

# U.S. Central Command Assessment Team



## Annex G Rule of Law Functional Report February 2009

Classified by: Maj Gen Robert R. Allardice,  
Director, Strategy, Plans and Policy, USCENTCOM  
Reason: ~~1.4.a.c.d.c~~  
~~Declassify on: 15 February 2034~~

**ANNEX G: RULE OF LAW  
TABLE OF CONTENTS**

1. EXECUTIVE SUMMARY.....3

2. PURPOSE, SCOPE AND METHODOLOGY.....4

3. SUMMARY OF THE SITUATION ASSESSMENT.....5

4. PLANNING ASSUMPTIONS.....8

5. STRATEGIC GOALS.....8

6. OVERALL CONCEPT OF INTEGRATION.....10

7. LINES OF EFFORT.....26

8. RESOURCES FOR IMPLEMENTATION.....26

9. RISK AND MITIGATION.....26

10. CONCLUSION.....26

11. RECOMMENDATIONS.....26

12. AUTHORITIES AND REFERENCES.....26

13. APPENDICES.....31

APPENDIX 1: SITUATION ASSESSMENT.....32

APPENDIX 2: LIST OF PERSONS CONSULTED.....120

APPENDIX 3: CHAPTER 1, JOINT FORCES COMMAND DRAFT ROL  
HANDBOOK.....122

APPENDIX 4: LEADERSHIP CHALLENGES IN ROL.....130

(U) ROL is a principle “under 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 that are consistent with international human rights principles.”<sup>1</sup>

**(U) The Importance of ROL.** Adherence to the ROL,<sup>2</sup> like military action, serves a larger purpose than itself in the U.S. struggle against transnational terrorism and other threats. The ROL is at once a fundamental principle for a government’s conduct, a measure for the stability and democratization of a nation and society, and when translated into an effective development program, a powerful enabler for stabilizing and reconstructing a nation suffering the wounds of conflict. It thus strengthens a government’s domestic, international, and global legitimacy. It creates political effects that bind and unite the people, their government, and the international order of nations. It also affects a nation’s reputation across the cultural, religious, and the global communities. Because of these effects, ROL cuts across multiple lines of effort in any effort aimed at a government and civil society, supporting each line in a way that promotes sustainability of development.

## 1. (U) **EXECUTIVE SUMMARY**

(U) ROL is a powerful enabler and should be a critical component of our efforts in partner nation development, U.S. Government (USG) operations in the U.S. Central Command (USCENTCOM) Area of Responsibility (AOR), and in the process of aligning USCENTCOM legal authorities with responsibilities.

1.1. (U) **Key Findings.** The United States and USCENTCOM have devoted significant effort to strengthening the ROL in many countries in the AOR, but we still face problems achieving beneficial effects from this investment.

- ROL is a critical, cross-cutting effort to strengthen domestic, international, and global legitimacy.
- USG efforts to develop partner nation ROL capacities lack unity of effort, face challenges with leadership, lack an accepted “interagency doctrine” for ROL<sup>3</sup>, and suffer from a Western-centric approach. This problem is especially critical because sharia, tribal, and Civil Code legal systems predominate in the AOR.<sup>4</sup>
- USCENTCOM always seeks to comply with law in its operations, but it faces two challenges in doing so. First, isolated cases of misconduct and poor policy decisions have created a deficit in

---

<sup>1</sup> This definition for ROL is commonly referred to as the “UN definition of ROL” and is officially cited by the State Department in Supplemental Reference: Foreign Assistance Standardized Program Structure and Definitions, Program Area 2.1 “ROL and Human Rights,” US Department of State, October 15, 2007.

<sup>2</sup> We adopt the UN definition of ROL for this assessment.

<sup>3</sup> An interagency doctrine is lacking because all existing guidance has an intra-agency focus. Existing guidance fails to consider all of the capabilities that parts of the USG could bring to a ROL effort. It also fails to address in a comprehensive manner all of the elements of government and society that a healthy democratic nation requires in order to develop its own system of legal governance, economic vitality, and popular democratic participation.

<sup>4</sup> These kinds of legal systems rely on Islam, tribal codes like Pashtunwali, and formal justice systems from Europe and the Ottoman empire.

partner nation trust in the USG's commitment to the ROL. Second, USCENTCOM and the USG agencies could incorporate legal factors and employ law enforcement agencies more effectively in the regional counterinsurgency and the struggle against transnational terrorism and other threats.

- USCENTCOM and USG legal authorities are a limited patchwork that limits the command's ability to adequately deal with threats and conduct operations in the AOR now and in the future.

1.2 (U) USCENTCOM Role. USCENTCOM must work with interagency partners to accomplish some of these proposed tasks. USCENTCOM could clearly accomplish military tasks without interagency partner assistance under its own authority.

(U) Relationship to Other Studies. This assessment is built upon many existing studies and proposals. It also includes original research, field assessments, and interviews. Given the current national security circumstances, the economic challenges facing the international community, and the growing potential threats, immediate action is required to address ROL, law enforcement and legal authorities. This report is therefore a recommendation on how USCENTCOM should implement necessary changes and seek implementation assistance from its joint, interagency, international, and multinational partners.<sup>5</sup>

## 2. (U) PURPOSE, SCOPE AND METHODOLOGY

2.1. (U) **PURPOSE**: This report was completed by the USCENTCOM Assessment Team over a 100 day period from November 2008 to February 2009. Its purpose is to provide a comprehensive assessment of the situation in the USCENTCOM area of interest, review existing strategies and plans across relevant departments and organizations, and recommend actions for U.S. Central Command in the context of an illustrative plan for the integration of all instruments of national power and efforts of coalition partners in time, space, and purpose to achieve policy goals.

2.2. (U) **SCOPE**: The ROL Assessment Team consisted of members from across civilian and military agencies/departments of the U.S. Government (Department of Justice and its component agencies that include the U.S. Marshals Service, Federal Bureau of Investigation, and the Drug Enforcement Administration, Department of State --International Narcotics and Law Enforcement Affairs and Coordinator for Reconstruction and Stabilization, Department of Treasury, the U.S. Army Office of The Judge Advocate General, and the U.S. Naval War College) as well as Coalition Partners (British Army, Supreme Headquarters Allied Powers Europe NATO). It drew on intelligence analysis, existing U.S. and Coalition plans and policy guidance, relevant reports and studies (see Appendix A for a full list of reference and source materials), the expertise of its members, the broader U.S. Government community, think tanks, non-governmental organizations, and academic institutions, and consultations throughout the region, including with Country Teams, bilateral partners, local actors, and international and nongovernmental organizations (see Appendix B for a full list of consultations).

---

<sup>5</sup> USCENTCOM operates in a joint, interagency, international, and multinational environment. USCENTCOM does not direct other partners' actions, but must seek concurrence and willing participation from a wide range of partners to best achieve the kinds of change that this assessment proposes. This report has benefited greatly from the wide range of representatives across the U.S. Government and foreign and international communities who participated in Assessment Team work.

2.3. (U) **METHODOLOGY:** This report was developed in the format of a draft illustrative plan annex in order to impose sufficient rigor in analysis and recommendations. By providing a comprehensive, civilian-military context for U.S. Central Command, this report is intended to mitigate the risk of over-militarization of efforts and the development of short term solutions to long term problems.

*Disclaimer: This document does not represent the official position of U.S. Central Command, the Department of Defense or any other agency of the United States Government.*

### 3. (U) **SUMMARY OF THE SITUATION ASSESSMENT**

(U) USCENTCOM support to USG and international ROL efforts in the AOR has been substantial, especially in Iraq and Afghanistan. Despite this support, ROL development efforts throughout the AOR face significant challenges.

(U) The legitimacy of a partner nation in the eyes of its people is directly proportional to its progress in establishing and strengthening a ROL construct in all of its activities. Moreover, the USG and its allies must be cognizant that the fidelity to the ROL in assistance to partner nations and in operations, particularly those directed at combating transnational threats and violent extremist organizations (VEOs), will affect the USG and our allies' legitimacy in the theater, AOR, and the international community. In turn, the strength of USG and our allies' legitimacy will impact the degree of success in achieving our strategic objectives.

(U) The most significant challenges in planning and implementing ROL programs are the following:

3.1. (U) Leadership and its Impact on Unity of Effort. USCENTCOM and USG civilian agencies lack unity of effort in helping partner nations develop their ROL capacity. Current and past ROL efforts have been plagued by systemic problems, including the inadequate leadership, synchronization, and management of ROL programs. Current military and civilian interagency ROL efforts in support of the governments of Iraq and Afghanistan have suffered from a lack of synchronization, coordination, and effective planning.<sup>6</sup> This is a fundamental problem because agencies are inefficiently developing redundant capacities in some security and justice sector assistance programs, while also failing to focus on some key areas (e.g., see the discussion below about analysis and engagement of customary, tribal, and religious legal systems).

(U) This problem of inadequate ROL leadership has existed amongst the civilian agencies in at least the past three U.S. Administrations and no acceptable resolution has been reached.<sup>7</sup> The Department of State (DoS) personnel who lead and manage ROL programs in operations like Iraq and Afghanistan face significant challenges and have been subject to consistent criticism from outside<sup>8</sup> and from within their own department.<sup>9</sup>

---

<sup>6</sup>See findings of Department of State, Office of the Inspector General, Inspection of ROL Programs in Afghanistan, Report Number ISP-I-08-09, January 2008, hereinafter referred to as "State Inspector General Afghanistan ROL Report."

<sup>7</sup>In fact, a vigorous debate occurred during this team's assessment. In order to address this controversy for the information of all readers, a description of various positions is discussed in Appendix E.

<sup>8</sup>E.g., Special Inspector General for Iraqi Reconstruction Report, Hard Lessons – The Iraq Reconstruction Experience, Washington DC, February 2, 2009, pp. 206-7, and Report from the Project on National Security Reform, "Forging a New Shield Executive Summary", Arlington, VA, 2008, pp. vii-x.

<sup>9</sup>E.g., State Inspector General Afghanistan ROL Report, pp. 5-8.

(U) It is important to note that the personnel from DoS, and in particular the Bureau of International Narcotics and Law Enforcement Affairs (INL), face severe challenges. They are understaffed, underfunded, and overworked. Secretary Gates and others within the Department of Defense (DoD) have long advocated additional funding and resourcing for DoS to perform their statutory duties. We share this concern and many military agencies and commands have worked to support DoS ROL personnel in order to achieve integrated success.

(U) USCENTCOM is an interested participant, not an arbiter on interagency organization, policy, or resourcing. Thus this report focuses on the impact this controversy over leadership and cooperation has on effectiveness of ROL and the military role in support of ROL development. With that said, we cannot overemphasize that truly effective leadership will improve the success and sustainability of ROL development efforts overseas.

3.2. (U) “Doctrine” and its Impact on Unity of Effort. Lack of agency unanimity in theory, doctrine, policy, and training for ROL results in fractured and inefficient approaches to development efforts. There is no common, shared vision of what the ROL consists of and therefore what approach should be taken by the USG interagency community. Ideally, the USG would have a written guide or manual that covers all of the major components of a robust ROL system. Such a comprehensive guide would discuss justice sector, security, law enforcement, corrections, legislative, constitutional construction, criminal law, economic and commercial issues, accountability, anti-corruption, and other essential legal elements of ROL. Since no single agency publishes policy or doctrine, USG agencies tend to focus on their agency’s past practice as a model for analyzing future partner nation problems. There are two developments that have tried to counter this problem. The U.S. Institute of Peace has started to conduct a training course for ROL practitioners that takes this kind of broad approach. Similarly, the U.S. Army Judge Advocate General’s Corps and Civil Affairs communities have been developing similar training, publishing handbooks, and including ROL as part of the discussion in Army Field Manual 3-07 Stability Operations.

3.3. (U) Cultural and Historic Awareness of Importance of Religious and Traditional Justice and Dispute Resolution and Reconciliation Systems. ROL programs typically fail to fully consider and then tailor efforts to the partner nation’s pre-existing religious, community, and tribal based systems of justice, law, and conflict resolution.<sup>10</sup> Such systems include sharia courts and the shura system of community based dispute resolution in Afghanistan. Such systems present grave challenges because they can infringe on human rights, empower illicit power structures, and adhere to religious or cultural beliefs that offend a Western democratic sensibility. However, ignoring this system concedes initiative and a vast human terrain advantage to insurgents, terrorists, and illicit power brokers who would profit from the use of customary law to displace the ROL and central government authority. Therefore, ROL development planning and implementation must, from the outset, accord great importance and significant deference to these systems. Partner nation and indigenous officials, experts and influential

---

<sup>10</sup> Although numerous studies have pointed this out in the Afghanistan ROL effort, the issue is still being studied and considered by USG ROL personnel and agencies. In the meantime, US military commanders have been routinely engaging these same informal or customary legal system decision makers for purposes of discussing security and other counterinsurgency (COIN) issues. We are missing a significant opportunity to combine and gain synergy through using the ROL to enhance security and vice versa. For an example of a USG study that reached this conclusion, see USAID’s “Field Study of Informal and Customary Justice in Afghanistan and Recommendations on Improving Access to Justice and Relations Between Formal Courts and Informal Bodies,” Afghanistan ROL Project, Checchi and Company Consulting, Inc., June 2005.

personnel must be part of and support significant development proposals. Key issues include whether the current mosaic of systems can respond to the needs of the host nation (e.g., fighting transnational crime or a growing market economy) and whether the current systems encourage or fail to respond to gross violations of human rights or of the basic tenets of a ROL construct.

3.4. (U) U.S. Credibility and Trust Deficit. USG legitimacy in the eyes of host nations and the international community is undermined by U.S. military operations and military support to civilian activities (e.g., law enforcement) perceived to be inconsistent with basic ROL tenets (e.g., prohibition of inhumane treatment, notice of charges and due process in adjudication) and international law.<sup>11</sup> This has undermined our historic reputation for compliance with legal, moral, and ethical standards. Incidents such as detainee abuse at Abu Ghraib, Guantanamo, and in military interrogations detract from our reputation and undermine our legitimacy. With a damaged reputation, it is difficult to persuade the international community of the need to review existing international legal approaches to national security against these and other threats. Diminished legitimacy can also limit our ability to employ all of the instruments of national power unilaterally and with coalition allies.

3.5. (U) Suboptimal Use of Law and Law Enforcement Options. USCENTCOM and the USG have not fully explored how to employ the legal authorities available under international law and the capabilities that U.S. Law Enforcement Agencies can provide in efforts to counter transnational threats. One area that has been explored is the authority<sup>12</sup> to respond to transnational terrorists and VEOs that operate in international waters, airspace, and in a variety of states. USCENTCOM should use this kind of analysis to brainstorm how to counter a broader range of related transnational threats and crimes. U.S. and international law often limit proactive or robust U.S. actions to counter transnational threats. This same limiting factor can affect the willingness of key allies and partner nations to assist and participate in such efforts. The statutes that authorize DoS, DoD, the Department of Justice (DoJ) and others to cooperate in development and public diplomacy with partner nations reflect outdated assumptions regarding transnational threats and the nature of instruments of national power in modern international relations. Although not new, threats like transnational terrorism, narcotics trafficking, transnational financial crimes, cyber crimes, and piracy pose a significant threat to both nations and the international order because they exploit the seams in the Westphalian system of sovereignty.<sup>13</sup> They exploit international boundaries, spaces, and safe havens afforded by a Westphalian model of sovereignty. However, there are existing legal frameworks that could provide a framework for more global, concerted effort against, and law enforcement interdiction of, these

---

<sup>11</sup> See e.g., discussion of the perception that the US operates in a “legal black hole” in: the War on Terror, Jack L. Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W.W. Norton and Company, 2007), p. 120.

<sup>12</sup> See e.g., discussion of this problem with US and international law authorities in both Goldsmith, *The Terror Presidency*, and Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (New York: The Penguin Press, 2008), p. 8.

