The motivation of conflict entrepreneurs is the same as any other entrepreneur -- profit.

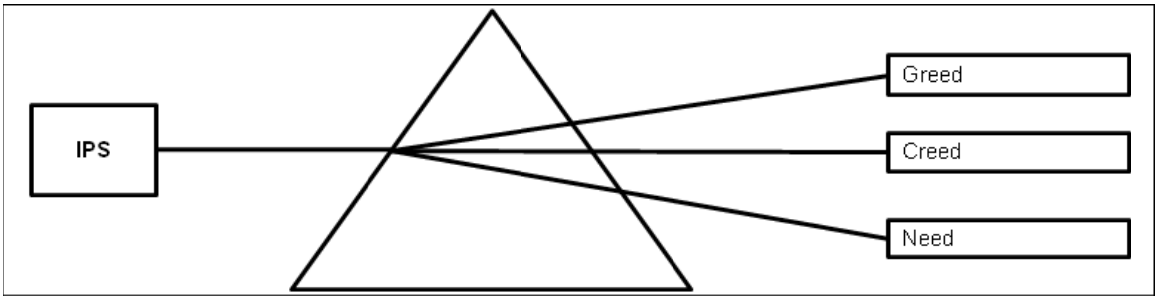

Figure C-2. Categories of Motivation

(2) Figure C-2 illustrates the need to analyze the motivation of and illicit power structure. Strong arguments that greed is the fundamental motivation of illicit power

[33] David Keen, *The Economic Functions of Violence in Civil Wars*, Adelphi Paper 320, (London: International Institute for Strategic Studies, 1998).

structures can oversimplify analysis. Identity politics remain a critical motivating factor in civil war, as do injustice, and economic or political deprivation. The latter motivations are referred to as "grievance" or "need" based. The existence of such organizations as Al Qaeda, Hezbollah, and others with like ideologies confirms the existence of organizations motivated to conflict by belief, creed, or need. In fact, it is likely that an illicit power structure is motivated by a combination of factors. These factors may be inconsistent within the group, and may change over time due to internal evolution or external pressures. However, generally one factor will be the key motivator that drives those in leadership positions to determine the behavior of the overall organization.

Example: **Intransigence and Absolutist Motives and Objectives – The Fiqh of Jihad**[34]

Much discussion has taken place regarding the objectives and motivations for Jihad. To summarize, the *Fiqh* of *Jihad* represents (informally) a group of laws that are literally being developed on the battlefield based on portions of the text of the *Qur'an*. *Jihadi* targets are often Muslim governments, but as the objectives and motivations make clear, it is within the framework of Islamic governance that the solutions are likely to be found.

To summarize:

1. For the *Jihadis*, the *Qur'an* is divine and their practices are firmly supported in the Book.

2. There is a general feeling that the concept of "nation states" is against the Book.

3. Sovereignty belongs to Allah alone; He is the sole source of law.

4. Under *Shari'a*, the only state entity is the *Caliphate*, so borders are irrelevant. Thus, national laws don't count.

5. In the absence of a Caliph, local leaders can issue a call to *Jihad*.

6. Duties are divinely ordained; rights only flow from following duties. Thus, laws don't count.

7. Territory must be conquered, re-conquered, or liberated through *Jihad*. The means determine the nature of the entity that emerges. Thus, elections don't count. Nor do treaties.

8. *Jihad* must be permanent.

[34] The term "*Fiqh*" refers to the various processes of Islamic legal thought and reasoning, including the decisions arrived at through it. The discussion of Jihadi Fiqh in this chapter was derived from a presentation by Ms. Nasra Hassan, former director of the United Nations Information Service in Austria, at the Salzburg Global Forum on *International and Islamic Law: Finding Common Ground*. (October 29, 2008).

9. International law is not justice; it is arbitrary and exclusionary.

Given these tenets, it would seem hopeless to try and engage with *Jihadis*. However, if one sufficiently understands the underlying grievances, which are essentially justice, inclusion, and the freedom from crime, then there is the possibility that if the process by which Islamic law is created is sufficiently inclusive, there is room for enough debate and flexibility to address the objectives.

GREED	CREED	NEED
Sever revenue stream	Public disclosure of harm done by illicit power structure	Inclusion in local political/justice/economic processes
Institutional and political reform	Public information campaigns	Humanitarian aid
Criminal and civil legal processes	Inclusion in political/justice/economic process	Economic aid and development
Oversight and accountability to incl. civil society development	Education	Safety and security

Table C-8. Tactical Approaches to Address Motivation

c. **Modality - How do they operate?**

(1) Illicit power structures have idiosyncratic organizational "cultures" and dominant behaviors. Because objectives, motivations and morphologies are frequently invisible to outsiders, the method of operation – a power structure's "modality," is usually the primary lens through which outsiders view an illicit or informal power structure. Similarly, its power and ability to exert influence over the processes of peace, development and democratic consolidation may derive from financial sources, weapons, propensity to engage in violent behavior, or the number and quality of fighters at its command. These means, methods and behaviors apply to exercise political influence and power surprisingly distill into three modalities: a) persuasion; b) coercion; and c) inducement. Although most frequently used in combination, only one modality is likely to be prevalent. Thus, if an organization's primary modality is persuasion, we may not be concerned, as some degree of non-violent persuasion is an acceptable modality for political behavior. However, coercion and inducement are the modalities more typically used by illicit power structures to exert influence on their environment. These are inherently corrupt, and subvert reconstruction, stabilization, democratization and sustainable development. Figure C-3 illustrates the need for proper modality analysis of an illicit power structure.

(2) Any response to an illicit power structure should adapt to the objectives and motivations of that structure. However, in the near term, *understanding the dominant*

modality of an illicit power structure offers the key to finding the most effective immediate counter-action.

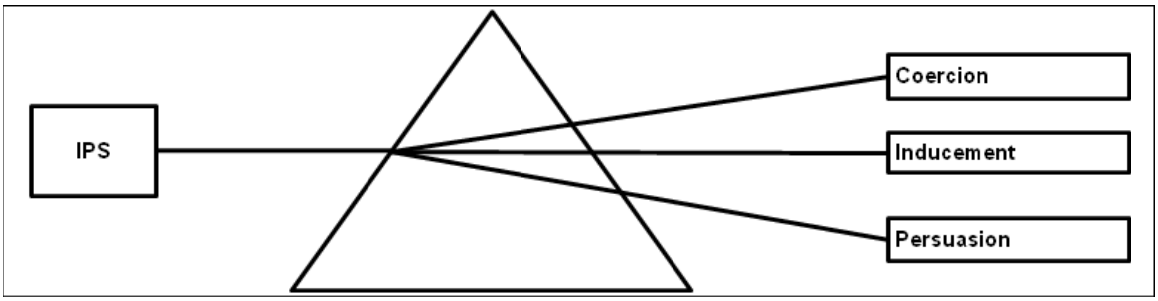

Figure C-3. Categories of Modality

NORMATIVE	INDUCEMENT	COERCION
Public information campaigns	Anti-corruption	Develop host nation security forces
Public disclosure of harm done by illicit power structure	Name and shame	Develop local community policing capacity

Table C-9. Tactical Approaches to Address Modality

d. **Morphology - How are they organized?**

(1) The final critical distinction between organizations is their structure or "morphology," which refers to how they are organized. The most basic distinction in illicit power structures is between hierarchical and networked organizations. While there are numerous varieties of each, this core distinction goes to the very essence of the organization, determining its patterns of communication, command and control.

HIERARCHICAL ORGANIZATIONS	NETWORKED ORGANIZATIONS
• Well-defined chain of command • Clear lines of authority • Enduring vertical subordinate-superior relationships, decision-making, and communications patterns	• Less-defined chain of command • De-centralized decision making • De-centralized channels of communication • More adaptive, rapid and flexible • Less predictable

Table C-10. Basic Organizational Structures

(2) Other elements for consideration include an organization's connectivity to external and other internal actors. How does it finance its illicit activity? Do remittances from a Diaspora fuel it? From illegal natural resource exploitation, trafficking in contraband or black-market trading in ordinary commercial items? Are its personnel tribe or clan-based, class-based, geographically localized, or dispersed? How does it relate to traditional forms of social organization? What kinds of armaments does the illicit power structure have, from where, and how obtained? Fully articulate the morphology requires examination of these questions.

(3) The way an illicit power structure is organized gives critical information about the propensities, strengths and vulnerabilities of the organization. Disruptions in the chain of command hobble rigidly hierarchical organizations, but negotiations with hierarchical organizations are likely to follow a more predictable course than negotiations with de-centralized networks. Hierarchical organizations are also generally vulnerable to "decapitation", *i.e.*, the removal or isolation of the highest level of leadership. An example of this is the weakening of the Peruvian terrorist group, *Sendero Luminoso* following the capture and incarceration of its leader, Abimael Gusmao in 1992. Co-opting or otherwise alienating middle-level commanders from the high-level commanders may be effective in diluting the impact of hierarchical organizations, as is alienating the organization from the general population, which is the thrust of counter-insurgency strategy. Another tactic is full-on engagement of an illicit power structure at all management levels to exhaust its capacity to act –called "engagement saturation," or "cooptation."

(4) Communications network disruption compromises networked organizations that have more difficulty reaching categorical and final decisions. In 1996, researchers from the Rand Corporation developed a theory of counter-action against networked organizations which they call "Netwar,"[35] and which, due to advances in technology, has even more vitality today than originally introduced. "Netwar" highlights the use of communication and information technology as a basis for neutralizing the operations of highly networked organizations. The idea includes the concept of "swarming," which features striking "from all directions at a particular point or points, by means of a sustainable 'pulsing' of force and/or fire, close-in as well as from stand-off positions," and represents an effort to develop comprehensive strategy that targets the specific organization of networks.

(5) Networked organizations may also be weakened by disrupting network communications, picking them off one node at a time until the network no longer possesses critical mass to exert significant effects, or eliminating critical, non-redundant nodes – such as bomb-makers, ideologues, technicians, financiers, etc.

HIERARCHICAL ORGANIZATIONS	NETWORKED ORGANIZATIONS
Decapitation	Attrition below critical mass
Detach ("turn") of mid-level commanders	Disruption of network communications
"Swarming attacks" or "saturation engagement"	Elimination of critical network nodes
Exploit the gap between cadres and general population	

Table C-11. Tactical Approaches to Address Morphology

[35] For a discussion of hierarchical and networked organizations see Arquilla and Ronfeldt, *The Advent of Netwar*, (Santa Monica: 1996).

5. Key Interagency Partners

Understanding and dealing with power structures presents a complex problem that requires nuanced, political analysis, and a well coordinated strategy for response. As a result, it is inherently an interagency problem. Different agencies bring different perspectives that draw upon their core competencies to the process and as a result, the better the interagency coordination, the better the JFC's mission analysis will be. The following table offers suggestions for initial interagency outreach.

USG AGENCY/OFFICE	PRINCIPAL FUNCTION
US Embassy "Country Team"	Focal point for political analysis, and coordination of USG activities in country, including engagement with host nation entities, to include informal power structures. Policy lead for US engagement within the host nation.
Intelligence Community	Conducts collection, analysis and production in response to requirements for information on illicit and informal power structures. (See CIR below)
Department of Treasury	Tracks international capital flows and terrorism financing which can be useful in determining sources of income of illicit power structures
US Agency for International Development (USAID)	Can conduct comprehensive conflict assessments that include illicit and informal power structures; planning, implementation, and monitoring and evaluation for programs that address underlying causes of conflict and instability
Department of Defense	Maintains relationships with defense forces, and often, other major security actors within the host nation, collects, analyses, and produces intelligence on conflict issues, and is often the only US presence on the ground in non-permissive environments.
Department of Justice	Tracks international organized crime, including narcotics trade, and frequently has officers posted to US embassies. Individual bureaus and agencies will have greater levels of detail depending on their mission or focus.

USG AGENCY/OFFICE	PRINCIPAL FUNCTION
Department of Homeland Security	Agencies within DHS frequently have officers posted to US embassies. DHS tracks international criminal organizations and suspicious individuals, and also works closely with host nation security officials on threats to US domestic security.

Table C-12. US Agencies' Contributions to Understanding and Dealing with Informal and Illicit Power Structures

6. Lessons Learned and Best Practices

a. *Illicit power structures can undermine stabilization and reconstruction operations*. During transition, the potential malignance of illicit power structures increases due to the absence of a legitimate ROL structure. Conflict entrepreneurs stand to gain a great deal of power and wealth from instability and from their ability to influence the population.

b. *Illicit power structures are distinctive and distinguishable by their objectives, motivations, modalities of behavior, and organizational structure*. The military objective is to reduce their undermining of broader strategic objectives, such as reconstruction and stabilization, security and ROL, or sustainable development. Analysis must identify the critical attributes and describe those characteristics that distinguish the illicit power structure from others.

c. *Accurate analysis of illicit power structures enables early measures to mitigate their subversive impacts at relatively low cost*. Intervening in local political processes involves a high risk of unintended consequences. Any political system is complex set of power relationships, and outside understanding will be limited. Increasing understanding of local power relations reduces the risk. Anthropological aspects of the illicit power structure, such as kinship, clan and tribal relationships, and its "group narrative"[36] can be significant Open sources (including academic literature) and human intelligence are likely to be the best sources for understanding organizational motivations, objectives, intentions, ideologies and world views. Economic information will help understand both greed and need related motivations. Examination of income and wealth of leaders can determine whether they are profiting personally from conflict.

d. *Allowing illicit power structures to operate freely enables them to metastasize and grow, ultimately requiring comprehensive counter-insurgency measures at a much greater cost in time and resources*. One intervention particularly prone to abuse and to cause unforeseen consequences is the provision of lethal materials, as is now clear from the experience of Afghanistan where we provided Mujahedeen weapons throughout the Soviet period. The weapons used to further our objectives today can undermine our objectives tomorrow.

[36] "Group narrative" is the distinct articulation of how groups see themselves situated in their political/economic/cultural environment, and how they believe they arrived at that particular situation.

e. *Numerous international and USG civilian agencies work to combat the effects of illicit power structures on the progress of reform, reconstruction and stabilization – unity of effort is required in order to be effective.* Incorporating into the military planning and execution process the relevant actors whose efforts are directly or indirectly tied to reforming or eliminating illicit power structures in the operating area may facilitate not only unity of effort but also assist in insuring more effective and efficient use of USG and international resources to reach desired effects.

SECTION F. CIVIL SOCIETY ORGANIZATIONS (CSOS)

> *"Civil society occupies a unique space where ideas are born, where mindsets are changed, and where the work of sustainable development doesn't just get talked about, but gets done."*
>
> **Kofi Annan,**
> **Former United Nations Secretary-General**

1. Purpose and Scope

The involvement of civil society in ROL programs is a pre-condition for wider and more inclusive local ownership and, ultimately, sustainability. Too often ROL programs are focused primarily on state institutions and fail to adequately engage civil society. While in some situations short-term progress may be possible by working solely with state structures, longer-term effectiveness requires the development of a popular and vibrant constituency for change. CSOs have a critical role to play in ROL as a beneficiary, informal overseer, partner and advocate of reforms as well as service provider. In SSR, CSOs have potential to give voice to the interests and concerns of the wider population and encourage reforms that are responsive to popular security and justice needs. In conflict environments, CSOs facilitate dispute resolution, reconciliation, and reintegration processes.

2. Definitions

a. Although it is common to speak of civil society in terms of actors, space, and mind sets; as the sampling of definitions below illustrate, just about any non-governmental organization has the potential for CSO labeling. For example:

b. The United Nations Office of Coordination of Humanitarian Affairs defines civil society as:

> [S]tructures independent from governments such as **nongovernmental organizations** and human rights groups, independent activists and human rights defenders, religious congregations, charities, universities, trade unions, legal associations, families and clans.[37]

[37] *ReliefWeb Glossary of Humanitarian Terms*, p. 15, ReliefWeb Project, www.reliefweb.int/glossaries. Draft Version, August 2008, emphasis added.

c. The World Bank refers to CSOs as:

> [T]the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide of array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.[38]

d. **Finally, Peace Terms of the US Institute of Peace defines civil society as**:

> A collective term for a wide array of nongovernmental and nonprofit groups that help their society at large function while working to advance their own or others' well-being. It can include civic, educational, trade, labor, charitable, media, religious, recreational, cultural, and advocacy groups, as well as informal associations and social movements. In theory, its institutional forms are distinct from those of the state, family, and market, though in practice, the boundaries are often blurred.[39]

3. Elements of Civil Society

The US Voice of America (VOA) provides a useful checklist to determine if conditions exist to promote the development of CSOs in an article entitled, *How America Works: A Primer:"*

a. A governmental system that provides for and encourages the public to take an active role in the process of governance;

b. political entities that represent the interests of the people and compete with each other in a pluralistic, participatory system;

c. interest groups that advocate and promote their goals in a constructive, non-violent manner; and

d. an understanding among the people in a community that its members have a responsibility to promote and ensure the collective good.[40]

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[38] http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html, emphasis added.

[39] US Institute of Peace, *Peace Terms: Glossary of Terms for Conflict Management and Peacebuilding* (Washington, 2011), p. 13, http://glossary.usip.org/resource/civil-society.

[40] http://www.voanews.com/english/archive/2007-04/2007-04-03-voa51.cfm?CFID=61198918&CFTOKEN=99513891, *How America Works: a Primer*, Young, Jeffrey, Washington, 03 April 2007.

Examples of Civil Society[41]

- Citizen advisory groups formally attached to governmental entities and operations. These groups make input to and promote goals involving their schools, public safety, public transportation, planning and zoning, parks and recreation, and other government services.

- Citizen groups that promote participation in the democratic process, such as those that staff and assist voting sites in elections. Included in this category are other citizen groups that exist to help ensure that the democratic process is fair and inclusive.

- Groups that represent and advocate the interests of a neighborhood or other subset of the community. One example is a neighborhood "crime watch" association that works with local police to promote safety.

- A free press that informs the public and communicates opinions found among these elements to each other, and to their governments.

- Advocacy groups that provide a voice for members of the community in need of special attention, such as those representing the poor, handicapped, homeless, and the hungry.

- Advocacy groups that represent distinct elements within the community, and promote the inclusion of and reconciliation with those elements in local society. Examples include groups based on race, ethnicity, and other delineations.

- Groups of common religious interest; churches, mosques, and synagogues. These are more than houses of worship – these groups also provide social and social welfare structures that are important to the promotion and stability of the community.

- Volunteerism - citizens using their unpaid free time to contribute to the collective good of the community. Examples include volunteer firemen, hospital aides, those who assist the elderly, and involvement with school activities such as sports teams.

- Groups of social organizations such as the Boy and Girl Scouts which give participants an entity to belong to as well as a code of behavior meant to encourage the development of constructive attitudes.

[41] *How America Works: a Primer,* Young , Jeffrey, U. S. Voice of America, Washington, (03 April 2007) http://www.voanews.com/english/archive/2007-04/2007-04-03-voa51.cfm?CFID=61198918&CFTOKEN=99513891,

4. Dealing with CSOs

a. The role of CSOs is a cross-cutting theme embedded in several ROL objectives, conditions, enablers, and LOEs. For example:

(1) **A Functioning Justice Architecture**: Justice Leagues, academic institutions, professional organizations including bar associations and police benevolent societies, and informal dispute resolution systems are all important to a functioning, accountable justice system.

(2) **A Functioning Security Architecture**: CSOs like neighborhood watches, community leagues, tribal councils, etc., will be instrumental in helping establish law and order, and CSOs also create demand for capable, accountable security services.

(3) **Accountability, Oversight, and Anti-Corruption**: This is an area where CSOs play a vital role. Institutions such as a free press are, in many parts of the world, one of the only checks on the exercise of governmental power. Watchdog and reporting CSOs and community organizations provide critical external oversight as well as the means to disseminate information and create public debate.

(4) **Conflict Resolution and Peace Implementation**: Experience has shown that without the support of CSOs in this area, governmental efforts will likely fail. What is said from the pulpit or in the mosque will often hold more sway over the people in the host nation than anything the government says, and CSOs have the ability to act as honest brokers within conflict communities.

(5) **Security Sector Reform**: Civil Society development is an essential task within SSR. CSOs create demand for capable, democratically accountable security and justice, foster the development of professional standards, and perform critical accountability and oversight functions.

b. Because CSOs can often be the underpinning to the establishment and sustainment of a true civil society that behaves and adheres to the notion that ROL it is essential for the commander to know what role they are playing the AO.

c. CSOs are non-state actors, a fact that creates a difficult and complex problem for the military planner. This places the planner and the JFC in the position of having to engage with non-state entities to achieve a perceived common purpose, a purpose which the host nation government may or may not see is in its interests to support.

d. What this common purpose means and how it is stated must be negotiated and clearly understood by the US military and the local and national leadership of the host nation; Otherwise, US military plans operations and initiatives may be contrary to overarching US Government and host nation strategic objectives. As one unattributed aphorism goes: “One man’s volunteer is another man’s subversive.”

e. The planner must identify CSOs in collaboration with the embassy, interagency partners, and the host nation and ensure that that the CSOs the planner identifies do not have goals and interests inimical to those of the host nation, the US Government and its partners.

5. Lessons Learned and Best Practices

a. *Find out who, what, and where CSOs are in the AO*. This list will grow quickly and will need constant update. More will assuredly follow as the CSOs themselves create conditions for civil society.

b. *Determine what CSOs actually do*. This can be a difficult task. Many CSOs will not have a charter or mission statement at hand that outlines what their goals and objectives are. These are non-state actors and will frequently spring into existence in an effort to resolve a short term problem at hand. Many CSOs can have elaborate and eloquent charters that are more exercises in puffery than in expressing reality.

c. *Distinguish between "good" CSOs and "bad" CSOs*. A CSO that calls for the elimination of a neighboring ethnic group in its manifesto is easy to categorize, but how should a CSO be categorized that not calls for ethnic cleansing, but also organizes neighborhood watches to keep crime levels down?

d. *Seek the requisite permission – "top cover" – before engaging with the CSOs*. This requires the military planner to coordinate closely with the embassy, interagency partners, and other actors in the AO. This can be frustrating and difficult for the military planner. It is both a collision of cultures and operating environments.

e. *Support capacity development*. Building the capacity of CSOs requires a long-term perspective in program planning, particularly when civil society is weak or under-developed. International actors can often usefully provide support for capacity development in areas such as skills acquisition, internal accountability, management procedures, monitoring and evaluation. CSOs with capacity for providing technical assistance can become valuable partners for states that aim to undertake security and justice reforms but suffer from limited capacity. With the necessary support, CSOs can make significant contributions to ROL through providing training, policymaking advice, and assisting in implementation.

f. *Consider the role of International CSOs in capacity-building*. International CSOs can help strengthen their equivalents in the partner countries by assisting in creating political space for engagement with their governments on security and justice issues, as well as providing moral support, protection and security. International NGOs can also provide important technical and capacity-building support through, for example skills development and training programs.

Example - Civil Society providing legal aid in Bangladesh

Context
One of the main challenges facing states in countries with large numbers of deprived populations like Bangladesh is the provision of public goods. This shortcoming is especially critical in relation to the judicial system, which tends to exclude poor people. The Bangladesh Legal Aid and Services Trust (BLAST) raises legal awareness, conducts research and advocacy, and provides services such as mediation, free legal support in the form of litigation, investigation and monitoring of violation of law and human rights.

Entry points
In order to open the judicial system to the disadvantaged, the idea of establishing an organization for providing legal aid was launched in 1992 at a national conference of lawyers held under the auspices of the Bangladesh Bar Council. BLAST was created as a result of these deliberations.

Lessons learned
- Important role of alternative dispute resolution - Resolving disputes through mediation and legal aid leads to improvement in economic conditions of the poor people, particularly women (60% of the BLAST clients said so in a survey).
- Benefits for family disputes - Family disputes can be resolved in a better and quicker way through mediation than through formal court processes.
- Need to reach out beyond the capital – One reason why BLAST's work has had an impact is that they have 19 offices and five legal aid clinics across the country enabling them to provide services to the rural poor.

Impact
BLAST has been able to make a significant difference through its advocacy activities including public interest litigation and public lobby events on justice issues. Successes have included the enactment of legal aid legislation by the government, protection of slum dwellers from eviction, and the reduction of arbitrary arrests. http://www.blast.org.bd

g. *Ensure transparency of engagement with CSOs*. It is important that governments and international actors are transparent in their dealings with CSOs to avoid misperceptions. Opaque engagement risks other CSOs growing suspicious of the relationship between governments and CSOs, and national governments becoming distrustful of the relationship between external actors and HN CSOs.

h. *Coordinate assistance*. Co-ordination with other HN and international actors is essential to avoid duplication, to pool resources and to concentrate efforts in supporting CSOs, while fostering their independence and sustainability. Lack of funding coordination and competition between external actors to sponsor a small group of

influential CSOs or individuals can distort their legitimacy and effectiveness, promoting rivalry instead of cooperation.

Case Study – Sierra Leone – Using CSOs to incorporate ROL into Development Strategies[42]

In Sierra Leone a wide range of stakeholders including Government representatives, Parliamentarians, CSOs, NGOs, the private sector, cooperative associations, local authorities, religious leaders, development partners and beneficiaries entered a dialogue within the framework of elaboration of a Poverty Reduction Strategy Paper (PRSP) which had a significant impact on ROL. Through civic engagement processes, chiefdom sensitization meetings, focus group discussions, district consultations and participatory assessments, the consultative process ensured better understanding of the PRSP and created opportunities for networking and collaboration. This process helped develop a broad national consensus on the countries' priorities and the inclusion of a section on 'Strengthening National Security' in the final PRSP document. This section refers to the importance of the capacity development and oversight of security institutions, including partnerships with non-security actors. This was a significant achievement as previously PRSPs in post-conflict and transitional countries tended not to address security and justice reform issues.

i. *Institutional funding and sustainability*. In countries with emerging CSOs acting in the security and justice arena it is important to ensure provision for core institutional funding. Although practice demonstrates that external partners are more disposed to support project-based activities, this limits CSOs' ability to engage in the longer-term and to develop or seize emerging opportunities in domestically driven security reforms. On the other hand, openness towards longer-term funding must balance with concerns of sustainability. There should be a requirement for CSOs to develop balanced sources of funding in order to sustain their independence and avoid donor fatigue. Harnessing the support of the private business sector and charity campaigns, for example, can accomplish this.

j. *Support civil society networks*. CSOs can be more powerful when they speak with a common voice. Networks provide strength in numbers and can help protect CSOs from targeting and abuses. One of their key functions is to demonstrate the element of diversity in society, but participatory approaches and coalitions of CSOs have greater potential to engage in security and justice issues.

[42] See Sierra Leone Poverty Reduction Strategy Paper 2005-2007, Government of Sierra Leone, February 2005, http://www.wds.worldbank.org.

Example - CSO work in under-appreciated aspects of security: La Strada Foundation against Trafficking Women[43]

La Strada Foundation works to raise awareness and knowledge on the problem of trafficking of women as well as provides services for its victims. The program helps mobilize government officials and legislators to seek solutions to the problem of human trafficking and works with law enforcement agencies to develop procedures and training focused on trafficking. In Poland, for example, La Strada lobbies national authorities on the human rights aspects of human trafficking and the need for reform. It has an active prevention program that aims to raise the awareness of potential victims on the dangers of human trafficking and it provides direct assistance, referrals and counseling for victims of trafficking. Within the security sector, La Strada has trained law enforcement representatives as trainers within the police and border guard academies. The training focuses on: raising the awareness of border guards and the police on the complexity of the problem; developing strategies to monitor and prevent trafficking; and how to deal with its victims. This resulted in the police academy including the issue of human trafficking to their curriculum and the harmonization of procedures and working methods to prevent and combat trafficking between the police and border guards.

k. *Promote public-private sector partnerships*. Public-private partnerships are an effective means of establishing cooperation between the state and CSOs. The private sector (business and NGOs) can often provide technological, financial, technical expertise and experience that the state normally lacks. In addition, initiatives involving the corporate sector for financing might help ensure sustainability of the provision of security, as long as programs are devised incorporating the security of society at large and not exclusively that of the business interests.

l. *Build media capacity to report on ROL and include media strategies into programming*. The media is one of the main channels to help raise public awareness on security and justice issues. Their reports and analysis often shape how the public perceives and understands these issues. In many countries, the media is under-developed and journalists lack the capacity and knowledge to cover security and justice issues. CSOs can play an important role in helping to develop these skills and developing the capacity of CSOs to engage with the media can be an important area for assistance.

m. *Support research institutions*. Academic and research institutes are sometimes insulated from some of the control that watchful regimes might impose on CSOs engaging in security matters. Developing their capacity for research can help generate a better understanding of the context, situation, relevant actors and challenges faced in a given country. Think tanks and policy institutes can also play an important role in providing independent analysis and briefings to parliamentarians and government officials.

[43] *See* La Strada Foundation, http://www.strada.org.pl/index_en.html

n. *Beware of any lack of domestic legitimacy*. Supporting CSOs without broad domestic legitimacy may jeopardize reforms with the government and alienate wider civil society. Some CSOs connect more closely to national elites and external partners than to local communities. Engagement should target CSOs that have local networks of partners and reach out beyond capital cities to engage women, community-based and faith organizations that are more in touch with grassroots movements. It is necessary to be attentive to the facts that not all CSOs are progressive or democratic, that some have fairly obvious political leanings or connections, and that others are mere shadow organizations 'hunting' for funding. For these reasons a comprehensive assessment of potential civil society partners is vital before beginning an assistance program.

o. *Overcoming the reluctance to engage*. Although CSOs tend to be very involved in conflict resolution, peace building and democratization efforts, many of them are reluctant to engage in rule or law or security reform. This could be due to a lack of knowledge and the fact that security system often has a reputation for being oppressive and opaque. Assisting CSOs to increase their security literacy and develop networks of peers will help build self-assurance.

p. *Anticipate the tension between role as watchdog and partner*. Tension often results between CSOs performing a watchdog role, holding government to account, and also seeking to be a partner with a role to play in implementing ROL. When CSOs move from playing a watchdog role and start to participate, their domestic audience may perceive them no longer as neutral. On the other hand, governments may not trust them as partners if they are being publicly critical. Some trade-offs will have to be made and training in how to raise sensitive issues without being overtly confrontational may be essential for CSOs performing advocacy roles.

q. *Beware of unintended consequences*. The danger of politicizing aid for local CSOs in different contexts require carefully thought. Perception of influence of a local CSO by an international actor may compromise the autonomy of its contribution to ROL and taint it in the eyes of the government. Where resources are scarce, targeting assistance to one CSO at the expense of others may fuel competition rather than build alliances. Overcome these challenges by being transparent in engagement with CSOs by using open tenders and awarding contracts or funds according to clear criteria. In addition, balancing assistance for different actors and supporting national networks that encourage coalition-building will also facilitate the process.

r. *Understand the nature of the Peace Agreement*. In post conflict, the role and impact of civil society may depend on the nature of the Peace Agreement if one exists. For example, both in the DRC and Liberia, civil society organizations became party to the peace agreement, taking up seats in transitional parliament and management of government parastatal organizations. This had implications for perceptions of its neutrality.

s. *Be aware of potential negative role of some civil society groups*. Violent conflict often engulfs, politicizes and splinters civil society. Some organizations,

considered to have played a negative role in the conflict, could act as spoilers to peace processes. For example, civil society groups participated in promoting hate propaganda that contributed to the genocide in Rwanda in 1994. This example helps to reinforce the importance of conducting a comprehensive assessment of CSO prior to engagement.

t. *Ensure the security of NGO and CSO partners*. In many contexts belligerent factions target NGOs with violence. For example, assassination of numerous women leaders in Colombia was due to their engagement with, and criticism of, various factions. In Guatemala veiled threats are common and there are instances of judicial staff murder and security forces harassing NGOs outspoken on security sector reform issues. Such examples highlight the need to pay additional care so those CSOs asked to partner with external partners and government-led initiatives are not put at additional security risk for doing so.