<sup>13</sup> The “Westphalian system” is a term arising from the Peace of Westphalia in 1648 which recognized territorial sovereignty of states as part of the terms that ended the Thirty Years’ War. “Westphalian” is thus a short hand term for international law and a term used to describe the fundamental organizing principle for the international order – each nation state exercises sovereignty over its own territorial land, airspace, and waters. Conversely, other nations must respect this sovereignty and may not intrude or take action against individuals in another’s territory unless exceptional circumstances exist. This basic principle is an underlying premise of the UN and is specifically safeguarded in terms of prohibiting aggression under Article 2(4) of the UN Charter.

groups. For example, the doctrine of treating pirates as “enemies of mankind” applies to pirates and other groups of criminals.<sup>14</sup>

3.6. (U) Legal Authorities. Current U.S. and international law do not include all of the legal authorities that should exist to support future USCENTCOM operations. Many specific problems existing in current laws should be addressed with amendments to the Foreign Assistance Act and other statutes. More importantly, the existing statutory structure for security assistance is outdated, inflexible, and predicated on a national security situation that no longer exists. Changes to existing legal authorities are needed to ensure that military (e.g. USCENTCOM) and partner USG civilian agencies can effectively pursue and safeguard U.S. objectives and interests.

#### 4. (U) PLANNING ASSUMPTIONS

~~(S//REL TO USA, FVEY)~~ This report assumes the following:

- - 
  - 
  -
- (b)(1)1.4(a), (b)(5)

#### 5. (U) STRATEGIC GOALS

5.1(U) Enduring Interests and Values Related to the Region: USCENTCOM planning for ROL must support the protection of U.S. interests in the AOR. Those interests are:

- The security of U.S. citizens and the U.S. homeland, which includes
- The defeat of VEOs, the elimination of their safe havens, and the discrediting of their ideologies

---

<sup>14</sup>This is an interesting model for dealing with transnational threats. The problem of piracy is almost timeless and, U.S. legal authorities implementing international legal agreements and practice from centuries past enable the United States and its allies to act now in international waters. The catalyst leading to such international comity was the universal recognition that a threat existed in international and territorial waters that was so profound that the community of nations must cooperatively in order to meet it. Thus was born the universal jurisdiction theory of piracy as an offense of international proportions. Military or naval forces were empowered to act because of the level of threat, but the adjudication mechanism still relied on national criminal law systems. Thus, today we see that naval forces are authorized to conduct arrests and searches on the high seas and to turn detained pirates to national criminal justice authorities for trial. In the territorial waters of Somalia, the UN Security Council has authorized naval forces to act in a much more expansive manner.

- Responsible control of weapons of mass destruction (WMD) and associated technologies
- Regional Stability
- International access to strategic resources, critical infrastructure, and markets
- The promotion of human rights, the ROL, responsible and effective governance, and broad-based economic growth and opportunity

5.2. (U) The most recent, unclassified end states that the DoD Guidance for Employment of the Force (GEF) sets out for USCENTCOM are listed below. They are consistent with and support achieving U.S. interests in the AOR.

- Protect the homeland and U.S. interests in the region.
- Develop and strengthen a network of friends and allies in the region.
- Protect the free movement of legal commerce, critical infrastructure, and resources of global commercial interest.
- Deny ability and interest of terrorist and VEOs to act and influence relations regionally and globally.
- Prevent the use, proliferation, and new development of weapons of WMD in the region.

5.3. (U) Based on U.S. national security interests and the GEF end states, the goals for ROL efforts should be as follows:

5.3.1. (U) Overall Long term Strategic Goal (10 years). In 10-25 years, key partner nation governance systems are improved through an integrated USG ROL development effort in order to strengthen partner nation legitimacy and stability.

5.3.2. (U) Intermediate Strategic Goal (5 years). Helped improve Afghanistan, Iraq, and other selected partner nation governance systems through integrated and doctrinal USG ROL development efforts in order to strengthen partner nation legitimacy and stability.

5.3.2.1. (U) Subordinate Goal 1. USCENTCOM supported adoption of an agreed interagency ROL planning framework.

5.3.2.2. (U) Subordinate Goal 2. USCENTCOM planned and provided significant military support to U.S. ROL activities in Iraq and Afghanistan as part of regional national development engagement.

5.3.2.3. (U) Subordinate Goal 3. USCENTCOM improved regional struggle against terrorists and other transnational threats through innovative use of law and law enforcement.

5.3.2.4. (U) Subordinate Goal 4. USCENTCOM supported fundamental modernization of Security Assistance statutes and other laws required to effectively win the struggle against transnational terrorists and other threats.

5.3.3. (U) Near-term Strategic Goal (18 months): Helped to improve Afghanistan, Iraq, and other selected partner nation governance systems through development and initial employment of a comprehensive ROL doctrine in order to strengthen partner nation legitimacy and stability.

5.3.3.1(U) Subordinate Goal 1. USCENTCOM increase military support for interagency coordination, planning, and execution of ROL efforts in Iraq and Afghanistan.

5.3.3.2. (U) Subordinate Goal 2. USCENTCOM improved military support to interagency ROL effort by adopting and employing a comprehensive planning framework or doctrine.

5.3.3.3. (U) Subordinate Goal 3. USCENTCOM initiated innovative use of law and law enforcement in order to more effectively address terrorists and other transnational threats.

5.3.3.4. (U) Subordinate Goal 4. USCENTCOM requests legislative proposals to better enable accomplishment of mission in AOR.

## **6. (U) OVERALL CONCEPT OF INTEGRATION**

(U) As discussed above, the key issue in this portion of the assessment is USCENTCOM's support for ROL because of its critical linkage to national legitimacy. The relationship between ROL and the popular reputation of a national government for justice can be one of the keys to success in all that government seeks to achieve.

(U) From a policy perspective, compliance with the ROL is considered a critical effort by almost every leader in the United States Government. The last U.S. Administration stated that it was a critical objective for the USG's diplomatic efforts.<sup>15</sup> President Barak Obama stated that ROL would be a touchstone of how his administration would operate.<sup>16</sup> The President also emphasized that in matters of national security he would apply the ROL as an example of our ideals, even when some would argue that it ran afoul of concerns about our security or safety.<sup>17</sup>

(U) From a practical or utilitarian perspective, experts maintain that ROL is necessary to help a nation achieve political stability or governmental sovereignty, advancing the view that respect for pre-existing and impersonal rules and adherence to law is a critical element of successful counterinsurgency efforts<sup>18</sup> and stability operations,<sup>19</sup> and of developmental efforts in struggling states such as

---

<sup>15</sup>Former Secretary of State Rice regarding US Department of State Global Objective 1.

<sup>16</sup>"Transparency and the ROL will be the touchstones of this administration," President Obama, announcing new rules regarding lobbyists and FOIA. 21 Jan 09.

<sup>17</sup>"As for our common defense, we reject as false the choice between our safety and our ideals. Our founding fathers, faced with perils we can scarcely imagine, drafted a charter to assure the ROL and the rights of man, a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience's sake. And so to all the other peoples and governments who are watching today, from the grandest capitals to the small village where my father was born: know that America is a friend of each nation and every man, woman, and child who seeks a future of peace and dignity, and that we are ready to lead once more." President Obama's inaugural address, January 20, 2009.

<sup>18</sup>"US legal violations quickly become known and undermine short- and long term COIN." FM 3-24, Counterinsurgency Operations.

<sup>19</sup>"Rule of Law enhances the legitimacy of the host nation government." FM 3-07, Stability Operations.

Afghanistan.<sup>20</sup> This view draws upon theories of social contract. The people consent to be governed and thus voluntarily support and give legitimacy to the government.<sup>21</sup>

(U) Finally, from a moral perspective, the ROL is consistent with moral imperatives that compel governments and their officials to act or refrain from action. The entire order of international relations is based upon notions of fundamental law and the obligations of justice and fairness. From the idea that all states are bound by general international law norms<sup>22</sup> to the notion that international relations itself relies on the concept of states being bound by their treaty agreements,<sup>23</sup> the ROL undergirds a wide range of influential moral theories.

(U) Whether one views this from a policy, practical, or moral perspective, it is clear that the concept of ROL and the state's or national government's perceived legitimacy are linked and, in turn, they form a basis for a state's actions inside and outside its borders. Thus, the development support we give a partner nation, our own actions in the AOR, and the way we ensure USCENTCOM has sufficient legal authorities to perform its duties, all revolve around adherence to ROL. Therefore, we recommend that USCENTCOM adhere to ROL as it performs these three functions:

**A. (U) Increase Unity of Effort in USG Programs and Actions to Develop Partner Nation's ROL Capacity.** USCENTCOM should take action to help strengthen unity of effort in USG ROL development efforts in partner nations. ROL unity of effort should achieve "coordination and cooperation toward common objectives" between military and interagency partners.<sup>24</sup> To be effective, ROL development must be an integral, integrated, and cross cutting part of the broader strategic effort to build partner capacity and to help with development, economic, and government (DEG) functions of host nations (as discussed in the DEG and Building Partner Capacity annexes of this assessment). Thus, the ROL line of effort can and should be a subordinate line of effort with its own sub-goals (albeit implicitly cross-cutting) for each of the planning efforts listed above. To accomplish this, we recommend the following actions:

(U) Increase military support for interagency coordination, planning, and execution of ROL efforts in Iraq and Afghanistan in order to improve unity of effort. Military commanders are already devoting significant effort to ROL in both Iraq and Afghanistan. With a slight increase in effort and personnel, these commanders could perform at a much more effective level and increase integration with other USG efforts. While significant augmentation has already occurred in Iraq for ROL programs, there are relatively few personnel assigned to ROL duties in military commands in Afghanistan. Given the significant need for support to Afghan government ROL, this would seem to be an area that could be

---

<sup>20</sup> "The ROL is a 'glue' that binds all aspects of the state, the economy, and society." Ashraf Ghani and Clare Lockhart, *Fixing Failed States* (New York: Oxford University Press, 2008), p. 125.

<sup>21</sup> This legitimacy thus grants government its power, authority, and sovereignty. This concept is generally associated with Locke, Hobbes, and others. See e.g., Jean Jacques Rousseau, The Social Contract, or Principles of Political Right, translated by G.D.H. Cole, 1762.

<sup>22</sup> E.g., *Jus cogens*, or preemptory norms of international law that are binding on states at all times and may not be abrogated by a state.

<sup>23</sup> E.g., *Pacta sunt servanda*, or a treaty agreement must be kept.

<sup>24</sup> From the definition of Unity of Effort in Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 12 April 2001 (As Amended Through 17 October 2008), p. 578. Unified action is further defined as "[t]he synchronization, coordination, and/or integration of the activities of governmental and nongovernmental entities with military operations to achieve unity of effort." Joint Publication 1-02, p. 575. While not ideal, such military references were the only readily available authoritative sources for these critical terms for describing interagency cooperation.

positively influenced with a relatively small increase in key personnel at the appropriate command levels.

(U) Use liaisons to facilitate ROL planning and execution. USCENTCOM could request augmentation from civilian agencies for the USCENTCOM headquarters and could increase the number of military personnel assigned to ROL duties in Afghanistan. Unity of effort also calls for subject matter expert leadership in Washington, DC and at the Country Team implementation level. To help institutionalize integrated strategic ROL policy development and regional planning, DoS, US Agency for International Development (USAID), Department of Justice (DOJ), and other agencies could be requested to assign senior subject matter experts (e.g., DOS International Narcotics and Law Enforcement Affairs [INL], USAID's OTI, and/or DOJ's International Criminal Investigative Training and Assistance Program [ICITAP] or Overseas Prosecutorial Development, Assistance, and Training [OPDAT]) to liaise with USCENTCOM in order to improve coordination and cooperation in planning and executing ROL development activities. This is critical because military activities relating to ROL require clear guidance on objectives, information on program efforts, coordination, and cooperation from the lead and implementing agencies. Without this integration and joint effort, military efforts will occur independently of, and perhaps in conflict with, efforts being planned at the U.S. Embassy and international partner level.

(U) Use military program commanders to coordinate ROL efforts. One of the problems with ROL success is that such efforts are long term in nature. They require long term planning from the very beginning in order to visualize how to nest military efforts with long term civilian agency development efforts and to build the partner capacity that is needed. One key to success is selecting the appropriate leadership model to apply to ROL programs, as demonstrated by selection of some of the key leaders for ROL programs in Iraq. USCENTCOM should consider appointing "program manager" types of leaders for ROL programs in countries like Iraq and Afghanistan, rather than assigning the program to traditional military unit commanders, though effort must also be made to promote the status and credibility of these "program commanders." Given the complex nature of ROL programs and the perspective of civilian agencies, military leaders involved in ROL must bring a different type of expertise and unique tools to bear on the problem. Given the long term nature of the effort, the resource management problems, the interagency cooperation, and the fact that ROL deals with a complex social-political dynamic that is best influenced through soft power tools, military leaders should consider appointing a program manager rather than a commander to lead ROL efforts. Like procurement or other types of efforts currently using program management structure, ROL must be led by those with career professional experience in the discipline at issue (e.g., policing, corrections, economic development, regulation of financial institutions) and related management experience (e.g., dean of police academy.) The funding agency provides required oversight through fiscal and programmatic reporting and consistent review of previously set performance indicators. Finally, the personnel assignment procedures should consider how to minimize disruption from periodic turnover. For example, program commander/managers in procurement are assigned to the program for an initial period as the Deputy. After serving in that capacity, the Deputy assumes the command or leadership duties upon rotation of the senior. This ensures full comprehension of the intricacies of the program, and minimizes the chances that the long term "baseline plan" for the program will be scrapped and redone upon turnover of key leader. In this regard, the USCENTCOM Commander should make use of his existing authority to organize commands as necessary to accomplish assigned missions.<sup>25</sup>

---

<sup>25</sup> 10 U.S.C. Section 164c(1)©.

(U) Increase the number of personnel assigned to conduct ROL in Afghanistan. USCENTCOM could also use military personnel to increase military liaison with ROL personnel at the U.S. Embassy Kabul (there is already a military liaison to the USG ROL Coordinator so this would be a potential increase of personnel) and at military command headquarters at CSTC-A, USFOR-A, and Regional Command - East/Combined Joint Task Force - 101. In addition, if joint strategic planning or assessment is needed in Afghanistan or elsewhere, U.S. Joint Forces Command (JFCOM) is forming a deployable assessment team that could augment such efforts on a short notice, and on a short term basis.

(U) USCENTCOM should support development, adoption, and employment of a ROL planning framework or doctrine.

(U) Support development of a doctrinal template for ROL planning and execution. As discussed above, there is no interagency template or doctrine for comprehensive ROL efforts. Agencies that work in ROL focus on efforts that are within their respective agency mandates or past practices.<sup>26</sup> As a result, there is no overarching theoretical construct that guides balanced and simultaneous efforts across USG agencies. USCENTCOM can initiate this effort by first developing a theoretical framework or doctrine for military effort. Like the military effort to develop COIN and Stability Operations doctrine in Field Manuals 3-24 and 3-07, USCENTCOM can help start the dialogue and agreement on how to shape this ROL doctrine. This effort can support existing efforts within DoS's Office of the Coordinator for Reconstruction and Stabilization and USAID. In fact, military and civilian interagency effort is already underway in Joint Forces Command.<sup>27</sup>

(U) Ensure that doctrine uses a comprehensive and functional approach, including anti-corruption activities. USCENTCOM should ensure that ROL development doctrine includes functional and not just institutional approaches. ROL analysis and assistance programs tend to focus on institutional development of individual ministries, technical assistance (i.e., mentoring at mid and upper level management within ministries) and training (e.g., police academies). In doing so, it is easy to overlook transactional relations between institutions and how these institutions work together to achieve systemic goals. Using the criminal justice system as an example, a primary goal is efficient investigation, prosecution, defense, adjudication, and punishment of criminal law violators. The actors at each stage of the process may be different depending upon the partner nation's system, e.g., police and/or judicial investigators having primary responsibility to conduct the investigation, supervised by either a prosecutor or investigating magistrate. Each actor will have different individual goals (prosecution vs. defense). But each element in the system – investigation, prosecution, defense, adjudication and corrections – must have clearly defined rules and responsibilities, all of which are intended to achieve the systemic goal outlined above. In civil law/Napoleonic code jurisdictions (the vast majority of jurisdictions in which ROL building programs are situated), effective Codes of Criminal Procedure (CCP) (and, possibly, its Constitution) usually provide detailed descriptions of how the system works. But, in post-despotic host nations, in addition to removing vestiges of the despotic regime and modernizing the CCP, ROL development should include inter-ministerial (including the defense bar) programs (e.g., information technology) and training to overcome past

---

<sup>26</sup> See e.g., the five problems with interagency national security systems described in the report by the Project for National Security Reform.