Example: **A Southern Africa academic network for delivery of security**

The Southern African Defense and Security Management (SADSEM) Network, which is coordinated by the Centre for Defense and Security Management (CDSM) at the University of the Witwatersrand, South Africa, is a network of eight university-based institutions in the region contributing to the democratic management and oversight of defense and security in Southern Africa. The network specializes in research, training, teaching and policy support. It started by running training programs on defense management and peace missions in the post-Apartheid period, helping to develop skills and building confidence amongst the region's security practitioner community. Recently two new programs were established, one specifically targeting parliamentarians and another focusing on security sector management and oversight, which counts on support from the African Security Sector Network. This program contains training and educational components, the latter of which includes a longer-term objective of the development of a regional Masters degree on security issues. DANIDA provides core funding for SADSEM's activity and the security management and oversight program receives financial support from the UK government.

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APPENDIX D
JUSTICE SECTOR DESIGN AND PLANNING CONSIDERATIONS

SECTION A. CRIMINAL JUSTICE

1. Purpose and Scope

This section addresses the systems that provide for the investigation, adjudication and imposition of punishments for crimes. Key US partners are DOS, USAID, and DOJ. A more detailed discussion of key partners and their roles is in Appendix G, "Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. **Drivers of Conflict**. Criminal justice systems can often be part of the problems that create instability. In some cases, the perception of bias by one or more of the criminal justice systems in favor of an ethnic, religious, political, economic, or other group (or that they are tools for repression by the ruling elite) may be a driver of conflict. It may be a widely held perception that individuals (the politically and economically powerful) and groups (military, law enforcement, and others) have reduced liability or impunity in the criminal justice systems. Another driver of conflict may be the perception that the criminal justice systems are ineffective--systems are incapable of processing cases effectively, efficiently and without corruption, or that that the government is unable or unwilling to enforce the judgments of the criminal justice systems. Another possibility is that the populace perceives all or part of the criminal justice systems as imposed by foreign power and not in consonance with their core beliefs, attitudes and values.[1]

b. **Systems**

(1) **Formal Systems**

(a) **Systems Of Laws**

1. Normally, there will be a written body of law that describes actions or failures to act that may be punished by the state with fines, imprisonment, death, and other punishments. These may be offenses against people (e.g., rape, murder, assaults) against property (e.g., theft, embezzlement, vandalism) or offenses against the state (e.g., insurrection, treason, counterfeiting, and tax evasion). Some may be violations of rules providing for public order, such as traffic offenses and curfews, or against religious or

[1] For an in-depth discussion of drivers of conflict in conflict and post-conflict situations, see Michael Dziedzic, Barbara Sotirin, and John Agoglia, eds. *Measuring Progress in Conflict Environments (MPICE): a Metrics Framework for Assessing Conflict Transformation and Stabilization*, (Washington: US Institute of Peace: 2010). The document is available at http://www.usip.org/publications/measuring-progress-in-conflict-environments-mpice-0. The section dealing with rule of law-related drivers of conflict is at pp. 30-38.

cultural norms, such as women wearing proper attire in public, businesses closed on Sunday or holy days, or shops closing during prayer time in Muslim countries.

2. There will also be laws governing the procedures for criminal actions, which normally include arrest, detention, investigation, rights and obligations of accused persons, evidentiary rules, as well as court proceedings. These may differ greatly from US procedures, but that does not mean that they are necessarily unfair or violate human rights.

3. The laws governing crime will be the laws of the HN, although there may be applicable internationally accepted human rights principles that come into play as well.

(b) **Systems For Investigating And Preparing Cases For Trials**. In many systems, either regular police or special police investigators gather evidence. Prosecutors then prepare the cases for court. In other systems, notably those modeled on the European civil law tradition, investigative judges perform this function.

(c) **Systems for Adjudicating Criminal Cases**

1. These may be courts with general jurisdiction over all crimes that occur in a geographically defined political or administrative area, or there may be courts for crimes committed by members of special groups, such as the military. There may be courts designed to deal with relatively minor crimes, allowing more rapid and effective resolutions. There may be special courts (e.g., the Iraqi Central Criminal Court) with jurisdiction over serious and sensitive cases.

2. In some circumstances, crimes against humanity, extensive war crimes, or genocide may be subject to special tribunals created by the HN or by the international community, such as the International Criminal Court (ICC).

3. In the American system, judges, prosecutors, defense counsel, and defendants are generally in court to present their cases in predominately open hearings. In other systems, notably those modeled on the European civil law tradition, much of the case is based on review of documents; a file (*dossier*) is compiled by the police, prosecutor, or by an investigative judge, reviewed and commented on by the defense counsel, and then reviewed by a panel of judges (which may include non-professional, or lay judges) or by a single judge.

4. In many countries, there are traditional justice systems (councils, elders, mediation) which often play a significant role in criminal justice. Often, these are highly acceptable to the populace and can be very effective in preserving social order, but may come in conflict with the authority of the HN government or with human rights principles expected by the international community. Section G below examines such traditional systems more closely.

5. In some cases, international courts established to try criminal cases, or the US military may have to establish temporary criminal courts as part of civil-military operations to restore order after conflict. While such methods are less desirable than assisting the HN courts, they may be necessary as an interim measure.

(d) **Systems for Enforcing Criminal Convictions**. Enforcing criminal convictions can include imprisonment or other means, such as probation, fines, restitution, or community service, or by traditional methods, such as apologies or exchanging symbolic gifts. Normally, the police, or other law enforcement or court personnel enforce compliance with such punishments, with imprisonment reserved as the sanction for not complying with the lesser punishment. However, in unstable states law enforcement systems often do not effectively or systematically enforce such punishments.

(2) **Informal/Social Systems**. Important nodes specifically relevant to this section are:

(a) Individuals who select persons to be prosecutors or investigative judges.

(b) Individuals who control training (initial and continuing) for prosecutors or investigative judges.

(c) Members of the Judiciary (See Section C below).

(d) Key members of the ministry of interior or other ministry who supervise police, prosecutors, or investigative judges.

(e) Chiefs of police.

(f) Prosecutors or investigative judges.

(g) Police investigators.

(h) Individuals who control the assignment of the prosecutors, investigative judges, and police, especially investigators.

(i) Individuals who control salaries, promotions and assignments for prosecutors and investigative judges.

(j) Individuals who control organizations which provide security for judges and their families.

(k) Individuals who evaluate the professional performance of judges.

(l) Individuals who control disciplinary processes for judges.

(m) Political, religious, clan, or other leaders who are not directly a part of the criminal justice systems, but who may exert influence over those who are.

(n) Apparently secondary functionaries who facilitate or bottleneck information flow and activities within the relevant organizations.

See also the Informal/Social Systems paragraphs in Section C, "The Judiciary," and Section D, "Court Administration," for further potential key nodes.

(3) **Accountability Systems**. In addition to audits, inspectors, review commissions and other methods of accountability there are three important accountability mechanisms for the criminal justice sector:

(a) **Defense Counsel**. Perhaps the most important element to promote accountability in the criminal justice system is competent, effective, and available defense counsel. In civil law systems, the judge also has the duty to protect the defendant's interests.

(b) **Appellate Review Processes**. Most legal systems provide for the review of criminal convictions by higher-level courts. Effective appellate review requires an effective appellate judiciary and an efficiently functioning appellate review system.

(c) **The Populace, Civil Society Organizations, and the Media**. If the populace perceives the criminal justice system as being unfair or corrupt, or that the HN government and its officials are not subject to it, their support for the system will erode and voluntary compliance will diminish, which in turn will put pressure on the HN government to correct the problem. This pressure may be exerted by civil-society groups or the media or by the populace turning to traditional or other alternate systems.

3. Lessons Learned and Best Practices

a. *Thoroughly analyze the criminal justice system to understand existing networks, social structures and customary legal systems*. This can be done by using the INL CJSART, or as part of a larger Security Sector assessment. Combine such an analysis with a conflict analysis that identifies the drivers of conflict and their relations to the judicial sector.

b. *Nest joint force support to ROL development in DOS and USAID plan for institutional and functional development of criminal justice system, and with larger developmental effort with HN Government, to include the executive and legislative branches*. Developing criminal justice capacity does not occur in a vacuum. It must be part of the overall development framework for the HN to develop the capabilities of its institutions.

c. *Strengthen ties of criminal justice systems to police and security forces, e.g., detention, arrest, and investigation of criminal offenders*. The justice system cannot function without effective security forces to enforce the laws. Conversely, police and security forces that are not working within the criminal justice system are at best another armed group with no legitimacy.

d. *Strengthen ties to criminal laws (legal framework connectivity), to include legislative mechanisms*. Improvements in criminal laws, courts, police, and corrections will normally come from laws passed by the HN legislature. The legislature should be involved in actively considering how to improve these systems.

e. *Assess human capacity of judiciary (selection, bias elimination, educational progression, corruption, etc*. See Section C, "The Judiciary," for more information.

f. *Strengthen ties to correction systems (both pretrial and post trial detention and imprisonment)*. The criminal justice system cannot function effectively if there is no effective corrections system in place.

g. *Identify ties and linkages with customary legal traditions*. *In many societies, criminal matters are often handled by traditional or informal customary methods*. For a fuller discussion of these mechanisms, see Section G, "Traditional and Informal Justice."

h. *Identify ties and linkages with transitional justice*[2] *mechanisms*. In post-conflict societies, there will often need to be special courts and other systems that address atrocities and other war crimes committed by the parties to the conflict. These may be indigenous to the HN, or transitional justice may be internationally administered by the International Criminal Court (ICC) or specially constituted courts as was done in the former Yugoslavia and Rwanda.

i. *Ensure that the people have visibility, knowledge, access and involvement in accountability for criminal justice system institutions and participants*. The populace is forced to choose between the protection offered by the police and courts of the government and the protection offered by insurgents or other armed groups. The populace must be convinced that the courts and police are effective and fair. Strategic communication themes and messages should incorporate information on the strengthening and reforming of the HN criminal justice systems.

j. *Actively support the development and functioning of criminal justice system accountability systems*. Accountability systems provide the necessary checks to control and reduce corruption and inefficiency. Accountability measures need broad and

[2] "Transitional justice" refers to "efforts to address a legacy of large-scale human rights abuses that cannot be fully addressed by existing judicial and non-judicial structures. Government responses have included criminal prosecutions, truth commissions, reparations, gender justice, security system reform, memorialization, and other reconciliation efforts. US Institute of Peace, *Peace Terms* (2011). "Interim justice" and similar terms are used in this handbook to refer to temporary measures used to restore justice functions to the HN until the normal HN rule of law systems are able to function effectively.

sustained support. Civil-society organizations and the media are important for creating the transparency needed to bring issues to the attention of political leaders and the public. The joint force should welcome and support such organizational efforts.

SECTION B. CIVIL JUSTICE

1. Purpose and Scope

This section addresses the formal systems that provide for the adjudication of non-criminal disputes between individuals, business entities, and other private organizations, as well as disputes between private individuals, organizations, and entities of the state. Traditional and informal systems are addressed in a separate section. Key US partners are DOS, USAID, and DOJ. A more detailed discussion of key partners and their roles is in Appendix G, "Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. **Drivers of conflict**. It is essential to understand the relationships between the drivers of conflict and the civil justice sector. Often, conflict may be the result of property rights or other rights protected by the civil courts. For instance, individuals and groups may have been dispossessed of their land or other property by force due to ethnic cleansing, or refugees may find others occupying their homes upon repatriation. Often, the most effective thing a HN government and its international supporters can do to reduce violence and increase stability is to provide a fair, impartial and effective civil justice system as an alternative to anarchy, self-help, or reliance on warlords or others able to impose their wills by violence.

b. **Systems**

(1) **Formal Systems**

(a) **Laws**

1. The civil justice system refers to all the laws and procedures that govern the HN other than the criminal law.[3] Thus, the laws governing land and other property ownership, commerce, relations between spouses, relations with children, inheritances, injuries caused by neglect or intent, pension rights, labor rights, education rights, licenses to practice professions, and many others fall in the civil justice sector. There will also be laws governing the procedure followed in civil litigation. There may also be a system of laws and regulations addressing environmental protection, occupational safety, health, and other administrative areas.

[3] Note that the distinction between criminal and civil in the legal systems of many countries may differ from what is normal in US or western type systems. In Islamic jurisprudence, for example, the resolution of homicide cases may be more of what we would class as a civil type action, rather than a criminal action.

2. The laws governing the civil justice sector will be the laws of the HN, although there may be applicable internationally accepted human rights principles that come into play as well. Major dysfunctions in the HN institutions may require an internationally imposed interim code and/or courts.

(b) **Courts**

1. In most countries, there are formal courts that adjudicate civil cases. These may be courts with general jurisdiction over all civil cases that arise in a geographically defined political or administrative area, or the courts established to deal with specialized subject matter areas, such as commerce, domestic relations, inheritances, or labor. Generally, a formal court system will have procedures to appeal decisions to higher-level courts.

2. In many countries, there are traditional methods (councils, elders, mediation) for resolving civil disputes. Often, these are highly acceptable to the populace and can be very effective in preserving social order by resolving civil conflicts. Where formal justice systems have broken down, traditional or informal dispute resolution processes may be the only mechanisms for maintaining social stability until a formal legal system is restored.

3. In some cases, it may be necessary for either international courts or US courts to be established as part of civil-military operations to assume the responsibility for adjudicating civil disputes. Such courts may be necessary as an interim measure in order to provide disputants with an immediately available system for timely and peaceful dispute resolution.

(c) *Systems for enforcing judgments*. Ideally, the courts have the power to order the police or other law enforcement personnel to enforce the court's decisions if a party does not comply voluntarily with the court's judgment. However, in unstable states law enforcement systems may not have the capacity or the will to comply with court directives. The enforcement process may be fraught with corruption, and frivolous appeals by defendants' attorneys can obstruct the final resolution of civil cases. The systems for enforcing judgments must be carefully evaluated and when necessary strengthened to ensure that the civil justice sector actually achieves its purpose.

(2) **Informal/Social Systems**. The JFC should conduct social network analysis (SNA), and in close coordination with DOS and USAID HN and regional experts. Important nodes specifically relevant to this section are:

(a) Judges

(b) Court personnel

(c) Individuals who enforce civil judgments (police, bailiffs, other functionaries)

(d) Individuals who perform mediation, arbitration, and other alternatives to judicial civil litigation

(e) Individuals who administer government civil dispute resolution programs

(f) Individuals who provide traditional/informal justice services

(3) **Accountability Systems**. The accountability mechanisms normally associated with civil justice are those that will be found for the courts and the judiciary. These include internal and external organizations that conduct audits, inspectors, review commissions and other methods of accountability. Other important accountability mechanisms for the civil justice sector are:

(a) **Private Lawyers**. Competent, effective and available legal professionals who advise civil claimants and represent their interests in courts and similar forums are very important to ensuring that the parties will have their cases carefully considered and fairly decided by the courts.

(b) **Appellate Review Processes**. Effective appellate review requires an effective appellate judiciary and effective appellate procedures.

(c) **Civil Society Organizations**. Grassroots organizations can empower groups by raising their awareness of rights and entitlements under civil law. Advocacy and legal aid groups, traditional labor unions, and human rights organizations also help marginalized groups identify their rights and press their claims in courts.

(d) **The Populace**. Most people comply with the requirements of the law voluntarily because it is compatible with their beliefs, attitudes, and values—it is the "right" thing to do. If the populace perceives the civil justice system as unfair or corrupt, their support for the system will erode and voluntary compliance will diminish, which in turn should put pressure on the HN government to correct the problem. This pressure may be exerted on the executive or legislative branches through democratic processes.

3. Lessons Learned and Best Practices

a. *A well functioning civil justice sector can contribute to economic growth, which may enhance stability*. Generally, organizations such as the World Bank regard predictable civil justice as essential to foreign investment. When the civil justice sector functions properly, investors and entrepreneurs are more willing to risk ventures that will improve economic conditions.

b. *A well functioning civil justice sector can contribute to social growth, thus decreasing actual or potential drivers of conflict*. Civil justice can reduce tendencies to resort to violence by allowing individuals and groups an opportunity to vindicate their

rights through non-violent means. Joint forces have an immediate interest in enabling OGAs, IOs, and NGOs to facilitate the use and success of HN institutions and practices to resolve civil law disputes.

c. *Plan for appropriate measures to ensure the HN populace perceives the civil justice sector favorably*. How the populace perceives the civil justice system is often more important than how well it actually works in an objective sense. The legitimacy of the HN government is enhanced if the populace generally has ready access to the government's civil justice systems and perceives them as fair, impartial, efficient, effective, transparent, and free from corruption.

d. *A civil justice sector does not have to resolve all disputes through court action in order to be effective*. In most cases in the developed world, the parties negotiate a settlement, reach a settlement through mediation, or otherwise resolve the case without trial. However, a well-functioning civil justice sector provides both incentives for out-of-court settlements and methods to resolve disputes should other methods fail.

e. *Property rights are normally the most important civil justice sector issue in post-conflict stabilization*. Because property rights issues are frequently found in conflict and post-conflict situations, they are dealt with in more detail in Section A, "Property Rights," of Appendix E, "Special Issues in ROL/SSR Design and Planning,". The civil justice system must have the capacity and the integrity to resolve ownership issues fairly and promptly. In some cases, is may be necessary to establish special courts and supporting organizations solely to deal with property disputes.

f. *HN law governing commerce and related areas must frequently be reformed and updated to facilitate economic stabilization and development*. In many rogue, failed, or fragile states, the laws affecting commerce and economic development will be inadequate to facilitate economic stabilization and subsequent development. Communications law, banking law, foreign investment law, intellectual property law, and other technical branches of the law may have had little or no updating to bring them into synchronization with the rest of the world, thereby making it difficult, if not impossible, for the HN to transact business with outsiders. Commercial and economic laws require sophisticated knowledge of the systems they are intended to regulate. USG support to revision of HN banking codes must be undertaken with an understanding of the international banking system, and how the HN system works or is supposed to work. In the initial stages of over-seas contingency operations, such expertise will not be organic to the joint forces on the ground, and must be obtained from civilian agencies, NGOs, international agencies, or by reach back to subject matter experts in the United States. Often, these technical areas of the law are more readily transferable into the HN legal system than more culturally sensitive areas of the law, such as domestic relations and inheritance law. Astute operational design will consider that all aspects of the HN legal system, even the most technical, are influenced by the HN's culture or cultures. For instance, Islamic countries will usually consider Islamic principles on usury in their banking and commercial codes.

SECTION C. THE JUDICIARY

1. Purpose and Scope

This section addresses the selection, vetting, training, compensation, protection and supervision of the members of the judiciary. Key US partners are DOS, USAID, and DOJ. A more detailed discussion of key partners and their roles is in Appendix G, "Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. **Drivers of Conflict**. A dysfunctional HN judiciary can be a driver of conflict. Judicial corruption can influence members of the populace to favor insurgent or other competitors to the HN government if the populace perceives the insurgent's alternative courts as fairer. Perceived judicial bias against a religious, ethnic, or other group can drive members into either avoiding the formal courts or actively opposing them. This bias can be reflected by the decisions of the judiciary, or it can be manifested by the systematic exclusion of otherwise qualified members of ethnic, religious, or other groups from being selected for judicial positions.

b. **Systems**

(1) **Formal Systems**

(a) **Systems of Laws**. Generally, there will be constitutional and other legal provisions in HN law establishing the judiciary and its functions. Often, there will be provisions for judicial selection, training, compensation, ethical standards, and career management.

(b) **Judicial Management Systems**. Frequently, a central body will manage a nation's judicial systems and have responsibilities for selecting, training, and paying judges. Often, it will manage the careers of judges and assign them to their positions, especially in countries which have borrowed from the European civil law system. In civil law systems, judges frequently enter into the judicial profession early in their careers, and progress through judicial assignments of greater importance as they gain experience and skill. In other legal systems, such as the English and American systems, judges are appointed or elected from experienced practicing lawyers. Judges also may be selected from those with no legal training or background, even in developed countries. Often, the national supreme court or other highest court will manage the judiciary administratively; in other cases, the high court may have little direct administrative responsibilities, with some other office managing day-to-day operation of the judiciary. Administration of the judiciary may also be decentralized to the provincial or local level.

(2) **Informal/Social Systems**. Judiciaries are networks of individuals. Who these individuals are, what they believe, and how they relate to one another will affect

reconstruction or reform programs. In a society torn by conflict, it is essential to understand the dynamics of that conflict and how the interests and grievances at issue affect members of the judiciary as individuals and members of identity groups. Understanding the conflict that pits one social group against another will alert joint forces to injustices and can guide USG support to HN reforms in building a balanced judiciary. Nodes specifically relevant to this section are:

(a) Individuals who select persons for the judiciary

(b) Individuals who control training (initial and continuing) for judges

(c) Individuals who control judicial salaries, promotions and assignments

(d) Individuals who control organizations that provide security for judges and their families

(e) Individuals who evaluate the professional performance of judges

(f) Individuals who control disciplinary processes for judges

(g) Local chief judges or others who assign cases to individual judges

(h) Individual judges

(3) **Accountability Systems**. These include internal and external organizations which conduct audits, inspectors, review commissions, and other methods of accountability described below. Frequently, these accountability systems will be administered by higher-level judiciary personnel, although sometimes there are other accountability systems external to the judiciary system.

Judicial Accountability Systems in Albania

The High Council of Justice (HCJ) is a body established by the Albanian Constitution which consists of the President, the Minister of Justice, The President of the High Court, 3 members of the legislature, and 9 members from the judiciary. It is responsible for the "protection, nomination, transfer, discharge, education, moral and professional evaluation, career and control of the activities of judges of the courts of first instance and those of appeal." The HCJ maintains an Inspectorate which inspects courts, evaluates the professional performance of judges, and verifies disciplinary complaints against judges. The Ministry of Justice also has an Inspectorate which carries out inspections of courts and initiates disciplinary proceedings of judges of the courts of the first instance and courts of appeal. The two Inspectorates overlap in their functions in some areas, and in other areas have separate but complementary roles in the process of conducting disciplinary proceedings against judges. The Ministry of Justice prepares disciplinary proceedings against judges, which are filed with the HCJ for decision. Decisions against a judge may be appealed to the High Court.

3. Promoting an Effective Judiciary

The keys to an effective judiciary are security, competency, integrity, and accountability.

a. **Security**: Judges must be secure in their persons, family, and property or they cannot function effectively. Judicial security involves security forces (HN police and security personnel; international military and police personnel; and dedicated court security personnel); secure transport (vehicles, etc.), and secure facilities (offices, courts, and living areas).

b. **Competency**: Judges must know the law, and be able to reason effectively through legal issues according to the standards of their legal system (which may differ considerably from the American system). They must be able to reach decisions perceived as wise and fair by the local populace. Training programs (HN, US, and international), mentoring programs (US, international, and HN), programs to review and evaluate judges' performance (should be primarily HN), and civil society review promote judicial competency.

c. **Integrity**: Judges must be trusted to make decisions on the basis of what the law requires, rather than seeking or accepting bribes, increasing their own power, promoting the interests of their friends, relatives or the politically powerful, or expressing deep-seated animosity toward groups other than their own. Integrity includes:

(1) **Impartiality**: Judges must make their decisions based on the merits of the cases brought before them, not on who are the parties to the controversy. They must be fair and impartial in fact and in appearance. Judges should not participate in cases in which their impartiality is a legitimate issue.

(2) **Independence**: Judges must not be under the control or influence of others, whether they are family members, friends, political patrons, or power brokers. The judiciary must be independent from influence and control by the executive, legislature, and informal power structures.

(3) Vetting programs, training programs, and accountability mechanisms promote integrity. Vetting of judges during selection or retention processes can enhance integrity by reducing the number of corrupt, bigoted, or otherwise unsuitable judges. Vetting serves several purposes, including eliminating unsuitable judges and targeting training to where it is most needed and will do the most good. Integrity is primarily promoted by influencing the judges to internalize ideas of avoiding corrupt practices and concepts of judicial integrity. Overcoming deep-seated racial, ethnic, and class biases is arguably more challenging. The concepts of integrity can be taught through formal training courses and mentoring programs. Integrity is also maintained by imposing clear, and preferably written, standards for judicial conduct and enforcing those standards through review and accountability mechanisms and criminal sanctions.

d. **Accountability**: Judges must be subject to an impartial system that ensures that a judge's conduct is monitored, evaluated, and subject to adverse sanctions for improper behavior. Accountability systems may include internal mechanisms, such as codes of conduct, through which the judiciary polices its own members. They may also include internal discipline measures (to include removal from their positions) and criminal penalties for violations. Checks and balances are essential to ensure judges do not abuse their power.

4. Lessons Learned and Best Practices

a. *Providing security for judges and their families must be a top priority*.

(1) The most effective technique used by insurgents, spoilers, criminals and other non-compliant actors to disrupt the effective application of justice is to intimidate or to kill judges or their family members. Physical security is essential for ensuring judicial independence, but not sufficient by itself. Ostracism and community pressures short of violence can affect judges. In providing security to judges, joint forces and HN military lend critical support to judicial independence. In SSR operational design, the JFC must immediately assess the capability and adequacy of existing HN security measures, and be prepared to take steps to ensure the safety of judges and their families in the earliest possible phase of an intervention. Joint intelligence is invaluable in gauging the overall threat and devising measures to achieve security for judges. Intelligence driven measures are the most cost-effective, particularly for such situations as preparation for *in extremis* extraction when specific threats are identified, or shifting protective measures from one locale to another when warnings indicate a geographic shift in the threat. Measures also include creating secure compounds where judges can work and their families can live, even if the compounds must be built and protected by US military personnel. Alternatively, police or HN military may provide perimeter or site security, with joint forces providing a Quick Reaction Force (QRF).

Colombia: Intimidation of the Judiciary

Pablo Escobar's Medellin Cartel routinely employed assassination as a tool. In 1984, the Cartel assassinated the Minister of Justice. This was followed by the assassination of 15 judges over the next three years, including Supreme Court Justice Baquero Borda. As a likely result of these tactics of intimidation, the Colombian Supreme Court ruled in February 1987 that the extradition of Colombians to the United States (including the extradition of Pablo Escobar) was unconstitutional. From the Cartel's perspective, the use of violence proved successful.

Colombia: Insurgent Attacks on the Judiciary[4]

On November 6, 1985, insurgents of the M-19 group seized the Palace of Justice "in the name of peace and social justice." The insurgents took approximately 300 hostages, of whom 44 were judges, including the President of the Supreme Court. The insurgents destroyed numerous court records, including the files of every extradition case. The Colombian military eventually seized the building and killed all the insurgents, but a large number of civilians, including 12 judges, were also killed. There were indications that the M-19 group received support and operational guidance from the drug cartels, but the evidence is not conclusive. Whether the M-19 was acting in concert with the cartels or not, the siege of the Palace of Justice clearly benefited the cartels.

(2) Security is not just protection from violence. There may be economic and other issues that adversely affect a judge's impartiality. In the initial phases of SSR, USG agencies or joint forces might pay the salaries of judicial personnel if the HN mechanisms are disrupted or ineffective.

b. *Vetting of existing and prospective judges is a necessary first step in reforming the judiciary.* Experience in both steady state and post-conflict situations demonstrates that vetting for removal and recruitment of judges is more critical than training. Vetting is used to: (a) remove bad judges; (b) select new judges in situations where a judiciary may need to be built "from the ground up," as in Kosovo where most judges, ethnic Serbians, left Kosovo with the NATO intervention; (c) select "reformable" judges for training; (d) assign judges to and away from cases to minimize the impact of any prejudices or interests on their decisions; and (e) ensure the recruitment of a balanced judiciary, i.e. one that gives a fair representation to all groups in a society. The military's information and intelligence is a critical resource in the vetting process. Vetting is not just a prelude to training but is itself a key element of judiciary reform. For further discussion of vetting, see Section C, "Vetting," of Appendix C, "Design and Planning Considerations for Security Sector Management and Oversight."

c. *Training programs must meet the needs of the trainees, the HN government, and the policy needs of the US government.* Often, promoting the ROL involves setting up formal training programs whereby experts, usually foreign, are brought in to conduct training for HN judges. While formal programs may help to raise the competency and promote the integrity of judges, they need to be carefully thought out and implemented with clearly determined objectives. It may not help a HN judge, whose legal system is based on the European civil law tradition and therefore does not have jury trials, to receive training in how to select and argue to a jury. It may be counterproductive to train judges if the trainers ignore the national codes, and instead teach a strict interpretation of Islamic *Shari'a* which actively opposes ideas of gender equality, religious toleration, or

[4] Sources for this vignette include Jay Robert Nash, *World Encyclopedia of Organized Crime* (1993), p. 154.

other human rights principles advocated by US policies.[5] Training must be part of the operational design. Individual programs not associated with the overall goals and objectives can be disruptive. Planning must include coordinated efforts to develop the necessary training and education programs. Know the content of training programs and both the expertise and biases of the trainers. Ensure that programs the US promotes and funds are consistent with US policy.

d. *Ensure that the JFC has the appropriate personnel to provide peer or near-peer mentors to HN judicial officials*. While formal training programs can greatly increase the competency of judges, the most effective way to lead judges to change their fundamental ideas about how to administer justice is by developing long-term and close mentoring relationships between HN judges and their international counterparts. In most societies, judges tend to be older and experienced and have relatively high social status. Effective mentoring of such people requires the US use individuals with appropriate rank, age, experience and training. The Joint Force Commander would likely not be too receptive to a 21-year old lieutenant from a foreign army as a mentor, yet the US military often offers the equivalent to foreign judges and other officials. Most traditional societies tend to respect age and rank much more than is done in Western democracies. While HN judges may work in dusty offices without regular electricity, they are unlikely to think a recent US law school graduate knows more about administering justice in their country than they do. They may, however, be amenable to being influenced by US civilian or military mentors they perceive as being their equals or near equals.

e. *Judges are people, not abstractions*. Understanding judges and their involvement in informal/social networks is essential to developing effective measures to improve the judiciary. In particular, identifying and understanding judges who have an influence over the judiciary as a whole is necessary. In many cases, senior judges are also the administrators of the judiciary, and can influence selections, training, promotions and other factors that may promote or impede reform. It is therefore essential to understand HN judges as both individuals and members of various social groups.

f. *Accountability measures are second only to security in promoting an effective judiciary*. Corruption is one of the most commonly identified reasons the populace distrusts the formal legal system, and can seriously undermine the legitimacy of the HN government. This is especially true if insurgents, warlords, and other non-compliant actors offer alternative justice systems that are not perceived as corrupt. Accountability mechanisms, if functioning, keep corruption from developing and weed it out when it occurs. Generally, accountability mechanisms consist of codes of judicial ethics, oversight by higher level judges and boards of judges, inspectors general, and independent commissions. In many cases, international donors may require international monitors as well. Deep-seated prejudice among judges is another factor impairing trust of the judiciary. Systems should be created to track decisions of judges for signs that

[5] David S. Gordon, "Promoting the Rule of Law in Stability Operations: Myths, Methods and the Military," 1 *The Journal for Military Legitimacy and Leadership (February, 2009*), http://militarylegitimacyreview.com/wp-content/uploads/2010/08/Journal-on-Military-Legitimacy-and-Leadership_20093.pdf.

they do not favor their own identity groups or discriminate against groups they oppose. Statistical correlation offers a way of detecting a systemic bias.

SECTION D. COURT ADMINISTRATION AND SUPPORT

1. Purpose and Scope

This section addresses the infrastructure, records systems, case processing systems, security systems, and personnel requirements for the administration and support of justice sector systems. Key US partners are DOS, USAID, and DOJ. A more detailed discussion of key partners and their roles is in Appendix G, "Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. **Drivers of Conflict**. Court administration and support systems can contribute to instability if the populace perceives them as biased, inefficient, and corrupt. Perceptions of corruption and bias erode the confidence of the populace in the HN government's effectiveness and legitimacy and can be a grievance that drives conflict.

b. **Systems**

(1) **Formal Systems**

(a) **Security Systems**. There should be appropriate physical security (guards, barriers, communications, fire detection and control, etc.) to protect facilities, personnel, and records.

(b) **Case tracking and management systems** are the most important administrative systems in terms of promoting the ROL. The case file ensures that all actions and decisions associated with a case are documented. A case tracking system also allows the record to be preserved, and, importantly, to be located when it is needed. Misplaced or stolen case files make it impossible for courts to process cases effectively and for the results to be properly reviewed.

(c) **Systems for recording and transferring property rights** are also important. Most countries maintain depositories, such as a registry of deeds or a cadastral office, for written records concerning land rights. These systems are essential for settling property rights disputes, and require safeguards to ensure that records are not lost, destroyed, hidden, or altered. For further information on property rights, see Section A, "Property Rights," of Appendix E, "Special Issues in ROL/SSR Design and Planning."

(d) **Systems for Legal Research**. In Anglo-American common law systems, prior decisions are normally binding on subsequent decisions, and it is essential to have accessible records of those prior decisions. Even in systems based on the European civil law system, where precedent is not binding, it is important to have records

of prior and higher level decisions to ensure that there is some consistency in the decision-making process. This may take the form of records of prior decisions of the court, printed case summaries, legal gazettes, or computerized legal research facilities.

(e) **Administrative support systems** deal with budgetary matters, expenditures, revenues received by the court (fees, fines, restitution, support payments, etc.), payroll, and personnel information. These systems are necessary to ensure that funds are accounted for properly, and to ensure that personnel are properly hired, paid, trained, and managed. In some systems, court administration is the responsibility of the judiciary, while in other systems (those usually influenced by the French model), court administration is the responsibility of the executive branch (usually the Ministry of Justice).

(2) **Informal/Social Systems**

Often court personnel are deeply entrenched in their customary ways of doing business, and will be highly resistant to change. In many countries, court functionaries will expect to be paid a facilitation payment to do their duties promptly. In other cases, a court official may have strong family, political or other loyalties that will influence how he or she performs official duties. In interactions with court administrators, knowing and adapting to informal and customary ways of doing business can be of great benefit to a JFC. However, acquiescence in a corrupt practice can undermine the overall mission of the JTF. Important nodes relevant to this section are:

(a) Those that control or influence budget and payroll affecting court administration operations and personnel

(b) Political, religious, clan or other leaders who are not directly involved in court administration, but who may exert influence over those who are

(c) Apparently secondary functionaries who facilitate or bottleneck information flow and activities within the relevant organizations

(3) **Accountability Systems**. It is important to determine what, if any, audit and other accountability mechanisms exist to examine the functioning of the court administration systems. Audits and other outside inspections enforce accountability in the various court information systems. Properly designed and implemented case tracking and management systems, property records systems, and court administrative support systems will facilitate such outside review.

3. Lessons Learned and Best Practices

a. *The JTF must be prepared to take immediate steps to secure and safeguard court and other public records.* Maintenance of court and other public records (including property records) is essential to the fair and orderly administration of both criminal and civil justice. In many conflict and post-conflict situations, these records become targeted

for destruction by criminals, warring factions, those who have obtained property from displaced and dispossessed persons, and others who see effective justice processes as a threat to their interests. Immediately upon entering an area of operation, the JFC should identify all records repositories and ensure that adequate security measures are in place to protect them. Look beyond the courthouse for important depositories for records; in many countries influenced by the European civil law tradition, notaries[6] often hold significant legal records.

b. *The JTF must be prepared to provide immediate security to court facilities and court administrative and support personnel until such time as local security forces can do so effectively*. Frequently, court facilities are targeted by non-compliant actors to disrupt the stabilization process, and court personnel are often intimidated or killed for the same reason. These facilities and personnel are essential for stabilizing the area and returning control to civil administration, so it is critical that the JTF be prepared to provide security when required.

c. *The JTF should ensure that its interface with the administration of justice system in the HN is effective and above reproach*. JTF troops will have occasion to interact with court officials when, for example, they have had to undertake crowd control measures and request the courts to process a large number of individuals or when they capture a high-profile criminal or militia leader. Knowing the procedures is important for effective and expeditious processing. At the same time, JTF troops should not acquiesce in corrupt practices to hurry processing; that weakens reform efforts and undermines their own legitimacy and mission.

d. *The JTF should support measures to ensure that court personnel are fair, impartial, diligent, and not corrupt*. In many countries, minor corruption is endemic in court administration. Clerks and other functionaries are paid very little, and often have their own sets of files which they alone control. The HN court must adapt appropriate measures to ensure that personnel are not tempted to seek minor bribes to survive. There must be standards that prohibit bribes, and training and leadership to ensure those standards are understood and followed. There should be audits and other systems to control and reduce corruption, as well as criminal sanctions for those who take bribes and otherwise abuse the authority of their offices. The JFC should be prepared to support such efforts if required.

e. *Any changes to court administration and support must be sustainable locally. Do not provide resources that cannot be sustained or maintained without external support*. Automation is often not appropriate. Frequently, Western interveners give computers to local prosecutors and courts to manage cases without ensuring that such automated systems will be able to operate without extensive foreign support. Issues to address include:

[6] A notary (French *notaire*, Spanish *notario*) in a civil law system does much more than a notary public in the United States; in many cases, they maintain depositories of legal records.

(1) Is there local capability to repair such systems (parts, and trained technicians)?

(2) Are there trained operators, and is there the local capability to train other operators in the foreseeable future?

(3) Is technical support readily available?

(4) Are there backup systems that will allow the system to continue if there is a crash or other catastrophe?

(5) Is the court administration budgeted to provide continuity of funding for any new systems?

(6) Are personnel able to contract for and administer contracts for systems and systems support?

(7) Is there consistent electrical power?

Court cases were managed for hundreds of years before the computer, and an effective manual system may be the most practical solution for some, if not most, HN courts. In many cases, it will be wiser to give the court administrators manila file folders, staplers, and staples than to give them computers.

f. *Even if automation is feasible, it is necessary to have a properly functioning manual case tracking system first.* In most cases, automating a defective manual system merely carries the same problems over to the new system.

SECTION E. CORRECTIONS AND DETENTION

1. Purpose and Scope

This section addresses the infrastructure, records systems, logistics systems, security systems, administrative systems, and personnel requirements for the administration and support of HN corrections and detention systems. Key US partners are DOS, USAID, and DOJ. A more detailed discussion of key partners and their roles is in Appendix G, "Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. **Drivers of Conflict**. Criminal justice systems are generally ineffective if there is no capability for incarcerating suspected criminals before trial. Court convictions are ineffective if facilities cannot hold the convicted for the duration of their sentences. Often, prison conditions can be an important driver of conflict when individuals are incarcerated without trial for long periods of time, their relatives are not given access to them or communication with them, and conditions and treatment in facilities are

inhumane. Networks of insurgents, terrorists, and criminals can arise and grow in overstressed and poorly managed detention facilities.

b. **Systems**

(1) **Formal Systems**. Corrections systems include prisons, jails and other confinement facilities; the logistical systems that provide them with food, water, medicine and medical materials, and other supplies and resources necessary for their operation; the personnel systems that provide guards and others who secure, manage and care for prisoners; records systems to account for those held in facilities; and administrative systems that ensure the proper management of all the systems. Often, corrections systems will be managed at the national level by the ministry of the interior, ministry of justice, or other ministerial level organization. There may be provincial and/or local administrative systems as well.

(2) **Informal/Social Systems**

(a) Social network analysis of the key individuals in the corrections system to determine their individual characteristics, their group loyalties, and their relationships with the rest of the criminal justice system is essential.[7]

(b) It is important to analyze prisoner networks as well. It is not unusual for prisoner networks to operate in collusion with corrections personnel networks in corrupt and illicit practices. Prisoner networks will often have ties to criminal, insurgent, and other illicit power structures outside the prison. Often prisoner networks can contribute to instability outside the prison by allowing criminal and insurgent leaders to continue to control their organizations even though incarcerated.

(3) **Accountability Systems**. HN courts are often a principal mechanism for ensuring the corrections and detention systems work properly. Audits and other outside inspections enforce accountability. The ***American Correctional Association (ACA)*** is an excellent source of guidance and subject matter experts on audit/accreditation standards for correctional facilities/systems.[8] However, the ACA standards may be far too complex for a conflict or post-conflict environment and could overlay too much complexity on a system emerging from crisis or collapse.

3. Minimum International Standards

The United Nations *Standard Minimum Rules for the Treatment of Prisoners*[9] are nonbinding rules approved in 1955 which aim to establish accepted practices for the

[7] Mark S. Inch, *Supporting the Restoration of Civil Authority: The Business of Prisons*, School of Advanced Military Studies (Ft. Leavenworth KS: US Army Command and General Staff College, 2005).
[8] The ACA is an independent, international accrediting body that has established internationally recognized correctional standards used throughout the United States by Federal (including US military), State, and local prisons and jails. Located at: http://www.aca.org
[9] UN Office of the High Commissioner, *Standard Minimum Rules for the Treatment of Prisoners*, 1977. The *Standard Minimum Rules* have provisions that overlap other international instruments such as the

treatment of prisoners and the management of institutions. They have played a role in improving prison conditions and reinforced the duty of humane treatment and the respect for human dignity.

4. Lessons Learned and Best Practices

a. *The JTF must have appropriate personnel to manage and support restoration and improvement of the HN corrections and detention systems*. Depending on the JTF's formal or informal agreements with the HN, or in cases where the joint forces are present as part of an occupation or under the legal authority of a UN mandate or similar authorization, the JFC may be legally required to assume responsibility for prison activities. The JFC may be constrained by political requirements and public opinion in providing or overseeing humane and safe prison activities where the HN will not or cannot do so. To support or restore a failed or failing corrections system, the joint forces need corrections specialists, managers, and engineers to deploy in a timely manner to reestablish, build, maintain, or expand prison capacity, conduct recruitment and training, provide system oversight and safeguards in accordance with international standards, and ensure timely transition to HN government control. Identifying, recruiting, and deploying the experts needed to assume control from the intervening military force is a critical element of operational design in the whole of government approach.[10] Note that the administration of the emergency detention of suspected insurgents, terrorists, and other security threats may require different skill sets from administering the normal corrections and detention systems applicable to ordinary criminal justice cases.

b. *The joint force must be prepared to provide immediate security to corrections facilities, prisoners, and administrative and support personnel until such time as local security forces can effectively do so*. Non-compliant actors can target corrections facilities to disrupt the stabilization process by releasing prisoners. Additionally, the joint forces may be required to build or upgrade facilities to take on additional prisoners as security is reinstated and the criminal justice system begins to function.

c. *When identifying prisons and other detention facilities, the JTF should attempt to locate all such facilities, including small local holding cells and confinement facilities which might not be under the control of the HN government corrections authorities*. In Iraq, Afghanistan and other countries, there are often widely disbursed holding cells used by the police, as well as detention facilities which are maintained by non-government actors. These facilities evade normal oversight.

d. *Existing HN corrections and detention systems may not be able to address the special needs that a conflict or post-conflict environment imposes*. The onset of

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Convention Against Torture and the *International Covenant on Civil and Political Rights*. Additionally, the UN General Assembly subsequently passed a list of eleven approved ***Basic Principles for the Treatment of Prisoners*** addressing the humane and impartial treatment of prisoners and the responsibilities of the State.

[10] Mark S. Inch, *Supporting the Restoration of Civil Authority: The Business of Prisons*, School of Advanced Military Studies (Ft. Leavenworth, KS: US Army Command and General Staff College, 2005).

stabilization operations will often generate large numbers of detainees and prisoners of various kinds. The JFC should be prepared to plan and conduct operations to support HN corrections and detention systems to meet surge requirements.

e. *Plan for coordination of detainee operations between US forces and HN corrections and detention systems*. US detention operations are governed by US and international law, use US resources, and comply with US policies. US military and civilian agencies and other international participants may provide support to the reconstruction, administration and reform of HN corrections and detention systems, but that is a different function from conducting detainee operations. The separate systems may interact in matters such as custody transfers, and it will be necessary to develop coordination procedures.

f. *The JTF should monitor and support the review of criminal justice records to determine status of prisoners and ensure that prisoners are held as a result of proceedings that are fair, impartial, free from corruption, diligent, and conducted in a timely manner*. There should be audits and other systems to control and reduce corruption, as well as criminal sanctions for those who take bribes and otherwise abuse the authority of their offices.

g. *Any changes to administration and support of corrections facilities must be sustainable locally*. Do not provide resources that cannot be sustained or maintained without external support.

h. *Actions dealing with HN corrections systems must be collaborative with the actions of other US Government agencies dealing with corrections*. Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) is the bureau of the USG most engaged in international corrections. In some cases, notably Iraq, INL will carry out corrections reform through the Department of Justice's ICITAP. In other cases, INL will perform corrections reform without ICITAP. INL also engages in projects relating to criminal justice which will impact on the corrections systems.

i. *Metrics and Tools Must Support Long-Term Sustainability*. Metric selection is typically focused on measuring the creation of short-term effects to support the military plan objectives. However, designers and planners must also coordinate with other stakeholders and take into account long-term desired effects that are sustainable and supported by other organizations committed to the long-term effort. Likewise, ROL support efforts should be careful in not introducing computer-based tools that may be cumbersome or not sustainable in the long-term.

Law and Order Task Force at the Rusafa Rule of Law Complex and Embassy Baghdad [11]

As a result of this data, LAOTF's [Law and Order Task Force] focus (and thus TR's [Team Rusafa, Baghdad]) measure of effectiveness became, "How many prisoners can we get / have been released?" In hindsight, the correct measure of effectiveness, in light of the mission to build judicial capacity, should have been, "In how many cases have the judges reviewed and made a decision, either final or interim?" The systemic issue requiring a sustainable fix is one of due process, not one of mass release, assuming at some point in the near future the population will stabilize and input (arrests) and output (judicial decisions) will equalize. While not fatal, the incorrect measure of effectiveness appears to have caused TR to expend unnecessary effort continuing to "intel check" and entering files into LAOCAS [Law and Order Case Administration System], as LAOCAS was (and remains) solely a tool for our (LAOTF) use.

LAOCAS, lacking Arabic inputs and requiring reverse translation to provide case-specific information back to the judges, had a limited useful lifespan and it eventually became more work "feeding" LAOCAS than benefit received from it.

SECTION F. MILITARY JUSTICE

1. Purpose and Scope

This section addresses the systems that provide for the investigation, adjudication and imposition of punishments for crimes and disciplinary infractions within the HN military, and in some cases, paramilitaries and police agencies also subject to military justice. A detailed discussion of key partners and their roles is in Appendix G, Key Partners in Rule of Law."

2. Understanding the Operational Environment

a. Drivers of Conflict

(1) Like civilian criminal justice systems, dysfunctional or unfair military justice systems can often create instability. The United Nations Organization Mission in the Democratic Republic of Congo found that the "military justice system is a primary vehicle for promoting the rule of law and respect for human rights."[12] Without proper discipline, the military "is easily turned to a disruptive force, and overreaching by military forces is a prime example of the kinds of arbitrary state actions whose

[11] The Judge Advocate General's Legal Center and School, U.S. Army, Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, 2008, page 283.
[12] United Nations Organization Mission in DR Congo (MONUC), "Military Justice," http://monuc.unmissions.org/Default.aspx?tabid=1894.

eradication is a primary component of the rule of law."[13] The military justice system may confer – or be seen to confer – *de facto* impunity from crimes and abuses by claiming exclusive jurisdiction, inadequately prosecuting cases, bringing lesser charges for offenses, or resisting oversight and accountability for its actions. Such factors may raise doubt within the civilian population as to the fairness of the system of justice.

(2) In a post-conflict scenario, the HN military may come under exceptional public scrutiny as the principal, if not the only, contingent of the HN government empowered to use force and exert government authority over the civilian populace. Exclusive and unchecked power will fuel perceptions of unfairness and abuse. The ethnic and religious makeup of the military may also drive conflict if the civilian population perceives bias. If the HN government has used international advisors to develop a new or reformed system, the HN military may perceive the system as an imposition of a foreign power.

b. **Systems**

(1) **Formal Systems**

(a) **Laws**

1. The laws of the military justice system normally will include offenses found in the civilian criminal justice system (e.g., murder, rape, robbery), as well as military-specific offenses (e.g., absent without leave, failure to obey a lawful order). Military justice systems are typically articulated in a military code which describes offenses, procedures, and punishments.

2. HN military justice systems may not, and in many cases should not, resemble the US military justice system. In many instances, an effective military justice system will need to be reformed or established immediately following an armed conflict to prevent serious problems associated with a military leadership vacuum, including looting and human rights violations against the civilian population. This is also the time when leaderless HN soldiers are vulnerable to outreach efforts of an insurgency.

3. The first step in reforming the HN military justice system is to understand the current systems, including the civilian justice system. Familiarization with HN culture and religion will play an important role in the development of and adherence to law, and may prevent conflict stemming from the perception that the new system is imposed by foreign powers.

4. International and HN law must be taken into account when providing support to HN military justice reform. Arrangements governing the international community's ROL activities are important as well. Familiarization with

[13] *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates* (Charlottesville, VA: The Judge Advocate General's Legal Center and School, US Army (Center for Law and Military Operations), 2008), 95-96.

these arrangements promotes unity of effort, and focuses operations on assisting the development of the HN military justice system.

5. *The Military Code*. If the HN already has a military code in place, or if it has had one in the past, the focus should be on improving the existing code, since that is the already established law of the HN and the HN military is familiar with its provisions. Often the existing code can be revised to address existing problems and to ensure that it complies with international human rights norms. Imposing a mirror image of the UCMJ on the HN is not the goal; however, if there is no existing code, and the HN authorities wish to develop one, the UCMJ can contribute to its development.[14]

(b) **Systems for Adjudicating Military Justice Cases**

1. HN military justice systems usually establish military courts to try offenses committed by HN military members and others subject to military jurisdiction. These courts may be presided over by military officers, military judges or, in some systems, civilian judges. For instance, Iraqi military courts also use civilian judges appointed as military judges.[15]

2. Jurisdiction of military courts is generally based on the status of the accused, such as being a member of the armed forces, regular or paramilitary police, or person accompanying a force. In some cases, military courts may have jurisdiction over offenses committed against the military or offenses committed in military controlled areas. Jurisdiction of HN military courts may be concurrent, where civilian and/or military courts may try an offense (particularly when the offense is common to both the military and civilian population, e.g., theft or murder), or exclusive, in which certain offenses may be tried only by military courts (typically for offenses that are military-specific, e.g., AWOL, or actions done in the course of official duties). In many HNs, there may not be a separate military justice system; the regular civilian courts may be empowered to exercise jurisdiction over offenses handled in other countries by military courts.[16]

[14] Sean M. Watts and Christopher E. Martin, "Nation-Building in Afghanistan: Lessons Identified in Military Justice Reform." *The Army Lawyer*, May 2006, 7.
[15] Steve Cullen, "Starting Over – The New Iraqi Code of Military Discipline," *The Army Lawyer*, September 2004, 48 (citing *Coalition Provisional Authority Order 23, Creation of a Code of Military Discipline for the New Iraqi Army* (Aug. 20, 2003), *available at* www.cpa-iraq.org/regulations/#Orders).
[16] *Rule of Law Handbook*, 96 (citing an interview with Lt Col J. Johnston, British Army (ALS), October 2006).

The Afghan National Army Law of Military Courts

The United States has been intimately involved in efforts to support the reform of the military justice system in Afghanistan. The result is the Afghan National Army (ANA) military code, called the Afghan National Army Law of Military Courts (commonly referred to as the AUCMJ).[17] The AUCMJ is largely based on the UCMJ, and includes non-judicial punishment provisions. It also provides for concurrent jurisdiction between military and civilian courts. The following are some of the lessons observed in the development of the AUCMJ:

- The new code must be disseminated widely among the ranks of the HN military.
- US mentors found that many ANA commanders and soldiers did not understand the applicability of the new code.
- Training of HN military justice officials must be conducted to ensure that there is a deep understanding of the new system.
- Cultural, economic, and language barriers make training difficult.
- ANA legal personnel had to be trained in Dari and Pashtu languages, relying little on writing due to a high rate of illiteracy.
- It is necessary to assess and become familiar with the HN culture, language, religion, and existing legal system before moving forward with military justice reform.

(2) **Informal/Social Systems**

(a) HN military justice systems emerge from the wider culture, religion, traditions, histories, languages, and heritages of the HN. Military organizations themselves have a distinctive culture and ethos. A tradition of pride in professionalism promotes adherence to high standards. On the other hand, unit and generational loyalties can undermine the objectivity of military judges and lawyers. It is necessary to understand the military's image of itself in relation to civilian society. Some militaries see themselves as a bulwark against self-seeking and corrupt politicians. Others see themselves as citizen-soldiers serving their compatriots out of uniform. Properly understanding the relevant individuals, their relationships, and their respective institutional cultures will frequently make the difference between meaningful reform and entrenching the undesirable and dysfunctional. Analysis of social networks and organizational cultures of the key individuals in the military justice systems and mapping their individual characteristics and their group loyalties are essential.

[17] Daniel J. Hill, and Kevin Jones, "Mentoring Afghan National Army Judge Advocates: An Operational Law Mission in Afghanistan and Beyond." *The Army Lawyer*, March 2007, 14 (citing *Afghan National Army Law of Military Courts* 2005).

(b) Important nodes specifically relevant to this section are:

1. Commanders and key staff

2. Judges who hear military cases

3. Military prosecutors and legal advisors

4. Those who investigate military crimes

5. Military corrections officials

6. Administrators for military courts

7. Defense counsel for military personnel

(3) **Accountability Systems**. Accountability in the military justice system is much like that of the criminal justice system. The three main components are defense counsel, appellate review, and the populace.

(a) **Defense Counsel**. The most effective means of ensuring fairness and accountability is a system for providing trustworthy and competent defense counsel who are not under the supervision or control of military prosecutors or commanders with an interest in the cases. The difficulty in a military justice system is the threat of unlawful command influence on military defense counsel. However, the system can be tailored to eliminate this obstacle by using civilian defense counsel, as does the British Army and Air Force,[18] or by making military defense counsel independent of the ordinary command structure, as does the United States.

(b) **Appellate Review Processes**. Military justice systems should provide a system of appeal similar to that of the civilian criminal justice system. There may be a system of military appeals courts, or there may be appeals to civilian courts. Often the first level of appeal may be with the convicted military member's commander.

(c) **The Populace**. The HN populace must view the system as fair and just. In post-conflict situations, the HN military may be the only functioning governmental entity and means of protection. The populace must be assured that the HN military is well-disciplined and will face punishment for abuses of power.

3. Lessons Learned and Best Practices

A successful military justice system will promote justice, assist in maintaining good order and discipline, promote efficiency and effectiveness in the military establishment,

[18] *Rule of Law Handbook*, 96.

and strengthen national security.[19] However, a military justice system must take into account a number of factors:

a. *Understanding HN social customs and protocols is essential to successful support to the HN military justice system.* Understanding social customs and protocols as they relate to the military justice system illustrates respect for the HN and injects a sense of familiarity into the system, increasing the likelihood for a cooperative work environment. Further, social characteristics of the HN that US or other coalition forces may undervalue or disregard could significantly affect the efficiency of the military justice system. For example, humiliation is a significant issue in Afghan culture.[20] This is also true in Arab cultures. Therefore, investigators and prosecutors must take special care not to needlessly humiliate the commander or soldier. If this is overlooked, crucial evidence may be destroyed in an attempt to protect the individual or the individual's family from any humiliation.

b. *Assistance personnel must develop a knowledge and understanding of the existing military justice system.*[21] Understanding the existing systems and their histories is a prerequisite for improving that system or assisting in implementing a new one.[22] Failure to understand HN legal traditions already employed can thwart efforts to reform or build institutions.

c. *Military justice systems and civilian justice systems should be viewed as being part of the larger HN legal system*. There are normally parallels in the systems which allow the HN some consistency in procedure. There should be an orderly check and balance system within the military justice and civilian justice frameworks. This parallel can be the basis to reform the applicable military criminal code and procedures while allowing for a smooth crossover in areas that may not yet have been addressed in the military justice system.

d. *A military justice code should incorporate rules and procedures, clearly defined offenses, and rights of the accused*. Laws should be clearly defined, accessible, foreseeable, and neither contradicting nor overlapping.

e. *The military justice code should identify the individuals who will be subject to the new code and establish jurisdictional boundaries*. A military justice system cannot operate successfully until those potentially subject to it are identified. It is also important for the development of a disciplined force that military members be trained to understand that their actions are subject to a different, albeit similar, criminal code that governs their conduct as members of the military.

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[19] *Forged in the Fire: Legal Lessons Learned During Military Operations 1994-2008.* (Charlottesville, VA: The Judge Advocate General's Legal Center and School, US Army (Center for Law and Military Operations), 2008), 289.
[20] Hill and Jones, "Mentoring Afghan National Army Judge Advocates," 18.
[21] *Forged in the Fire*, 132.
[22] Watts and Martin, "Nation-Building," 2.

g. *An organized structure for implementing military justice matters and an established command structure are important to the development of an effective military justice system*. Commanders, staffs, and military legal personnel should be trained to understand the process of how cases are investigated, charges initiated, courts constituted, trials conducted, punishments imposed, and appeals and other post-trial actions are processed. There should also be training in non-judicial punishment and other disciplinary measures, if the HN has adopted such measures. Further, there should be a review process for completed actions to ensure that actions are handled consistently in judicial or non-judicial actions and punishment.

h. *Constituent parts must work together through each phase of the process*. Military justice is more than military courts and prosecutors. Commanders, investigators, and corrections systems are part of the process. Liaison with civilian investigative and other agencies may be crucial to effective military justice. Logistical and administrative systems adequate to support the operation of the military justice system should be available. There should be a consistent, fair, and humane system of punishments for those convicted under the military justice system.

SECTION G. TRADITIONAL AND INFORMAL JUSTICE

1. Purpose and Scope

a. This section addresses the traditional and informal systems that provide for the resolution of disputes between individuals and groups in areas where formal court systems do not exist or are not effective. They may also be found working parallel to formal systems.

b. "Traditional," "customary," or "informal" justice are simply terms applied to the broad range of ways in which communities resolve their disputes nonviolently using their customs and their leadership structures rather than those imposed by formal government systems. Generally, these rules preserve the peace by settling disputes in ways the community sees as fair.

c. In many parts of the world, including those where unstable conditions may require military intervention, traditional and informal justice systems play an important role in adjudicating disputes and providing social order. These systems generally have long histories and have a high degree of acceptance by the populace. Often, they function parallel to formal justice systems; in some cases, they are competing. In other cases, the formal justice system of the HN government has broken down, and traditional/informal systems are the only effective mechanisms.

d. Although there are important caveats in that sometimes such systems may be inconsistent with internationally recognized human rights standards or may in some cases be a driver of the conflict, traditional justice systems can in many cases be effective mechanisms to resolve disputes peacefully and bring about reconciliation in post-conflict societies, and can thereby enable the JFC's mission accomplishment.

2. Understanding the Operational Environment

a. **Drivers of Conflict**. In some cases, informal or customary justice systems can be themselves, or can contribute to, the drivers of conflict if the populace perceives the systems as being biased for or against an ethnic, political, economic, or other group, or if the populace perceives the systems as being barriers to social and economic development. In other cases, traditional and informal justice systems may undermine the authority of the HN government by making decisions which conflict with the formal legal system governing in the HN. On the other hand, traditional and informal justice systems can be an effective means to reduce the drivers of conflict and increase stability by providing the populace with cheap, readily accessible, efficient, and effective means of resolving disputes which have a very high degree of local legitimacy.

b. **Systems**

(1) **Systems of Rules, Adjudication, and Enforcement**

(a) **The Laws of Traditional Justice Systems**

1. The laws of traditional justice systems are the generally accepted rules of behavior that govern a specific community. The community may be an isolated village, or it may be a tribal, ethnic, or other group with thousands or hundreds of thousands of members. While the rules may be a highly developed and recognized system, such as the *Pashtunwali*[23] of the Pashtuns in Afghanistan and Pakistan, they are almost always transmitted orally within the community.[24] There may be local variations of the same system. There may be competing customary legal systems in a given area inhabited by different ethnic groups.

2. While traditional systems may have been in existence for long periods, like other legal systems, they are often strained and modified during periods of instability and conflict. These systems are ever changing, and responsive both to internal social change, as well as external influences, including colonialism, conflict, and the processes of modernization.

3. Customary rules will often be very useful in determining community-based rights, such as who is entitled to a piece of land, who receives property on the death of an individual, what rights do families have over children, etc. Generally, the rules in a customary system are primarily geared to maintaining or restoring harmony in the community, rather than punishing lawbreakers (i.e., they apply "restorative"

[23] For a description of the *Pashtunwali*, see The International Legal Foundation, *The Customary Laws of Afghanistan* (September 2004), http://www.theilf.org/reports/ILF_Customary_Laws_of_Afghanistan.pdf. Note that this document directed at the international community, and is not one actually used by Pashtuns.
[24] One example of customary law which has subsequently been reduced to writing is the *Kanun of Lek Dukagjin* of Albania and Kosovo, a code possibly developed in the 15th century, which remained unwritten until the 19th and 20th centuries. See Noel Malcolm, *Kosovo: A Short History* (New York: New York University Press, 1998), 17.

justice, rather than "retributive" justice). These systems are a different paradigm from what we think of as formal systems. While formal systems tend to focus on individual rights and responsibilities, winners and losers, retribution, and consistent application of specific rules and codes, customary systems tend to focus on communal order, truth, and restoring social harmony.