<sup>27</sup> JFCOM J-9 is developing a series of joint commanders' handbooks on stability operations. One of them deals with Security Sector Reform and the ROL. The draft planning template developed in this effort is already in use in various geographic combatant commands. The handbook is in draft, but the planning template is already fairly well developed. [See further explanation in the introductory chapter to the draft handbook, reproduced as Appendix D].

rivalries and mistrust, and to re-enforce common interests, e.g., proper case management. Functions in most USCENTCOM AOR ROL programs should include anti-corruption, accountability, and transparency. This is one of those functional areas that is often left undone when building the initial development plan, but is a critical obstacle to progress. For example, the DoJ has an excellent model for anti-corruption that they have developed based on their extensive international ROL efforts.

(U) Ensure that doctrine respects existing customary, religious, and tribal legal systems. USCENTCOM should ensure that ROL efforts respect and account for existing legal traditions. This is a significant issue because it is central to how development efforts recognize that “durable social change must come from within” the nation’s society and government.<sup>28</sup> Others cite the axiom that all efforts must be done “by, through, and with” the partner nation leadership. This is particularly true regarding existing formal (i.e., religious and secular) and customary legal traditions of that nation. Rather than evaluating partner nations’ systems primarily from a Western-centric perspective, USCENTCOM and civilian ROL practitioners should acknowledge customary legal systems if they are part of the basic social fabric. Contemplated changes should be considered under two sets of circumstances. The first is if the current systems are inadequate to meet current challenges to the society, e.g., the systems cannot address social needs in the face of transnational crime or the development of a market economy. The second is if the current systems promote or acquiesce to gross violations of human rights and/or the universal tenets of a system based upon the ROL.

(U) Understanding and developing an appreciation for traditional legal systems poses a particular challenge for Western trained ROL practitioners. Thus, a major and ongoing endeavor of U.S. military and interagency ROL practitioners is to continually deepen their understanding of these systems, including the cultural, religious, and historical underpinnings, critical actors and practical application in every day life. For example, studies of tribal and other non-state legal systems in Afghanistan indicate that more than 75 percent of disputes are resolved in jirgas and shuras. Most Afghans do not know of or rely on the formal courts of the Afghan government. Given that the Afghan government supports the strengthening of a national (formal) system, efforts should focus on the goals to be achieved by the national system and how this system will help to ameliorate perceived weaknesses of traditional systems.

(U) All ROL practitioners must study and understand the legal systems of the partner nation. This should take place prior to arriving in the partner nation. Command legal advisors are required to conduct a country law report/study that should include an in depth discussion of these complex legal systems. We recommend that these studies include links to landmark scholarly or empirical studies. As we improve greater integration of military and civilian ROL planning, civilian agencies might contribute to these country law reports. Similar research and data should be included in any interagency assessment conducted prior to or during the providing of ROL assistance.

(U) From the very outset, analyses of existing legal systems (formal and informal) and development needs must be based upon close and continual consultation with host nation officials, local and regional experts, and other appropriate stakeholders and experts. Development programs for formal legal systems must respect and attempt to build on existing, traditional, or informal systems.

---

<sup>28</sup>Jane Stromseth, David Wippman, and Rosa Brooks, Can Might Make Rights? Building the ROL After Military Interventions, New York: Cambridge University Press, 2006, p. 377. See also how ROL in Counterinsurgency must be done by, through, and with the partner nation and its people in FM 3-24, and in the Interagency COIN Guide, p. 41 [“Effective COIN therefore requires that the major effort is (and is seen by the local population to be) led by the indigenous government.”]

Respectful engagement about indigenous systems should focus on the two scenarios described above: the systems are unable to meet current societal needs and/or conflict resolution within the boundaries of fundamental, internationally accepted standards of the protection of human rights and ROL. Proposing fundamental changes to the system (e.g., change from European/"civil" law and/or an accusatorial to U.S./U.K. common law and/or adversarial system<sup>29</sup> should be deferred until questions regarding the relationship between the traditional and envisioned formal legal systems are resolved.<sup>30</sup>

**B. (U) Employ ROL to Make Operations More Effective.**

(U) Build Upon Existing Compliance with the ROL. USCENTCOM and the forces it commands are firmly committed to compliance with law in all operations. Commanders at all levels should reinforce this success by continuing to provide command emphasis to continue this as part of our operational norms. Leaders at all levels abide by the law during operations as an institutional imperative. This compliance is mandated by legal and doctrinal provisions. Leaders also recognize this as a practical necessity. Far from being an impediment, effective leaders recognize the value of incorporating legal and policy issues in their decision making. Below are some examples of how this already occurs:

(U) Commanders are acutely aware of the importance of negotiation and compliance with international agreements like status of forces agreements and other treaties. Commanders comply with the law of war and policy restrictions inherent in targeting and rules of engagement. Even controversial categories of operations like intelligence and special operations activities include legal review and decision-making.

(U) In intelligence and special operations activities, military commanders make difficult decision in planning and executing military actions involving intelligence and special operations capabilities on a regular basis. Whether overt, clandestine, or potentially covert all intelligence and special operations consider legal and policy issues before, during, and after any action. Even the most sensitive operation is still evaluated to ensure that the approving official is acting within the boundaries of what the USG has lawfully directed. The ROL always applies, even if less transparent to public review and scrutiny.

(U) Even "new missions" have required legal support as commands developed procedures and systems to handle these emerging functions. Detainee operations in Afghanistan and Iraq are legally intensive and sensitive. Lethal and other means of pursuing terrorists have been extensively staffed with legal support. Information operations, because of the classification and other problems, are new tasks for

---

<sup>29</sup> The adversarial system involves a prosecutor (e.g., Office of the Attorney General) and defense counsel contributing to the gathering of facts and an in-person trial before an independent trial judge in which counsel has the responsibility to present all evidence. An accusatorial (European/civil law system) has an investigating magistrate, part of the judiciary, gathering all evidence (including exculpatory evidence) and presenting it in writing --"the dossier"--to the trial judge. The dossier forms the evidentiary basis for the eventual disposition of the matter. In comparison to adversarial trials, the inquisitorial trial is relatively abbreviated, with the trial court controlling what evidence must be presented and which live witnesses called to testify.)

<sup>30</sup> As noted above, proposed development of more formal legal dispute resolution systems and integration of the envisioned formal system with the traditional systems must be the product of an ongoing nuanced and informed dialog within a broad range of experts from across the USG, the scholarly community and, most importantly, the partner nation in question and other regional and international experts.

many tactical commanders. However, they are dealing with the discipline with the help and advice of their legal advisors.

(U) Another area where USCENTCOM commanders have quickly adapted to legal requirements is in multinational operations. Some commands have dealt with multinational operations. In Afghanistan and elsewhere, commanders have learned “on the fly” how to operate within the volatile, uncertain, complex, and ambiguous realm of international coalition operations. The fact that such operations can be governed by multinational treaties and directives, such as the North Atlantic Treaty and NATO operational mandates, is a novel consideration for some commanders. In Afghanistan, U.S. military leaders have had to adapt to NATO principles of consensus and consultation that characterize NATO policy and operational decision-making. In order for a major military activity to occur, the North Atlantic Council must research, develop national positions, consult, fully disclose information, and debate. If and only if a unanimous decision is reached by the North Atlantic Council, the military NATO commanders can develop and issue orders and plans to initiate major military activity. In addition, national restrictions or caveats can complicate the permissible rules of engagement and operational roles of some allied forces. Against this coalition background, commanders must balance U.S. national interests and military concerns with coalition authorities. Commanders must know the legal relationships and authorities in order to effectively employ forces and invoke allied contingent obligations to act. By knowing the allied and coalition procedures, restrictions, and authorities, a wise commander can decide how to effectively accomplish missions with coalition forces.

(U) Help to Combat the USG’s Credibility and Trust Deficit. Unfortunately, despite USCENTCOM’s compliance with law, the USG suffers from a number of problems in public diplomacy and strategic communication. As discussed in the Strategic Communications and Political Diplomatic Annexes and elsewhere, a trust and credibility deficit has grown in which people perceive that the USG does not abide by the ROL. The perception is widely held that U.S. tactics in combating terrorism are inconsistent with basic tenets of the ROL. This perception is primarily the product of isolated instances in which individuals have violated the law and engaged in offensive or inappropriate actions.<sup>31</sup> It also results from some flawed policy decisions by the USG that were ultimately reversed by the executive branch or judicial review.<sup>32</sup>

(U) Combating the perception that the US has failed to act within the ROL and fundamental human rights will require more than modifications in Strategic Communications or Public Diplomacy. It will require a concerted effort to clearly demonstrate that the United States conducts all operations in accordance with its obligations under U.S. law, international law, and with respect for partner nation laws and customs.

---

<sup>31</sup> E.g., the soldiers who abused detainees at Abu Ghraib during Operation Iraqi Freedom I. These soldiers never did this as a matter of USG policy, but the misimpression lingers that their actions were part of a broader deliberate military policy.

<sup>32</sup> Many are familiar with the controversies surrounding DoD officials approving a military order directing use of interrogation techniques that turned out to be unlawful. Although the team was not privy to the events surrounding the approval of military interrogation techniques for Guantanamo, we base our general conclusion on information obtained during the course of our home agency duties and on unclassified accounts such as Goldsmith, The Terror Presidency, pp. 153-62, and the detailed analysis in Sands, Torture Team. It is important to reiterate that this assessment concludes that the vast majority of actions by the USG in the past eight years have been necessary and lawful. The decisions and actions taken were the result of flawed judgment or the desire to provide a decision where the law was ambiguous or in flux.

(U) USCENTCOM can contribute to this effort by re-emphasizing the need for commanders to ensure continued compliance with well established legal standards set in military training and education. This applies to areas such as detainee operations, human intelligence interrogation, targeting, COIN, and the conduct of military operations in sensitive situations and populated areas. In Iraq, this includes the need to ensure clear compliance with the terms of the Security Agreement and Strategic Framework Agreement. Despite popular perception and media commentary, the United States already does all of this at the institutional level.

(U) USCENTCOM Should Use Law and Law Enforcement Approaches Innovatively. USCENTCOM should explore how to use the law to deal with transnational threats in a more effective manner. Today's threats and the circumstances that will arise in the future require a different approach than those developed in past years. How can USCENTCOM and its USG partners combine military power and soft power capabilities in innovative ways? Can we integrate and synchronize military and law enforcement approaches to deal with transnational threats, terrorism, and violent extremist organizations in a more efficient and expansive manner? As discussed in the Counterterrorism Annex, this kind of approach is already ongoing and, if expanded, offers the opportunity to increase the available tools and to counter the drivers of violent extremism. A greater reliance on prosecution of terrorist threats will help to de-legitimize those threats by treating these individuals as "criminals" rather than as "warrior enemies." USCENTCOM should employ this approach in both counterinsurgency operations and in other areas around the AOR.

(U) This approach also allows USCENTCOM to cast a wide net in dealing with threats and crime that may be closely aligned with the threat of transnational terrorism and VEOs. For example, a transnational terrorist organization may need funding, transportation, supply, or arming for their organization and personnel. In finding ways to accomplish this, they may turn to existing networks that are used in transnational criminal financing (money laundering, etc.), cyber crime, human trafficking, narcotics trafficking, piracy, and WMD proliferation. In targeting these other threats, USCENTCOM and the USG will be able to indirectly interdict terrorism and will increase our chances of gaining actionable intelligence on the most significant threats.

(U) The existing legal structure already facilitates this approach. Congress, at the request of the executive branch, has already made terrorist acts crimes under U.S. law. Congress has also approved the creation of a military system for judicial disposition of cases involving terrorists and others who take up arms against the United States and its armed forces through combat, insurgency, and terrorism. Law enforcement agencies conduct investigations and extradite suspects from foreign countries to stand trial in the United States. In fact, the U.S. legal framework for extraterritorial jurisdiction over terrorism is one of the most aggressive in the world. This structure can serve as a firm foundation for improving how we deal with transnational threats in general.

(U) Although the next step is not one for USCENTCOM to take or advocate, it is critical for the command to maintain situational awareness as an interested party. It will affect the operational environment and the kinds of operations we will have to conduct in the future struggle against transnational terrorism. Thus, it is important for USCENTCOM to know that there is an ongoing national debate on how to take a further step in criminalizing terrorism. It deals with the creation of substantive criminal offenses that go beyond the existing laws and the question of whether to create a

national security court system. If either or both of these steps occur, the opportunity to employ law enforcement approaches in the AOR may increase significantly.

(U) If a criminal statute exists, Law Enforcement Agencies can focus their efforts to ensure that a transnational criminal will be identified, investigated, and arrested (it is interesting to note that some in the FBI have adopted the military targeting terminology, i.e., “find, fix, and finish” to describe this sequence). Somewhere in that sequence, USG leaders will need to address the problem of where a trial should occur and under whose authority. In some cases a partner nation may be willing to exercise its territorial jurisdiction over terrorists in their country. In other cases, the USG and the partner nation may seek to have a third country or international tribunal (such as the International Criminal Court) exercise jurisdiction over the individual. In U.S. courts we have a number of ways to handle such a case. We could try the criminal in U.S. District Court under criminal statutes, in a military commission,<sup>33</sup> and potentially in a national security court.<sup>34</sup>

(U) Expanded efforts to deal with transnational criminals would also involve investment in the resources needed to conduct international or extraterritorial investigations. The level of effort at the Legal Attaché offices<sup>35</sup> around the AOR would increase significantly. Our liaison and joint operations with partner nation law enforcement officials would increase. Intelligence and law enforcement information sharing procedures involving foreign disclosure procedures would be especially critical. Moreover, the resources needed to exercise enforcement of extraterritorial jurisdiction, extradition, and secure transport of prisoners would be substantial.

(U) Finally, international agreements would have to be negotiated to make this approach more effective. Bilateral or multilateral extradition agreements would be needed. Agreements regarding joint investigation and enforcement activities, along with negotiations regarding the status of diplomats and other USG personnel involved in these activities, would be sensitive and substantial.

### **C. (U) Legal Authorities.**

(U) USCENTCOM would be better able to help bring “smart power” to bear against threats to U.S. interests in the AOR if existing legal authorities were improved. Because USCENTCOM legal authorities include wartime statutory authorities and at the same time exercises authorities designed to enable peacetime cooperative security engagement, they often conflict because these outdated and inflexible bodies of law were not written to operate simultaneously like in today’s dynamic environment. By working within the legal system to obtain these authorities, USCENTCOM supports the ROL. The proposals below were developed based on issues identified by the sub-regional and functional teams within the USCENTCOM Assessment Team. Many of them reflect proposals that have been included in previous reports and legislative proposals.

---

<sup>33</sup> Assuming that the President chooses to continue to use the authority granted in the Military Commissions Act.

<sup>34</sup> The idea of a national security court has been discussed extensively throughout the U.S. national security law community. See e.g., Jack L. Goldsmith and Neal Katyal, “The Terrorists’ Court,” The New York Times Op-Ed Section, July 11, 2007; Harvey Rishikof, Memo to the New President – A National Security Court, January 15, 2009.

<sup>35</sup> Legal Attaches are Department of Justice prosecutors from the Department’s Criminal Division or a Department of Justice law enforcement agency representative (e.g., Federal Bureau of Investigation, Drug Enforcement Administration, US Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives). Even missions that do not have a Legal Attaché on their Country Team are usually supported by a nearby Legal Attaché on a regional basis.

(U) **Immediate Priorities for Legislative Change.** USCENTCOM should seek five top priority changes to existing laws. These are required now and would have immediate effect.

1. (U) Make the Commander's Emergency Response Program (CERP) funding a standing authority throughout the AOR. USCENTCOM should request that this program be made a provision in the U.S. Code and that it be made available for use in all foreign countries. CERP has proved invaluable and responsive to the needs of military commanders in Iraq and Afghanistan. As currently authorized in the National Defense Authorization Act of 2009, the funding is only available for operations in Iraq and Afghanistan and only for fiscal year 2009. The USCENTCOM Commander, in close coordination with Chiefs of Mission, should have the authority to use this funding throughout the AOR as one of the tools available to him to conduct theater cooperative security engagement. Making this authority permanent and usable in countries other than Iraq or Afghanistan will increase the effectiveness of the USCENTCOM Commander's efforts to work cooperatively in support of diplomatic efforts, help minimize drivers of instability, and safeguard national security interests throughout the AOR.