4. Parties include not just the individuals involved, but their families or even the community at large. Resolution tends to be about compensation, apology, and social reconciliation. These values reflect the pragmatic needs of the community. Community life in which people are socially and economically interdependent may require social reconciliation as they cannot keep living with conflict within the community. Economic need may be the reason that compensation is valued far over punishment; putting the perpetrator in jail does not make good the loss, but makes it harder for the family to compensate the victim. These are values that even the best formal systems are not designed to provide. This should challenge some of our assumptions about Western-style formal justice systems and make us think carefully about how to preserve the positive aspects of the traditional systems.[25]

5. Do not confuse ***Shari'a*** (Islamic law) with traditional justice. *Shari'a* is the foundation of all Islamic legal thought. The issue in the Muslim world is how much Muslims should insist on requiring the laws of society to be derived from the law of God as Islam teaches it, and how much should they allow the laws of society to be borrowed from Western legal traditions. To most Muslims, to oppose *Shari'a* is to oppose Islam.

6. Groups in Africa, North America, and Asia who have never heard of Islam have traditional justice systems. A traditional justice system in the Muslim world may be influenced by *Shari'a*, and in many cases the members of the groups may think they are following *Shari'a,* when in fact they are merely following their own local customs not found elsewhere in the Islamic world.

(b) Administration of Traditional Justice

1. Generally, local leaders will administer traditional justice. They will normally be the heads of families or tribal groups or subgroups or elder, experienced, and respected members of the community, and will have predominately persuasive, and little coercive authority. Often, they can lead the community to impose social sanctions, which may include the very serious step of expelling the non-conforming member. These local leaders may be called on to hear disputes as individuals, or in many cultures they may act as a group, which may often be called a council of elders. Examples from Afghanistan are *Shuras* and *Jirgas*.[26]

[25] Deborah Isser, remarks made at the US Joint Forces Command-US Institute of Peace Conference on Traditional Justice and Military Support to Rule of Law, December 16, 2008.
[26] Thomas Barfield, Neamat Nojumi, and J. Alexander Thier, *The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan* (Washington: United States Institute of Peace, nd).

2. It is important to recognize that these traditional leaders normally derive their power not from their ability to muster force, but from the tacit consent of their followers, who accept their judgments based on their demonstrated ability to come to decisions that are generally acceptable to their community. They lose their leadership positions when their people begin not to accept their suggestions.

3. What tends to make a customary system work is its decentralized, local character, and the personal legitimacy and authority of the traditional leaders who apply it.[27] The administration of traditional justice may be largely informal, where the community gathers and all the parties tell the leaders and the community about the dispute and the rival claims. It may also take a more structured form. There may be set rituals, such as symbolic acts or customary statements which are part of the procedure.

(c) *Enforcement of Traditional Justice*. Generally, the redress mechanisms are intended to restore harmony to the community. These methods may include restitution, making formal apologies, performing services for the aggrieved party or the family of the aggrieved party, submitting to corporal punishment, intermarriage between the families of the offender and the offended, ostracism, and in some cases, killing of the wrongdoer by the aggrieved family or by the community.

Human Rights and Traditional Justice in Afghanistan, 2003

In Afghanistan, one of the traditional remedies is the custom of *bad*, which may be used in homicide cases. *Bad* requires that the family of the perpetrator provide the family of the victim with two virgin daughters to be married to members of the victim's family. This custom binds the families together and eliminates the blood feud between them. In 2003, a member of the council of elders hearing such a case was also a member of the provincial human rights council set up by the Afghan government. Because of his human rights training, he recognized that applying *bad* would violate the human rights of the girls. He therefore persuaded the rest of the council to impose monetary compensation, rather than applying *bad*.

(2) **Informal/Social Systems**. Social Network Analysis is even more important in analyzing traditional and informal justice systems than in formal systems, because there are no readily identifiable organizational structures used to identify key individuals. The identities of these individuals, their beliefs, how they relate to one another and the communities they represent will affect any program dealing with customary or traditional practices. Key links will normally be the links between the elders/community leaders and their communities, between elders/community leaders and formal governance and justice systems, and links between elders/community leaders and illicit and informal power structures.

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http://www.usip.org/ruleoflaw/projects/clash_two_goods.pdf. In some cases, such as Sudan and Liberia, the government has adopted legislation on the powers of chiefs' courts.

[27] Deborah Isser, remarks made at the US Joint Forces Command-US Institute of Peace Conference on Traditional Justice and Military Support to Rule of Law, December 16, 2008.

(3) **Accountability Systems**

(a) **Community Standards**. Generally, informal and customary justice systems are administered by local leaders whose decisions are accepted because the members of the community view these individuals as being wise and knowledgeable of the customs of the community. If the members of the community lose trust and confidence in the ability or impartiality of a leader or leaders, they will stop bringing disputes to them, and their status as community leaders will be reduced or terminated.[28]

(b) **The Formal Justice Sector Systems**. The formal court system can be an effective accountability system for informal and customary systems. Individuals and groups not treated fairly by traditional processes may choose to bring their cases to the formal system, rather than the informal system. HN officials may choose to use the police, the formal courts, and other instruments of the state to ensure that traditional and informal processes do not violate human rights or commit other abuses. In many cases, HN law may establish procedures which recognize the legitimacy of traditional systems, but allow review of decisions made by those systems by the formal courts and enforcement by the state. However, in many post-conflict situations, the formal system will be unable to regulate itself, much less traditional systems.[29] It may be necessary for the two types of systems to operate and develop separately until such time as the formal systems develop the capacity and integrity to provide oversight to the traditional and informal systems.

3. Lessons Learned and Best Practices

a. *Do not ignore or reject traditional and informal processes out of hand*. Traditional systems usually are very accessible, reflect the values of the community, and are trusted by the people. They can serve to resolve local disputes and restore social order. In some cases, traditional systems have been modified to bring about some reconciliation between warring factions.[30]

b. *Do not blindly accept traditional and informal processes, or consider them the answer to all problems*. Verify that traditional and informal processes are legitimate and reflect social norms, particularly in post-conflict scenarios. Conflict disrupts social order and breaks down traditional norms of behavior. Traditional systems may follow customs

[28] This principle may be modified or eliminated altogether in cases where the government asserts control over traditional systems.
[29] Deborah Isser, remarks made at the US Joint Forces Command-US Institute of Peace Conference on Traditional Justice and Military Support to Rule of Law, December 16, 2008.
[30] The US Institute of Peace (USIP) has done substantial work on evaluating traditional and informal justice systems. Much of this work has been done in Afghanistan, Southern Sudan and Liberia, but USIP is also active in Iraq and other post-conflict and otherwise fragile states. USIP also engages in projects which assist traditional leaders' councils and their communities in ascertaining their own customary and community laws, assists in developing policy options, prepares and delivers training to HN personnel, and conducts conferences to facilitate dialogue among groups in conflict. See US Institute of Peace at http://www.usip.org

that Westerners and others outside the community view as contrary to internationally accepted human rights standards. Traditional systems may fall under the control of warlords, insurgents, and other non-compliant actors. Traditional law and justice may not be of value when disputants are from different communities.

c. *Do not leave a vacuum*. Do not do anything that will disrupt or degrade the traditional or informal systems unless there is a functioning formal system capable of replacing it. Often, it is better to attempt to bring the traditional and informal systems and the formal systems together so that the populace views them as complementary and effective systems which provide justice at all levels.

d. *Customary practices can be modified, but any changes must be done so as to preserve local legitimacy*. Most customary systems change over time, even the most conservative. Customary practices reflect the beliefs, attitudes and values of the leaders of the community who make the decisions and the members of the community who empower the leaders. Respectful dialogue can bring about such changes, but such efforts must take into account the cultural values of the HN society.

e. *Do not let short-term gains defeat long-term objectives*. Actions to improve the administration of traditional justice will frequently enhance the power and standing of local leaders. Take into account whether the leaders that are empowered will support the long-term policy goals of the HN government and the US.

f. *Providing security for local leaders who administer traditional justice must be a top priority*. The most effective technique used by insurgents, spoilers, criminals and other non-compliant actors to disrupt local leadership and traditional justice is to intimidate or to kill local leaders and/or their family members. The JFC must immediately assess the capability and adequacy of existing security measures, and be prepared to take steps to ensure the safety of local leaders and their families.

g. *Tension between the formal justice systems and traditional systems is highly likely*. HN agencies will often be engaged in projects that may influence traditional and informal justice systems. In many cases, there will be tension, if not outright conflict, between the HN officials who represent the formal justice system and those who carry out traditional and informal justice; often, traditional and informal systems will be viewed as a threat to the formal systems and to the efforts of the state to consolidate power and enhance its legitimacy with the populace. In other cases, HN officials will recognize that traditional and informal systems have utility in providing order and increasing stability, and will seek to co-exist with such systems, or, if possible, strengthen and co-opt them into a cooperative relationship with the formal systems. In some cases, members of the joint force may be the mediators between the individuals forming the HN formal and informal systems.

APPENDIX E
SPECIAL ISSUES IN ROL/SSR DESIGN AND PLANNING

SECTION A. PROPERTY RIGHTS

1. Purpose and Scope

This section is to assist commanders and their staffs in mission analysis and course of action development for civil-military operations involving property disputes. It examines how disputes concerning property (generally, but not exclusively, rights in land) may be drivers of conflict which contribute to instability, the types of systems for resolving property disputes, and measures which may be taken to address property disputes and related issues.

2. Understanding the Operational Environment

a. **Drivers of conflict**. Frequently, property rights are a significant driver of conflict. Some potential drivers of conflict related to property rights are:

(1) Concentration of land or other economic resources in the hands of an elite, or in the hands of a tribal or other group, may drive conflict to redistribute land and similar resources (land reform issues).

(2) Individuals and groups may have been dispossessed of their land by force or compelled to transfer their land due to ethnic cleansing or similar reasons.

(3) Owners may have fled because of armed conflict, economic problems, or natural disasters; squatters may in possession.

(4) Formerly state-owned property privatized in such a manner as to be captured by predatory power structures.

(5) Ancestral rights may conflict with rational economic development.

(6) Ancestral rights may conflict with social development (e.g., the *padrone* system in Latin America).[1]

b. **Systems** which may be relevant to property rights are:

(1) **Formal Systems**

(a) **Systems of Laws Which Establish Rights in Property**. Property rights will be dependent on HN law. The HN may have formal property law derived from an imported system, such as the Anglo-American Common Law tradition, or the

[1] Robert I. Rotberg, ed., *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004), 190-192.

European Civil Law Tradition. Host nation property law may be based on a traditional or customary system, where rights to various kinds of property are not in written form, but are widely recognized by the members of a group as being binding. A property law system may be a mixed system, with elements coming from one or more formal systems and other aspects coming from traditional systems. There may be varying systems in different parts of the country because of differing traditional systems or, in some cases, because the law was borrowed from different former colonial powers. Religious or ethnic minorities may have their own codes which are distinct from the majority codes. In some cases, property law may have been disrupted by conflict to the point where it is necessary that an internationally imposed interim property code and adjudication measures be used to address major dysfunctions.

TYPES OF PROPERTY RIGHTS	
• Right to own a house or farm • Right to minerals • Right to water • Right to raise crops • Right to harvest timber • Right to forage for firewood • Right to hunt • Right to graze cattle	• Right to fish in a stream or lake • Right to cross over the land • Right to build a road • Right to have a market • Right to draw water from a well • Right to dig a well • Right to buy and sell rights to property • Right to pass property to heirs

Table E-1. Types of Property Rights

(b) **Systems for Recording and Transferring Property Rights**. These systems include formal, written methods of recording property rights. Generally, there will be a depository, such as a register of deeds or cadastral office, for written records of property ownership In other cases, informal methods, such as community memory or the memory of elders, will be the only existing or effective method for a community to preserve property rights. Often transfers of land in informal systems will be done by customary rituals, such as delivery of a symbolic piece of the land being transferred.

(c) **Systems for Adjudicating Property Cases**

1. In most countries, there are formal courts established that adjudicate civil cases, to include property disputes. For a discussion of civil courts and civil justice, see Section B, "Court Administration and Support," of Appendix D, "Justice Sector Design and Planning Considerations." There may be special systems created to resolve property disputes by returning dislocated civilians. In many countries, there are traditional methods (councils, elders, mediation) which resolve property disputes. Often, these are highly acceptable to the populace and can be very effective in preserving social order by resolving conflicts peacefully. In some cases, where the degree of conflict is so severe that the civil justice sector is unable to effectively address property conflicts, it may be necessary for either international courts or US courts established as part of civil-military operations to assume the responsibility for adjudicating property disputes. While

such methods are less desirable than assisting the host nation courts, they may be necessary as an interim measure.

(d) **Systems for Enforcing Property Rights**. Often, it is difficult if not impossible for a party who has successfully gotten a court to recognize a property right to enforce that right. In many cases, the current occupant of disputed land will refuse to give it up and may resort to violence to remain in possession. In other cases, especially when the conflict is between ethnic or other identity groups, the security situation may be such that the claimant cannot safely exercise possession because the property is in an area controlled by a hostile group. In unstable states, the law enforcement systems may be unable or unwilling to comply with the court's directives. Carefully evaluate the systems for enforcing judgments and when necessary strengthened them to ensure that the rightful owners can safely and successfully exercise property rights.

(e) **Property Rights-Related Crimes**. There may also be criminal issues relating to property disputes, such as false documentation used for claims, bribery, or intimidation. In post-conflict situations it may be necessary to provide greater emphasis to law enforcement efforts for property rights crimes.

(2) **Informal/Social Systems**. Property rights systems operate by means of networks of individuals. Social Network Analysis of the key individuals in the systems that record, adjudicate, and enforce property rights may be necessary to determine their individual characteristics and their group loyalties.

(3) **Accountability Systems**. The accountability mechanisms normally associated with property rights are those found for the courts and the judiciary. These include internal and external organizations which conduct audits, inspectors, review commissions, and higher level courts, and may include special commissions for property disputes. Private lawyers and the populace also contribute to accountability.

3. Lessons Learned and Best Practices

a. *Providing security for judges, records custodians and others involved in the property rights systems, as well as their families, must be a top priority*. The JFC must immediately assess the capability and adequacy of existing security measures, and be prepared to take steps to ensure the safety of those who contribute to the property rights resolution process, as well as their families.

b. *The JTF must be prepared to take immediate steps to secure and safeguard property records*. Preservation and maintenance of property records is essential to the fair and orderly resolution of property disputes. In many conflict and post-conflict situations, criminals, warring factions, those who have obtained property from displaced and dispossessed persons, and others who see effective justice processes as a threat to their interests, target these records for destruction. Immediately upon entering an area of operation, the JFC should identify all property records repositories and ensure that adequate security measures are in place to protect them. Look beyond the courthouse for

important depositories for records; in many countries influenced by the European civil law tradition, notaries[2] often hold significant legal records.

c. *There must be measures in place to provide for the security of property claimants*. Often, successful claimants to property may be at risk because their property is in an area dominated or controlled by a hostile group, or it may be that those dispossessed by the claimant are able and willing to use violence to drive the rightful claimant away. The JTF should examine the ability of HN police, military, and other available security providers, including the US military, to protect property claimants from violence.

d. *The perception of the populace concerning property rights and their protection is very important for stability*. Generally, how the populace perceives the property systems will determine whether they pursue what they see as their rights through courts and other peaceful means, or if they will use self-help or group or individual violence. It is therefore not enough to develop or improve HN property systems so that they are fair and effective; it is also essential to conduct an appropriate public information campaign to convince the populace that the property systems are fair and effective.

e. *Property issues are often related to dislocated civilian issues*. In many cases, property disputes arise because people have fled fighting near their homes, and subsequently return to find squatters and others in possession of their property. In other cases, another group, who then takes possession and sometimes awarded a deed or other apparently legal title to the property, has driven members of one identity group from their homes. Often, there will be large numbers of dislocated civilians attempting to return to their homes, but who will be unable to take possession of them and return to their normal ways of living. There will therefore be the need for food, water, temporary shelter, sanitation, medical care, and security while property issues are resolved. The JTF's Civil Affairs assets should be prepared to manage dislocated civilian operations should that become necessary.[3]

f. *The JTF should be prepared to support measures to ensure that HN property records personnel are fair, impartial, diligent, and not corrupt*. In many countries, minor corruption is endemic in the administration of property records. For a further discussion of this problem, see subparagraph 3d of Section D, "Court Administration and Support," of Appendix D, "Justice Sector Design and Planning Considerations."

[2] A notary (French *notaire,* Spanish *notario*) in a civil law system does much more than a notary public in the US; in many cases, they maintain depositories of legal records.
[3] See FM 3-05.401/MCRP 3-33.1A, *Civil Affairs Tactics, Techniques and Procedures* (2007), Paras. 5-11 through 5-18.

SECTION B. CULTURAL PROPERTY: PROTECTING ARTS, MONUMENTS AND ARCHIVES

1. Purpose and Scope

This section is to assist joint force commanders and their staffs plan for civil-military operations[4] to protect host nation cultural property and deny its use by insurgents and other non-compliant actors.

2. Overview

a. The principal source of guidance for the requirement to protect cultural property in military operations is the 1954 *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the "Hague Convention").[5]

b. The Hague Convention defines cultural property as "movable or immovable property of great importance to the cultural heritage of every people."[6] Cultural property may be religious or secular. It includes culturally significant:

(1) Monuments;

(2) Architecture, including groups of significant buildings;

(3) Works of art and objects of artistic interest;

(4) Buildings, sites, or objects of historical significance;

(5) Manuscripts and books;

(6) Archeological artifacts;

(7) Archeological sites;

(8) Museums, large libraries and depositories of archives;

(9) Scientific collections;

[4] "Civil-military operations" are "the activities of a commander that establish, maintain, influence, or exploit relations between military forces, governmental and nongovernmental civilian organizations and authorities, and the civilian populace in a friendly, neutral, or hostile operational area in order to facilitate military operations, to consolidate and achieve operational US objectives." JP 1-02, JP 3-57.
[5] 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ("1954 Hague Convention"), Art. 1. The US ratified this multilateral convention on September 25, 2008. The text of the 1954 Hague Convention with protocols is available at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.
[6] Hague Convention, Art. 1.

(10) Repositories ("refuges") to protect movable cultural property during armed conflict; and

(11) Centers containing a large amount of cultural property ("centers containing monuments").

c. The protection of cultural property is important in defensive operations, offensive operations, and stability operations. Unless there is an imperative military necessity to the contrary, the US military is legally obligated under international law to respect cultural property.[7] Failure to respect and protect cultural property undermines the legitimacy of US military actions and erodes support for the intervention in the host nation, in the US, and in the international community. The US military generally takes steps to ensure that its operations do not damage or destroy cultural property, and that military personnel do not loot such property; however, the biggest threat to cultural property is often not from the US military, but from local civilians who may loot or vandalize. Thus, protection of cultural property is part of the larger issue of establishing security in a stability operation.

3. Understanding the Operational Environment

a. Cultural Property as a Driver of Conflict

(1) In some conflicts, two or more identity groups may fight to control a site that is culturally significant to each group. In other cases, one group may attack or desecrate a monument, building or site that is significant to another group to demoralize the other group or provoke retaliation. Culturally significant sites, including places of worship, may be used as sanctuaries by combatants or might be destroyed as part of a program of ethnic cleansing.

The Bombing of the Samarra Mosque, Iraq 2006

In February, 2006, the dome of the Al-Askari Mosque in Samarra was destroyed in a bombing by al-Qaeda in Iraq. The mosque is both historically and religiously significant cultural property for Shi'ite Muslims. Although no one was killed in the bombing, the destruction of the dome sparked a massive Shi'ite backlash, and within two days more than 130 people were killed and two hundred Sunni mosques were destroyed.[8]

(2) Failure to protect cultural property can be viewed as lack of ability on the part of the host nation government or US forces to provide general security, which can

[7] While cultural property, to include buildings and other sites, are protected under the international law of armed conflict, that protection may be lost if combatants misuse that property for military operations. See Geoffrey S. Corn, "Snipers in the Minaret—What is the Rule? The Law of War and the Protection of Cultural Property: A Complex Equation," *The Army Lawyer*, July 2005, pp. 28-40, http://www.loc.gov/rr/frd/Military_Law/pdf/07-2005.pdf.

[8] Lawrence Rothfield, *The Rape of Mesopotamia: Behind the Looting of the Iraq Museum,* Chicago: The University of Chicago Press, 2009, p. 1.

drive members of the populace into armed groups for their personal and group protection. Illicit trade in antiquities can also drive conflict by financing the activities of insurgents, criminals, and other non-compliant actors.[9]

Cultural Property as a Driver of Conflict – the Preah Vihear Temple Dispute

Ownership of Preah Vihear, an 11th-century temple built by the Khmer king Suryavarman I, has been a long-simmering source of controversy between Cambodia and Thailand. A ruling in 1962 by the International Court of Justice awarded territorial rights to the land on which the temple sits to Cambodia, a decision Thailand grudgingly accepted at the time. However, when UNESCO declared Preah Vihear a World Heritage site in 2008, nationalist tempers again flared, resulting in exchanges of gunfire between Thai and Cambodian forces near the temple in 2008 and a continued standoff between Thai and Cambodian troops. The temple area is also a flash point for rival political groups within Thailand, where nationalists are pressing for stronger actions against Cambodia.

b. **Cultural Property Systems**

(1) **Formal Systems**. These include the laws governing cultural property, as well as the agencies that manage cultural property and the forces that provide security to cultural sites and which enforce the host nation's cultural property laws.

(a) **Legal Systems**. HN law governs cultural property, although international agreements may also apply. Most countries have laws that protect cultural property and sites such as archeological sites, museums, and libraries. Also countries usually have laws that control or prohibit the export of cultural property, or at least very significant items. Nations that are party to the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*[10] are obligated to respect the cultural property laws of other nations who are party to the Convention. UNESCO maintains a database of national cultural heritage laws.[11]

(b) **Cultural Property Management Agencies**. Often there will be formal governmental organizations to collect, manage, study, and safeguard cultural property. In most countries, these organizations will be centrally controlled by a Ministry of Culture. These organizations may regulate such activities as conducting archeological digs or licensing the sale and export of cultural property.

[9] See Matthew Bogdanos, "The Terrorist in the Art Gallery," *New York Times*, Dec 11, 2005, http://www.nytimes.com/2005/12/11/opinion/11iht-edbogdanos.html?_r=1. Also see Rothfield, *The Rape of Mesopotamia*, pp. 134- 149.

[10] http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[11] Launched in 2005, the database may be found at http://www.unesco.org/culture/natlaws.

(c) **Security Forces**. There may be special police or other security forces which protect cultural sites. There also may be special police organizations which investigate crimes involving antiquities and other cultural property and who interdict dealing and smuggling networks. These functions may be carried out or augmented by regular policing organizations, such as the national police or border and customs police. In many cases, the government or private individuals or groups hire local tribes, communities, or private security companies to protect sites

(2) **Informal/Social Systems**

(a) **Legitimate informal groups** that manage or have responsibility for cultural property. These may include:

1. **Civic organizations**. Civic organizations such as local historical societies or veteran groups may support museums or libraries. Village organizations, for example, may support a bridge of historic interest.

2. **NGOs**. Often affiliated with international bodies, host nation NGOs may also have a network that supports local cultural institutions. NGOs may include local affiliates of organizations such as the International Council on Archives and the International Council of Museums that are under the umbrella of the International Committee of the Blue Shield. (See below.)

3. **Religious groups**. Cultural sites of religious significance are often not part of a national cultural property registry or management and protection system. Religious ministers or volunteers will attend to the care and protection of such sites.

4. **Wealthy patrons and landowners** may care for buildings, artifacts, and sites that are items of personal property as well as part of the national patrimony.

5. **Art/Antique Dealers**. Most countries have dealers in antiques, rare books and maps, and other cultural artifacts. Legitimate dealers operate within the host nation's cultural preservation laws and in accord with international law.

(b) **Illicit actors and power structures** also affect the disposition of cultural property:

1. **Thieves/Looters**. Professional thieves may steal cultural property from archeological sites, museums and other collections and feed the material into the black market. In many cases, operations by professionals will be quite extensive and involve many people. In some instances, entire families, clans and tribes may be engaged in obtaining cultural property illegally. While thieves often operate in a pre-planned, organized way, looters tend to be locals seizing a window of opportunity created by a law enforcement vacuum that may be the result of a military operation. Often, such spur of

the moment looters will take anything they can carry away, with little to no knowledge of the value of the property taken.

2. **Illicit Dealers/Smugglers**. There may be networks within the host nation for moving the property out of the country and to the international market. In addition to cultural property, these networks may be engaged in illegal drug, weapon, or human trafficking or other illegal commerce, such as money laundering. Often, they will be very sophisticated in their operations. Such networks may be under the control of insurgent groups or organized crime.

3. **Complicit International Dealers**. Usually the networks of black market dealers and smugglers will have connections with unscrupulous members of the international art and antiquities market who are able and willing to move the property into the hands of private collectors and museums. There are also legitimate art and antiquities dealers who may inadvertently handle illegal cultural property based on false documentation received from their suppliers.

4. **Participants in formal systems**. While most cultural property professionals are dedicated, and often heroic, in caring for the property entrusted to them, there is still a great risk of looting by or abetted by insiders (e.g., guards, curator staff, government officials) who have access to and knowledge about the property. There may be conflicts and rivalries between individuals and groups within the formal systems. Often political, ethnic, tribal, family, or business ties play a substantial role in the selection process for positions in cultural protection organizations.[12] It is therefore important both to understand the beliefs, attitudes and values of key individuals and to understand their ties with family, tribes, political parties, and informal power structures.

(3) **Accountability Systems**. Oversight and accountability systems may be built into the cultural property management agencies and security force organizations, or they may be external, in entities such as police agencies formed specifically to investigate art and cultural property crimes. Often the most effective way of improving the functioning of the cultural property management and protection systems it to identify the existing accountability systems and focus efforts on their improvement; or, if accountability systems are lacking, to take measures to create such systems.

4. Key Partners

a. **US Government Agencies**. The State Department (Bureau of Educational and Cultural Affairs - ECA) administers the Convention on Cultural Property Implementation Act. Under this Act, the US may limit importation of stolen cultural property into the US. The Agency for International Development (USAID) has undertaken training programs for museum and library personnel and for modernization of archeological

[12] For example, a dentist was appointed to be the head of the Iraqi Ministry of Tourism and Antiquities in 2006 because he was related by marriage to Muqtada al-Sadr. Rothfield, *The Rape of Mesopotamia*, pp. 148-149.

research.[13] Immigration and Customs Enforcement (ICE) (Department of Homeland Security) handles investigations into lost or stolen cultural artifacts that appear on the world market.[14] The Department of Justice's Federal Bureau of Investigation (FBI) investigates art and cultural property crime, to include theft, fraud, looting, and trafficking across state and international lines. The FBI may be able to provide assistance in dealing with networks engaged in looting, dealing and smuggling cultural property.[15] The National Endowment for the Humanities (NEH has been a source of funding for post-conflict cultural property protection and recovery projects.[16] The Library of Congress has in the past provided technical assistance teams to support post-conflict reconstitution of libraries.[17]

b. **International Organizations**. The principal UN organization dealing with cultural property is the United Nations Educational, Scientific and Cultural Organization (UNESCO), which focuses on damage assessments, operational rehabilitation, safeguarding and conservation actions.[18] UNESCO also plays a leading role in the prevention of illicit trafficking in cultural property through the 1970 UNESCO Convention. Because of concerns that transnational trafficking in antiquities is increasingly linked to organized crime's involvement with drug trafficking, arms smuggling, violence, corruption, and money laundering, UNESCO and the United Nations Office on Drugs and Crime (UNDOC) are cooperating to strengthen measures to prevent trafficking in cultural property.[19] The International Criminal Police Organization (INTERPOL) is a clearing house for information concerning stolen art and antiquities, as well as related matters such as terrorist and criminal networks who may engage in illegal cultural property transactions.[20]

c. **Nongovernmental Organizations**. The most important of these organizations as far as military operations are concerned is the US Committee of the Blue Shield (USCBS). The USCBS is the US branch of the International Committee of the Blue Shield (ICBS), an organization whose purpose is to protect cultural property at risk from armed conflict. The Committees take their name from the symbol designated by the 1954 Hague Convention to be used to mark protected cultural property.[21] USCBS can assist the military by providing cultural property training to the US military, developing cultural

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[13] Nancy C. Wilkie, "Governmental Agencies and the Protection of Cultural Property in Times of War," in Lawrence Rothfield, ed., *Antiquities under Siege: Cultural Heritage Protection after the Iraq War,* Lanham, MD: AltaMira Press, 2008, pp. 237-247, 241.
[14] http://www.ice.gov/pi/nr/0906/090601newyorkcity.htm.
[15] http://www.fbi.gov/hq/cid/arttheft/arttheft.htm. Also see Rothfield, *The Rape of Mesopotamia*, pp. 149-50.
[16] http://www.neh.gov/.
[17] Rothfield, *The Rape of Mesopotamia*, p. 120.
[18] http://portal.unesco.org/culture/en/ev.php-URL_ID=35019&URL_DO=DO_TOPIC&URL_SECTION=201.html.
[19] UNODC, *Protection against Trafficking in Cultural Property*, UNODC/CCPCJ/EG1/2009/CRP.1, 28 October 2009.
[20] http://www.interpol.int/Public/WorkofArt/Default.asphttp://www.interpol.int/Public/WorkofArt/Default.asp.
[21] http://www.uscbs.org/index.html.

emergency response teams for situations where cultural property is threatened by armed conflict, and by acting as the intermediary between cultural property organizations and individual experts and the US military.[22] The American Institute of Archeology (AIA) is the oldest and largest archeological organization in North America, and can be a valuable source of information concerning archeological sites, cultural property, experts in a given area, and conservation methods. AIA will in some cases work with the military.[23] The International Foundation for Art Research (IFAR), headquartered in New York City, also maintains databases on art and cultural property case law and statutes and on international legislation and contacts for many countries around the world.[24]

5. Lessons Learned and Best Practices

a. *Cultural property must be protected as much as possible during combat and other operations by US forces*. This includes: (a) avoiding cultural sites as targets; (b) minimizing collateral damage to such sites; (c) taking care to prevent unintended targeting of sites; and (d) preventing looting by US troops. Damage to sites, intended or unintended, will undermine the legitimacy of the intervening forces and undermine the strategic goals of a stability operation by generating hostility to US forces.

b. *The JTF must be prepared to immediately identify cultural property sites and be able to prioritize them for protection efforts*. Available resources will probably be inadequate to secure all possible sites, especially when major combat operations are taking place. However, there may be national museums, archives, libraries and other sites that are of high value and should receive priority attention.

c. *The JTF must be prepared to immediately secure significant museums, monuments, archives and other sites to protect them against looting and vandalism by local nationals and others*. Looting by host nation nationals and others is always a serious threat in post-conflict environments and can occur very quickly. Establishing immediate and effective control over important museums, libraries, archives, archeological and other cultural property sites should be part of the JFC's plan.

d. *The JTF must be prepared to take immediate actions necessary to mitigate the effects of damage to cultural property resulting from military operations, looting and vandalism, and natural causes*. Buildings and cultural objects may be endangered by damage from munitions, fire, weather, and other causes. It may be necessary to put out fires, shore up collapsing structures, and board over doors and windows in order to secure and protect cultural property.[25]

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[22] Corine Wegener, "Assignment Blue Shield: The Looting of the Iraq Museum and Cultural Property at War," in Rothfield, ed., *Antiquities under Siege,* pp. 163-173.

[23] "Archaeologists Teach US Troops Iraq and Afghan Heritage," AIA website, 2005, http://www.archaeological.org/webinfo.php?page=10319. Also see Rothfield, *The Rape of Mesopotamia,* p. 144.

[24] www.ifar.org.

[25] See GTA 41-01-002, *Civil Affairs Arts, Monuments and Archives Guide*, February 2007, pp.6 -15.

e. *The JTF must have and use appropriate personnel to provide cultural property advice and management*. The JTF force structure must have personnel who are specialists in dealing with cultural property--this is a legal requirement of the 1954 Hague Convention (Art 7.2). Normally, these personnel will be the Arts, Monuments and Archives personnel assigned to the supporting Civil Affairs organization, who must be able to move, shoot and communicate to carry out these functions. CA personnel will normally identify and contact local authorities responsible for cultural property as well as international experts who may provide critical information on cultural property in the AO.

f. *Funding must be immediately available for rapid action to obtain security for sites, mitigate damage, and other steps necessary to protect cultural property*. In many cases, protection of cultural property will require funding to procure building materials, fuel, and other goods locally, as well as to obtain the services of local construction workers, transportation, and security guards. It may be necessary temporarily to pay salaries for museum personnel and other local cultural property personnel. The JFC should have operations funds or other funds available for these purposes at the time of deployment.

g. *The JTF should be prepared to interdict illegal distribution systems and smuggling of cultural property and/or to support HN and international efforts to do so*. It may be necessary to identify and monitor potential looters, dealers and smugglers, and to implement measures to interdict the illegal cultural property trade in order to cut terrorist, insurgents and other hostile actors off from this funding source. Also, under Protocol I of the 1954 Hague Convention, a military force occupying the territory of another state is required to prevent the export of cultural property from the occupied state. Enforcement action against illegal cultural property networks should be coordinated with HN, US and international law enforcement agencies.

SECTION C. CONTRACTORS IN RULE OF LAW OPERATIONS

1. Purpose and Scope

a. This section addresses the use and integration of contractors in ROL activities in all sectors considered by this handbook. This chapter does not address the specific fiscal and contracting procedures for employing contractors, which are covered in the references.

b. Contractors are essential in stability operations. By providing services that do not involve uniquely military skills, contractors allow military personnel to be more effectively used. Contractors also provide skills and expertise that are limited or nonexistent among military personnel. Contractors also allow for rapid fielding of a needed skill without the government having to go through a long series of steps to recruit, vet, and train the needed personnel; such actions are done by the contractor.

2. Understanding the Operational Environment

Contractors are an important factor in the operational environment. Not only are there contractors working for the US military and civilian agencies, but there will be contractors who are acting on behalf of international organizations, coalition and other governments, NGOs, and the host nation itself. The non-JTF contractors can have a substantial impact for good or ill on the ROL systems the JFC is trying to influence. In many cases, there may be synergy between the operations of external contractors and those of the JTF; in other cases, external contractors may work counter to the JTF.

a. Drivers of Conflict

(1) Understand the factors that drive the existing conflict as well as potential conflicts that may arise from contractor activities. For instance, if the existing conflict is between two tribal or ethnic groups, and the majority of the judiciary comes from one group, contractors training to the existing judiciary may increase conflict; the group underrepresented in the judiciary may perceive this training as benefiting their oppressors and worsening their own position.

(2) Contractors may create new conflicts. For instance, if a contractor brings in outside workers to build a courthouse when local labor is available, there may be ill will and sometimes violence directed against the outsiders and the project. Ensure that local leaders and the local populace see that a project benefits them, and that they participate in the project both politically and economically as much as possible. Local involvement may result in higher costs for the project, but the additional costs translate into greater local acceptance of the project and local economic growth.

b. Systems

(1) **Contractor Systems**. Key elements (nodes) of contractor systems are:

(a) **Donors**. Donors are those organizations or individuals who provide funding for reconstruction projects. A donor may be the US or a third country government, an international organization, such as the UN Development Programme or the World Bank, or a non-governmental organization (NGO). Donors may use public funds, or they may collect donations from the private sector. Funding will almost always have constraints limiting the use of the funds. Donor agendas may mesh with the HN's development framework, and may support US policy goals; however, this is not always the case.

(b) **Principals**. A principal receives funding from a donor, determines what projects it wishes to execute, plans the project, and then executes the project itself or hires contractors to do the execution. A principal may be the JTF or its subordinate commands, other US agencies, international organizations, development and foreign assistance agencies of other nations, NGOs, or the HN government.

(c) **Host Nation Beneficiaries**. The HN beneficiaries are those HN institutions which are the recipients of contractor support, such as the judiciary whose personnel receive training by contractors, provincial court systems which have courthouses constructed or refurbished for them, or ministry bureaus who receive assistance in law reform projects.

(d) **HN Government**. The HN government will be evaluating assistance to its institutions to ensure that the results advance the goals of its developmental framework and its other policy goals.

(e) **Contractors**. Contractors may be US companies, international organizations, third country organizations, companies and individuals, or HN organizations, companies, and individuals. Contractors may be competing for funding from different donor sources. A contractor may be doing projects for different principals who may have different agendas. US companies will frequently be engaged in projects conceived, planned, funded, and supervised by US agencies at higher echelons than the JTF, or by US civilian agencies not under the control of the JFC. Civil Affairs units will normally be tasked by the JFC for planning and supervising ROL activities undertaken by local contractors.

(f) **JTF Contracting Personnel**. A commander's principal personnel for employing contractors are the **contracting officer (KO)**, the **contracting officer's representative (COR)**, and his legal advisors. A KO is issued a warrant authorizing him or her to bind the US government contractually. Generally speaking, **a KO is the only official who may enter into contracts on behalf of the government**, although others may be given limited authority to purchase specified items and services up to a set amount. **A COR is someone appointed by the contracting officer to monitor the performance of a contract and deal with the contractor**. The COR is the only authorized person who can communicate the military's requirements to the contractor and prioritize the activities of the contractor within the terms of the contract. Contractor personnel are not supervised or directed by military or civilian employees. What contractor employees do will be limited by the contract. A contractor cannot normally be changed from performing the project for which it was contracted to another project because the commander deems the second project more important.

Sample ROL Contractor Tasks

- Training. Provide training for judges, prosecutors, other legal personnel, and administrative and support personnel. Training may be by means of classroom training, conferences and seminars, mentoring on-the-job, or a combination.
- Infrastructure. Design and build facilities that support ROL systems, including courthouses, judges and prosecutor's offices, and secure housing for judicial personnel and their families.

- Communications and information technology. Install and provide training on communications systems and information technology systems. Systems should only be provided if the HN is capable of sustaining the maintenance and operation with little to no external support.

- Assessments. Assess various ROL systems, such as assessing a province's court houses and other structures, determining the level of training and competence of judges, prosecutors, and administrative personnel, and evaluating the effectiveness of communications, office management systems, and records systems.

- Transportation. Provide mobility for judges, prosecutors, and other legal professionals, and may provide mobility for other ROL contractors.

- Security. Provide security for judicial facilities, judges, prosecutors and other personnel, or for other contractors providing training or other legal system support, reconstruction or reform services.

- Law reform advice. Provide experts in an area of law to assist HN authorities in modernizing and reforming their laws to meet their development goals.

- Public education and information projects. Develop projects that tell the local populace about their laws and judicial systems, and about their legal rights and responsibilities. These projects may be done by many methods, including mass media and curricula for the educational system.

- Property surveys. Provide services surveying land to resolve property disputes.

(g) **JTF Funding Sources**. Money is a weapons system; however, there are very strict rules regarding expenditures of government funds. The planner should coordinate with the contracting officer, comptroller, and staff judge advocate to determine the most feasible way of contracting for and funding the operation.[26]

(2) **Informal/Social Systems**. It is important to understand the informal and social relations between contractors and contractor personnel and their donors and principals, and their relationships with the HN government and informal power structures in the HN. Analysis of informal and social systems is often essential to evaluate the potential effects of the available courses of action.

(3) **Accountability Systems**

(a) **Contracts on behalf of the US Government**. There are several accountability systems which ensure proper performance of contracts and the appropriate expenditure of funds. The initial level is inspection by the contracting officer or by the

[26] Further general guidance is in Appendix G, "Financial, Contract, and Project Management," FM 3-05.401/MCRP 3-33.1A, *Civil Affairs Tactics, Techniques and Procedures* (2007).

contracting officer's representative to ensure that the contract is performed to the agreed standards. The military departments have audit agencies and inspectors general who may inspect contracted activities. DOD has the Defense Contract Audit Agency. There may also be special inspectors general appointed for a theater of operations. US civilian agencies likewise have well-developed audit and inspection offices. Finally, the US Comptroller General, who heads the Government Accountability Office (GAO), conducts audits of all the executive branches.

(b) **International organizations and third country governments** generally have audit mechanisms, although these may vary widely in thoroughness and effectiveness. The *host nation* frequently will either have or be developing audit mechanisms in order to reduce corruption and ensure the effective use of funds. In many cases, one of the most important development projects the HN may undertake is to develop such mechanisms, often with international assistance.

3. Lessons Learned and Best Practices

a. *Operations by contractors must be included early in overall military plans*. Contractors cannot perform their tasks unless they are identified, hired, brought to the area of operations and are able to be sustained when there. It is important to analyze requirements for contractors who will support the JTF mission early, and to plan for their transportation (to include TPFDD), logistical support and security as part of the overall plan.

b. *Contractor activities should promote HN legitimacy*. Contractor activities should be planned and carried out to promote the perception that the HN government is able to and is entitled to administer the country. This is usually a high-priority goal of the US.

c. *Contractor activities should support the HN development framework*. The HN government should have a framework for development which is adopted and accepted by the HN, although it may have been developed with international assistance.[27] While operations involving contractors should ensure that they work within (or at least do not conflict with) the framework, this is not always the case. Projects are frequently selected and contractors hired to support donor goals rather than HN frameworks. Donors may be driven by ideological reasons, or the motivation may be largely for the benefit of the nationals of the donor country—a country may donate large amounts ostensibly to solve the problems of the HN, but restrict the funding to goods and services from the donor nation, even if that is not essential. On the other hand, projects may be favored by members of the HN government because they benefit their private or political interests, rather than the HN as a whole. An official may favor a courthouse construction project because one of his relatives will get a lucrative contract, or support a training program because it promotes a particular political or religious agenda.

[27] Andrew S. Natsios, "The Nine Principles of Reconstruction and Development," *Parameters*, Autumn, 2005, 4-20.

d. *Whose interest does the contractor represent?* Another issue contractor personnel may have is determining whose interests they are protecting—the US Government's, or the HN organization they are supporting or advising. This can be a particular concern when using US or other lawyers as advisors to HN organizations. In many cases, such contractors view the HN government agency as their client, and consider themselves to have an ethical obligation to protect the interest of the HN agency, even when that interest is contrary to the interests of the US government. The duty of loyalty should be clearly established in terms of the contract.

e. *Contractor legal status may affect operations*.

(1) The legal status of contractors and contractor personnel under HN law may be an important operational issue. Historically, contractors and contract personnel have not been granted special status under Status of Forces Agreements (SOFAs). Contractors and their personnel are therefore subject to HN jurisdiction, to include being subject to licensing requirements, building codes, environmental laws, and the tax code, as well as being subject to HN criminal jurisdiction.

(2) Contractor personnel now comprise a substantial portion of the individuals needed to carry out military operations; therefore, SOFAs and other international agreements, such as administrative and technical agreements, may contain express provisions providing protections for contractor personnel who accompany the military force. There may be similar agreements for contractor personnel who work for other US agencies. Contractor personnel who are nationals or otherwise ordinarily resident in the HN will normally not be given any special status, but will be subject to HN jurisdiction over criminal offenses, HN taxes, and other HN law.

f. *Contract personnel conduct may affect operations and relations with the HN*.

(1) The contractor is responsible for the discipline of its personnel. The contract should require contractor personnel to comply with administrative regulations. Contractor personnel who jeopardize mission accomplishment or who do not comply with the contract may have their security access revoked or suspended. Or, the commander may restrict them from installations or facilities. The commander may also request that the contracting officer direct the contractor to replace the individual. Contractor personnel who are working on behalf of the Armed Forces who comment crimes overseas may be subject to US federal (but not military) prosecution under the Military Extraterritorial Jurisdiction Act of 2000 (MEJA).

(2) The HN has a legitimate interest in regulating the conduct of individuals and companies that are active in its jurisdiction. An inability to regulate such activities will frequently be perceived by the HN populace as degrading the legitimacy of the HN government. On the other hand, bringing spurious criminal charges under HN law against a contractor may be more effective in disrupting reconstruction efforts than blowing up a building. US and international contractors may be reluctant to subject

themselves to HN laws and judicial processes because they believe that they might be dragged into court without real cause and be unfairly treated because they are foreigners.

g. *Ensure that there are adequate numbers of Contracting Officers, Contracting Officer Representatives, inspectors, and support personnel to monitor contract performance and provide oversight to contractor activities*. One of the most frequent deficiencies noted in using contractors in stability operations is lack of oversight and monitoring.[28] The large volume of relatively small and diverse activities, poor communication, geographical dispersion, difficulty in movement, lack of security, language and cultural differences, and opportunities for fraud and corruption make providing oversight to contractor activities in a stability operation much more difficult and labor intensive than routine contracting activities in the US.

Prosecutorial Seminars Afghanistan 2003

In 2003, a US-based contractor developed and conducted a series of seminars for Afghan prosecutors. These seminars were held at the office of the Attorney General. The project was subsequently criticized by the Judicial Reform Commission (JRC) as not having been approved by the JRC and not being in line with the developmental goals of the JRC as the primary agency for judicial sector reform under the Bonn Agreement. The Secretary of the JRC thought the $200,000 of donor money spent on the seminars should have been better spent on other projects approved by the JRC.

Whose Training? Afghanistan 2003

A prestigious international legal organization was granted a contract to provide a series of courses for judges and prosecutors from all parts of Afghanistan. The intent was to better train the judges and prosecutors on Afghan law so they could more effectively administer justice in the provinces. The personnel who were hired were noted jurists from relatively moderate Muslim countries. However, as the training progressed, pro-western participants pointed out that the teaching was not focusing on the Afghan codes and statutory law, but ignored such law in favor of a very strong Islamic Shari'a interpretation. In many cases, the teaching provided by the contractor was in opposition to the policy goals of the Afghan government, the international community, and the US government.

[28] See *Washington Post*, "Report Criticizes Spending by Contractor Hired to Train Iraqi Police," Jan 25, 2010, A15, http://www.washingtonpost.com/wp-dyn/content/article/2010/01/24/AR2010012403017.html?wpisrc=nl_politics

SECTION D. NON-STATE SECURITY PROVIDERS

1. Definitions and Scope

a. Non-state security providers encompass a broad range of security forces with widely varying degrees of legal status and legitimacy. Government regulated private security contractors (PSCs) and some neighborhood protection programs are examples of legitimate services; some political party militias are acceptable in certain countries, while for the most part guerilla armies, warlord militias, and so-called "liberation armies" are generally illicit and counterproductive to any peace process or stabilization effort. *The key characteristic that all of these non-state actors share is that they provide some form of security to someone*. Although non-state security providers can and do provide critical, legitimate security functions, unlike traditional police they do not serve the general public. In attempting to bring them and their actions within the ROL, this limited degree of public accountability has to be recognized and addressed. The following table illustrates the types of services that non-state actors can provide, and provides a useful framework for analyzing the problem, even in the absence of formal structures.

MILITARY SERVICES	SECURITY SERVICES
▪ Military training/consulting ▪ Military intelligence ▪ Arms procurement ▪ Combat and operation support ▪ Humanitarian de-mining ▪ Maintenance	▪ Physical security (static/transport) ▪ Close protection (body guarding) ▪ Rapid response ▪ Technical security ▪ Surveillance service ▪ Investigative services ▪ Risk assessment and analysis

Table E-2. Services of Non-State Security Providers

b. The "private security sector" is generally defined as those commercial companies directly providing military or security-related services (of a more protective nature) for profit, whether domestically or internationally. The number of PSC personnel and the size of PSC budgets exceeds public law enforcement agencies in many countries, including South Africa, Philippines, Russia, US, UK, Israel, and Germany, yet the private security sector is rarely addressed in any systematic way in ROL programming or assessment.

c. If this sector is neglected in broader ROL programming, it may come to represent an essentially parallel and largely unaccountable element in competition with the state for provision of justice and security. Without effective regulation, PSCs are often narrowly accountable to clients and shareholders (i.e., *those who pay*), rather than being accountable under public law. Over reliance on PSCs can reinforce exclusion of vulnerable populations and unequal access to security. Additionally, unaccountable non-state security actors can facilitate or perpetrate human rights abuses or inappropriate links between the private security sector and political parties, state agencies, paramilitary organizations and organized crime.

Example: Linkages Between Police Reform and the Private Security Sector in Moldova[29]

A 2005 private security sector assessment in the Republic of Moldova found that the State Guard Service, within the Ministry of Interior, was directly competing with national private security companies for guarding contracts, while at the same time operating as national regulator for the private security sector. Private security companies were also found to have been actively employed by the police to undertake police tasks, such as arresting criminals and combating organized crime. A review of the relationship between public and private security in Moldova is underway.

Example: Coastal Security Force Development in Liberia[30]

In 2007, the US committed to train and equip a small boat coastal security force in post-conflict Liberia. Its primary purpose would be to conduct maritime interdiction aimed at stemming the illicit traffic of weapons and illegal narcotics and prevent illegal fishing in Liberia's territorial waters. During a comprehensive security sector reform assessment, it was noted that the Liberian government had contracted with a private corporation to run one of its two ports, and was considering the same for the main port of Monrovia. Under the contract, the corporation would be allowed to conduct its own port security operations. However, this factor, and the effect it would have on the coast guard's ability to operate out of those ports, had not been previously considered as part of the proposed concept of operations. As a result of the assessment, critical cross coordination and authorities issues between the public and private security actors that had been overlooked were identified so they could be addressed as part of the US assistance package.

d. A professional, accountable and well-regulated private security industry can complement, rather than undermine, the state's ability to provide security. A healthy private security sector can allow scarce public resources to be more effectively redirected for other purposes, including focusing on complex threats (e.g., organized crime, terrorism) and the public provision of security to vulnerable groups. In general, regardless of the context, as host nation governance is restored and strengthened, a relatively unregulated and rapid proliferation of non-state security providers is often followed by a period of consolidation and professionalization, in which a more sophisticated domestic control regime is established, which leads to a marginalizing of at least the most questionable operators.

2. Lessons Learned and Best Practices

a. *Avoid creating a security vacuum*. Non-state security actors may be the only providers of security in areas or sectors where state provision of security is weak. To

29 M. Page, et. al., SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity? (Belgrade: SEESAC, 2005).

30 Official Report of the US Government Interagency Security Sector Reform Liberia Field Team Assessment, J. Werbel, L. Bird, A. Akumu, and M. Hughes (2007).

avoid creating a security vacuum, it may be necessary to strengthen state security provision and capacity for oversight as a precondition for effectively regulating the private security sector.

b. *Control (regulate) the activities of personnel wherever they are working.* This is essential to ensure that they are accountable for all wrongful acts wherever they are committed, particularly when the domestic regulatory environment is weak.

c. *Clarify the roles and functions of private security providers.* Issues include private sector involvement in law enforcement or military operations, procedures for reporting to the police, and the role of the police in enforcing private security sector legislation. This is particularly important in post-conflict, where national legal and regulatory frameworks are often weakest but, at the same time, high levels of insecurity and armed violence create an environment in which there is a significant demand for private security services.

d. *Establish transparent licensing criteria*. Licensing criteria might include adherence to standards related to vetting and training, equal employment practices, recording and reporting operations, oversight and management structures, responsibilities to the public, and relations with public service providers.

e. *Do not overlook criteria for licensing host nation security providers who operate externally*. Particularly in places like Africa, bad actors tend to export their activities. Regulation should include whether the company or its proposed activities are likely to pose a threat to law and order; undermine economic development; enhance instability and human suffering; increase threat perceptions in neighboring countries; contribute to or provoke internal or external aggression; or violate international embargoes or sanctions.

f. *Avoid blanket immunity agreements that insulate outside PSCs*. International private security providers may acquire immunity agreements to prevent prosecution under Host Nation laws. These agreements are often a condition of undertaking work on behalf of governments, particularly in conflict or post-conflict situations. Despite their apparent utility, these agreements can weaken the ROL in the host nation, often at a time when establishing and enforcing it is essential to the provision of security.

g. *In post-conflict, a thorough assessment of the ownership and command (and control) structure of private security companies is essential to ensure that they do not operate based on any previous or on-going affiliations with criminal groups, armed combatants, or political parties and that they are not ethnically or religiously exclusive in their recruitment of personnel or areas of operations.* These issues are extremely difficult to address but they can be mitigated by implementing a stringent system of background checks and vetting procedures.

h. *Address the links to DDR*. DDR programs need to specifically include private security personnel, who are often recruited locally and may have played an active role in

conflict. Among them may be ex-combatants implicated in war crimes or human rights abuse. Former combatants may provide a recruitment pool because they frequently possess specialized military skills but lack alternative economic opportunities. This can lead to a proliferation of private security firms and lack of professionalism if former combatants are not adequately vetted and trained. It is important that DDR programs carefully consider these issues, so that they do not contribute to insecurity in post-conflict contexts through maintaining command structures and legitimizing weapons possession under the guise of legitimate private security provision.

i. *Where possible, align efforts to deal with the problem of non-state security providers with civil society and community safety initiatives*. Efforts to professionalize and monitor non-state security providers are frequently embedded in larger civil society initiatives that may not be immediately apparent, but can be extremely effective enablers. Community safety programs are also useful tools that can help increase the oversight of the private security sector by local authorities and community groups, encouraging dialogue between communities and all security providers, and encouraging local cooperative agreements between security providers and communities that outline the roles and practices of the different actors in maintaining local security and law and order.

Example: Regulation of the Use of Force by Non-State Security Providers in Uganda[31]

In 2001, the Government of Uganda was able to develop a National Action Plan for Arms Management and Disarmament (NAP) with assistance from the NGOs Saferworld and SaferAfrica. The NAP was based on a comprehensive national assessment of the small arms situation that included the use of firearms and force by private security providers. The NAP consequently called for a review (currently underway) of small arms policy and legislation, which includes the development of national guidelines on the use of force and firearms that are applicable to private security providers.

SECTION E. DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION

1. Purpose and Scope

This section provides the JFC with a basic understanding of the role that DDR plays in conflict prevention, resolution, and the restoration or strengthening of the ROL in post conflict, counterinsurgency, and irregular warfare. Because DDR is generally a donor supported, multilateral activity, this chapter will use definitions that are commonly accepted and understood by international practitioners. It will outline the major actors in DDR, their focus areas under which they generally operate, and political constraints and

[31] See Statement by Ambassador Francis K. Butagira, Permanent Representative of Uganda to the United Nations Conference to Review Progress Made in the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects, New York (June 27, 2006) http://www.un.org/events/smallarms2006/pdf/arms060628uganda-eng.pdf

challenges that the US military can expect to encounter in the field when called upon to support DDR. Finally, the relationship between DDR and peace implementation processes, and the impact this has on military operational planning will be explored.

2. Overview and Definitions

a. The disarmament, demobilization, and reintegration (DDR) of former combatants is a process that follows a peace or ceasefire agreement or other negotiated solution to an armed conflict. Its objective is to support the reestablishment of order and the authority of the state by disarming and demobilizing combatants and reintegrating them into society. In some instances, DDR programs may be referred to as "DDRR," with the additional "R" standing for "reinsertion." Whichever term is used, the programs will essentially be the same.

b. Since DDR involves transforming former combatants into productive members of a community pursuant to a political settlement (the peace process), it is, even at its most basic, a complex process with political, military, security, humanitarian, and socio-economic dimensions. It requires a well-coordinated comprehensive approach to succeed. The United Nations, which is often the lead international organization for DDR assistance and management, defines the four key terms involved in DDR – *disarmament, demobilization, reinsertion*, and *reintegration* – as follows[32]:

(1) **Disarmament** is the collection, documentation, control, and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and, in some cases, the civilian population. The disarmament process includes the development of responsible arms management programs.

(2) **Demobilization** is the formal and controlled discharge of active combatants from armed forces or other armed groups. It may involve the both downsizing and disbanding forces, and is applied to government and non-government forces as part of the transition from conflict to peace, or as part of SSR strategies. Demobilization tasks include assembling, disarming, quartering, and discharging former combatants, who may receive some form of compensation and other assistance to encourage their transition to civilian life. The first stage of demobilization may extend from the processing of individual combatants in temporary centers, to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas, or barracks). The second stage of demobilization encompasses reinsertion.

(3) **Reinsertion** is the assistance offered to ex-combatants during demobilization but prior to the longer-term process of reintegration. Reinsertion is a form of transitional assistance to help cover the basic needs of ex-combatants and their families. It can include transitional safety net allowances, food, clothes, shelter, medical services, short-term education, training, employment, and tools. While reintegration is a long-term, continuous process of development, reinsertion is short-term material or

[32] United Nations, http://www.unddr.org/whatisddr.php#9.

financial assistance to meet immediate needs. Under UN practice, reinsertion assistance can last up to one year.

(4) **Reintegration** is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open timeframe. It primarily takes place in communities at the local level. While it is a national responsibility, it is also part of the general development of a country, and often requires long-term external donor assistance to help former combatants become productive members of society and not slide into criminal activity. In some cases, reintegration may involve families of combatants as well as persons who were kidnapped by opposition forces and forced to serve in non-combat roles. Reintegration should not be confused with reconciliation, the long-term process through which a society repairs damaged social, political, and economic relationships.

3. Key Partners in DDR

a. Because DDR processes deal with the former combatants in a conflict, the problems that must be addressed have cultural, political, security, humanitarian and socio-economic dimensions. As a result, the role of the military is generally to support a civilian-led DDR process that involves multiple international donors.

b. The two major international institutions that support DDR programs are the United Nations and the World Bank, which manages trust funds to which donors contribute. While both institutions may be involved and cooperate in the same DDR effort, the UN has frequently taken a lead role in single-country DDR programs, particularly in Africa.

c. As a matter of policy, World Bank DDR programs cannot include disarmament. Whether run by an international organization or coordinated under the auspices of a national commission, DDR programs are generally supported by a large number of nongovernmental organizations and aid groups. The largest DDR program in Africa, for example, is a multi-country initiative in the Great Lakes region of Central Africa run by the World Bank in conjunction with forty Western and African governments, nongovernmental organizations, and regional organizations and supports approximately 455,000 ex-combatants.

d. In the UN, DDR programs for former combatants are coordinated by the Department of Peacekeeping Operations (DPKO); [33]The United Nations has been involved in the DDR of former combatants in post-conflict situations since the early 1990s. From 1999 to 2005, seven UN missions[34] had UN Security Council mandates that included DDR. The World Bank was the lead agency for supporting DDR programs in Uganda, Cambodia, Djibouti, Chad, Sierra Leone, Guinea Bissau, the Democratic Republic of Congo, and Bosnia-Herzegovina and provided technical or financial support for Rwanda, Mozambique, Guatemala, and South Africa.

[33] (http://www.un.org/Depts/dpko/dpko/home.html).
[34] Sierra Leone, the Democratic Republic of Congo, Liberia, Cote d'Ivoire, Haiti, Burundi, and Sudan

e. US military planning for a DDR program that involves the United Nations should be coordinated with the UN through the State Department. The Department's Bureau of International Organization Affairs has overall responsibility for managing USG interaction with the UN. The US Mission to the United Nations, headed by the US Permanent Representative to the UN and located in New York City, assists the President and the Department of State in conducting US policy at the United Nations.

INTERNATIONAL ORGANIZATION	PRINCIPAL FOCUS
UN Department of Political Affairs (UN/DPA)	Focal point for post-conflict peace-building in the UN system. Provides political input in pre-negotiations of peace accords; ensures DDR implementation meets political objectives.
UN Department of Peacekeeping Operations (UN/DPKO)	Manages overall UN peacekeeping operations; at the end of 2007, the DPKO oversaw almost 107,000 military, police, and civilian personnel in 17 peacekeeping missions and three political missions around the world.[35]
UN Office for the Coordination of Humanitarian Assistance (UN/OCHA)	Coordinates financing and implementation for humanitarian elements, including reintegration, within the framework of a DDR operation.
UN Development Program (UNDP)	Formulates and implements demobilization initiatives aimed at creating a sustainable environment in communities of return and facilitating the socio-economic reintegration of ex-combatants and families.
Office of the UN High Commissioner for Refugees (UNHCR)	Located in Geneva, Switzerland, UNHCR leads and coordinates international efforts to protect and provide durable solutions for the world's refugees and plays a key role in providing for refugees' basic needs, such as food, shelter, health care, and education. In 2007, it had 6,200 staff in 116 countries and protected or assisted approximately 11.4 million persons.
World Bank	Lead international organization providing support, technical, and financial assistance to government DDR programs; focuses on demobilization, reinsertion, and reintegration phases.

Table E-3. Main DDR Implementers and Their Focus/Functions

[35] *United States Participation in the United Nations, 2007*, pp. 63-64. Report by the Secretary of State to the Congress, April 2009.

f. Within the US government, the US Agency for International Development (USAID) is generally the principal agency assisting a DDR implementation process, while the State Department's bureaus for political-military affairs, international organizations, and the relevant regional bureau coordinates overall policy. Other USG agencies that often play a role include the Department of Defense, the Department of Labor and the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL).

USG AGENCY/OFFICE	PRINCIPAL FOCUS
US Embassy "Country Team"	Focal point for coordination of USG DDR and related post-conflict efforts with host country government authorities.
US Agency for International Development (USAID)	Conducts needs assessment; planning, implementation, and monitoring and evaluation for reintegration programs.
Department of Defense	Supports the reform, restructuring, or reestablishment of the armed forces and the defense sector.
Department of State, Office of the Coordinator for Reconstruction and Stabilization (S/CRS)	When directed by the Secretary of State, coordinates preparation and implementation of USG interagency programs for DDR.
Department of State, Regional Bureaus	The Assistant Secretary of State for the relevant regional bureau serves as the Washington lead in developing policy with respect to the Host Country.
Department of State, Bureau of Political Military Affairs, Office of Plans, Policy and Analysis (PM/PPA))	Supports the development and implementation of security sector reform programs.
Department of State, Bureau of International Organizations (IO)	Coordinates USG programs and activities with those of the various agencies in the United Nations system as well as other coalition organizations.
Department of State, Bureau for International Narcotics and Law Enforcement (INL)	Provides technical assistance with retraining former combatants to serve in the civilian security and justice sectors.
Department of Labor	Provides technical assistance with reintegration employment programs.

Table E-4. US Agencies in DDR

g. Nongovernmental organizations (NGOs) frequently play an active role in DDR processes, often as implementing partners funded by a foreign donor. The International Committee of the Red Cross (ICRC), with its special status as a Non-Governmental Humanitarian Agency (NGHA), is one of the major international organizations that frequently supports DDR programs, by providing humanitarian support to persons affected by conflict, including demobilized combatants and their families. Other areas of

ICRC activity related to DDR include family reunification, tracing of missing persons, and assisting reintegration processes.