2. (U) Make National Defense Authorization Act (NDAA) 2006 "Section 1206 Global Train and Equip" a standing authority. USCENTCOM should request that this authority be made a standing authority in the U.S. Code and that it be expanded to authorize assistance to non-military security forces. For financial year (FY) 2010 the funding should be increased to at least \$750 million and the funds should be permitted for use in assisting non-military security forces. NDAA CT and stability operations are often conducted by security forces in addition to the military forces of partner nations. While the existing Section 1206 authority allows training of military forces essential to ongoing counterterrorism or stability operations, its effectiveness would be enhanced with modifications that take into account the significant financial requirements and the command structure of foreign security and paramilitary forces. This proposed change would increase the USG's ability to meet time-sensitive requirements to build the capacity of foreign security forces for counterterrorism operations or stability operations.

3. (U) Make NDAA "Section 1207 Global Stability and Reconstruction" a standing authority. USCENTCOM should request that this authority be made a standing authority in the U.S. Code. Section 1207 of the NDAA authorizes DoD to transfer up to \$100 million to DoS for stability and reconstruction. The money is managed by DoS S/CRS<sup>36</sup> but DoD retains a significant say in how the money is spent. There are several political reasons why this arrangement is in place, but the major problem is that DoS lacks sufficient funds to conduct what DoD recognizes as DoS's mission to conduct stability and reconstruction. The Secretary of Defense continues to support these efforts but has stressed that DoS needs its own funding to conduct this vital mission. In addition, codifying this provision will enable DoD to continue to provide support as necessary to DoS stability and reconstruction efforts as world events and time sensitive emergencies occur. This flexibility will enable the USCENTCOM Commander to work collaboratively with DoS and Country Teams throughout the AOR to apply soft power engagement where and when needed to best serve U.S. national security interests.

---

<sup>36</sup> Department of State's Office of the Coordinator for Reconstruction and Stabilization is commonly referred to as "S/CRS."

4. (U) Make NDAA “Section 1208 Special Operations Train and Equip” a standing authority. USCENTCOM should request that this authority be made a standing authority in the U.S. Code. Section 1208 authorizes DoD to train and equip indigenous forces operating with U.S. special operations forces. As demonstrated by the past, this is an absolutely essential tool in the struggle against terrorists and other transnational threats. Codifying this provision will enable USCENTCOM to continue to provide support, plan, and to sustain long term relations countries in the AOR. This will enable the USCENTCOM Commander to work collaboratively with partner nations and forces throughout the AOR to apply military instruments of national power where and when needed to best serve US national security interests.

5. (U) Make Military Construction Authorities more Relevant and Responsive to Ongoing USCENTCOM Operations. USCENTCOM should request that military construction (MILCON) authorities and funding be modified as listed below. These recommendations were identified by the Basing, Frameworks, and Logistics Team.

(U) Request increase in the Contingency Construction Account (CCA) annual threshold that authorizes use of operations and maintenance funds for overseas construction related to temporary wartime requirements. The limit for projects is specified annually in the NDAA. Prior to FY 2008, the Secretary of Defense was authorized to waive the funding limits and use higher amounts of operations and maintenance funds if the situation required. Given the dynamic nature of the northern line of communication and ground line of communication situation for Afghanistan, we recommend that this waiver authority be renewed.

(U) Increase the spending limit for unspecified minor military construction using operations and maintenance funds from the current level to \$3 million when in support of a declared war or contingency operation. This is also appropriate since operational situations often inflate market value of construction projects in foreign countries, especially if timely completion is a driving element in production schedules.

(U) Request MILCON funding be provided as a lump sum appropriation without requiring line item approval for specific projects, as well as other changes needed to reduce time in the MILCON process.

(U) **Other Near Term Legislative Proposals.** In addition to the five priority legislative proposals, USCENTCOM should resubmit a number of specific proposals that have been included in previous DoD and DoS legislative submissions. If approved these would significantly improve USCENTCOM’s ability to conduct mission activities throughout the AOR. They include:

1. (U) Establish a Defense Coalition Support Account to better support coalition partners in the struggle against transnational terrorists. The United States needs to be able to stockpile additional war-fighter equipment (such as night vision devices, communication equipment, and body armor). We also need to expedite the award of contracts to procure such equipment, so that it will be readily available when it is required for transfer to coalition and other partner nations. Advance purchases will focus on high-demand war-fighter support equipment that has long procurement lead times. Long procurement lead times are often the main limiting factor in our ability to provide coalition partners with critical equipment to make them operationally effective. This proposed legislation would create an improved

mechanism that builds on aspects of the Special Defense Acquisition Fund (SDAF).<sup>37</sup> This proposed revision to existing SDAF legislation would allow DoD to pre-purchase equipment for sale or temporary use to its partners, using funds that have been made available to DoD through appropriations by the Congress or by using donations from non-USG sources (e.g., foreign governments, international organizations, and private donors). Under this authority, DoD could accept orders from other federal agencies such as DoS to purchase or provide temporary use of equipment to coalition partners for purposes like counterterrorism, stability operations, border security and peacekeeping activities.

2. (U) Authorize reimbursement of salaries for reserve components in support of security cooperation missions. This proposed modification would increase flexibility by providing permissive authority for the reimbursement of the salaries of Reserve, National Guard, or other members of the Armed Forces who may be ordered to active duty in situations where DoD appropriations do not fund their salaries.

3. (U) Authorize the Secretary of Defense to transfer under Acquisition and Cross Servicing Agreements (ACSAs), on a lease or loan basis, items identified as Significant Military Equipment (SME) for personnel protection or to aid in personnel survivability to nations conducting military operations that the U.S. chooses to support because of its impact on counterterrorism goals. This proposal would meet a critical need to provide interoperability and adequate personnel protection to coalition partners in combined operations with U.S. forces. Additionally, this proposed change would make permanent the authority of the DoD to transfer under ACSA, on a lease or loan basis, items identified as SME for personnel protection or to aid in personnel survivability to nations participating with U.S. Armed Forces in military operations if the Secretary of Defense, with the concurrence of the Secretary of State, determines in writing that it is in the national security interests of the United States to provide such support.

4. (U) Authority to Approve Transfer of Excess Defense Articles. Authorize delegation by Secretary of Defense to Geographic Combatant Commanders, with the concurrence of the Secretary of State, to transfer on a grant basis, non-lethal excess defense articles to each country within that Commander's AOR for the purpose of building the capacity of such countries to conduct counterterrorist operations, or to participate in or support military and stability operations in which the U.S. Armed Forces are a participant. USCENTCOM should advocate for the appropriate amount required.

5. (U) Allow use of Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) in stabilization efforts. Amend Section 2561(a)(1) of Title 10, U.S. Code, by inserting "and in consultation with the Chief of Mission, for stabilization purposes" after "other humanitarian purposes." OHDACA provides DoD with a unique capability to enable commanders to access countries and regions that would otherwise be inaccessible to U.S. Forces. Unlike the Commanders' Emergency Response Program, OHDACA can be used for planned programmed activities, making it a key shaping tool. Using OHDACA, commanders have a non-combat, results-oriented tool to interact with governments, indigenous organizations, and ordinary citizens to establish long term, positive relationships, mitigate terrorist influence, and prevent conflict.

---

<sup>37</sup> Authorized by the International Security and Development Cooperation Act of 1981, Public Law 97-113, and decapitalized in 1993.

6. (U) Make the U.S. Information and Education Exchange Act of 1948 (P.L. 402); (the Smith-Mundt Act) more practical in the context of modern telecommunications. The Smith-Mundt Act of 1948 specifies the terms in which the USG can engage in public diplomacy. Specifically, the Act prohibits domestic distribution of information intended for foreign audiences. While the Act as written applies only to DoS, legal interpretations have extended coverage of the Act to the DoD. Since 1948, significant advancements in communications technology make it extremely difficult for either DoS or DoD to fully comply with the Act. As a result, USG strategic communication efforts are significantly constrained.

7. (U) Make overseas local purchases easier under Title 10 USC Section 2533a (the Berry Amendment). Enacted in 1941 in order to protect the domestic industrial base in time of war, the Berry Amendment requires DoD to give preference in procurement to domestically produced, manufactured, or home grown products- most notably food, clothing, fabrics, and specialty metals. The Berry Amendment significantly constrains U.S. national providers from procuring goods and services from local providers in Iraq and Afghanistan. As a result, it is far more difficult to use logistics to enhance local employment, security, and governance. While the ability to obtain a waiver exists, it is a time consuming process and such waivers are rarely granted. It should be noted that Joint Task Force commands are not bound by the proscriptions of the Berry Amendment and thus can purchase local goods and services. However, the positive impact for commands in Afghanistan and Iraq of “buying local,” while significant, is not nearly as effective as it could be if national providers could also purchase large quantities of local goods.

8. (U) Make overseas local purchases easier under Title 41 U.S.C. Section 10a; (Buy American Act). Enacted in 1933, the Buy American Act requires the USG to prefer U.S.-made products in its purchases. Similar to the Berry Amendment, the Buy American Act hinders the ability to purchase local goods and services in Iraq and Afghanistan and helps to create a complex legal environment for procuring items.

9. (U) Authorize use of DoD Counterdrug funding for use in multinational and United Nations (UN) counterdrug operations. Section 1004 and 1033 CN funds cannot be transferred to international organizations, such as the UN Office on Drugs and Crime (UN/ODC), or used for the payment of supplemental pay/bono-pay to members of host-nation BG and/or law enforcement organizations. This hinders the CN effort in that UN/ODC is the primary organization under which salary supplements are distributed in Central Asia. Salary supplements are part of a larger effort to limit corruption and help attract more qualified law enforcement officials.

10. (U) Increase Support to Central Asia under the FREEDOM Support Act. Due to the fact that the region receives its assistance funding from limited FREEDOM Support Act (FSA) appropriations, it is almost impossible to support substantial activities in Central Asia that could result in increasing U.S. influence and strengthening relations in that region. The steady, sharp decline in FSA funding for Eurasia in general and Central Asia in particular in the last four fiscal years has severely limited the assistance activities that can be supported. Programs have been seriously under-funded and we are forced to make difficult choices about which effective programs can be preserved. This issue is especially critical since it appears that no Economic Support Funds or Development Assistance Funds are available for use in the Central Asian states. Sanctions imposed following the 2005 Andijan uprising in Uzbekistan limit USG assistance. Because of funds authorized/appropriated several years

ago and programmed in late 2008, there is a limited FMF program. The FSA contains a “notwithstanding” clause that has been invoked to permit assistance activities on anti-trafficking and human rights. Other USAID activities in Uzbekistan include limited political party training, health reform, assistance to people with disabilities, and condominium association development.

**(U) Major Intermediate Term Statutory Revisions.** USCENTCOM should also support bold changes in legal authorities in order to ensure the national security legal framework keeps pace with the nature of international relations and transnational threats in the AOR. In 1961 President Kennedy criticized foreign assistance as “based on a series of legislative measures and administrative procedures conceived in different times and for different purposes, many of them now obsolete, inconsistent, and unduly rigid and thus unsuited for our present needs and purposes.”<sup>38</sup> His bold and imaginative change was to propose the Foreign Assistance Act of 1961. This Act created not only new legal authorities, but also the US Agency for International Development. Similar vision and action is essential to serve the nation’s “present needs and purposes.” USCENTCOM should therefore recommend the following:

1. (U) Comprehensively Revise Security Assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1976. This recurring recommendation comes from almost every report and field interview studied during this assessment. It is also discussed as a major task in the Building Partnership Capacity Annex. The current security assistance system is slow and disorganized. The resulting process is an impediment to innovative efforts to build partner nation capacity and cooperative security engagement, even in high priority efforts like Iraq and Afghanistan.

2. (U) Comprehensively Revise of Legal Framework for Criminalization of Transnational Threats and Crimes. USCENTCOM should provide any required military input to assist the USG with developing a new legal framework for criminalizing transnational terrorism, VEOs, and other transnational threat actors. As discussed in section B above, current U.S. laws criminalize a wide range of terrorist and terrorism support acts. As terrorism practices evolve and as other transnational threats emerge, these laws will need to be adjusted to keep pace with these threats and to ensure that we equip law enforcement personnel with the jurisdictional authority to identify, investigate, and indict transnational terrorists and other criminals. This will be necessary to deal with terrorists and combatants that have been dealt with using the Military Commissions and the Guantanamo detention facility system. It will also be necessary to deal with transnational actors who have engaged in piracy, cybercrime, violent extremist acts, and other transnational criminal activity. There are competing proposals for how best to accomplish this task. USCENTCOM has an interest in the resolution of this debate so that whatever course of action the USG takes is something that is consistent with practical ways of securing U.S. interests in the AOR. USCENTCOM may not have a particular position in this debate, but it should have the opportunity to participate meaningfully.

(U) One proposal advanced by a broad spectrum of national security law practitioners is to create a new national security court system.<sup>39</sup> Precedents for such a national model exist in Israel and the United Kingdom, but this is a very controversial subject. Whatever approach emerges, such a system

---

<sup>38</sup> John F. Kennedy, “Special Message to the Congress on Foreign Aid,” March 22, 1961, in *Public Papers of the Presidents of the United States: John F. Kennedy, 1961* (Government Printing Office, 1961).

<sup>39</sup> See e.g., Goldsmith and Katyal, *supra*; Rishikof, *supra*.

of laws and judicial institutions would have to comply with the provisions of international law, such as the International Convention on Civil and Political Rights, Article 9.

(U) Another way of approaching this issue is to interpret existing laws or pass amendments to laws regarding piracy to ensure they apply to transnational terrorists and potentially other transnational criminals. As discussed above, piracy is a well-established but limited model for dealing with this problem. It has advocates in the international law community, but courts have not formally endorsed application of piracy law to this kind of conduct. This approach has one advantage in that international and U.S. courts have clearly upheld application of the theory of extraterritorial (or some argue universal) jurisdiction against pirates. A drawback with this approach is that the laws and customary enforcement practices for piracy do not contemplate intruding on territorial waters, airspace, or land of another country to interdict or criminalize pirate activity.

(U) Obviously, terrorists are not the only threats against U.S. national security interests that operate in a transnational manner. Those who engage in narcotics trafficking, terrorist financing, proliferation of WMD, cybercrimes, and other similar activities all exploit the lines of communication and safe havens afforded by the international system. The problem of transnational crime is inextricably interwoven with the concept of exclusive sovereignty of nation-states, which originated in the Peace of Westphalia and remains a cornerstone of the UN system today.

3. (U) Comprehensively Revise authorities for Department of State, US Agency for International Development, Department of Justice, Department of Homeland Security, and other key agencies. The various USG agencies that are involved in developmental assistance and protection of U.S. national security interests overseas should have their authorities to operate, to support each other, to cooperate, and to undergo comprehensive review and revision. A recurring request heard from these agencies is for creation of a CERP-like authority for them to conduct their agency operations.

4. (U) Comprehensively review authorities to improve interagency integration of national security efforts. As highlighted by many studies (e.g., the Project for National Security Reform and others) the USG requires a significant overhaul of its structure for national security cooperation. This will require a number of profound organizational, funding, personnel, and other changes. Although efforts such as the Reconstruction and Stabilization Civilian Management Act of 2008, part of the NDAA 2009 have helped, they are not systemic and have limited scope and purpose.

-Organizational integration of effort through interagency teams operating below the National Security Council level. Include agencies that are not currently viewed as national security agencies in order to better incorporate competencies that support soft power instruments.

-Authorize multi-year funding to enable long term program planning, development, and execution of national security efforts amongst the new national security agencies. Also authorize transfers between agencies through a more efficient mechanism than existing Economy Act, Foreign Assistance Act Section 632, or similar procedures.

-Authorize personnel hiring, education, assignment, and progression policies that foster interagency and national security competency.

**(U) Other Major Policy and Operational Authority Issues.** In addition to the legislative and international agreement issues raised above, the USCENTCOM Assessment Team has also raised a number of recommendations regarding policy, operational, and national security organizational changes that may be accomplished through USG decisions. Please refer to the respective functional annex or sub regional report for detailed discussion of these proposals.

- Appoint a Special Representative with program and resource authority for specific operations and geopolitical situations. For example, a Special Representative for Afghanistan and Pakistan, “War Czars” at the National Security Council, and embassy-based ROL or Counternarcotics Coordinators, and provide them with the required IA staff.
- Increase direct financial support to host nation governments, either through budget support or trust funds with robust oversight, accountability, and transparency.
- Support removing actual and perceived blocks to transferring funds between agencies and departments. This is already partially addressed by the legislative proposal listed above, but this recommendation goes to agency reluctance to transfer funds for actions that an agency disagrees with for policy or parochial reasons.
- Support authorizing Combatant Commanders to re-allocate funds within the command structure to support “CWMD necessary” activities.
- Expand the authorities and mechanisms to interdict lethal aid in Iraq, Afghanistan, and the Levant and make these efforts more effective.
- Support increased civilian expeditionary capabilities (Civilian Response Corps, DoD Expeditionary Corps), including provision of sufficient transportation, interagency training and education, and protection to enable them to operate in hostile or semi-hostile environments.
- Support creation of whole-of-government funding mechanisms under the responsibility of appropriate interagency teams to allocate/implement (e.g., embassy-based sectoral teams, NSC-led interagency teams), including an interagency conflict response fund and CERP-equivalent.
- Fully resource strategic communication and align resources with responsibilities, including expanding authorities and resources for Military Information Support Teams (MIST) in Jordan (for Lebanon), Turkey, and Azerbaijan, and support additional language specialists.
- Support Biden-Lugar bill, COIN contingency fund, and IMET for Pakistan and increased resources (military forces, civilian personnel, and flexible foreign assistance funds) for Afghanistan.
- Rebalance intelligence resources towards instability/COIN.
- DoS and USAID should consider developing a budgeting and execution process similar to the DoD’s Planning, Programming, Budgeting, and Execution System (PPBES).

- Streamline Policy and Resource authorities to make Strategic Communication (SC) and Public Affairs more responsive to theater requirements
- Change procedures for providing personnel to support United Nations Assistance Mission in Afghanistan (UNAMA)

7. (U) **LINES OF EFFORT** (THIS SECTION NOT USED)

8. (U) **RESOURCES FOR IMPLEMENTATION** (THIS SECTION NOT USED)

9. (U) **RISK AND MITIGATION** (THIS SECTION NOT USED)

10. (U) **CONCLUSION**

(U) Given the linkage between “ROL” and legitimacy, all of these proposals serve to strengthen USCENTCOM’s ability to ensure stability of our partner nations and to better safeguard U.S. interests in the AOR.

11. (U) **RECOMMENDATIONS**

- USCENTCOM should contribute to interagency unity of effort by helping to develop a ROL doctrine that is comprehensive and culturally sensitive.<sup>40</sup>
- USCENTCOM should increase military support (personnel, resources, and planning) to USG ROL development efforts to improve security, reconstruction, and stabilization in Afghanistan and Pakistan.
- USCENTCOM should use law and law enforcement in innovative ways to ensure operations are more effective in countering transnational terrorism and other threats to U.S. national security interests. This includes seeking resolution of legal and policy guidance on the legal status, detention, interrogation, and prosecution of insurgents and transnational terrorists.
- USCENTCOM must seek expanded legal authorities to ensure that it is postured to deal with threats in the AOR and help other USG agencies to obtain the authorities necessary to perform interagency “smart power” activities.<sup>41</sup>

---

<sup>40</sup> Comprehensive refers to “an approach that integrates the cooperative efforts of the departments and agencies of the United States Government, intergovernmental and nongovernmental organizations, multinational partners, and private sector entities to achieve unity of effort toward a shared goal.” FM 3-07, Stability Operations, p. 1-5. This would help to address the deficiencies in existing doctrine highlighted in footnote \_\_ above.

<sup>41</sup> There are many meanings associated with terms like “smart power,” “soft power,” and all their powerful derivative terms. The following is a useful explanation of how military “hard power” relates to military and civilian “soft power” approaches: “Smart power is neither hard nor soft—it is the skillful combination of both. Smart power means developing an integrated strategy, resource base, and tool kit to achieve American objectives, drawing on both hard and soft power.” Center for Strategic and International Studies Commission on Smart Power – A smarter, more secure America, Washington, D.C., 2007, p. 7.

12. (U) AUTHORITIES AND REFERENCES

- Arms Export Control Act of 1976. 22 U.S.C. 2761. "Sales from Stocks."
- Atwood, J. Brian, M. Peter McPherson, and Andrew Natsios. "Arrested Development, Making Foreign Aid a More Effective Tool." Foreign Affairs Journal, November/December 2008.
- Barber, Rusty and Sam Parker. U.S. Institute of Peace Briefing. "Evaluating Iraq's Provincial Reconstruction Teams While Drawdown Looms, A USIP Trip Report." United States Institute for Peace, December 2008.
- Barfield, Thomas, Neamat Nojons, & J. Alexander Thier. "The Clash of Two Goods, State and Non-State Dispute Resolution in Afghanistan." United States Institute for Peace, November 2006.
- Bearden, Milton. "Afghanistan Graveyard of Empires" Foreign Affairs. November/ December 2001.
- Beyond Assistance, Parts 1 and 2. HELP Commission Report on Foreign Assistance Reform, December 2007.
- Cronin, Patrick M. "Irregular Warfare: New Challenges for Civil-Military Relations." Strategic Forum, No. 234. <http://www.ndu.edu/inss> Institute for National Strategic Studies, National Defense University, October 2008.
- European Security and Defense Policy. Available at:  
[http://consilium.europa.eu/cms3\\_fo/showPage.asp?id=268&land=EN&mode=g](http://consilium.europa.eu/cms3_fo/showPage.asp?id=268&land=EN&mode=g).
- Foreign Assistance Act of 1961. Section 660. "Prohibiting Police Training."
- "Geopolitical Diary: Obama Deals His First Iran Cards." Stratfor, January 12, 2009.
- Goldsmith, Jack L. The Terror Presidency: Law and Judgment Inside the Bush Administration. New York, W.W. Norton and Company, 2007.
- Hammond, James W. "Legitimacy and Military Operations." Military Review, Vol. 88, No. 4. July-August 2008.
- Independent Afghan Bar Association Rule of Law Toolkit.
- Intelligence Authorization Act, FY 2004. May 2003.
- "Interagency, Intergovernmental Organization, and Nongovernmental Organization Coordination during Joint Operations, Vol. I." Joint Publication 3-08. March 17, 2006.
- Iraq Security Forces Fund (ISFF) 1206. "Train and Equip."
- Islamic Republic of Afghanistan. Constitution of the Islamic Republic of Afghanistan. January 2004. Available at <http://www.afghanistanembassy.no/Doc/About%20afghanistan-constitution.pdf>.

Islamic Republic of Afghanistan. National Development Strategy, National Anti-Corruption Strategy. 1387-1391 (2007/08-2012/13).

Islamic Republic of Afghanistan. National Development Strategy, Justice & ROL Sector Strategy, Pillar II, Good Governance. 1387-1391 (2007/13).

Joint Forces Command J-9. Rule of Law Handbook.

Kraska, James Commander, JAG, U.S. Navy and Captain Brian Wilson, JAGC, U.S. Navy. "Piracy, Policy and Law--Capturing the bad guys may be the easy part." Proceedings. December 2009.

"Management of Interagency Efforts Concerning Reconstruction and Stabilization." National Security Presidential Directive/NSPD-44, December 7, 2005.

Martin, John H. and Romano, Anne T. Multinational Crime: Terrorism, Espionage, Drug and Arms Trafficking (Studies in Crime, Law, and Criminal Justice). Newbury Park, CA: Sage Publications, 1992.

NATO Legal Gazette. November 10, 2008.

NATO/International Security Assistance Force HQ, Kabul, Afghanistan. "Explanation and Implementation of ISAF ROL." Unclassified Cable. December 30, 2008.

NATO/International Security Assistance Force HQ, Kabul, Afghanistan. "Standard Operating Procedures 362 for: Detention of Non-ISAF Personnel." July 24, 2007.

"Non-state Justice and Security Systems." United Kingdom's Department for International Development Briefing Note, May 2004.

OSCE Country Programs. Available at <http://www.osce.org/regions/13003.html>.

OSCE Field Operations. September 30, 2008. Available at [http://www.osce.org/documents/cpc/2008/10/3242\\_en.pdf](http://www.osce.org/documents/cpc/2008/10/3242_en.pdf).

Petraeus, General David. Speech at the 5<sup>th</sup> IISS Regional Security Summit. December 14, 2008.

Project on National Security Reform. "Forging a New Shield Executive Summary." 2008.

"Report on Detainee Abuse Blames Top Bush Officials." Available at Washingtonpost.com. December 12, 2008.

"Report on Progress toward Security and Stability in Afghanistan." Report to Congress in accordance with the 2008 National Defense Authorization Act (Section 1230, Public Law 110-181). June 2008.

Special Inspector General for Iraqi Reconstruction Report. "Hard Lesson--The Iraq Reconstruction Experience." February 2, 2009.

Staberock, Gerald, "A ROL Agenda for Central Asia," Abstract of an article. Essex Human Rights Review, Vol. 2, No. 1, April 2004. Available at <http://projects.essex.ac.uk/EHRR/V2N1/Staberock.pdf>.

Standard Operating Procedures for Detention of Non-ISAF Personnel and the Rules of Engagement. HQ ISAF SOP 362.

Stromseth, Jane; David Wippman, Rosa Brooks. Can Might Make Rights? Building the ROL After Military Intervention. Cambridge University Press, October 2006.

Terrorism and Extraterritorial Jurisdiction in Criminal Cases: Recent Developments in Brief. Library of Congress. Congressional Research Service, September 2002.

The Customary Laws of Afghanistan. International Legal Foundation, September 2004.

Thier, J.Alexander. A Third Branch? Reestablishing the Judicial System in Afghanistan. Working paper. Center on Democracy, Development, and the ROL. Stanford Institute for International Studies. September 1, 2004. Available at [http://iis-db.stanford.edu/pubs/20714/Reestablishing\\_the\\_Judiciary\\_in\\_Afghanistan.pdf](http://iis-db.stanford.edu/pubs/20714/Reestablishing_the_Judiciary_in_Afghanistan.pdf).

Troops in Contact, Airstrikes and Civilian Deaths in Afghanistan. Human Rights Watch, September 2008.

United Nations (UN). Afghanistan Human Development Report 2007, Bridging Modernity and Tradition: ROL and the Search for Justice. Center for Policy and Human Development, Kabul University, Jamal Meria, Kabul, Afghanistan. Army Press, Islamabad, Pakistan.

UN Charter. October 24, 1945. Available at <http://www.un.org/aboutun/charter/>.

UN "Draft Report of the Counter-Terrorism Committee Executive Directorate on the Committee's Visit to the State of Kuwait." December 2-6, 2006.

UN "Draft Report on the Visit of the Counter-Terrorism Committee to the Islamic Republic of Pakistan." November 17-24, 2006.

UN. "Preliminary Conclusions of the Visit of the Counter-Terrorism Committee to the Kingdom of Saudi Arabia." March 22-29, 2008.

UN. "Draft Report on the Visit of the Counter-Terrorism Committee to the Kingdom of Saudi Arabia." March 22-29, 2008.

UN Office of Drugs and Crime. Legislative Guide to the Universal Legal Regime Against Terrorism 2008. Available <http://www.ondc.org/documents/terrorism/LegislativeGuide.2008.pdf>.

UN Security Council Resolution 1267 (1999)

United Nations Secretary General's Report on The ROL and Transitional Justice in Conflict and Post-Conflict Societies, UNSCR S/2004/616

United States. National Defense Authorization Act of 2006, Section 1206(f).

United States Agency for International Development (USA.I.D.), Foreign Assistance Act of 1961. Creation document. September 4, 1961.

USAID "Lebanon, ROL Assessment." March 2006.

United States Army Field Manual 3-07. "Stability Operations." October 2008.

U.S. Army Field Manual 3-24. "Counterinsurgency." December 2006.  
<http://www.usgcoin.org/library/doctrine/COIN-FM3-24.pdf>

United States Central Command. "United States Central Command Theater Strategy."  
~~(SECRET//REL to USA, FVEY)~~ June 11, 2008.

United States Department of Defense (U.S. DoD). Joint Publication 1-02: Dictionary of Military and Associated Terms. April 12, 2001 (As amended through October 17, 2008.)

U.S. DoD. "Guidance for Employment of the Force." May 2008.

U.S. DoD. National Defense Strategy. August 2008.

U.S. DoD. "White Paper on Capability Gap Assessment (CGA) Process Overview." Joint Chiefs of Staff J-8/Joint Capabilities Division, June 2007.

United States Department of Justice (U.S. DoJ) Strategic Plan, 2007-2012.

U.S. DoJ. OPDAT. "Iraq Fact Sheet, Justice Sector Development Program." July 25, 2008.

U.S. DoJ. OPDAT. "Kyrgyzstan, Resident Legal Advisor Program." July 2008.

U.S. DoJ. OPDAT. "Tajikistan, Resident Legal Advisor Program." August 2008.

United States Department of State (U.S. DoS), Foreign Assistance Standardization Program Structure and Definitions, Program Area 2.1. "ROL and Human Rights." October 15, 2007.

U.S. DoS. Office of Inspector General Report of Inspection, No. ISP-I-08-09. ROL Program in Afghanistan. January 2008.

U.S. DoS. U.S. Counternarcotics Strategy for Afghanistan. August 2007.

U.S. DoS and U.S. A.I.D. Joint Strategic Plan for Fiscal Years 2007-2012.

United States Department of the Treasury, Office of Foreign Assets Control.  
“Nonproliferation: What You Need to Know About Treasury Restrictions.” Available at  
<http://www.treas.gov/offices/enforcement/ofac/programs/ascii/wmd.txt>.

United States Institute for Peace. Rebuilding Afghanistan--A Framework for Establishing Security and the ROL, Findings from a Roundtable on “Rebuilding Afghanistan: Establishing Security and ROL. December 11, 2001.

United States Institute for Peace. Special Report 117. “Establishing the ROL in Afghanistan.” March 2004.

United States Senate. Letter from The Honorable Christopher Bond to General Michael B. Mukasey, November 7, 2008, transmitting the “Executive Summary of Key Findings and Recommendations on Afghanistan and Pakistan by the Intelligence Committee.”

“Q&A: Obama on Foreign Policy.” Available at [Washingtonpost.com](http://Washingtonpost.com). March 2, 2008.

Weber, Max. The Theory of Social and Economic Organization. New York. Free Press, 1947.

Wittes, Benjamin. Law and the Long War: The Future of Justice in the Age of Terror. New York: Penguin Press, 2008.

Zoellick, Robert B., President, The World Bank, “Securing Development” speech at United States Institute for Peace “Passing the Baton” Conference, January 8, 2009.

13. (U) **APPENDICES**  
**APPENDIX 1: SITUATION ASSESSMENT**  
**APPENDIX 2: LIST OF CONTACTS**  
**APPENDIX 3: JOINT FORCES COMMAND DRAFT ROL HANDBOOK**  
**CHAPTER ONE**  
**APPENDIX 4: DISCUSSION OF LEADERSHIP CHALLENGES IN ROL**

## APPENDIX 1: (U) Situation Assessment for Rule of Law, Law Enforcement, and Legal Authorities to Annex G

1. (U) **INTRODUCTION.** This assessment evaluates USCENTCOM AOR activities within the context of interagency and international ROL, Law Enforcement, and Legal Authorities.