Department of Labor (DOL) Assistance in Action: Vocational Training for Vulnerable Afghans[36]

In 2002-05, the DOL funded a vocational training program in Afghanistan for a vulnerable Afghans consisting of ex-combatants, widows, orphans, and persons with disabilities. The program involved conducting a survey to identify occupations that were in demand, provide training in these occupations to persons in the vulnerable group, then linking these persons to sources of financing so they could become self-employed. The high-demand occupations identified included such diverse activities as bee-keeping, bricklaying, carpentry, esthetics, electronics repair, silk worm production, and dairy work.

4. Planning for DDR as a Line of Effort

a. **Demobilization, Disarmament, and Reintegration** is identified as a functional line of effort within Appendix A, "Rule of Law Objectives, Conditions, Enablers, and Lines Of Effort." The unique complexities of DDR programs usually originate in some form of negotiated settlement. As a result, military supporting tasks, conditions, and standards are often seriously constrained

b. From a ROL perspective, the essential elements of "DDR" include:

(1) Formal agreements for disposition of combatants;

(2) Areas of cantonment for former combatants and/or weapons;

(3) Designated responsibilities for monitoring former combatants;

(4) Designated responsibilities for receiving and maintaining/disposal of weapons;

(5) Agreements specifying rights/responsibilities former combatants may or may retain;

(6) Formal agreements specifying former combatants' rights of return and/or reclaiming property;

(7) Formal programs of economic and re-settlement assistance for former combatants;

[36]Presentation by James Rude, US Department of Labor, as summarized in the after action report on the Rule of Law/Security Sector Reform Reconciliation Sub-chapter Conference conducted by the Joint Futures Lab, US Joint Forces Command, on February 25-26, 2009 at Arlington, VA.

(8) Formal programs of economic, medical, re-settlement and protection assistance for women and children associated with demobilized forces;

c. DDR and SSR planning should be coordinated to ensure that DDR does not preclude effective future security sector reform, which will influence the future legitimacy of the Host Nation government and its security forces. DDR is, ultimately, a complex political process, and if it not performed in a manner consistent with the political goals, it will fail.

5. Lessons Learned and Best Practices

a. *Basic decisions on the scope and timetable for DDR and SSR programs should be part of a negotiated settlement*. This includes key decisions such as whether to integrate demobilized combatants into the country's security forces as part of SSR. Negotiation of the conflict settlement should give all parties a clear understanding of the objectives and expected results of the DDR process. Where these elements are not specified, the JFC should seek clarification.

b. *Formulation of DDR and SSR programs should be integrated into a larger strategy of post-conflict state building*. Essential DDR-related elements of such a strategy would include: 1) provisions for political capacity building, which are important for ex-combatants desiring access to positions of power or to share power in general; 2) establishment of the ROL, including reestablishing law and order and transitional justice if applicable, and; 3) conducting DDR and SSR so as to establish a state monopoly on use of force or instruments of violence; and 4) socio-economic development to create constructive livelihoods for former combatants.

c. *Decisions on the appropriate levels of security forces following Security Sector Reform and the number and type of ex-combatants to be integrated into them should be made prior to demobilization*. Establishing the framework for SSR will facilitate DDR by answering the question of how many ex-combatants can be absorbed by the security forces. The symbiotic relationship between SSR and DDR programs means that the two are often best considered together as part of comprehensive security and justice development.

d. *DDR and SSR programs should be planned to clearly distinguish the roles of ex-combatants in post-conflict security forces, codify them in legislation, and raise general awareness of potential SSR-related issues that may result*. DDR usually involves downsizing armed forces, with some ex-combatants frequently integrating into police or private security companies. Clear criteria should be developed for the entry of ex-combatants into the security system prior to launching DDR programs that recognize the different training and skills required for military and police, and because the roles of police and the military may have become blurred during the conflict.

Lessons Learned – The Impact of the Disconnect between the Dayton Peace Accords and DDR in Bosnia-Herzegovina[37]

In 1995, the Dayton Peace Accords (DPA) ended four years of conflict between three belligerent armies and established two political entities that together form the state of Bosnia-Herzegovina (BiH). Despite the international community's substantial experience in post-conflict DDR, a comprehensive strategy was not included in the DPA. NATO's Implementation Force (IFOR) considered the "demobilization of remaining forces," a primary military task in early 1996, but offered little more than security advice on the proposed locations of military barracks. The brunt of the responsibility for emergency demobilization and reintegration support fell first to the devastated HN governments responsible for the three armies, and then to the international community, which reacted in varying degrees of effectiveness.

Two factors were largely responsible for the neglect of DDR. First, it is unlikely that the political tension between the belligerents during the DPA negotiations would have permitted agreement on the sensitive security issues surrounding demobilization processes. Second, IFOR lacked the experience in civil-military cooperation to manage tasks beyond traditional military security. IFOR's concern was that its primary role remain a military function of "separating armies from fighting one another" or "protecting civil populations from the actions of the military forces." This position, coupled with the absence of HN government cooperation and capacity, meant that no official demobilization and reintegration assistance was provided, and that the knowledge of UN DDR processes was not passed on to the civilian government. While IFOR's early disarmament efforts for heavy weapons were conducted with vigor, light weapons were not accorded the same attention. The result of the various political and military constraints was ad hoc and uncoordinated project delivery and duplicative DDR programming. The failure to effectively address DDR, to include small arms, also affected weapon smuggling in the region. Surplus weapons from the war in BiH found their way the conflict in Kosovo, the former country of Zaire, and elsewhere.

e. *DDR funding has to be reliable*. Even short interruptions in DDR program funding may jeopardize a peace process if they interfere with the promised delivery of funds, goods, or services.

f. *Implementation of DDR and SSR programs should be closely aligned to prevent emergence of a security vacuum*. State law enforcement agencies, legitimate non-state actors, or foreign civilian police should be prepared to provide interim security for local communities throughout the demobilization process and until transformed security forces are able to assume their responsibilities.

[37] Jeremy King, *Building Peace in Bosnia: Lessons Learned in Disarmament, Demobilization, Reintegration and Civilian Police Capacity Building,* http://www.international.gc.ca/arms-armes/isrop-prisi/research-recherche/intl_security-securite_int/king2000/index.aspx, Department of Foreign Affairs and International Trade, Ottawa, Canada, 2000.

g. *Cantonments or encampments should be short-term and if employed, there should be a strict timetable for their dissolution*. Temporary holding options are essentially security requirements and not a mandatory part of a DDR process. They should only be considered when necessary for security. Extended cantonment generally raises the frustration level of former combatants and should be avoided.

Lessons Learned – Failure of DDR Planning Assumptions in Liberia[38]

Under a comprehensive peace agreement signed in 2003, armed parties to the conflict in Liberia were to participate in a "disarmament, demobilization, rehabilitation, and reintegration" (DDRR) program coordinated by the UN Mission to Liberia (UNMIL). However, the UNMIL-supervised disarmament process which began in Liberia in December 2003 faced immediate and substantial problems related to the operational and logistical challenges of initiating a DDRR program rapidly nationwide. A key difficulty arose from misinformation about the protocol for paying disarming combatants. Plans called for a two-stage total payment of $300 to disarming combatants, with the first $150 installment to be paid only after an initial introduction into the DDRR process was completed. When disarming combatants learned they would not receive on-the-spot payments upon surrendering their weapons, they rioted and looted. Although the unrest was suppressed and UNMIL announced that it would pay each disarming fighter $75 in exchange for their weapon upon entrance the cantonment site, the DDRR process had to be halted pending further planning and was not resumed until April 2004. UNMIL initially projected the number of combatants at 38,000, and planned support accordingly. However, by October 2004, more than 95,000 combatants had been demobilized under the program. This number included over 12,600 women and 10,000 children, about 22% of them girls, and at least 530 foreign combatants. UNMIL was unprepared to deal with the scope of issues that the numbers and diversity presented.

h. *Do not overlook DDR condition setting or enabling tasks that can be performed during conflict*. For example, it may be possible to support the Host Nation by conducting an amnesty program aimed at encouraging opposition fighters to turn in their weapons and withdraw from combat in exchange for the government's commitment to protect them from former comrades and actively assist their reintegration into society. In such a case, the Host Nation government needs to have a well-designed and adequately funded effort in place to ensure that the amnesty program has credibility, and may require assistance in getting information about the amnesty program to fighters in the opposition force.

i. *Ensure that DDR programs are sensitive to issues involving female DDR participants*. UN Security Council Resolution 1325, adopted unanimously in 2000, called on all actors, when negotiating and implementing peace agreements, "to adopt a gender perspective, including inter alia during repatriation and resettlement and for

[38] Nicolas Cook, *Liberia: Transition to Peace*. CRS Report to Congress, Congressional Research Service, The Library of Congress, updated October 28, 2004.

rehabilitation, reintegration and post-conflict reconstruction." The DDR process should differentiate, in identification and treatment, between abducted women, female combatants, female support workers, and the wives and children of former combatants, from the rest of the DDR population.

SECTION F. RULE OF LAW ISSUES IN HUMANITARIAN OPERATIONS

1. Purpose and Scope

a. The purpose of this section is to focus on some specific ROL issues that affect US military humanitarian operations, or foreign humanitarian assistance (FHA) operations as defined by DOD. US military doctrine governing humanitarian operations is found in JP 3-29, *Foreign Humanitarian Assistance* (17 March 2009). JP 3-29 lists several types of FHA missions, noting that they "span the entire range of military operations but are most often crisis response and limited contingency operations." The types of missions include:

(1) **Relief Missions** – prompt aid that can be used to alleviate the suffering of disaster victims.

(2) **Dislocated Civilian Support Missions** – specifically designed to support the assistance and protection for dislocated civilians. ("Dislocated civilian" is used by DOD to include a displaced person, an evacuee, an internally displaced person (IDP), a migrant, a refugee, or a stateless person.)

(3) **Security Missions** – establishing and maintaining conditions for the provision of FHA by organizations of the world relief community.

(4) **Technical Assistance and Support Functions** – short term support tasks such as communications restoration, relief supply distribution management and delivery, port operations, base operating support, emergency medical care, search and rescue, and humanitarian de-mining assistance.

US MILITARY DEFINITION OF FHA[39]

Foreign Humanitarian Assistance (FHA) -- Department of Defense activities, normally in support of the United States Agency for International Development or Department of State, conducted outside the United States, its territories, and possessions to relieve or reduce human suffering, disease, hunger, or privation.

b. Basic characteristics of FHA include:

(1) It is limited in scope and duration.

[39] JP 3-29, *Foreign Humanitarian Assistance*, p. GL-8.

(2) It is designed to supplement or complement efforts by the host nation civil authorities or agencies that may have the primary responsibility for providing that assistance.

(3) US forces are not the primary USG means of providing FHA; normally they supplement activities of US and foreign government authorities, NGOs and intergovernmental organizations.

2. Legal Issues and Guiding Principles

a. Legal issues as they relate to humanitarian operations are covered in Appendix E of JP 3-07 and in Appendix A of JP 3-29, with a separate annex on humanitarian principles in the law of war. JFCs are advised to consult their staff judge advocate to address these issues.

b. *Civil-Military Guidelines & Reference for Complex Emergencies* is a collection of core humanitarian instruments developed by the United Nations (UN) and the Inter-Agency Standing Committee (IASC) on civil-military relationship in complex emergencies. Its goal is to help promote respect for international law, standards and principles in these situations. With the advent of "whole-of-government" approaches, as well as the increased propensity of some governments to deploy mixed civilian-military teams to provide aid as a 'tool' to address security threats, the situation calls for enhanced understandings between the military and humanitarian professionals at all levels.

c. Despite the complex set of principles and guidelines under which US military operates in support of humanitarian assistance, tensions between military and civilian relief agencies remain, and are perhaps inevitable given the different roles and responsibilities of the two. Military support in response to a natural disaster is less controversial with civilian humanitarian aid organizations than is military humanitarian assistance in conflict situations.

Tensions in Civil-Military Relations in Humanitarian Assistance [40]

"'Hearts and minds' tactics – the exchange of material rewards for information, cooperation and political support – have a long history in military practice. For military planners, these activities are deemed to have force protection benefits. However, they remain deeply contentious from the perspective of the impartiality of humanitarian assistance. In Afghanistan, the military's delivery of assistance in civilian clothing and the occasional conditionality placed on military aid in return for intelligence have been particularly controversial. These practices are seen as challenging the distinction between humanitarian and military action required by international humanitarian law (IHL), a distinction viewed as integral to the safety of humanitarian workers.

[40] Victoria Wheeler and Adele Harmer (eds.). *Resetting the Rules of Engagement: Trends and Issues in Military-Humanitarian Relations*. Overseas Development Institute, Humanitarian Policy Group: HPG Research Report 21, March 2006, p.2.

The risk of being associated with a potentially unwelcome military force, and thereby losing the protective patina of neutrality, has been a consistent theme within the humanitarian community for many years. At the same time, however, humanitarian agencies have themselves been inconsistent in maintaining the distinction between military and humanitarian action."

3. Corruption and Its Effect on Humanitarian Operations

a. Corruption is almost always a potential problem that can be minimized if addressed early in the planning process. Although corruption is present to varying degrees in all countries and is impossible to completely eliminate, humanitarian relief operations offer an especially lucrative environment in which corruption may flourish. Efforts to provide assistance to address emergency human needs may be hindered or even undermined by bribery, extortion, outright theft of assets, and patronage and corruption in procurement. Corruption may also be present in competition for other scarce resources such as for food, non-food items (e.g., shelter, blankets, tools, etc.), jobs, travel documents or work permits, and even the location of one's tent in a refugee camp.

b. Each level in the relief chain creates potential opportunities for fraud, waste and corruption. At the individual/household level, people may collect extra ration cards or re-cycle through aid distributions to get more assistance for themselves or their families. Aid providers may trade aid, jobs, or other assets for money or sex. Warlords or criminals may demand aid, money, cars, or other equipment in exchange for access to areas or protection. National and local officials may require extra payments under the guise of customs duties, taxes, or fees from a relief organization to collect its foreign deliveries or equipment or to control distribution of aid in an area. The process of who gets assistance in emergencies is often marred by political, tribal or clan prejudice that creates further opportunities for corrupt behavior. Corruption may become a means for the enrichment and empowerment within the political, tribal or clan context, helping one political party or ruling elite dominate another.

Corruption Risks in the Provision of Humanitarian Relief

- Intentionally unequal distribution of goods and services
- Diversion of goods or services due to fraud, embezzlement, or bribery
- Theft or diversion of humanitarian aid in order to support the warring parties efforts to continue the conflict
- Theft, diversion or blockage of humanitarian aid in order to benefit a particular clan, village, tribe, political party, or warlord
- Lack of safe access to humanitarian assistance by vulnerable populations (e.g., women, children, ethnic minorities)

c. When humanitarian emergencies occur, the military is often the organization that has both the capability to help secure the ground for humanitarian activities and to provide the means to rapidly deliver assistance. JFCs and planners should understand where the potential risks of corruption lie and how to minimize or mitigate those risks.

Corrupt Activities in IDP Camps in Northern Uganda [41]

The corruption exposed by in the IDP camps in Uganda illustrates the range of issues that are likely to arise in humanitarian operations, and as such, is instructive for planners.

During two decades of fighting between government forces and the Lord's Resistance Army, some 1.7 million displaced people were living in camps in northern Uganda. IDPs identified the registration process for food and non-food items as a major area of corruption. The camp leaders tasked with registration used multiple registrations, added fictitious names and included names of their own dependents and non-beneficiaries who paid them. Other abuses cited included the selling of ration cards, manipulation of household data, and distribution of food to non-beneficiaries. Complaint mechanisms were inadequate, often requiring a person to pass a complaint about corruption to the camp leaders who were themselves involved. Some recommendations made by camp residents to reduce corruption were:

(1) aid agencies should avoid using volunteers and depending heavily on local leaders for registration;

(2) aid agencies should have direct contact with beneficiaries;

(3) food registrations should be done more than once a year;

(4) in order to minimize favoring family and friends, aid agencies should not allow people to work in their home areas; and

(5) leaders involved in serious corruption should be punished.

4. Key Partners and Coordination Processes

a. The procurement and delivery of those goods and services to alleviate natural and man-made disasters usually involves a mosaic of different actors, including the affected government, donors, the UN and other international agencies, the ICRC and Red Cross/Crescent Movement, NGOs, military personnel, and private contractors. At the onset of the crisis, the unprecedented large inflows of international assistance and the accompanying pressure to spend money quickly make the operation particularly vulnerable to corruption.

[41] Sarah Bailey, *Perceptions of Corruption in Humanitarian Assistance Among Internally Displaced Persons in Northern Uganda*, London Overseas Development Institute, Humanitarian Policy Group, August 2008. (www.odi.org.uk/hpg)

b. Initial coordination with the US embassy will be critical in determining the expected scope of USG activities during the humanitarian operation and in providing detailed information on the HN and local levels and types of corruption. Usually the USAID Mission will be the primary point of contact, often through its Disaster Assistance Response Team (DART). In particular, USAID and Embassy officers may be able to provide commanders and staffs with the following information:

(1) Applicable domestic legal constraints for battling corruption.

(2) Key bilateral agreements between the US and the host government.

(3) Country-specific guidance issued by the Ambassador or Chief of Mission.

(4) Recent USG (State, USAID or others) site assessments of the affected area or region and any reports on corruption encountered by these agencies.

(5) Ongoing USG projects in the area.

(6) Whether there any SOCOM-associated assets currently operating within the region or country.

5. Assessing the Risk of Corruption in a Humanitarian Operation

a. To be effective, humanitarian actors must be able to accurately target beneficiary groups and distribute their aid accordingly. It is necessary to identify the key areas of vulnerability and develop options to mitigate corruption in them.

b. In many cases, military planners may have access to corruption risk assessments prepared by other USG agencies or international organizations. In cases where the military must conduct its own assessment, it should ensure that such assessments are conducted and maintained at an unclassified level so that they are available to other agencies and organizations involved in the relief effort. When the military receives information about possible corrupt activities, it should have procedures in place to share its reporting with the US embassy.

6. Lessons Learned and Best Practices

a. *Military elements may be exposed, either directly or indirectly, to corrupt activities and the opportunities that soldiers may have to become personally involved in illicit activities.* The JFC should be aware of the internal and external risks, and, more importantly, the negative impact that corruption can have on the overall mission.

b. *Commanders and staffs should realize that their mission involves many other actors in the distribution of humanitarian aid and should incorporate these organizations in their anti-corruption planning.* Some of these organizations may be able to provide vetting methods for the recruitment, selection, and assignment of locals with relevant

skills for service with military forces. Additionally, they may be able to provide recommendations on where the military can focus its response to corruption. Planners may ask these organizations if there are any particular assets they possess that can assist the military in corruption identification and mitigation.

c. *Corruption is a very sensitive issue for many international agencies providing humanitarian assistance, and they may be reluctant to face it directly*. This may be due in part to the concerns of relief agencies that any public acknowledgement of financial mismanagement or waste in their programs could undermine the support of donors, tax-payers and politicians.[42] Both engagement plans and the commander's communications strategy need to be adapted to address their concerns.

d. *Be aware of the host nation's international commitments to fight corruption,* such as the country's adherence to the UN Convention against Corruption and the OECD DAC Governance Network-Collective Action against Corruption. These provide international standards to which the country is committed. For further information, see Section B, "Incorporating Anti-Corruption into Military Operations," of Appendix C, "Design and Planning Considerations for Security Sector Management and Oversight."

e. *Determine the force protection measures for military forces dealing with corruption and provide recommendations to the initial publication of the Rules of Engagement (ROE) for the mission*. Questions might include the use of lethal force in response to theft from compounds and disruption of convoys or how to support humanitarian organizations in need of assistance in combating corruption.

Implementing Anti-Corruption Measures in Humanitarian Operations

- Protection and prevention
  - *Financial systems* – Focus on budget formulation, accounting, reporting, and audits covering both expenditures and revenue.
  - *Procurement* – A main area where corruption risks can be reduced by following standard procedures (e.g., multiple quotes, sealed bids, procurement committees, and monitoring by technical experts).
  - *Asset management* – Warehousing systems in insecure locations require careful planning to consider who has access to reduce the potential for collusion between agency staff, warehouse staff and contractors.
  - *Targeting, registration and distribution* – Identifying people for assistance, registering and distributing aid is one of the most difficult

[42] Nicholas Stockton, "Preventing Corruption in Humanitarian Relief Operations," Asian Development Bank/OECD Anti-Corruption Initiative for Asia and the Pacific: Issue paper, 5th Regional Anti-corruption Conference (Beijing, China), September 2005, p.1.

areas for controlling corruption. Field-level staff and local authorities have many opportunities to abuse their power in this area. The ICRC, which plays a major role in registration, and aid agencies such as the WFP and UNHCR have detailed guidelines that include measures to encourage greater participation, transparency and downwards accountability.

- *Monitoring, reporting and evaluation* – Often aid agencies neglect reporting on corruption and focus solely on project effectiveness.

- *Recruitment, human resources and partners* – The presence of international expatriates may not reduce corruption, in part because many may not understand the local culture. Recruitment of local staff is another area obviously requiring care.

- Coordination – There needs to be a consistent approach among agencies towards bribery.

- Deterrence: Clear policies against fraud and corruption must be published and understood. It is also necessary to have a plan to deal with fraud.

- Acceptance ("downward accountability and awareness"): More can be done to reduce corruption by involving beneficiaries more in project design, making them aware of their entitlements through information campaigns, and providing mechanism for feedback and complaint.

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APPENDIX F
SAMPLE ASSESSMENT QUESTIONS

Note: these are samples to assist in developing appropriate questions for a particular mission; not a list for every mission.

1. Host Nation Legal Framework

a. Does the HN have a fair and impartial legal framework that addresses: property rights, revenue generation, commercial activity, family law and domestic relations, anti-corruption, customary law, military justice, civil service, elections, criminal activity to include counter-narcotics and organized crime, civil dispute resolution, and individual rights?

b. Are there legitimate processes for conflict and dispute prevention, resolution, mitigation and management? To what extent are these processes embedded in the formal system, and how much is conducted through informal and traditional processes, or by non-state actors?

c. What are the cultural norms of "legality"? To what extent are they understood and accepted?

d. Is there popular demand for the Rule of Law?

e. Does a legal framework exist that supports HN participation in international conventions and is consistent with international obligations/standards?

f. What are the regulatory processes for essential services?

g. Are there procedures for generating/amending laws? How well do they work?

h. Is there a legitimate legal foundation for Chief Executive and Executive Branch authority?

i. Is there a legal/regulatory foundation for national defense and security functions (maritime, air, and land protection)?

j. Are the HN laws rational in the way they support desired host nation governance objectives and effects?

k. To what extent is there transparency and accountability in government? What are the legal impediments?

l. Are there legal processes for peaceful transition of authority at all levels of government?

m. To what extent is there public awareness, knowledge, and acceptance of existing laws and cultural norms? Where are the gaps?

Requirement	Assessment Methodology
1. The roles and missions of military and intelligence services are clearly defined in law and are observed by such services.	Expert Knowledge
2. Civilian structures and procedures exist and direct and control the military and intelligence services effectively (e.g., command and control structures, internal control processes, periodic inspections and audits, etc.).	Surveys, Polling, Expert Knowledge
3. Military officers and NCO corps regard use of the military for partisan political purposes as strictly forbidden.	Surveys, Polling, Expert Knowledge
4. Military officers and NCO corps accept that they do not have the legal right to overthrow civilian leadership.	Surveys, Polling, Expert Knowledge
5. Protections against violations of civil and political rights, such as privacy (e.g., which is violated by unlawful surveillance and wiretaps) exist in law and are enforced by the courts.	Expert Knowledge
6. Security force officials can be held accountable for serious misconduct either by a military tribunal or civilian judicial process.	Expert Knowledge
7. Legislative authority over the military and intelligence services exists and is exercised (may include approving budgets, access to off-budget program expenditures, power to investigate misconduct by members of the military and intelligence services, and approval of senior military and defense appointments).	Expert Knowledge
8. The extent to which civil society views the security services as legitimate and protecting the interests of citizens.	Surveys, Polling

Table F-1. Security Force Subordination and Accountability to Legitimate Civilian Authority[1]

2. Security Sector Management and Oversight

a. What is the existing capacity for national/provincial/local (as applicable) co-ordination and planning on security and justice issues?

[1] Adapted from the assessment framework used in "*Measuring Progress in Conflict Environments*" Version 1.0, Dziedzic, Sotirin, Agoglia, editors (August 2008).

b. How able are security sector actors and institutions to fulfill their missions effectively and transparently (service delivery) and how capably do they do it (management and oversight)?

c. Can existing structures be strengthened or are new ones needed?

d. Is there a national security or justice strategy, and are these issues addressed in them or in other national development frameworks or strategies? If there is not a formal strategy, how are strategic-level decisions made?

e. Is there a national threat estimate and, if so, is it linked to a national security or justice strategy? If there is no rigorous threat assessment process, how are threats identified? What are the threat perceptions of actors in the security sector? Officials of the government? Do they differ? How do they reconcile any differences?

f. How can national structures be developed that are inclusive and open to the involvement of non-state justice and security actors?

g. How can an assistance program strengthen the management capacity of security and justice institutions?

h. What existing capacity and processes for monitoring, review and evaluation exist in government and non-state bodies, and how can these be enhanced?

3. Accountability and Oversight

a. General

(1) Is the current legal and constitutional framework for the military comprehensive?

(2) What is the chain of command and division of responsibilities? How does the actual exercise of control compare to the legal situation? What oversight mechanisms, internal and external to the defense sector, exist for military budgets and expenditure? To what extent is oversight restricted by secrecy?

(3) How transparent are military policy, spending, and management to parliamentarians, the media and the general public?

(4) What processes does the military have in place to respond to allegations of human rights violations by its personnel, including those related to sexual and domestic violence?

(5) What mechanisms do the armed forces have to raise legitimate concerns to their political leadership?

b. **Security and Justice Providers**

(1) Are the mandates of all security and justice providers clearly defined and limited by statutory law?

(2) Are there control and enforcement mechanisms to deal with misconduct by security and justice providers and cases where they exceed their competences?

(3) Are coercive powers used on the basis of the principles of proportionality, rule of law and human rights?

(4) Does policy exist concerning illegal or discriminatory actions and orders within security and justice services?

(5) Is the staff of the security and justice providers trained in an established code of conduct, human rights and international law?

(6) How is the political neutrality of security and justice providers guaranteed?

(7) Are there internal financial controls, disciplinary procedures and performance reviews?

(8) Are there equal opportunity employment, retention and promotion policies within the justice and security system?

c. **Executive**

(1) What safeguards are there against ministerial abuse?

(2) How is a balance achieved between the need for ministerial responsibility and the need for professional autonomy of security and justice providers?

(3) Is there a planning, budgeting and accounting system in place, including a strong role for the ministry of finance and audit office?

(4) Does the executive have the right to know and to approve all politically sensitive issues?

(5) Does the executive have some role in setting basic security and justice policies, priorities and procedures?

(6) Are executive powers of censorship and coercive powers (surveillance and detention for example) defined within a system for oversight and review?

d. **Legislature**

(1) Is parliament strong in terms of legal powers, resources, staff and expertise on SSR-related issues?

(2) Do parliamentary oversight committees (or bodies) exist that ware mandated to oversee all security and justice providers?

(3) Are all political parties represented in the parliamentary oversight bodies?

(4) Do parliamentary committees have statutory oversight powers, enact laws that define the role of the security and justice providers, initiate investigations and organize hearings?

(5) Do all members of parliament have access to classified information?

e. **Judiciary**

(1) Is independence guaranteed, vis-à-vis both the executive and security system?

(2) If security and justice providers violate the rule of law, is there an effective way to hold them accountable for their actions through the justice system?

(3) Do the public and employees of the security system have fair and effective access to justice?

(4) Is there a fair, effective and separate system of military justice? How does it deal with civilians?

f. **Independent Bodies**

(1) Is there a national human rights commission? Ombudsman, inspector general, auditor general (or equivalent)?

(2) Do the independent oversight bodies function on the basis of statutory law, and report to parliament and the minister concerned directly?

(3) Do they have quasi-judicial powers? Can they undertake investigations and site visits at their own initiative? Can they institute proceedings in courts?

(4) Are the recommendations and findings of independent oversight bodies binding?

(5) Do independent oversight bodies have access to classified information enabling them to carry out their mandate?

(6) Are there effective international or regional oversight mechanisms (e.g. regional human rights courts, UN special *rapporteurs*)? Are judicial decisions respected? Are international or regional reports influential?

g. **Civil Society**

(1) Does a workable freedom of information law exist?

(2) Do freedoms of expression, association and gathering exit?

(3) Does civil society seek (and is it allowed) to participate actively in legislative consultation, and to provide expertise to parliamentarians? Does it have the capacity to do so?

(4) Are there effective and respected human rights organizations that monitor and document the behavior of state and non-state actors and their compliance with human rights and humanitarian law?

(5) Is there a low (legal) threshold to form NGOs? Are there attempts by the executive to close down and weaken NGOs?

(6) Is there accurate and quality reporting in the media on the performance of security and justice providers?

(7) Do members of the executive branch use libel cases against the media and other judicial actions to close down media companies?

(8) Are civil society organizations able to monitor the justice and security sectors for human rights violations and corruption without intimidation or undue influence?

4. Anti-Corruption

a. **National Anti-Corruption Strategies/Plans**

(1) Anti-Corruption Strategy

(2) Anti-Corruption Plans

b. **Anti-Corruption Enforcement Laws and Institutions**

(1) Explicit Anti-Corruption Laws

(2) Corruption Investigations

(3) Corruption Prosecution in Courts

(4) Money Laundering

(5) Asset Recovery

(6) Witness Protection

c. **Corruption Prevention Laws and Institutions**

(1) Executive Branch

(a) Asset Disclosure

(b) 3.1.2 Abuse of Discretion

(c) 3.1.3 Gifts/Favors/Abuse of Influence

(2) Legislative Branch

(a) Asset Disclosure

(b) Gifts/Favors/Abuse of Influence/Conflicts of Interest

(c) Oversight Responsibility

(3) Judicial Branch

(a) Asset Disclosure

(b) Gifts/Favors/Abuse of Influence/Conflicts of Interest

(c) Judicial Independence

(d) Accountability Mechanisms

(4) Civil Service

(a) Conflicts of Interest

(b) Asset Disclosure

(c) Codes of Conduct

(d) Whistleblower Protection

(e) Lobbying

(f) Public Hiring and Appointments

(g) Immunity

(5) Transparency and Accountability

(a) Ombudsman (public complaints unit)

(b) Freedom of Information

(c) Public Hearings Requirements

(6) Political Parties and Elections

(a) Political Party Financing

(b) Elections

(7) Public Finance

(a) Financial Management Systems

(b) Audits of Public Expenditures

(c) Public Procurement

(a) Budget Planning

(e) Taxation

(f) Banking System

(8) Private Sector Regulation & Privatization

(a) Business Regulations

(b) Privatization

(c) Business Sector Anticorruption Activities

(9) Non-Governmental Organizations & the Mass Media

(a) Civil Society Organizations

(b) Mass Media

d. Cultural Dimensions

e. International Cooperation

f. Compliance with International Legal Instruments

5. Vetting

a. **Objectives/End state**[2]

(1) What is the strategic end state for forces and institutions that are being vetted?

(2) What is the vetting staff's stated goal? (Normally the goal is "to ensure that no person of improper character is accepted into the new force.")

(3) What are the key stakeholders' objectives?

(4) What is the public's view of reform needs?

b. **Scope**

(1) Which HN government and security sector systems have personnel positions that require vetting?