(U) The efforts captured under the umbrella of ROL, Law Enforcement, and Legal Authorities are important not because they are ends in themselves but because they are important contributors to U.S./Coalition objectives throughout the USCENTCOM AOR. All three topics examined here contribute to an important aspect of the counterterrorism/counterinsurgency fight: helping host states establish national governmental legitimacy. Legitimacy is a central tenet in classic counterinsurgency theoretical treatments. A renewed interest in this literature-- along with the recent wars in Iraq and Afghanistan--brings this concept a new level of prominence in current U.S. Army and Joint war-fighting doctrine. Legitimacy, for instance, appears 131 times in the new U.S. Army counterinsurgency manual FM 3-24.<sup>42</sup>

(U) Legitimacy refers to the reciprocal relationship between a population and authority. In return for accepting and consenting to authority (or what Max Weber termed, “a certain minimal amount of voluntary submission”<sup>43</sup>), leaders have certain obligations to the population, such as ensuring the distribution of basic goods and services and providing safety and security. In Western societies, the reciprocal relationship between populations and their governments is codified in laws and regulations (ROL). With their roots in the Middle Ages, these laws--and the mechanisms to enforce them (Legal Authorities and Law Enforcement)--provide the bedrock of civil and stable society. As the population and the ruling authority both find safety, their obligations and entitlements are spelled out and protected. Neither feels the need to work outside of the system by resorting to rebellion or repression (respectively). Instead, the population and authority find themselves bound in working together.

(U) These traditions can be used as tools to aid friendly nations that face terrorist and/or insurgent threats. A robust U.S. effort in developing a host nation’s ROL, Law Enforcement, and Legal Authorities, then, could materially aid that government’s legitimacy in the eyes of its population. Both insurgents and terrorists—who require a sympathetic population that is alienated and disaffected from its own government—cannot gain a foothold in states with a legitimate government. As Lt Col James W. Hammond has written:

(U) Legitimacy and obligation are two sides of the same coin. At the very least, accepting some authority as legitimate implies a level of consent on the part of the population to the actions of that authority. This further implies the obligation to accept that authority’s decisions, even if some decisions are undesirable. The implication for emerging governments or military forces operating in an area is that local populations will accept even significant infringements on their rights and freedoms if the demands come from an authority they view as legitimate. The inverse, of course, also applies: the people will resist even the slightest imposition from an authority they view as illegitimate.<sup>44</sup>

---

<sup>42</sup> James W. Hammond, “Legitimacy and Military Operations,” *Military Review* Vol. 88, No. 4 (July-August 2008), 61-62.

<sup>43</sup> Max Weber, *The Theory of Social and Economic Organization* (New York: Free Press, 1947), 324.

<sup>44</sup> Hammond, “Legitimacy and Military Operations,” 62.

(U) Legitimacy then comes in the form of a rational or legal authority, a set of regulations that members of society have created that are consistently applied to all within the group. As such, authority comes not from an individual but a conception of what is right, which is in turn codified into a legal framework.

(U) Over the past hundred years or so, Western nations went one step further and tried to mitigate the anarchy of the international system by creating an international legal framework. With the United States in the lead, these nations have created many laws concerning the interaction of states. Just like individuals at the state level, states working within international legal frameworks find a type of legitimacy in the international community. Likewise, when a state works outside of international laws, the state does not possess the legitimacy or tacit approval of that community. Thus, legitimacy is a concept that not only helps authority within a state, it may also aid states (e.g., the United States) when it acts outside its borders.

(U) In short, ROL, Law Enforcement Activities, and Legal Authorities—like military action—do not serve themselves. Instead they serve a larger purpose: to create a framework that binds and unites a government with its people, which is parallel to international law that binds and unites the international order with nation states. This framework promotes stability and provides little reason for a population to support terrorists or insurgents. With this baseline, the Situational Assessment below critiques the effectiveness of activities that promote the ROL, Law Enforcement, and Legal Authorities, and it seeks to identify gaps in current efforts. Our approach is based on the following considerations.

**(U) ROL.** The assessment studies interagency and international efforts to build capacity of a host nation government, economy, and population in order to maximize national stability and security through integration of ROL. These efforts are assessed through the lens of USCENTCOM and interagency goals for development, diplomatic, and military engagement strategy.

**(U) Law Enforcement Activities.** The assessment studies two USG actions. First, USCENTCOM support for USG civilian law enforcement agency activity in the AOR. Second, USCENTCOM use of USG civilian law enforcement agencies to enhance military operations and activities in the AOR.

**(U) Legal Authorities.** The assessment considers obstacles and gaps in existing legal authorities. Specifically, it focuses on U.S. statutory provisions, international law instruments, and administrative implementing guidance that should be amended or clarified in order to better support the USCENTCOM mission.

**(U) ROL Definition.** For the purposes of this assessment, we adopt the definition of ROL (ROL) as “a principle under 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 that are consistent with international human rights principles” (see Para 2.B.(3)).

(U) BLUF. USCENTCOM, interagency, and international ROL and Law Enforcement activities have been substantial; however, they lack unity of effort, are not sufficiently culturally sensitive, are undermined by a lack of perceived legitimacy, and are burdened by overly restrictive U.S. legal authorities.

## 2. (U) STRATEGIC CONTEXT

### A. (U) Recent Developments and Historical Context in ROL and Law Enforcement

**(U) The Problem.** The USG military and civilian interagency ROL effort has been ill defined and insufficiently coordinated. This important work has been divided between various agencies and activities. These agencies lack a consensus on the component parts of the ROL discipline and on how to best achieve ROL goals. Fortunately, recent efforts by JFCOM to establish an agreed planning framework for ROL work have resulted in a usable product that can be employed to address these deficiencies in the AOR.

**(U) The ROL Platitude.** “ROL” is routinely cited by senior military and civilian leadership, as well as rank and file personnel, as a critical guiding concept and requirement. It is frequently mentioned in objective and/or goal statements. It is also included as an effect or condition in planning. Finally, it is often listed as a program in action or a program of record. Until recently, however, there was very little agreement regarding its definition. Frequent invocation indicates that most agency personnel recognize that it is an important ingredient for success. Yet, the lack of agreement on its definition and its parameters guarantees that interagency efforts cannot be integrated and focused on achieving a state in which the “ROL” prevails. More importantly, it inhibits the ability to place “ROL” into an overall strategic plan that will be effectively articulated and its importance readily grasped by those designed to author or implement strategy. ROL, it must be restated, is a concept that helps establish legitimacy in weak and failing states. Building legitimate governments in both Iraq and Afghanistan will in turn undermine the appeal of VEOs to disaffected populations, thereby protecting vital U.S. national interests.

**(U) ROL Definition Use.** The ROL definition mentioned above emanates with slight modification from the UN and is often referred to as the “UN definition of the ROL.”<sup>45</sup> DoS uses this definition for certain purposes.<sup>46</sup> Army stability operations doctrine adopted the definition this year<sup>47</sup>. It is also likely to be included in a draft interagency policy paper on Security Sector Reform that is under consideration for signature by representatives of the DoS, the USAID, and DoD.

**(U) Pre-Doctrinal Developments.** One group of military, interagency and international experts is collaborating on a handbook that builds on this definition. It seeks to explain the definition and provide a planner’s framework for joint, interagency, international and multinational ROL activities.<sup>48</sup> The framework draws from concepts that have widespread acceptance and places them in a template designed for use by joint planners involved in civil/military planning processes. The framework is intended to nest with the strategic or operational goals of a joint force commander to support general stability operations or counterinsurgency planning. The line of effort is defined using an

---

<sup>45</sup> UN Secretary General’s Report on “The ROL and Transitional Justice in Conflict and Post-Conflict Societies,” UNSCR S/2004/616.

<sup>46</sup> See, Supplemental Reference: “Foreign Assistance Standardized Program Structure and Definitions,” Program Area 2.1 “ROL and Human Rights,” U.S. Department of State, October 15, 2007.

<sup>47</sup> Army Field Manual 3-07, *Stability Operations*.

<sup>48</sup> Although this is pre-doctrinal, this effort is a thorough analysis of ROL that engages interagency and international experts. The framework developed in this Joint Forces Command J-9 handbook is already being used by joint planners at various Geographic Combatant Commands and sub-unified commands.

amalgamation of the UN definition for ROL as an objective statement and the Judge Advocate's working definition. Seven effects, drawn in concert with a leading academic treatise (see Footnote 8) on ROL, link this objective to categories of activities.<sup>49</sup> (See Attachment 6 for those seven effects.) Finally, the framework lists more than 20 categories of activities that include institutional, human capacity and functional concerns that relate to ROL in a nation. These activities are intended to be culturally and legal system sensitive/neutral. They generally represent institutions or functions, including security and legal institutions, legitimacy strengthening and societal activities, and conflict transformation activities. These 20 efforts collectively help establish and maintain the legitimacy of governments. The nature of the international environment, however, has changed in ways that force the United States and its Coalition Partners to assess how ROL is used. We believe that this is the best distillation of agency and academic thought for supporting joint and interagency ROL activities. There are other outstanding frameworks developed by USAID, the World Justice Project and other groups. These require future detailed analysis.

**(U) USG Actions.** The USG has taken actions during the Global War on Terror that create the perception that it acts in violation of law and human rights. The USG's conduct of counterterrorism operations and, in particular, the manner in which military detainee operations have been carried out are perceived as violating international and U.S. law. This undermines USG legitimacy and ability to positively influence and build relationships with partner nations in ROL and Law Enforcement activities. This critical issue is discussed more thoroughly below.

**(U) Transnational Challenges.** It is difficult to respond to transnational and non-state actor threats under existing international and U.S. legal systems because they are based on a nation-state construct.

**(U) Westphalian Construct.** The existing international law system is based on the Westphalian concept that the international system consists of sovereign nation-states.<sup>50</sup> This concept also assumes that each nation-state is best qualified and able to control the activities of persons in its territorial boundaries. Consequently, the system prohibits nations from infringing on another state's political and territorial integrity and sovereignty. This concept is the centerpiece of the Charter, organization and operations of the UN.

**(U) The Westphalian Construct Problem.** With some exceptions, non-state actors, such as transnational or international terrorists or criminals, pose a significant problem in this international system. They do not have standing in this system, and there are limited redress mechanisms in international law that deal with individuals. The standard assumption is that all individuals can and should be dealt with through the nation in which they commit crimes.<sup>51</sup> This raises a particular problem when it comes to dealing with individuals or organizations that operate outside of the United States, or in international waters, airspace or ungoverned spaces. Under this system the United States can only stop the activities of an individual in a foreign nation by requesting the national government to take actions under its laws. This creates difficulties if the nation has no laws prohibiting the actions of the individual and, impossible if the national government is unwilling to take the requested interdiction action.

---

<sup>49</sup> See Stromseth, Whippman, Brooks, Can Might Make Rights?

<sup>50</sup> Generally cited as arising from the terms of the Peace of Westphalia which concluded the Thirty Years War in 1648.

<sup>51</sup> This is the most common application of the rules of jurisdiction in international law. As with any legal issue, this is a complex area of study but unnecessary for this assessment.

(U) In order to apply ROL approaches to development in a particular country where no current analysis exists or is ongoing, USCENTCOM personnel should conduct a country law study of that nation's legal systems. Such a study should provide an understanding of both the substantive and procedural aspects of the legal systems in that nation. Too often, USCENTCOM ROL personnel have little information regarding how the partner nation's legal system is constructed or how its laws function. Since they only work with development of a particular ministry or sector, many believe they don't need to have this comprehensive knowledge. In other cases they are aware of a major aspect of the partner nation's legal system, but choose to ignore it because it runs counter to their understanding of religious or legal imperatives. Both approaches reflect a lack of knowledge and understanding of the importance of comparative law.

**B. (U) The Nature of the Environment and Sub-Regional Prioritization in ROL and Law Enforcement**

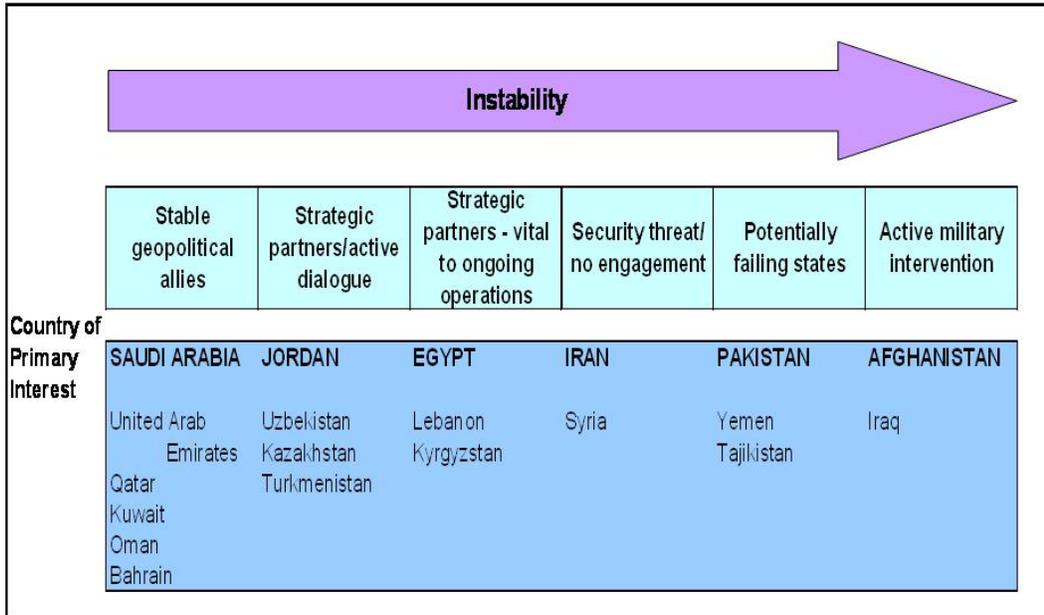
(U) The nations in the USCENTCOM AOR contain a diverse collection of national legal systems, degrees to which the ROL is evident, and multiple challenges in law enforcement and ROL development. This section provides broad comments on ROL trends and themes as manifested by representative examples of the legal systems in the AOR and a framework for prioritization of effort. Finally, this section provides an examination of a critical, but often mistakenly undervalued element, in ROL development: The customary or non-formal legal systems and their pivotal role in the development of the formal, national legal system.

**(U) Governmental ROL Institutions.** Every nation in the USCENTCOM AOR has an extant rational and formal institutional approach to ROL. Any decision to engage in ROL development for a partner nation will have to start with a clear understanding of that nation's existing legal system, which might have a tortured evolution. The form, function and capacity of the relevant governmental institutions and their roles may vary, but they do exist. They are the sovereign exercise of authority by the national government and may reflect the popularly accepted and legitimate legal system in the eyes of the people of that partner nation.

(U) The majority of countries in the AOR have adopted forms of government organization and legal systems that contain influences from various civil, common, Ottoman, tribal, and Islamic legal traditions. Their law and law enforcement agencies generally include executive, legislative, and judicial bodies; law enforcement and detention or corrections institutions; and other agencies that support these functions. To staff these agencies, most rely on university, law school, and religious school graduates to serve in leadership, governmental, judicial, prosecutorial, defense bar and secretariat positions.

**(U) Situational Analysis and Prioritization of ROL Effort within the AOR.** There is no generally accepted framework for the analysis and prioritization of focus, effort and resources to most efficiently and effectively promote U.S national security interests and engage the nations in the AOR. Our colleagues in the USCENTCOM Assessment Team (CAT) Democracy, Economic and Governance Functional Group have developed an excellent framework for this analysis, some of which is as follows:

# Instability Topology



(U) In both the ROL and Democracy, Economic and Governance (DEG) analyses, there is a direct correlation between the presence of contributing factors to instability and heightened priority of USCENTCOM engagement. The successful advancement of the ROL in the AOR will promote stability and help to significantly advance national security interests. The ROL team adds the following comments on selected countries contained in DEG's excellent and nuanced discussion. These are presented for selected country in descending order of priority as shown in the chart above.