(2) What accountability systems are already in place in HN law that can be used to support vetting?

(3) What will be vetted?

(a) Are the positions clearly defined and not subject to reorganization?

(b) What behavior justifies a candidate being rejected?

(c) How will the search for credible evidence of wrongful conduct be determined?

(d) How are legitimate rejection standards derived? Sources of international criminal, human rights and humanitarian laws can serve as core standards.

[2] The content of this checklist is derived principally from Sean McFate, "The Art and Aggravation of Vetting in Post-Conflict Environments," *Military Review*, July-August 2007, p. 81, with substantial contributions by Diane Kohn, Alan Childers, Thomas Dempsey, and Michelle Hughes. http://www.army.mil/professionalwriting/volujes/volume5/october_2007/10_07_3.html

(e) How are the standards accepted by domestic and international stakeholders?

c. **Process**

(1) What are the vetting procedures?

(a) How is a candidate's application sought, accepted, and examined?

1. Normally, recruitment begins with a nationwide public information campaign and applications are taken at recruitment center(s).

2. Consider lack of infrastructure, literacy rate, cultural differences, ethnic diversity, language diversity, conflict history, and general mistrust of security forces.

3. Consider whether reliable records exist or will need to be established.

4. Consider how to establish safe, anonymous channels for information can be provided from all sources without fear of reprisal.

5. Is there or should there be a joint review board of international and indigenous stakeholders to act as selection approval authority?

(b) What principles are applicable during examination?

1. Consider physical test, functional literacy test, and medical exam.

2. Consider administering tests in least resource-intensive (i.e., physical exam) to most resource-intensive (i.e., literacy and medical exam) to speed process.

3. Consider how background checks, record checks and publication investigation will be accomplished, including vetting team makeup, interview questions, and how the background investigation will be conducted.

(c) What action will be taken if a candidate is discovered may be cheating, lying, or refusing to cooperate during vetting procedures?

1. Consider the general trustworthiness of allegations made against the applicant, trustworthiness of accusers.

2. Is more than one source?

(2) What is the role of the HN in the vetting process?

d. **Interagency and Donor Coordination**

(1) Who are the lead US agencies? What are their points of contact? What's the USG policy for vetting?

(a) Has it been determined that minimum levels of stability, government authority and political will exist?

(b) Are necessary personnel and material resources available?

(2) What vetting mechanisms are established by UN mandate, peace accord, treaty, or other authority?

(a) Is there international commitment to support the vetting process, both politically and operationally?

(b) Is any domestic legislation established?

(c) Is the HN a party to international treaties that contain anti-corruption, human rights, and security-related standards that can be used to support vetting objectives?

e. **Risk Mitigation**

(1) What are the potential consequences of prior disarmament, demobilization, and reintegration programs on security force vetting? Can they be mitigated through the vetting process?

(2) What are the potential security consequences of a vetting program?

(a) Consider that the proper ethnic mix of a newly formed security sector can be sensitive if a single group previously disproportionately dominated the security sector.

(b) Consider implications if a vetting program may lower the standards for human rights vetting or other standards in order to achieve diversity and/or more stable security environment.

(c) Consider other potential institutional concerns (e.g., independence of the judiciary, danger of political misuse of the process, management and oversight gap, and danger of destabilization).

(d) Consider what broader institutional reforms are essential to safeguard the results of the vetting process and ensure the quality of the security sector in the future.

6. Financial Management

a. Which actors are involved in formulating and implementing security sector budgets? What are their respective roles?

b. Do the relevant actors have access to adequate information and sufficient weight to participate fully in the formulation and implementation of security sector budgets? Do some stakeholders have a monopoly or near-monopoly over information, giving them undue influence? Do mechanisms exits for enabling the participation of civil and political society?

c. Where relevant, explain why the actors involved are unable to fulfill their role (lack of funding, lack of independence, unfamiliar with financial and management and oversight processes, lack of confidence between the actors and the security bodies, etc.)?

d. **Strategic Planning**

(1) Are budgets based on strategies/policies for each security body? If there are no sectoral strategies for defense, justice/public security and/or intelligence, how are funding priorities for each sector identified?

(2) Are the outcomes of the previous year's planning and implementation period reviewed at the beginning of the annual budget cycle and information integrated into the current year budget cycle?

e. **Determining What is Affordable**

(1) Is there a firm resource envelope for the security sector?

(2) What mechanisms are used to promote fiscal discipline in the security sector?

(3) If the government has adopted medium-term expenditure frameworks, does it use them in the security sector? If used, are they effective? If not, why not?

(4) Do security bodies, apart from the official budget, have other legal sources of income?

(5) Are these other sources of income integrated in the official budget? If not, how is this income used (procurement, salaries, private purposes)?

(6) Are there illegal sources of income obtained by the security actors? On what scale is the official budget compared to? How is this problem addressed?

f. **Sectoral Allocation of Resources**

(1) Are the budgets provided for each security body adequate for them to carry out mandated tasks?

(2) Do the security bodies compete on an equal footing with other sectors for resources?

(32) Are resources within the security sector allocated according to priorities?

(4) Are the legislature and other relevant financial oversight actors adequately equipped (*e.g.* capacity, access to information) to assess security sector budgets?

(5) When does the legislature receive the security budgets? Does this allow adequate time for assessment?

g. **Efficient and Effective Use of Resources**

(1) How is procurement managed?

(2) Are there internal audit units within the security bodies and the relevant ministries?
Does the auditor-general have full access to relevant material?

(3) Do internal audits also include legal sources of income other than the state budget?

(4) Is the auditor-general allowed to conduct “value for money” evaluations?

(5) How are irregularities in any portion of the process dealt with? Are there mechanisms in place to feed information obtained by assessing budget implementation back into the policy development and planning processes?

h. **Comparing the Security Sector to Government-wide Processes**

(1) How do the processes just described compare with the country’s legally mandated budgeting process?

(2) Is the security sector or some portion of that sector treated differently from the rest of the public sector in terms of budget formulation, execution and oversight?

(3) In answering any of the above questions, are there substantial discrepancies between the national and provincial/local levels?

7. Illicit and Informal Power Structures

a. What are the illicit power structures currently in-place now and in the recent past – how engrained are they in society and customs; how are they organized? Do they oppose or disrupt development and reform?

b. What are the motives for the illicit power structure? Are its leaders and members motivated primarily by economic, political, religious or other reasons?

c. What is the ability of the HN government to respond to the motives, means and opportunities the illicit power structures exploit?

d. What are the resources which sustain illicit power structures?

e. What is the source of power of the leaders for the illicit power structures?

f. What is the view of the local populace of the illicit/informal power structure?

g. What is the second order effect of attacking the illicit power structures – near and long-term?

h. What are the external factors affecting illicit power structures (e.g., relations with drug traders)?

i. What will replace the illicit power structure if it dissolved? What are the associated risks and opportunities?

8. Civil Society Organizations

a. What CSOs already exist, what is their status, and what are their goals?

b. Is the security situation sufficiently stable to allow the creation and growth of CSOs?

c. Do the CSOs believe they are able to conduct their activities in a free and on-punitive manner?

d. Does the host nation government impede the actions of CSOs?

e. Is there a free press?

f. CSOs are secure in their persons and property.

g. The state is itself bound by law and does not act arbitrarily against CSOs.

h. The law pertaining to CSOs can be readily determined and is stable enough to allow CSOs to plan their affairs.

i. CSOs have meaningful access to an effective and impartial legal system.

j. The rights of CSOs are protected by the state.

(1) **Context**

(a) What are the political, policy and legal frameworks in which civil society operates?

(b) Is there a national NGO network that provides coordination and support for CSOs?

(c) When does government take an adversarial or a partnering relationship with CSOs?

(d) Which CSOs work on security and justice issues and how credible are they? What is their relationship with the government? How representative are CSOs of the views and needs of local people? Is their work based on research? What is the configuration of power relations and institutional dynamics among local CSOs?

(2) **Accountability and Oversight**

(a) Does civil society play a role as an informal oversight actor? Which CSOs help oversee the security and justice systems?

(b) Which mechanisms exist to ensure that CSOs are equally accountable to their populations and their external partners?

(3) **Capacity**

(a) Which CSOs are the possible agents of change in the security system? What are their key sources of influence? Are they effective and efficient?

(b) Have certain CSOs demonstrated a capacity to engage in armed violence and security-related issues, including advocacy and awareness-raising on small arms and light weapons?

(c) What capacity do CSOs have for research, advocacy, training and policy advice?

(4) **Management**

(a) How strong are the internal managerial systems of relevant CSOs? What is the level of internal consultation, participation and feedback on the programs undertaken by the organization?

(b) Do they possess effective mechanisms for organizational learning? Do they handle budgeting activities competently and transparently?

(5) **Coordination with Other Parts of the Security System**

(a) What institutional mechanisms exist for CSOs and state security and justice sectors' interaction?

(b) What state or coalition activities can be used as a vehicle for engaging with civil society?

(c) Are members of CSOs put at a security risk by interacting with the security sector?

(d) Which CSOs have linkages and mutually respectful relations with security and justice actors?

(6) **External Partners Engagement**

(a) What is the relationship between CSOs and international NGOs and external partners?

(b) Is there primarily a need for programmatic or institutional support to CSOs, or both?

(c) How can sustainability be built among targeted CSOs?

(d) Are there any potential risks involved in interacting with specific CSO groups?

(e) What is the likely impact of external partners' involvement/assistance on the local conflict dynamics? How can negative impacts be avoided or, at least, minimized?

(f) Is there a risk that external support may endanger members of CSOs and how can they be protected from human rights abuses?

9. Justice Sector

a. Criminal Justice

(1) Conduct conflict and social network analyses to identify the roots of the conflict and informal workings of the justice system. These are important for framing detailed and more operationally oriented planning.

(2) Identify bottlenecks in justice (e.g., inadequate coordination between police and prosecutors).

(3) Do investigators and prosecutors have necessary technical capacity, including sufficient supplies and equipment?

(4) Is there a demand for legal reform within the government or population?

(5) Are the jurisdictional lines between traditional/customary justice mechanisms clear?

(6) What is the relationship between the two, and what are the established areas of responsibility of both? Is there a gap or overlap, and how can that be reconciled?

(7) Is there a criminal code and adequate procedural mechanisms to implement it? Were the provisions publicly debated and enacted in a transparent process? If not, is this culturally accepted or expected? Are appropriate penal sanctions available or are monetary sanctions condoned? Are the laws publically available in all languages used by the HN population? Is the public generally aware of their basic civil rights? Do they have civil rights under the law?

(8) Does equality exist under the law? Are all forms of discrimination prohibited, including gender, social, economic, ethnic, and religious discrimination? Are minorities protected or at least not targeted for persecution or discriminatory treatment?

(9) Does criminal justice conform to internationally accepted norms for basic human rights?

(10) Is human trafficking illegal?

(11) Is freedom of expression lawful? Is it socially desired?

(12) Is freedom of religion lawful?

(13) Are detained individuals informed at the time of arrest what accusations are made against them? Are they promptly and predictably brought before a judge to determine whether the charges are lawful? Is the detainee allowed the right to silence and counsel? Is there a standard for pretrial confinement and the availability of a speedy trial? Do these standards conform to international norms? Is there an adequate record system for all detainees to ensure they are accounted for to both the legal system and the individual's family and lawyer?

(14) Are trials open to the public?

(15) Are criminal sanctions imposed consistently and fairly?

(16) Is sentencing arbitrary, or done subject to guidelines?

b. **Civil Justice**

(1) Determine availability of civil enforcement mechanisms of judgment and contract enforcement, to include property registries, credit bureaus, and court officials who enforce judgments. Assess such availability in different regions of the military's AO and for different identity groups in conflict.

(2) Determine what, if any, informal mechanisms support or detract from enforcement (e.g., reliance on reputation or cultural lack of reputational sanctions).

(3) Determine whether traditional or customary justice mechanisms are utilized in lieu of State-sponsored courts (e.g., estate distribution, marital dissolution, child custody, etc.).
Analyze case backlogs and underlying causes of delay.

(4) Assess the fairness of the civil justice system. How is it perceived by different identity groups? How much use is made of the formal and informal systems? Do systems favor entrenched elites?

c. **The Judiciary**

(1) How many and what types of HN judges and similar officials are present? What is the composition of the judiciary by identity-group affiliation?

(2) Where are HN judges located? What is their experience level? What is their level of training? How are they organized and administered—are they in a national structure or regional structure?

(3) Are the judges and other personnel getting paid, and being paid adequately?

(4) What is the overall-threat assessment against the judiciary? How does it change over time and through the conflict space? Are judges targeted or threatened by armed groups?

(5) What is the nature and extent of the threat against the security of judicial personnel, their families and their property?

(6) What measures are in place (HN, international, and US military) to ensure the security of judicial personnel, their families and their property?

(7) How are judges selected, educated, trained, administered, and paid? Are the HN systems to select, educate, train, and administer judicial personnel functioning? Are any otherwise qualified individuals systematically excluded from candidacy because of ethnicity, religion, gender, or other characteristics?

(8) What are the personal, ethnic, religious, political, and ideological loyalties of the judges? How willing are the judges to rule against informal/illicit power structures?

(9) How does the HN populace, across social-identity groups, perceive members of the judiciary? Are they seen as competent, fair, impartial, independent, wise, and not corrupt? Or are they perceived as being biased in favor of an ethnic, political, economic or other group? As puppets of foreign power who will make their judgments on the basis of foreign beliefs, attitudes and values? As incapable of adjudicating cases effectively, efficiently, in accordance with the law, and without corruption? As being under the control of the executive or other powerful persons or groups? As the ruling elite's tools of repression? As imposing reduced liability or giving de facto impunity to politically and economically powerful individuals and members of law enforcement, military and other groups when they are charged with violating the rights of others?

(10) What accountability mechanisms are in place to assure the competence and integrity of the judiciary? What methodologies exist for assessing bias? Are there measures in place to inspect and audit their job performance? Are these mechanisms functioning adequately?

(11) What codes of judicial ethics exist? Are the ethical standards enforced by criminal or other sanctions?

(12) What resources are required to protect, select, vet, train, mentor, pay, organize and administer the HN judiciary? What resources are available for these purposes from the HN, US forces, other US government agencies, the international community, NGOs, and the private sector?

d. **Court Administration and Support**

(1) Where are the repositories of court and other public record in the JTF AO? What security measures are in place to protect them? Are more security measures necessary?

(2) What are the security measures in place to protect court facilities and personnel? Are these adequate given the threat conditions?

(3) Identify national, provincial and local judiciary, separate constitutional or administrative tribunals, and religious or other special courts. Do they supplement or replace state institutions?

(4) Identify and assess private bar associations, notaries, property registries, formally recognized arbitration services, and other legal aid providers.

(5) Analyze the details of legal organizations to determine overall powers, duties, and internal distribution of labor. Are they effective in the arena they purport to cover?

(6) Analyze court processes for managing cases, such as booking, charging, scheduling cases, receiving documents, storing physical evidence and other such functions, with special attention to processes relevant to JTF interaction with the courts. Determine bodies (or need thereof) responsible for organizational management, oversight, administration, their powers, focus, and daily operations.

(7) Evaluate human resources: major job categories, distribution of work, salaries, tenure, career systems, selection, performance monitoring, discipline, training programs. Assess geographic distribution of work, employees, and workload. Assess the budget and analyze salary levels for state personnel. Analyze incentives motivating or detracting personnel from doing their jobs.

(8) Assess infrastructure, equipment, vehicles, communications access (phone, fax and IT). Determine normative framework to include performance standards and required release of information to the public.

(9) Review rules governing access to judicial system, geographic distribution of judiciary and fees.

(10) Check quantities of cases processed, rates of clearance, outcomes, trends and geographic or functional area differences.

(11) Determine what notification procedures, supervision, or logistical obstacles exist in asset seizure.

(12) Determine existence and efficacy of case tracking mechanisms.

(13) Analyze managerial capacity and quality of pool from which staff is drawn.

(14) Analyze notification procedures and systems.

(15) Analyze staff training and public education programs.

(16) Determine if support staffing is insufficient or excessive, and the weight of political patronage in career progression/job availability.

(17) Assess ratio of judges, police, or prosecutors to population.

(18) Analyze ratio of cases filed to cases resolved via settlement and/or judgment.

(19) Examine incentives for personnel to do their jobs or de-incentivizing them from doing their job.

(20) Analyze appellate rate (ratio of cases appealed to cases tried; ratio of cases resolved by appellate court decision to cases appealed).

(21) Analyze judicial enforcement rate (ratio of judgments rendered to judgments enforced).

(22) Assess delays and underlying reasons.

(23) Analyze linguistic barriers potentially interfering with access to justice.

e. **Corrections**

(1) Where are the corrections and detention facilities the JTF AO? What security measures are in place to protect them? Are more security measures necessary?

(2) What is their surge capacity? How close are they to conflict areas? Are they suited to meet the requirements of a prison population that will include more than common criminals?

(3) Where are the corrections and detention facilities the JTF AO? What security measures are in place to protect them? Are more security measures necessary?

(4) What is their surge capacity? How close are they to conflict areas? Are they suited to meet the requirements of a prison population that will include more than common criminals?

(a) **Context:**

1. What is the legal and organizational framework of the prison system? Does a specific law exist on the functioning of the prison system? What is the incarceration philosophy of the system? Does it seek deterrence, rehabilitation of the criminal, or containment of the criminal population?

2. What government ministry has responsibility for the prisons?

3. How integrated is the prison department into the ministry?

4. Where does the head of the prison administration stand in the hierarchy of the ministry?

5. What access to prisons is given to civil society groups, especially those caring for vulnerable prisoners?

6. What is the public's perception of prisons and the treatment of prisoners? Is there a difference in perception by different population groups (men/women, urban/rural, rich/ poor, and minorities)?

(b) **Accountability and Oversight:**

1. What recordkeeping and reporting is required of the prison administration?

2. Are complete data available on all prisoners?

3. Are there annual reports, statistics on deaths in custody, records of violent incidents or misconduct? Are these disaggregated by gender, ethnicity and other important variables?

4. Are there any places of detention not officially classified as prisons or not under the control of the prison administration? If so, under whose authority are these?

5. How involved is the legislature in prison issues?

6. Are there independent outside bodies to which all prisoners can bring complaints and grievances? Beside the ICRC, Who are these bodies?

7. What mechanisms exist for independent inspection of prisons and publication of inspection findings?

8. What is the legal framework that shapes prison management?

9. Is the prison law and its implementation consistent with the international human rights framework?

10. Are prisons covered in government reports to treaty bodies such as the UN Committee on the Rights of the Child?

11. Has the government ratified or does it plan to ratify the Optional Protocol to the UN Convention Against Torture, which creates a permanent system of international visits to places of detention?[3]

(c) **Capacity:**

[3] http://www2.ohchr.org/english/law/cat-one.htm.

1. Are the prisons safe and secure? How do prison conditions rate in comparison to international standards?

2. What is the background of the head of the prison administration: civil service, military, police or other profession?

3. Are there potential negative psychological and social effects to continuing prison operations in particular venues that could undermine the stabilization effort?

4. What level of support is there for reform within the prison administration?

5. What are the incentives and disincentives for reform?

6. What outside constituencies such as faith groups, human rights groups, women's groups and academics might support prison reform?

7. Are prisons accessible to the media and are prison issues covered responsibly by the media?

(d) **Management:**

1. What is the basis for employing the prison staff?

2. Are these civil service, military or police posts, or a combination?

3. Are there a basic training system and an equal and fair structure for promotion?

4. Are female staff members likely to progress in the prison system regardless of their gender? Are there policy and structural barriers to the equal employment and treatment of women and other minority staff?

5. Is it possible to establish the annual recurrent costs of the prison system, whether there is any money for reforms, and who ultimately makes spending decisions?

6. Are women kept separate from men, juveniles separate from adults and pre-trial prisoners separate from the convicted?

7. Are there appropriate health, training, work, education and recreation facilities for male, female and juvenile prisoners?

8. Are there significant health or drug problems in prisons? If so, what is being done to address them?

9. What is the estimated capacity of the prison system and how many prisoners are being held? For which types of crime have the prisoners been tried and imprisoned? What is the social and economic breakdown of the prison population?

10. What is the percentage of the prison population on remand and what is the average remand time?

11. What is the level of crime and violence in prison?

12. What is the risk of recruitment to terrorist or organized crime groups or of learning new criminal methods in the prison? What is the risk of prisoners continuing to direct the activities of their organized crime groups from within the prison? What is being done to address these problems?

13. Are there opportunities for prisoners to practice their religion?

(e) **Co-ordination with Other Parts of the Security System:**

1. Are particular judges or other judiciary personnel assigned responsibility for the follow-up/implementation of sentences, including imprisonment?

2. Are there joint criminal justice forums where the prison administration can meet with police, prosecutors and judiciary to discuss the management of the system, the impact of criminal justice policy on the prisons, and measures to reduce overcrowding, such as sentencing changes and alternatives to prison?

3. If so, how effective are these bodies?

(f) **Engagement of the International Community:**

1. In what activities aimed at improving the prisons are external actors currently involved and what past activities have there been?

2. Do consular officials from the embassies visit their nationals in prison and give information to their political colleagues?

3. Do ambassadors make prison visits and maintain links with NGOs interested in prisons?

4. Do donors remember to include the prison system when designing health, local government and other programs?

f. **Military Justice**

(1) What is the current military justice structure and how can it be improved to promote consistency in disciplinary measures?

(2) What cultural characteristics may affect military justice reform? What are the key features of the military culture and ethos itself? How does the military see itself in relation to the broader civilian/civil culture and society?

(3) Do the populace and military personnel perceive the military justice systems as being biased in favor of an ethnic, political, economic or other group? Is there a bias for military personnel over civilians? Do civilians perceive such a bias?

(4) Do the populace and military personnel perceive the military justice systems as being incapable of processing cases effectively, efficiently, fairly, impartially, and without corruption?

(5) Does the populace perceive that military personnel have reduced liability or impunity in the military justice systems for crimes committed against civilians?

(6) What is the caseload for the military justice system--how many cases, what types of offenses? What is the average processing time for different types of cases? What percentage results in convictions? What punishments are imposed? How many cases are appealed? What percentage of appeals is granted? Are there discernable biases based on ethnicity, religion, or other factors?

(7) What is the selection process for military lawyers, judges, and other legal personnel? Are there discernable biases based on ethnicity, religion, or other factors?

(8) What education and training do military lawyers, judges and other legal personnel have? Are they trained in civilian law as well as military law? Are there programs of continuing education for military legal personnel?

(9) Are there issues of command influence or other forms of influence on the military justice process? What measures exist to limit such influences? What social and peer pressures exist that impede impartial administration of justice?

(10) What measures are place to ensure that military defense counsel are free to represent the interests of their clients without any actual or apparent influences that would undermine the fair and impartial administration of military justice?

(11) Are military investigative personnel available in adequate numbers? Are they adequately trained and equipped?

(12) Are there adequate numbers of trained and equipped administrative personnel available to support military justice activities?

(13) What accountability systems are in place to ensure the military justice systems work fairly and efficiently?

(14) What HN military lawyers and judges are available to participate in military justice reform? Are they willing to work with foreign advisors in the reform process?

g. **Traditional and Informal Justice**

(1) Who makes up traditional justice systems? Are such systems operated by traditional leaders, warlords, others? What is the geographic scope of each system?

(2) How do traditional justice systems relate to traditional governance systems as a whole? Are they part of tribal or other governance systems, or are they distinguishable?

(3) Who brings matters to the traditional justice systems and why?

(4) How strong is the attachment to a traditional system? Does it vary with age, gender, wealth, education?

(5) What types of matters are decided by the traditional justice systems?

(6) What principles do the traditional justice systems apply?

(7) How are decisions enforced—why do people do what the traditional justice systems say?

(8) What is the relationship between traditional/informal justice and the formal justice system?

(9) How do traditional/informal justice systems contribute to stability? Can they resolve local/community disputes? Can they be part of post-conflict reconciliation process?

(10) How can traditional/informal justice contribute to instability?

(11) What are the human rights issues with traditional/informal justice systems? Are there gender issues, or minority group issues?

(12) How can the international community/USG support traditional/informal justice so as to reduce drivers of conflict and increase stability?

(13) How can the HN incorporate traditional justice systems so as to enhance the legitimacy of the HN system, and how can the US government and military facilitate that process?

(14) How can the international community mitigate undesirable effects of traditional/informal justice?

(15) How does the international community/USG develop long-range development plans which co-opt the traditional/informal justice systems?

(16) How can the traditional/informal justice systems be integrated with the formal justice systems so as to enhance central government legitimacy?

(17) How can the US military support or implement USG policies and plans as they impact HN traditional/informal justice systems?

(18) What capabilities does the US military have which may impact traditional/informal justice systems? Presence? Freedom of movement? Ability to Identify, Assess, Monitor? Local influence? Ability to be an impartial mediator? Resources—equipment, money, transportation assets?

h. **Property Rights**

(1) What is the legal structure of the HN property law? Have they borrowed elements from the English common law system, or from the French or German civil law systems?

(2) To what extent has any imported legal system been modified by legislation, executive order, religious law, and traditional law?

(3) What laws govern ownership of property?

(4) What buildings, offices and other physical locations are used to maintain property records?

(5) How are property records kept? How are they protected? How are they retrieved?

(6) Does the populace look primarily to the formal system or traditional systems to resolve disputes concerning property?

(7) What is the court and administrative system for property issues?

(8) What are the geographical jurisdictional areas relevant to property ownership, recordation, and adjudication?

(9) Who are the judges who adjudicate property matters? How many are there? Where are they located? What is their level of training? How are they organized and administered—are they in a national structure or regional structure? How are they paid?

How are they protected? How are they selected? What are their personal loyalties? What measures to inspect and audit their job performance are in place? What codes of judicial ethics exist? Are the ethical standards enforced by criminal or other sanctions?

(10) How willing are the judges to rule against informal/illicit power structures?

(11) What are the traditional justice mechanisms/ alternate dispute resolution mechanisms available for property disputes? How widely are they respected and used? What are the relations (formal and practical) with the formal court and administrative systems?

(12) What is the percent of property dispute claims adjudicated relative to claims registered, by identity group and province?

(13) What is the percent of claims adjudicated relative to the number enforced, by identity group and province?

(14) What is the perception of parties involved with property disputes that the process was fair and the case resolved satisfactorily, by identity group and province?

(15) What is the percent of property dispute claims adjudicated and resolved relative to claims registered, by identity group?

i. **Cultural Property**

(1) Personnel trained in Arts, Monuments, and Archives Support, should normally be the principal assessors.[4]

(2) Assessment personnel must have the security, transportation and communication assets to travel to potential sites.

(3) Prior to conducting an assessment, personnel should consult with international, HN, and local experts, if possible.

(4) Assessment personnel should locate cultural property sites, document their condition, evaluate their security, and determine the nature and extent of damage.[5]

(5) Where are any archaeological sites, museums, or culturally significant buildings or other structures in the JTF's area of operations? In what condition are they?

(6) What host nation organizations and personnel are available to secure and protect cultural property from looting and vandalism? Are they able and willing to

[4] See *The Army Universal Task List* (FM 7-15), Article 6.14.6.1, pp. 6-121 to 6-122, August 2003.
[5] GTA 41-01-002, *Civil Affairs Arts, Monuments, and Archives Guide* has a sample site assessment survey form on pp. 16-18.

perform their duties? Are they adequately equipped? Are they susceptible to bribery or other corruption?

(7) What host nation security measures are in place for cultural sites to prevent looting and vandalism? How effective are these measures?

(8) Are any foreign organizations or personnel engaged is securing and conserving cultural property? Where are they located, and what are they doing? Are they willing to work with the JTF to secure and protect cultural property?

(9) Assessment personnel should identify, locate and contact local cultural property personnel.

j. **Contractors**

(1) **Areas**

(a) Where are contractors operating now?

(b) Where can contractors provide their services?

(2) **Structures**

(a) Do contractor personnel have adequate facilities in which to work and live?

(b) Is there adequate security at contractor facilities?

(3) **Capabilities**

(a) What rule of law tasks are contractors able to perform?

(b) What expertise do contractors have?

(c) What equipment do contractors possess or have available?

(d) Do contractors possess or have access to adequate supplies and material to perform the required projects?

(e) Do contractors have adequate personnel (numbers and skill sets) for contemplated projects?

(f) Do contractors have adequate logistic, communications, transport and other support for their operations, or will they need support from the military?

(g) Are contractors able to provide their own security for their personnel and projects, or will it be necessary for the military or security contractors to provide protection?

(h) Do contractors have sufficient freedom of movement (security, transportation, communications, authorizations to travel) to perform the contemplated projects?

(i) Are contractors able and willing to implement the HN development framework?

(j) Are contractors able and willing to engage in actions that further US policy interests?

(k) Are contractors able and willing to make use of local resources of labor and supplies as much as feasible?

(4) **Organizations**

(a) What is the organizational structure of contractors?

(b) Is the contractor's management structure adequate to successfully carry out projects in the operational environment?

(c) Is the financial condition of the contractor adequate for them to perform the contract?

(d) Is the ownership and control of the contractors acceptable to the US Government in terms of human rights records, prior performance of other contracts, and other policy considerations?

(e) What mechanisms do contractors have in place for vetting their employees, and are these effective?

(f) Does the contractor have adequate accounting controls in place to effectively manage their contracts, and are those controls easily audited by the JTF or other principals?

(g) What audit mechanisms are available to the JTF and its partners to monitor contractor performance and ensure compliance with the contract?

(5) **People**

(a) Do contractor personnel have the requisite skill sets for the contemplated projects?

(b) Have contractor personnel been vetted to ensure that they do not have adverse human rights or criminal records?

(c) What are the contractors' social/informal connections with suppliers, government officials, and informal and illicit power structures?

(d) Are there any personal relations (family, tribe, business connections, and political allegiances) which may call into question the contractor's ability to meet the requirements of the HN development framework or US policy goals?

(6) **Events**

(a) What is the contractor's ability to adjust its performance to significant events, such as the following?

1. Elections

2. Changes in government officials

3. Increases in insurgent activity

4. Terrorist acts directed at contractors

5. Reductions/relocation/removal of US and/or coalition troops

6. Improvements in local security conditions

7. Opposition/obstruction/rejection of contractor efforts by HN beneficiaries or HN government

(b) How do contractor activities affect the drivers of conflict?

k. **Non-State Security Providers**

(1) **Context**

(a) What are the factors contributing to supply of and demand for private security services and other non-state security providers?

(b) Who are their "clients" and what security threats are they hired to protect clients from?

(c) How does the public perceive them? Do perceptions differ according to gender, socio-economic, regional, or ethnic background of the respondent?

(d) What is the impact of non-state security providers, including the private security sector on public law enforcement services, crime levels, public safety, human rights, and business confidence?

(e) Is there demand for reform of the sector from government, civil society, client groups, or from legitimate private security companies?

(f) To what extent are private security company employees affiliated and identified with former armed groups, ex-combatants, and arms trafficking?

(2) **Regulation and Oversight**

(a) What laws and regulations are in place to govern the private security sector and the use of firearms by civilian corporate entities?

(b) How effective is their enforcement and which agencies are responsible for this?

(c) Which government agencies or ministries are involved in the control and regulation of PSCs (e.g., trade, economy, interior)?