(U) Afghanistan is the most unstable and the weakest nation in the AOR. The Afghan Government and partner nations face three challenges whose combined effect is unique in the AOR. First, narcotics production and trafficking (roughly 90 percent of the world's heroin supply) is conducted by an alliance of war lords, criminal gangs, and VEOs (of which the Taliban and Al Qaeda are most prominent). Narco-traffickers are the primary contributors to endemic, high level and growing corruption, which is a major obstacle to the Karzai government gaining legitimacy. Growing criminality, in combination with increasing terrorist activity and the decreasing legitimacy of the Afghan Government, are major de-stabilizing effects in the AOR. Second, the tools we currently use to develop and strengthen the ROL in Afghanistan are not working. Informed observers, most recently the SIGIR in its January 2009 Report on Afghanistan, cite the absence of an integrated ROL development plan, the lack of unity of effort, the failure to modify ROL programs to the truly unique circumstances in Afghanistan and the failure in current ROL programs to clearly draw upon the hard lessons learned in Iraq. In our view, these will not be remedied by ceding development responsibilities to our European allies, whose track record on ROL development in Afghanistan is decidedly mixed, since they often rely on traditional, Euro-centric models. New ROL planning, led by the ROL Coordinator at Embassy Kabul, is now underway. This process will hopefully include not only the international community and Afghan experts, but also regional authorities. Third, the elements and success of Afghanistan ROL development efforts are inextricably linked to the circumstances and policy evolution in its increasingly unstable neighbor, Pakistan. (See discussion below.)

(U) Afghanistan and Iraq must continue to respond to both short term events and long term goals in adjusting the respective responsibilities of the military and law enforcement (both Coalition and host nation) in the counternarcotics and counterinsurgency campaigns. This issue alone has a significant and continuous impact on other ROL efforts in both theaters.

(U) ROL progress in Iraq is evident. There is increasing reliance upon the judicial process (both investigating magistrates and adjudicative courts). Concentrated re-training and mentoring by the Italian Carabinieri of the formerly sectarian Iraqi National Police (NPS) has converted the NPS into a legitimate hard-edged law enforcement force. Since 2004 there has been consistent improvement of corrections facilities and operations conducted by the Iraqi Corrections Service (Ministry of Justice). The U.S.-Iraqi relationship, however, is experiencing fundamental change due to the implementation of the Strategic Framework Agreement and Agreement regarding withdrawal of U.S. Forces. There are concerns that the withdrawal of forces may provide opportunities for the renewal of widespread sectarian and insurgent violence. The legitimacy of the Government of Iraq (GOI), buoyed by recent provincial election results, has certainly not achieved critical mass. These factors require that Iraq also remain a focus for USCENTCOM's ROL related activity.

(U) The second group of nations in the Instability Typology is led by Pakistan and includes Yemen and Tajikistan (and some sources include Kyrgyzstan). This group manifests most of the classic weaknesses that may lead to a failed state: Basic failures of development, infrastructure, the delivery of fundamental services, the economy (including unemployment, food availability and inflation), and weak and/or autocratic government.

(U) Pakistan generates the most concern due to escalating tensions with India, nuclear capability, increased lethal attacks on the Pakistani populace by VEOs and their growing presence, impunity and ability to launch operations from the FATA region into Afghanistan. Pakistan receives ROL assistance by Department of Justice (INL funded) to their prosecutorial/judicial sector and law enforcement. A five-party (Afghanistan, Pakistan, U.S., UN and NATO) determination of both international pressure and, if necessary, a "clear-hold-build" plan to curb and isolate the safe haven of the FATA will, among other major benefits, provide greater opportunities for increased focus. Efforts on Pakistan ROL INL-funded projects, such as border security, and strengthened law enforcement and judicial sector capacity in the Government of Pakistan's counterinsurgency (GoP) efforts against VEOs will likewise increase. Additional factors in a re-evaluation of greater focus of ROL assistance should include the GoP's increasing fragility, absence of legitimacy and strategic importance in the region, both to the east and west.

(U) Yemen provides a potential safe haven for Al Qaeda (AQ) and other VEOs. Currently a resurgent AQ threatens to expand its activities and operations, potentially using Yemen as a base for operations in the Gulf. The country is also a regional source of weapons smuggling. Yemen is chronically underdeveloped and it faces significant food and water shortages in the context of a rapidly growing population. The combination of unemployment, poverty, political grievances and an expanding youth budge offers potential opportunities for VEO recruitment. Concentrated ROL-related planning should proceed with an emphasis on providing fundamental services to the population and other forms of practical responsiveness to the public in order to strengthen the cohesiveness and legitimacy of the State. The most immediate efforts in Yemen are likely to be diplomatic, focused on convincing President Ali Abdullah Saleh to engage in a consistent campaign against AQ, while also pursuing

critical reforms that are essential for short term stabilization. These efforts should build upon the current USAID programs intended to address social well being of average Yemenis, particularly regarding youth training and employment.

(U) Kyrgyzstan and Tajikistan are potential flashpoints, as both face potential food shortages and serve as well used routes for narco-trafficking. Both nations are the focus of increased “carrot and stick” engagement by Russia, as evidenced by the recently offered increase in assistance to Kyrgyzstan, quickly followed by the Kyrgyz decision to deny U.S. use of Manas AFB. Russia’s invasion of the Abkhazia (not to mention the natural gas shut off to Ukraine) provides a clear indication of Russia’s perceived sphere of influence. The DoS’s Coordinator for Reconstruction and Stabilization (S/CRS) has already conducted an ICAF assessment in Tajikistan, and efforts to implement the findings have begun, including ROL-related efforts such as border security and steps for conflict avoidance in the Fergana Valley. An ICAF study should be performed in Kyrgyzstan as part of the increased diplomatic engagement resulting from the Manas AFB issue.

(U) Iran and Syria, while high on the priority list because of their malign actions in the region, are unlikely venues for ROL-related programs in the near future. Diplomatic efforts to identify and analyze the dangers of Syria being in an alliance with and developing common regional interests with Iran will set the stage for ROL engagement. As noted throughout this study, however, ROL fact gathering, situational analysis and planning must be generated by civilian agencies such as DoS, USAID, DOJ and Commerce, integrated with military planning, so that opportunities can be seized in a timely manner. Thus we recommend ongoing ROL studies and planning be conducted with regard to Syria and Iran.

(U) Egypt serves as a key ally and stabilizing factor in the region. Changes in the Mubarak Regime, and the likely continuation of the high profile controversy of contraband (as well as legitimate, vital consumer goods) moving across the Egypt-Gaza border, reflect the need to maintain Egyptian stability. However, we should continue to monitor and encourage improvement in Egypt’s ROL record, particularly on human rights and political diversity. The United States supplies modest assistance to the lower echelons of the Egyptian police, but there is little engagement with those elements of the law enforcement or the national security apparatus allegedly engaged in corporeal human rights abuses. This ROL Annex argues that the perception that the United States’ perceived failure to consistently adhere to our own legal and ethical ROL standards has diminished our legitimacy and credibility in the fight against terror. We understand that respect must be given to other nation’s traditions, culture and legitimate threats. Nevertheless, it is our strong view that the United States cannot fail to take appropriate actions when faced with systematic violations of international human rights/ROL standards, particularly by our partner nations and/or those that receive significant U.S. assistance. The USG’s conditionality of its assistance programs to Egypt on human rights/democratic reforms should not be eliminated or substantially weakened. Vindication of international human rights standards should remain as a core means of promoting U.S. national security interests in the region.

(U) Lebanon has served as both a military battle ground for regional conflicting forces and the contest for legitimacy through the successful execution of governmental services between the Siniora Government and Hezbollah. Establishment of ROL based institutions that operate as extensions of the elected government, and which are responsive to the citizenry, non-corrupt and require no political

loyalty or other *quid pro quo* for services, should play a key role in U.S. economic assistance programs.

**(U) Customary ROL Traditions.** Many USCENTCOM AOR partner nations have authority systems based upon customs and traditions that co-exist or compete with the formal national systems of justice and dispute resolution. Customary legal systems refer to systems that exercise some form of non-state authority in providing safety, security, and access to justice. This includes a range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters, such as family, clan or tribal ties.<sup>52</sup>

(U) Where USCENTCOM and our interagency and international partners engage a nation's government for development, we often encounter such customary systems. Because these systems can be closely tied to local governance structures, they are especially critical in issues of security, legitimacy, power distribution and access to justice. We must be prepared to identify and build on the strengths of these systems and mitigate features that endanger security or legal standards fundamental to the host nation government's responsibilities.

(U) Customary legal systems are common in post-conflict or failing state situations. In those conditions, customary legal systems often serve the people's need to address issues such as community security, land ownership, property, and personal disputes between families and other groups in the community. Such systems may be popular or seen as the only feasible solution to problems that have community acceptance.

(U) In either case, advisors must be prepared to consider them because they may be the only practical means of solving post-conflict transitional needs until the national government is willing and/or able to provide more formal dispute resolution mechanisms. As an example, the customary or traditional system in Afghanistan was examined. This is useful because we are currently engaged in ROL development with this priority partner nation. In addition, it is especially complex because long term conflict has fractured traditionally established customary legal traditions. Hence, the systems used by local communities vary widely. A brief description follows:

(U) The traditional Afghan legal system suffered during the many changes of power throughout the 20th Century. It added Sharia Courts<sup>53</sup> and Commanders' Shuras,<sup>54</sup> undermining the traditional authority of the councils or elders.

(U) At present formal and informal justice systems co-exist, but have little if any common recognition by people in the provinces or the Supreme Court in Kabul. The formal justice system, in different forms, has intermittently existed for almost 100 years in Kabul and a few other urban centers.

---

<sup>52</sup> Other terms often used are primary, non-state justice and security systems, and non-formal. These terms are used and interpreted in various ways in different contexts and may be politically or culturally sensitive. This description and list of alternative terms comes from the United Kingdom's Department for International Development Briefing Note, Non-state Justice and Security Systems, May 2004, p. 1.

<sup>53</sup> The body of Islamic religious law.

<sup>54</sup> Participation with others in a proceeding and decision that concerns them; by mutual consent and counsel.

(U) The informal system, based on local cultural values, varies according to tribes, communities and regions. Its over-reaching aim is the reestablishment of honor and property to persons, families and tribes. Usually community elders or other respected persons make up a shura (consulted group) or a jirga (a chosen group sitting in a circle showing equal status). Their task is to resolve disputes through their understanding of customs, the individuals and their families--including wealth and relationships--to arrive at a consensual settlement. The jirgas may be considered mediators rather than enforcers of decisions. Punishments are rarely custodial in nature, as in formal legal systems, but instead rely on a complex process of public condemnation, forgiveness and acceptance. The most serious decision will lead to exiling the guilty party. The overall purpose of the gathering is the reestablishment of harmony in the community. Following an unsatisfactory decision, a possible appeal is settled by a larger jirga. In very serious cases, a second appeal may be brought before the final decision-making body of a tribal assembly.

(U) Some agrarian societies, who use the jirga system also, consider gold, women and land as the root cause of most disputes. Although the offering of women in settlement of a case is considered non-Sharia, it can be found in Pashtun tribal areas. This is a serious violation of International Human Rights principles and should be addressed through the formal justice system. Clearly, this also requires ensuring that women have access to the formal justice system.

(U) Family law and minor crimes are easily resolved in the non-traditional systems. In Afghan perception, homicide, rape and adultery are problems concerning individuals and their families, not necessarily the community. If a jirga is unable to arrive at a resolution, it often triggers a required blood feud causing irreparable harm to the community. These more serious crimes need a combined formal and traditional resolution system. While the state must have jurisdiction, particularly in homicide and other violent cases, the community must resolve the discord and tensions that the incident caused in order to eliminate further violence.

(U) Under its present construct, if there is no provision within the Afghan Constitution or other domestic laws “regarding ruling on an issue, the courts’ decisions shall be within the limits of this Constitution in accord with Hanafi jurisprudence and in a way to serve justice in the best possible manner.”<sup>55</sup> “Courts shall apply Shia school of law in cases dealing with personal matters involving the followers of [the] Shia Sect in accordance with the provisions of law. In other cases if no clarification by [the] Constitution and other laws exist and both sides of the case are followers of the Shia Sect, courts will resolve the matter according to laws of [the] Sect.”<sup>56</sup>

(U) In short, as various states in the USCENTCOM AOR are examined, we find that there are often conflicts between authority based on a formal legal system and one based on custom and tradition. Finding the proper combination of traditional system and the formal justice system requires studying the existing resolution system and--depending on the strength of government representation in the specific district--negotiating in good faith with local representatives for a satisfactory solution for both sides. It will be a lengthy process since the central government has little if any reach into many communities outside of Kabul.

---

<sup>55</sup> Afghan Constitution Chapter 7, Article 15

<sup>56</sup> Afghan Constitution Chapter 7, Article 16

### 3. (U) Assessment of Current Policies and Activities

**(U) Gaps in International, Policies and Activities in ROL and Law Enforcement.** ROL is one of the fundamental building blocks of a peaceful and just society. It is the common thread that binds society together. In its best form it is the antithesis of anarchy or autocracy. The ROL delivers a blueprint for how government and civil society should be organized and provides an ongoing set of shared practices that guide daily public life in almost all respects. Despite its importance, an analysis of the USCENTCOM AOR<sup>57</sup> determined that ROL is misunderstood and oversimplified, if not overlooked and forgotten, by USCENTCOM.

(U) Within the USCENTCOM AOR, a single, unified government authority should be established that provides leadership and financing for all ROL endeavors. The greatest strategic challenge is the need to harness the USG's ROL work in the AOR, in all its various aspects, under a single lead and administration. The environment in which USCENTCOM operates encompasses countries with varying levels of civil order, from poor countries bordering on anarchy and failed-state status to wealthy nations with sophisticated legal codes and economic markets. Despite the challenges that this wide array of situations poses, USCENTCOM and its partners must focus on consolidating ROL activities under a single USG directive authority.

(U) Coordination of interagency efforts is challenging. This is particularly so within the ROL arena. Because the ROL touches upon almost every facet of public life, it is difficult to find a single authority that can administer all its aspects. To a certain extent, the USG has already recognized this fact, with multiple agencies being assigned responsibility for various pieces of the ROL puzzle. The logic is that each agency can then focus on its own area of expertise without venturing into unfamiliar territory; but this diversification of effort also means that there is little coordination between the various ROL actors in the region.

(U) For example, the U.S. Justice Department is excellent at training foreign judges, police, corrections officers and prosecutors, but it has traditionally not been involved in capacity-building with the defense bar. Along the same lines, USAID has great expertise in improving court technology and streamlining administration, but it does not engage in training the police or security services. On the theory that an adversarial system takes two sides in court and has tough but fair policemen on the street, there needs to be coordination of effort in building a judicial system. This is not an argument

---

<sup>57</sup> **This ROL assessment lacks first hand understanding of the ROL situation within Iran, Syria and Yemen.** Yet, there is a need to protect neighboring countries including their financial markets, trade and infrastructure from these rogue States. Although the ROL assessment was both broad and deep within the USCENTCOM region, the team was of course limited by geopolitical realities and security concerns. The reason for this gap in understanding with respect to Iran and Syria is obvious; the deteriorating security situation within Yemen further explains the team's lack of access there (although it was able to discuss with USAID representatives certain anti-corruption initiatives being undertaken in that country with MCC and Treasury Department funding). This said, the external law enforcement and security imperatives arising from these countries are well-understood and thoroughly discussed in this assessment. The central law enforcement challenge in this regard involves insulating Iraq and Afghanistan, as well as neighboring Gulf allies, from external threats, including hostile transients emanating from Iran, Syria, and Yemen. It must further ensure that regional financial markets and trading infrastructure, particularly in Gulf countries, are not exploited by hostile elements seeking to fund terrorists and export embargoed military goods to Iran and to Iraqi insurgents.

for a single agency to do everything, but it is an admonition that a single agency should oversee these diverse and uncoordinated efforts.

(U) This imbalance derives not only from the way field work is conducted, but also from the underlying budgetary process for ROL initiatives. The focus on the scope and content of any government project begins with the appropriations process. The ROL in the USCENTCOM region is no different. Money is allocated to the various departments and agencies only for specific purposes. For this reason, agency leaders are not conditioned to think broadly about how their efforts fit into the larger ROL picture. A single ROL coordinator for the USCENTCOM AOR would take a more unified view of how money is spent, in order to eliminate duplication of effort and the waste of budgetary resources.

(U) The absence of a single, unifying leader for ROL activities, or the failure to place these extant diverse efforts within a single agency's purview, means that there is little consensus, or coordination, about priorities and projects. A single lead agency is better placed to take a broad view of the ROL. This does not ignore the fact that all agencies operating in the ROL arena provide expertise in their relative fields, nor that they have staffed their efforts with competent and dedicated professionals. But without the singular vision and unification of effort, our ROL activities will never equate to more than the sum of their individual parts.