(d) What procedures and criteria exist for licensing and registering PSCs?

(e) What systems and standards exist for vetting and licensing private security personnel?

(f) Have PSCs or other non-state security actors or their personnel been implicated in crime, including gender-based violence or trafficking, and have incidents led to trials or prosecutions?

(g) What voluntary codes of conduct, industry bodies and standards exist, if any? Do enforcement mechanisms exist? To what degree are they enforced?

(h) Do procurers of private security services have selective procurement criteria or report information on the companies or individuals that they employ?

(i) Are there regulatory restrictions on the use of force and firearms by PMCs/PSCs?

(3) **Capacity**

(a) What is the size and profile of the private security industry operating in the country and overseas (e.g., size and number of companies, number of personnel, annual turnover)?

(b) What services can they offer and which do they provide?

(c) What is the capacity and coverage of private security provision compared with the police and public providers?

(4) **Management (Where Formal Structures Exist, such as E. Europe, Latin America, etc.)**

(a) What is the ownership structure of the private security industry (e.g., national, international, subsidiaries of international companies)?

(b) What is the role of shareholder groups, boards of trustees, directors in the control and management of PSCs?

(c) What kind of training is provided to staff? Is there a code of conduct? Is it enforced?

(d) What are the human resource and recruitment policies and practices, including the promotion of equal opportunities and the recruitment of female staff?

(e) Do they vet recruits for criminal convictions, disorderly conduct or in post-conflict situations, for human rights abuses?

(f) What are the command and control arrangements for staff while on duty?

(g) How are small arms and ammunition controlled, stored, and managed by PSCs?

(5) **Coordination with Other Parts of the Security System**

(a) What affiliations and relationships do companies have with government officials, law enforcement agencies, military, intelligence agencies, political parties, criminal groups, and militias?

(b) What is the functional relationship and division of responsibilities between public and private security providers?

(c) How are state security providers involved in training, licensing, and support of private security providers?

(6) **Donor Engagement**

(a) Do existing Security Sector Reform (SSR) programs contain a private security component?

(b) Have donors undertaken a security or conflict assessment prior to their SSR interventions and, if so, was the private security sector considered as a factor?

(c) Do international actors operating in country, such as humanitarian and donor agencies, procure private security services, and what are their procurement criteria?

l. **Disarmament, Demobilization, and Reintegration (DDR)**

(1) What are the governing documents, principles, and/or agreements that control the DDR process?

(2) Under the governing peace agreement or other negotiated settlement to the conflict, who is eligible to take part in a DDR program? Does it include vulnerable populations such as child soldiers, women and their dependents, etc.?

(3) How is DDR supposed to be administered? Which agencies and organizations have the lead for what issues, and how are will medical care, accommodations, food, and other special humanitarian needs be managed? How is coordination between the military and other lead agencies or organizations accomplished?

(4) What are the responsibilities of the Host Nation, and how is its part coordinated?

(5) Does the military have a specified role in supporting the DDR, and what are the constraints or restraints on that role?

(6) Who are the groups, factions, or other spoilers that would want to block implementation of DDR? Is there a strategy already in place to deal with them? Is there an agreed upon information strategy or message for informing former combatants of program details? Is that strategy sufficient to preclude future misunderstandings and the possibility that participants will perceive that program administrators are changing the rules to cheat the former combatants out of benefits they had been promised?

(7) How are the DDR phases linked so that disarmament and demobilization processes can effectively transition participants into reintegration programs?

m. **Humanitarian Assistance and Corruption**

(1) What is the role of the disaster-affected government in the relief process?

(a) Is it involved in direct implementation?

(b) If so, which part of government is involved (the military, local government)?

(c) What, if any, regulatory or coordinating role is the government playing?

(d) Do anti-corruption agencies exist; if so are they examining the relief response?

(e) How well is the judiciary functioning? If relief personnel were found to be corrupt would legal action be possible?

(2) What is the level of scrutiny of the international and national media of the relief process?

(3) How does governance work at local levels? What roles do local authorities and other local elites, such as chiefs and tribal leaders, play and how do they influence the provision of relief?

(4) How well do disaster-affected populations understand what relief they are entitled to, which organizations are responsible for assisting them and how to complain if corrupt abuse is going on?

(5) What transparency measures are in place?

(6) What is the degree of participation of disaster-affected populations in the planning, implementation, monitoring and evaluation of relief provision?

(7) Are there effective complaint mechanisms in place for disaster-affected populations?

(8) What were the pre-crisis levels of corruption?

(9) What is the political economy of the crisis (particularly in conflicts)?

(10) How do the warring parties sustain and finance their operations?

(11) To what extent is relief likely to be a target for diversion?

(12) Who are the main humanitarian actors in the crisis?

(13) Is the response dominated by international or national actors?

(14) How many international relief organizations are operating?

(15) How strong is the coordinating role being played by the United Nations?

(16) What funding models are operating? Are most international agencies implementing directly, or working through HN partners? Is most funding from bilateral donors, or raised directly from the general public?

(17) How long have international actors been working in the country, and how well do international staff understand the local economic, social and political contexts in which they are operating?

(18) What are the features of national civil society?

(19) How strong, effective and accountable are national NGOs involved in the relief response?

(20) What is the focus of the relief response (food aid, shelter, health, nutrition) and what are the particular risks associated with each sector?

APPENDIX G
KEY PARTNERS IN RULE OF LAW

1. US Government Agencies

a. **The Office of the Coordinator for Reconstruction and Stabilization of the Department of State (S/CRS**) is responsible for leading, coordinating and integrating the USG civilian reconstruction and stabilization activities. S/CRS, with Department of State partner bureaus and other agencies[1] through the Civilian Response Corps may, in certain circumstances, be able to provide civilian experts in criminal and civil justice reconstruction, judicial and prosecutorial reform, court administration, and corrections if designated to do so by the Secretary of State.[2]

b. The **US Agency for International Development (USAID)** does a wide range of ROL projects, to include building courthouses, training judges, prosecutors, lawyers and administrative personnel, designing and implementing case tracking and management systems and other court management information systems, and conducting assessments.[3] USAID generally uses contractors to accomplish its tasks, and often will support ROL projects by giving grants to HN and international NGOs. USAID is prohibited from doing any projects relating to corrections.[4] While USAID is prohibited from any projects benefiting foreign militaries, their projects in ROL may indirectly impact on military justice reform. USAID does a wide range of projects that affect may affect traditional and informal justice systems, to include doing assessments of the relative effectiveness and relationship between formal systems and traditional and informal systems.[5]

c. The **Bureau of International Narcotics and Law Enforcement Affairs of the Department of State (INL**) engages in projects to train judges, prosecutors, and investigators, provide mentoring of judges and prosecutors, and other projects relating to criminal justice. INL also conducts criminal justice sector assessments, using the CJSART tool,[6] which covers law enforcement as well as the justice sector. CJSART includes assessment of military justice.

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[1] CRC Rule of law personnel will be drawn from other bureaus and agencies such as INL, DOJ, and USAID.

[2] DOS, Office of the Coordinator for Reconstruction and Stabilization, http://www.crs.state.gov/index.cfm?fuseaction=public.display&shortcut=4QRB. Statutory authority for S/CRS and the Civilian Response Corps is found in Title XVI of the Duncan Hunter National Defense Authorization Act for FY 2009 (NDAA), http://www.thomas.gov/cgi-bin/query/F?c110:5:./temp/~c110MNV1sM:e962370. The Civilian Response Corps is referred to as the 'Response Readiness Corps" in the NDAA.

[3] Often, USAID will support rule of law and justice sector projects by giving grants to HN and international NGOs. USAID is very limited in its internal capacity, and relies heavily on contractors to accomplish its tasks. See USAID *Primer: What We Do and How We Do It*, 22-25.

[4] See US Agency for International Development, USAID *Primer: What We Do and How We Do It*, 22-25.

[5] An example of this is the Asia Foundation, *Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor*, Report prepared for USAID, February 2004, http://pdf.usaid.gov/pdf_docs/PNADF616.pdf.

[6] DOS, Bureau for International Narcotics and Law Enforcement Affairs. *Criminal Justice Sector Assessment Rating Tool* (CJSART) (January, 2008).

d. The **Bureau of Democracy, Human Rights, and Labor of the Department of State** produces Country Reports on Human Rights for all governments annually, assessing respect for human rights and the workings of the judicial system. The reports should be a starting point for assessing a judiciary, especially with respect to its impartiality and independence.

e. The **Department of Justice's** programs, notably ICITAP and OPDAT, train HN personnel, build facilities, and carry out other activities relating to the criminal justice sector. **ICITAP (International Criminal Investigative Training Assistance Program**) works with the HN to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism. ICITAP works with corrections systems, and is able to make use of the expertise of DOJ's **Bureau of Prisons** when needed. **OPDAT (Office of Overseas Prosecutorial Development, Assistance and Training)** develops and administers technical assistance to enhance the capabilities of foreign justice sector institutions and their law enforcement personnel so they can partner effectively with the Department of Justice in combating terrorism, trafficking in persons, organized crime, corruption, and financial crimes. **The US Marshals Service** of DOJ conducts projects pertaining to the security of judges and other judicial personnel. DOJ programs are conducted in partnership with INL, other Department of State Bureaus, or USAID.[7]

f. The **Federal Judicial Center**, a Congressionally-funded agency for US federal courts, is the education and research agency for the US federal court systems. It works with HN courts and judicial training centers through supporting technical assistance projects, including judicial and court education programs, caseload tracking and reporting assessment, judicial reform assessments, and case calendaring initiatives. It also provides technical training programs and equipment to implement new court administration programs. Its **International Judicial Relations Office** identifies US judges, court managers, and public defenders with expertise relevant for a particular international ROL program or court reform project.[8]

g. The **United States Institute of Peace**, a Congressionally-funded, independent US Government agency, works with security sector management and oversight, justice sector and legislative institutions to enhance definition and implementation of legal and constitutional reforms. Its ROL specialists design and implement strategies on transitional justice-related issues, including documenting war crimes and crimes against humanity, and assisting HN and US officials with vetting candidates for elected office and other senior positions. USIP has developed a generic model criminal code and criminal procedures based on internationally accepted standards and rights. It also

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http://www.ago.gov.af/Content%5CAboutAGO%5CReports%5CMore%20Reports/CJSART%20Assessor%20Info%20Ver%2020.pdf.

[7] The DOJ conducts such activities pursuant to interagency agreements with USAID, State/INL and other foreign affairs agencies, as DOJ programs implement provisions of the Foreign Assistance Act, for which funding is appropriated in annual foreign operations appropriations acts. DOJ has no independent authority to conduct foreign training and capacity-building programs.

[8] See Federal Judicial Center, http://www.fjc.gov/.

provides judicial training and programs in justice administration reform. USIP focuses considerable resources on developing and implementing long-range institutional reforms in judicial and legislative processes that support stability operations. USIP assists local, regional, and national law makers and legal practitioners in drafting civil, administrative, and criminal codes conforming to democratic principles that support long-term institution-building. USIP also fosters civil society efforts to establish reliable, transparent, and corruption-free legal systems. [9]

h. The **International Network to Promote the Rule of Law (INPROL),** a branch within the USIP, is a network of practitioners working together with professional communities, including judges, prosecutors, defense attorneys, senior police officials, stability police commanders, corrections officials, legal advisors, monitors, and judicial administrators, to promote the ROL.

i. The **Defense Institute of International Legal Studies (DIILS)** is a jointly-staffed institute of military and civilian personnel which provides professional legal seminars, programs, education and training on military justice and ROL topics to HN military members and civilian government officials.

2. International Organizations

Numerous international organizations engage in ROL activities.

a. The **UN Development Programme (UNDP**) has worked on corrections facilities, courthouses, and ROL assessments, and has engaged in traditional/informal justice projects.

b. The **UN Office on Drugs and Crime (UNODC)** provides technical assistance and mentoring in the criminal justice sector, including programs focusing on organized crime, narcotics, and anticorruption, among others.

c. The **World Bank** performs assessments of the civil justice sector as an important element to support foreign investment. In its annual evaluation of countries regarding compliance with ROL, the Bank considers civil law matters like enforceability of contracts, security of traditional property rights, and justice in commercial matters. It performs assessments of the judiciary, including its Worldwide Governance Indicators (WGI), an annual assessment that scores 212 countries on six factors that include ROL and Corruption. The scores aggregate evaluations by experts from more than a dozen organizations in any field. The Bank donates money to NGOs for non-state justice programming.[10]

[9] See US Institute of Peace at http://www.usip.org.
[10] http://adsindonesia.or.id/alumni/ASAC2008Papers/Bambang%20Soetono-paper.pdf. See also http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,menuPK:51562~pagePK:64133621~piPK:64140076~theSitePK:40941,00.html

d. The **United Nations Rule of Law Unit,** established under the Coordination and Resource Group of the United Nations, has been running on an interim basis since the beginning of 2007. Its focus is the training of HNs in military law and the military justice system. Most recently, the UN ROL Unit trained armed forces officials in the Democratic Republic of Congo (DRC).

e. **The International Committee of the Red Cross (ICRC)** is a humanitarian organization whose mission is to protect the lives and dignity of victims of war and internal violence. It directs and coordinates international relief activities in situations of conflict. The ICRC has a permanent mandate under international law to take impartial action for prisoners in armed conflicts, and seeks to visit prisons to ensure their humanitarian and human rights standards are met.

3. Development Agencies of Other Nations

The *development agencies* of other nations who are assisting the HN often will be involved in ROL projects. An example is the **UK Department for International Development (DFID)** which carries out ROL projects and has published guidance on engaging with non-state systems.[11]

4. Coalition Military Forces and Organizations

Generally, US forces will be part of a coalition of military forces which may be operating under an international organization such as NATO or the UN. The coalition or individual national forces may be conducting operations which affect the HN ROL systems. Coalition forces will likely be working directly with their sending state's development agencies.

5. Nongovernmental Organization

a. NGOs (which may be HN or international) may be engaged in ROL projects. In many cases, NGOs will be working for international or national development agencies as contractors or grantees. The designated official liaison between the US government and international agencies and NGOs is USAID. As a general rule, the JTF must not engage with international agencies or NGOs until the interagency process is followed and such contacts are approved by the Country Team.

b. NGOs may be engaged in developing defense counsel capabilities and civil society initiatives designed to inform the populace of their legal rights when accused of crimes. One such NGO is the **International Legal Foundation (ILF)**, which currently conducts operations in Afghanistan and Nepal.[12]

[11] http://www.gsdrc.org/go/topic-guides/justice/non-state-justice-and-security-systems.
[12] The ILF is a not-for-profit public defender organization created to assist in the establishment of fair criminal justice systems in post-conflict countries. It is guided by two fundamental principles: that laws must be drafted with an appreciation of the cultural realities of the country in which they will function and

c. NGOs may be engaged in projects to improve the judiciary and court administration. NGOs can also supply information related to assessment and accountability. For example, **Transparency International** scores some 180 countries annually on its Corruption Perceptions Index, using a methodology like that of the World Bank. Human rights organizations are indispensible watchdogs for alerting interveners to injustices in courts, including anecdotal evidence of abuses by specific judges.

d. NGOs may be engaged in projects to improve corrections administration, accountability and support. Some of the more prominent NGOs working in this area are: **International Corrections and Prisons Association, International Crisis Group**, **Amnesty International**, **Council of Churches**, and the **Institute for Restorative Justice and Penal Reform**.

e. **Institute of Military Justice (NIMJ)** is a non-profit corporation in the District of Columbia created to advance the fair administration of military justice and foster improved understanding of the military justice system. The NIMJ is affiliated with American University's Washington College of Law. There are also international NGOs, such as the **International Society for Military Law and the Law of War**, headquartered in Brussels, Belgium.

f. NGOs may be engaged in projects that deal directly with or impact traditional and informal justice processes. Some examples of organizations who work directly with traditional systems are **the Norwegian Refugee Council**,[13] **the International Rescue Committee (IRC),**[14] and **the Asia Foundation.**[15] Since traditional and informal systems are based in communities and the norms governing those communities, civil society initiatives by NGOs can have a major impact on how traditional systems develop and are applied.

6. Private Sector

This includes private citizens, businesses, and civil society leaders. Civil-society organizations, to include watch-dog and advocacy groups, human rights organizations, grassroots movements, and media, help to maintain accountability in security sector management and oversight and the justice sector.

7. Host Nation Government Agencies

HN agencies will often engage in ROL improvement projects using either foreign assistance funds or funds from their own revenue sources. Although such activities are not under the control of the joint force or the US government, the JFC should carefully

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that defense lawyers -- as guardians of due process -- are indispensable to any fair system of justice and must be provided to anyone accused of a crime. http://www.theilf.org/home/.

[13] http://www.nrc.no/.

[14] http://www.theirc.org/.

[15] http://asiafoundation.org/.

monitor them to determine what effect they might have on the operational environment. In consultation and coordination with civilian USG agencies, the JFC may directly or indirectly support such efforts to build HN stability. The JFC should take care to avoid collaborating with programs that may promote factional interests or lead to corruption by channeling power and economic benefits to government officials, their clans and families, or to illicit power structures.

APPENDIX H
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GLOSSARY

PART I – Abbreviations and Acronyms

ACA	American Correctional Association
AIA	American Institute of Archeology
ANA	Afghan National Army
ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
AUCMJ	Afghan National Army Law of Military Courts
BLAST	Bangladesh Legal Aid and Services Trust
CA	civil affairs
CAST	Conflict Assessment System Tool
CBP	Department of Customs and Border Protection
CDSM	Centre for Defense and Security Management
CJSART	Criminal Justice Sector Assessment Rating Tool
CMO	civil-military operations
CMOC	civil-military operations center
COI	commission of inquiry
COIN	counterinsurgency
COR	contracting officer's representative
CRC	Civilian Response Corps
CSO	civil society organization
DART	Disaster Assistance Response Team
DDR	disarmament, demobilization, and reintegration
DDRR	disarmament, demobilization, reinsertion, and reintegration
DEA	Drug Enforcement Agency
DFID	UK Department for International Development
DHS	Department of Homeland Security
DIILS	Defense Institute of International Legal Studies
DOD	Department of Defense
DODI	Department of Defense instruction
DOE	Department of Energy
DOJ	Department of Justice
DOS	Department of State
DOT	Department of Transportation
DPA	United Nations Department of Political Affairs; Dayton Peace Accords
DPKO	United Nations Department of Peacekeeping Operations
DSART	Defense Sector Assessment Rating Tool
ECA	DOS Bureau of Educational and Cultural Affairs
EEB	DOS Bureau for Economic, Energy, and Business Affairs
EITI	Extractive Industries Transparency Initiative

FBI	Federal Bureau of Investigations
FCPA	Foreign Corruption Practices Act of 1977
FHA	foreign humanitarian assistance
FM	field manual
FRMC	Forest Reform Monitoring Committee
GAO	Government Accountability Office
GEMAP	[World Bank] Governance and Economic Management Assistance Program
GW	global witness
HN	host nation
HNG	host nation government
ICAC	Independent Commission Against Corruption
ICAF	Interagency Conflict Assessment Framework
ICBS	International Committee of the Blue Shield
ICC	International Criminal Court
ICE	immigration and customs enforcement
ICITAP	International Criminal Investigative Training Assistance Program
ICRC	International Committee of the Red Cross
IDP	internally displaced person
IFAR	International Foundation of Art Research
IFOR	NATO Implementation Force
IHL	international humanitarian law
IG	inspector general
IGO	intergovernmental organization
ILA	intermittent legal advisor
ILF	International Legal Foundation
IMF	International Monetary Fund
IMS	Interagency Management System
INL	DOS Bureau of International Narcotics and Law Enforcement Affairs
INPROL	International Network to Promote the Rule of Law
INTERPOL	International Criminal Police Organization
IPI	indigenous populations and institutions
IRC	International Rescue Committee
JFC	joint force commander
JIACG	joint interagency coordination group
JOPP	joint operation planning process
JP	joint publication
JRC	Judicial Reform Commission
JTF	joint task force
JWFC	Joint Warfighting Center

KFOR	NATO Kosovo Force
KO	contracting officer
LFI	Liberian Forest Initiative
LOE	line of effort
LOO	line of operations
MEJA	Military Extraterritorial Jurisdiction Act of 2000
MOE	measure of effectiveness
MONUC	United Nations Organization Mission in Democratic Republic of Congo
MOP	measure of performance
MPICE	measuring progress in conflict environments
MSSR	maritime security sector reform
NAP	National Action Plan
NEH	National Endowment for the Humanities
NGO	nongovernmental organization
NIMJ	National Institute of Military Justice
NMS	national military strategy
NSC	National Security Council
NSPD	National Security Presidential Decision
NSS	national security strategy
OCHA	United Nations Office for the Coordination of Humanitarian Assistance
OECD DAC	Organization for Economic Cooperation and Development, Development Assistance Committee
OGA	other government agencies
OPDAT	Office of Prosecutorial Development Assistance and Training
PEAP	[Ugandan] Poverty Eradication Action Plan
PEO	peace enforcement operation
PFM	public financial management
PKO	peacekeeping operation
PKSOI	United States Army Peacekeeping and Stability Operations Institute
PRSP	Poverty Reduction Strategy Paper
PRT	provincial reconstruction team
PSC	private security contractor
QRF	quick reaction force
RFMI	USAID Regional Financial Management Improvement
RLA	resident legal advisor
ROL	rule of law

SADSEM	Southern Africa Defense and Security Management
S/CRS	DOS Coordinator for Reconstruction and Stabilization
SFA	security force assistance
SJA	Staff Judge Advocate
SNA	social network analysis
SOFA	Status of Forces Agreement
SSR	security sector reform
StAR	Stolen Assets Recovery Initiative
TI	Transparency International
TPFDD	time-phased force and deployment data
TSA	Transportation Safety Administration
UK	United Kingdom
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations Office of the High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNODC	United Nations Office on Drugs and Crime
UNOSOM	United Nations Operation in Somalia
UNTAET	United Nations Transitional Administration in East Timor
UNTOC	United Nations Convention Against Transnational Organized Crime
USAFRICOM	United States Africa Command
USAID	United States Agency for International Development
USCBS	United States Committee of the Blue Shield
USCG	United States Coast Guard
USEUCOM	United States European Command
USG	United States Government
USIP	United States Institute of Peace
USJFCOM	United States Joint Force Command
USSOCOM	United States Special Operations Command
VOA	Voice of America
WGI	worldwide governance indicators

PART II – TERMS AND DEFINITIONS

accountability. An active system that holds government officials answerable for their actions when they are shown to be illegal, unethical, or otherwise contrary to the rule of law and the public good. In a democratic system, accountability in the security and justice sectors is based on the principles of transparency, responsibility, participation and responsiveness to citizens. Accountability is vital in building a firm foundation for defense budget planning and program implementation.

civil-military operations. The activities of a commander that establish, maintain, influence, or exploit relations between military forces, governmental and nongovernmental civilian organizations and authorities, and the civilian populace in a friendly, neutral, or hostile operational area in order to facilitate military operations, to consolidate and achieve operational US objectives. Civil-military operations may include performance by military forces of activities and functions normally the responsibility of the local, regional, or national government. These activities may occur prior to, during, or subsequent to other military actions. They may also occur, if directed, in the absence of other military operations. Civil-military operations may be performed by designated civil affairs, by other military forces, or by a combination of civil affairs and other forces. (JP 3-57)

civil-military operations center. An organization normally comprised of civil affairs, established to plan and facilitate coordination of activities of the Armed Forces of the United States with indigenous populations and institutions, the private sector, intergovernmental organizations, nongovernmental organizations, coalition forces, and other governmental agencies in support of the joint force commander. Also called CMOC. (JP 3-57).

coalition. An ad hoc arrangement between two or more nations for common action. (JP 5-0)

country team. The senior, in-country, US coordinating and supervising body, headed by the chief of the US diplomatic mission, and composed of the senior member of each represented US department or agency, as desired by the chief of the US diplomatic mission. (JP 3-07.4)

demobilization. The process of transitioning a conflict or wartime military establishment and defense-based civilian economy to a peacetime configuration while maintaining national security and economic vitality. (JP 4-05) The formal and controlled discharge of active combatants from armed forces or other armed groups. It may involve the both downsizing and disbanding forces, and is applied to government and non-government forces as part of the transition from conflict to peace or as part of SSR strategies. Demobilization tasks include assembling, disarming, quartering, and discharging former combatants, who may receive some form of compensation and other assistance to encourage their transition to civilian life. The first stage of demobilization may extend from the processing of individual

combatants in temporary centers, to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas, or barracks). The second stage of demobilization encompasses *reinsertion*. (UN, http://www.unddr.org/whatisddr.php#9)

disarmament. The reduction of a military establishment to some level set by international agreement. (JP 1-02) The collection, documentation, control, and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and, in some cases, the civilian population. The *disarmament process* includes the development of responsible arms management programs. (UN, http://www.unddr.org/whatisddr.php#9)

essential task. In the context of joint operation planning, a specified or implied task that an organization must perform to accomplish the mission. An essential task is typically included in the mission statement. (JP 5-0)

golden hour. That period of time (of whatever duration) immediately following an intervention or conclusion of a crisis, when authority structures, customary relationships, and familiar procedures have come unmoored from civil society. Decisions made during this period will have far-reaching impact by becoming the new standard around which a fractured society will coalesce as they reorganize themselves for the future. Popular tolerance of outside entities is usually higher during this period.

host country. A nation which permits, either by written agreement or official invitation, government representatives and/or agencies of another nation to operate, under specified conditions, within its borders. (JP 2-01.2)

host nation. A nation which receives the forces and/or supplies of allied nations and/or NATO organizations to be located on, to operate in, or to transit through its territory. Also called HN. (JP 3-57)

illicit power structures. For the purposes of this handbook, are entities that seek political and/or economic power through the use of violence, often supported by criminal economic activity.

implied task. In the context of joint operation planning, a task derived during mission analysis that an organization must perform or prepare to perform to accomplish a specified task or the mission, but which is not stated in the higher headquarters order. (JP 5-0)

indigenous populations and institutions. A generic term used to describe the civilian construct of an operational area to include its populations (legal citizens, legal and illegal immigrants, and all categories of dislocated civilians), governmental, tribal, commercial, and private organizations and entities. (JP 3-57)

informal power structures. For the purposes of this handbook, these include a broad range of socially and culturally embedded hierarchies, which often existed prior to the formal state institutions of modern government or are created as a way of consolidating power within specific factions or groups. They may be licit or illicit.

intergovernmental organization. An organization created by a formal agreement (e.g., a treaty) between two or more governments. It may be established on a global, regional, or functional basis for wide-ranging or narrowly defined purposes. Formed to protect and promote national interests shared by member states. Examples include the United Nations, North Atlantic Treaty Organization, and the African Union. (JP 3-08)

line of effort. A line that links multiple tasks and missions using the logic of purpose—cause and effect—to focus efforts toward establishing operational and strategic conditions. (FM 3-0).

measure of effectiveness. A criterion used to assess changes in system behavior, capability, or operational environment that is tied to measuring the attainment of an end state, achievement of an objective, or creation of an effect. (JP 3-0)

measure of performance. A criterion used to assess friendly actions that is tied to measuring task accomplishment. (JP 3-0)

nongovernmental organization. A private, self-governing, not-for-profit organization dedicated to alleviating human suffering; and/or promoting education, health care, economic development, environmental protection, human rights, and conflict resolution; and/or encouraging the establishment of democratic institutions and civil society. (JP 3-08)

oversight. For the purposes of this handbook, the review, monitoring, evaluation, and investigation of government agencies and entities, and their programs and policies, to ensure compliance with the country's laws and to ensure agencies are carrying out their assigned tasks. Legal authority for conducting oversight flows from the host nation's constitution and resulting laws. Oversight institutions use several fact-finding techniques, including audits, inspections, evaluations, and investigations.

private sector. An umbrella term that may be applied in the United States and in foreign countries to any or all of the nonpublic or commercial individuals and businesses, specified nonprofit organizations, most of academia and other scholastic institutions, and selected nongovernmental organizations. (JP 3-57)

private security sector. Those commercial companies directly providing military or security-related services (of a more protective nature) for profit, whether domestically or internationally.

public financial management. As used in this handbook, includes all phases of the budget cycle, including the preparation of the budget, internal control and audit, procurement, monitoring and reporting arrangements, and external audits. It seeks to achieve overall fiscal discipline, distribution of resources to priority needs, and efficient and effective allocation of public services.

reinsertion. The assistance offered to ex-combatants during demobilization but prior to the longer-term process of reintegration. Reinsertion is a form of transitional assistance to help cover the basic needs of ex-combatants and their families. It can include transitional safety net allowances, food, clothes, shelter, medical services, short-term education, training, employment, and tools. While reintegration is a long-term, continuous process of development, reinsertion is short-term material or financial assistance to meet immediate needs. Under UN practice, reinsertion assistance can last up to one year. (UN, http://www.unddr.org/whatisddr.php#9)

reintegration. The process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open timeframe. It primarily takes place in communities at the local level. While it is a national responsibility, it is also part of the general development of a country, and often requires long-term external donor assistance to help former combatants become productive members of society and not slide into criminal activity. In some cases, reintegration may involve families of combatants as well as persons who were kidnapped by opposition forces and forced to serve in non-combat roles. Reintegration should not be confused with reconciliation, the long-term process through which a society repairs damaged social, political, and economic relationships. (UN, http://www.unddr.org/whatisddr.php#9)

rule of law. A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. (UN Documents S/2004/616 and A/61/636-S/2006/980)

rule of law activities. For the purpose of this handbook, activities planned and executed to assist the HN to administer, reform, rebuild, and assist its rule of law systems in order to achieve US military objectives as part of an overall USG plan for stabilization and reconstruction. They will normally be done in coordination with and in support of rule of law activities conducted by other US agencies and/or international actors. Note that rule of law activities are not a series of isolated activities, but must be viewed as a group of interconnected and mutually supportive actions that are planned and executed together to accomplish overall objectives.

rule of law systems. For the purpose of this handbook, those functionally and behaviorally related interacting and interdependent elements of a society that resolve disputes, preserve public order, and provide regulation to the society. The elements of these systems include individuals, groups, institutions, laws, administrative processes and funding mechanisms, Rule of law systems are generally complex and adaptable systems of systems.

security sector governance. The transparent, accountable, and legitimate management and oversight of security policy and practice. (DOD, DOS, and USAID, *Security Sector Reform* (Jan 2009).) This handbook uses "security sector management and oversight.

security sector reform. The set of policies, plans, programs, and activities that a government undertakes to improve the way it provides safety, security, and justice. (JP 3-24)

specified task. In the context of joint operation planning, a task that is specifically assigned to an organization by its higher headquarters. See also essential task; implied task. (JP 5-0)

transitional justice. Efforts to address a legacy of large-scale human rights abuses that cannot be fully addressed by existing judicial and non-judicial structures. Government responses have included criminal prosecutions, truth commissions, reparations, gender justice, security system reform, memorialization, and other reconciliation efforts. US Institute of Peace, *Peace Terms* (2011). "Interim justice" and similar terms are used in this handbook to refer to temporary measures used to restore justice functions to the HN until the normal HN rule of law systems are able to function effectively.

Unified Action. The synchronization, coordination, and/or integration of the activities of governmental and nongovernmental entities with military operations to achieve unity of effort. (JP 1)

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