(U) As the above discussion demonstrates, there is no systematic, interagency process or clear consensus as to which USG resources would be employed in providing USG assistance to law enforcement and justice sector actors and institutions. INL and USAID have most of the direct program funding (see Millennium Challenge Corp. discussion below.) These two agencies have increasingly assigned the planning and implementation of ROL programs to their respective private contractors, with little day-to-day management or oversight by the relatively small number of their respective agency's federal employee ROL career subject matter experts.

(U) ROL doctrine for the USCENTCOM AOR requires a framework for analysis. This analysis must consider each country's customary, religious and state legal traditions with input and vision provided by host nation experts. A related problem to the lack of unified leadership is a gap in doctrinal development and the lack of an agreed framework for ROL analysis. In the absence of a unified leader, agencies are free to develop their own priorities with no obligation to coordinate programs. To this end, there should be a single construct for what the ROL entails and how the various pieces of the ROL puzzle fit together. This construct must extend beyond the core concepts of "cops, courts, and corrections" to encompass the role of security and intelligence institutions; legislative, administrative, and regulatory systems; non-judicial dispute resolution and public information outlets; and building police and judicial power in pre- and post-conflict societies.

(U) For example, core ROL tasks concern the role and capabilities of law enforcement and internal security services. This goes further than police recruitment and training. Functioning detention facilities and jails, as well as the corrections systems more broadly, also need development. The same applies to other internal security functions, such as border control, seacoast patrol, and airspace security. All these elements must also interconnect with the armed forces and intelligence oversight. Rather than limiting our ROL activities to the police, we must adopt a broad understanding of which internal security institutions need help in development and in capacity building.

(U) Along the same lines, an effective ROL regime depends on more than a functioning court system. At its most basic level, the primacy of law begins with a constitution or basic governance agreement, regardless of the form. Some juridical body must convene to produce this blueprint. In addition, the fact that courts cannot work without effective administration and legislative functions must also not be forgotten. Effective law drafting, like effective constitution writing, is an important juridical task. Regulatory agencies round out the list of quasi-judicial institutions that make society work.

(U) Outside the core areas of security and juridical institutions are other societal systems that have ROL functions and should not be neglected. For example, many countries within the USCENTCOM AOR have longstanding traditions of informal or customary dispute resolution. This is the basic, perhaps tribal, context for these countries and its significance should not be overlooked. At another level, building a strong and diverse legal community requires promoting bar associations, police unions, victims' rights advocates, and other groups. There are the other societal actors, such as the press, which are not part of the legal regime per se, but bear on its ability to work in an informed, accountable, and transparent way.

(U) There are also the unique challenges in pre- and post-conflict societies in the region. When societies fail or threaten to fail, the tendency is to place military efforts above all others. The perception is that the use or threat of military force is the only tool for preserving some semblance of order. To be sure, without security there can be no law, but the ROL does have a defined and institutional role in conflict transformation. Law can mediate between competing power and security structures and can, through transitional justice arrangements, lead to national healing and reconciliation. It can also produce recompense for wartime victims and impose refugee safeguards for displaced persons. In sum, the ROL can produce legitimacy for what stability remains at the margins of armed conflict.

(U) Finally, the ROL not only writes and enforces the rules, but also builds confidence in government. The legal system defines sovereignty in terms of both geographic territory and political power. An anti-corruption system ensures that officials remain accountable, and election laws define eligibility criteria and selection methods for the most powerful persons in society. On the flip side, the law must also protect the least powerful through guarantees of equality and human rights. The true measure of a society is how it treats its least fortunate members. The ROL can ensure that our partner nations have the highest degree of legitimacy among their own citizens and the community of nations.

**(U) The ROL Task Organization.** Another critical gap concerns the USG's failure to work across all lines of the host country's government. Functional capabilities in certain key ROL areas. There is a need for broader agency participation in ROL awareness and development in foreign countries. Intelligence is needed to support assessment and planning. One basic but important area, for example, would be to describe what current legal institutions exist in a nation, how they function, who are the key leaders, etc. Otherwise, ROL practitioners arrive in country and ask, "Who's in charge?" Intelligence practitioners can help not only in building the partner nation's Intelligence Community, but also in participating in the democratic function of intelligence oversight. The U.S. Treasury provides technical assistance in detecting, investigating and prosecuting financial crimes and in financial and banking governance while the Justice Department helps with legislative drafting. There is not, however, a program to assist in building the legislative capacity.

(U) Of course, the ROL is broader than courts, legislatures, and agencies. It encompasses other societal elements, such as bar associations, police unions, law schools, and victims' rights groups. Although the USG can address deficiencies in each of these areas, oversight of customary dispute resolution actors and the development of modern public record-keeping systems are lacking. USIP may represent the best of USG-related capabilities when it comes to integrating with, and improving on, customary dispute resolution actors, but it does not have a policy-making or operational presence in the field.

**(U) Anti-corruption.** Corruption is endemic in all despotic and former despotic/emerging democratic regimes. Corruption indexes (e.g., Transparency International) demonstrate a direct correlation between the legitimacy of a democratically governed state and the level of both public and private (commercial) corruption. Non-democratic regimes are accountable not to the citizenry but to a political elite and ideology. For the people to obtain government services, from basic police protection to government contracting and legislating, they must engage in a "pay to play" system. Such corruption is deeply entrenched in the social fabric of all despotic and former despotic/emerging democratic regimes. Thus, a comprehensive anti-corruption program must be an integral part of the initial and all subsequent development plans.

(U) The manifestations of endemic corruption and the obstacles it presents to the establishment of the ROL are well known.

(U) In the political realm, a government that engages in or tolerates widespread corruption will not garner the legitimacy needed to become self-sustaining based upon popular support. In an extreme example, Putin enjoys widespread support in Russia, despite a number of un-democratic policies, because, among other reasons, he is seen as establishing a government and market place which operates relatively free of the omnipresent petty corruption that marked Russian life two decades ago. Corruption in law enforcement and courts (civil, commercial and criminal) results in the populace seeking other, non-governmental means of dispute resolution (e.g., hiring criminal gangs) and disregarding the underlying statutory or regulatory system itself, since it is not enforceable. Reform and re-structuring of government institutions will meet fierce stiff resistance from current corrupt officials who will not survive a merit based employment and management regimes.

(U) In the economic realm, corruption fundamentally distorts the operation of markets. Government and private resources become allocated inefficiently based not on market forces but on the basis of nepotism or graft. (This is believed to have been a factor in the economic collapse suffered in SE Asia earlier in the decade.) Inefficient firms and incompetent manufactures prosper. The cost of doing business rises for reasons having nothing to do with market forces. Government regulation of the private sector is weakened and distorted.

(U) Planning the Anti-corruption program Broad based anti-corruption measures must be a key element from the outset of any basic development or Reconstruction and Stabilization program. Too often anti-corruption programs are drafted and begun 1-2 years from the initiation of the development effort, and then the government's response is focused on criminal prosecution. Even if at the outset the environment is non- or quasi-permissive, concrete steps can be taken to plan the anti-corruption effort.

(U) The proposed anti-corruption system for the host nation should include ethics codes and statutory requirements, disclosure rules for public employees and “sunshine” requirements rules for government activities. There should also be a full range of administrative, civil and criminal remedies for violations. Criminal prosecutions are important for targeting the most flagrant abuses, deterring others and providing tangible evidence of the government’s commitment to address corruption. But the kind of petty corruption that plagues the average citizen, as well as conflicts of interest and other impermissible relationships with government personnel, are most effectively uncovered and efficiently addressed by an administrative system operated either by a separate entity within the agency (Inspector General) or an independent government agency, such as the U.S. Office of Government Ethics.

(U) Full-buy-in by high level host nation officials to a long term anti-corruption effort, as well as sustained collaboration by wide ranging indigenous officials and experts is the *sine qua non* of planning and eventually implementing an anti-corruption system for an entire government. As noted, corruption is a way of life in most host nations. Changing the mind-set and obtaining the active, visible and consistent support, in both word and deed, by senior, credible governmental and civil society actors is a long term process. This is particularly true when governmental leaders are constantly changing, as is true in most developing nations. Thus, the effort to engage host nation officials, experts and public opinion leaders must begin at the outset and be sustained throughout the assistance process.

(U) Elections are a key element of building a ROL based system of government which is accountable to the people. Policy makers must initially consider the timing for elections and the priorities among national, provincial or local elections. Popular elections may both reflect the existing development of democratic institutions and/or be an initial step in legitimizing a nascent government to govern and create such institutions. This “chicken and egg” dilemma must be at the heart of assisting the host nation in determining the manner and level of the initial rounds of elections.

(U) USAID has the most experience in election reform, working to strengthen elections commissions. It provides excellent, non-partisan technical assistance through the National Democratic Institute and International Republican Institute. It also has the capability and capacity to provide consistent, long term technical assistance and mentoring to elected leaders, parliaments and administrative agencies and to assist in drafting constitutions and other legislative documents. DOJ has helped train police to provide election security. DOJ does offer legislative drafting assistance, but advisors do not work with the legislative and administrative institutions themselves. USG assistance is a critical component to strengthen the effectiveness, credibility and sustainability of legislative and executive branch institutions.

**(U) Major Risks and Opportunities in ROL and Law Enforcement.** If we fail to commit ourselves to developmental ROL activities and U.S. Law Enforcement activities in the USCENTCOM AOR, we will suffer consequences. Conversely, we reap benefits from such efforts. Host Nation governance, economic development, and counterinsurgency/counterterrorism capacity depend upon effective ROL systems. Some consequences, for example, are as follows:

(U) USG must commit to long term development in the AOR to establish conditions that lead to stability and encourage economic development and foreign investment.

(U) Every nation in the AOR provides unique conditions for the development of positive and productive relations with USCENTCOM and the USG. National ROL constructs, as they are affected by cultural and religious principles and traditions and current conditions, vary widely. Nevertheless, the basic principles underlying the ROL, and the positive results for the government and society that incorporate and embrace a ROL construct, mandate that the USG commit to the long term development of the ROL in the nations of the AOR.

(U) Law enforcement and justice sectors not governed by the ROL are easily manipulated, whether by non-state power centers such as terrorists, “narco-kings” or corrupt politicians. Such sectors are unlikely to consistently provide citizens with long term, equitable security and access to justice. Thus, the law enforcement and justice sectors will have little credibility among the people, who may turn to non-state actors for security and justice. Such eventualities substantially undermine the United States and partner nations' anti-terrorism and transnational crime efforts. The absence of the ROL will impede economic development by discouraging foreign investment and trade. Such conditions may lead to instability and render nations in the AOR as weak partners in fighting terrorism and transnational crime. It also limits their participation in the global economy. Such nations may be politically unable to identify common interests and, particularly, to act in concert with USCENTCOM to promote those common interests. This would fundamentally impede the USG and USCENTCOM long term strategy for the AOR.

(U) Deal with the existence of customary and religious legal traditions or lose credibility, relevance, and effectiveness in counterinsurgency/counterterrorism and the effort to build lasting relations in the USCENTCOM AOR.

(U) At the outset of ROL development, planners must understand and be sensitive to existing religious-based courts (i.e. sharia law and courts) and traditional, community based systems (e.g. Shura system in Afghanistan). Intensive host nation engagement from the beginning is likewise critically important. The host nation must formulate a system to accommodate the formal dispute resolution process (both criminal and civil, including family and property law) that is compatible with religious and traditional systems. Unless all parties, including those vested with responsibility for conducting the religious or traditional based systems, support any restrictions on the respective jurisdictions of the two kinds of systems, the general populace is likely to view development of a formal system as a Western imposition of its values and processes and ignored it in most day-to-day matters.

(U) However, true Western sensitivity and deference to these systems can provide real bonding with host nation experts and community leaders. Such interactions can provide useful discussions and greater understanding on both sides on issues such as extreme procedures or remedies (e.g. summary justice, show trials or certain severe punishments). When considering recommended changes, Western ROL practitioners must consider, as a starting point, the crucial role of these religious and traditional dispute resolution systems in the fundamental fabric and social contract of these societies. That fabric and contract must survive and ultimately be strengthened by the development of new institutions. Existing religious and traditional based systems must be a building block rather than a casualty of that process.

(U) To the extent experienced, knowledgeable personnel already exist within the relevant USG agencies, their expertise should be mobilized and supported prior to bringing in outside consultants

and/or contractors. There are numerous USG departments and agencies with international divisions and offices engaged in international work. Many have extensive experience in their specific expertise and a long successful record of assisting other countries, particularly in the fields of development, finance, agriculture and ROL. In addition USG agencies have well qualified experts even though the agency's mandate may not necessarily contain international assignments. The use of pre-qualified and proven employees and personal services contractors (PSC) has the value of fast deployment, loyalty, benefit protection, a set pay scale and should be of less cost to the government. These employees should be able to draw on other assets of their agencies, additional personnel and other assets, which can be of great benefit to the international endeavor. It is important to use these in-house assets prior to reaching out to contracting with or through private organizations.

**(U) Repair U.S. Reputation as ROL Leader.** We must change the perception that the United States fails to act in accordance with the ROL. Failure to do so will concede a strategic advantage to adversaries and undermine our ability to build lasting and transformational relations with partner nations in the USCENTCOM AOR.

(U) In concert with the actions of the new administration, we must analyze how to counter the perception that the USG manipulates national and international laws and treaties to further the "war on terror," and we must amend certain existing Security Assistance and Counter Terrorism Legal Authorities and practices.

(U) The credibility of USG activities has been undermined by the impression held by many that certain USG legal authorities and practices are not consistent with basic U.S. legal principles (such as separation and limitation of powers and the prohibition of the deprivation of freedom without due process of law). ROL practitioners have been confronted by questions such as how the assertion of unlimited presidential power, even in wartime, is consistent with any ROL construct.

(U) This is a sensitive and complex area. The scope of Executive Branch power in connection with the War on Terror is evolving; the Supreme Court has several recent opinions on the detention of "unlawful combatants" and individual cases are in several levels in the lower courts. The new Administration and Congress are certain to revisit this and other areas. One significant factor in the Executive and Legislative Branch deliberations should be the effect prior policy and statutory postures have had on ROL policies and programs.

(U) Notwithstanding these problems, the perception is that the United States must get its own ROL house in order before it can credibly demand that others do the same. The USG has suffered a loss of legitimacy, especially in the USCENTCOM AOR, due to "legal" tactics in the war on terror. It is seen as hypocritical due to enemy combatants, extraordinary renditions, indefinite detentions, and interrogation methods, among others. Many of our adversaries and some of our allies criticize detention of personnel in Guantanamo Naval Base as unlawful.

(U) Critics argue that the USG is conducting unlawful surveillance under presidential authority of international communications as part of its efforts to defend against terrorism. In addition, the criminal actions that came to light in early 2004 of soldiers at the Abu Ghraib Theater Internment Facility are often viewed as symptomatic of the conduct and predilection of U.S. Forces at large.

(U) In conclusion, there is a widespread perception among the international community, host nation populations, and U.S. citizens that the USG and its military are acting unlawfully and in blatant disregard of international and domestic law. This false perception must be corrected.

**(U) Identify Current USG Organizational Policies and Activities in ROL and Law Enforcement.**

As this section of the assessment indicates, there are many agencies and organizations engaged in advancing the ROL in support of our partner nations in the USCENTCOM AOR. The U.S. military, interagency, and civilian non-governmental organizations (NGOs) effort is largely un-coordinated and hampered by stove piped approaches. In Iraq and Afghanistan innovative approaches are being utilized including the appointment by the Chief of Mission of a ROL Coordinator, as well as their creation of ROL Working Groups. While these approaches are experiencing growing pains and need considerable more in terms of authority, staff and other institutional flaws, they represent a core beginning to addressing these fundamental problems. Fortunately all involved bring sincere commitment to furthering the ROL development, so the ingredients that are missing can be corrected. What is missing is agreement on how best to achieve this coordination.

(U) Department of Defense. Although Department of Defense personnel are engaged in cooperative security engagement throughout much of the theater, the bulk of developmental effort for ROL is focused on Iraq and Afghanistan. The execution of military ROL support activities as part of the interagency effort in these two countries is instructive in identifying how to be prepared to accomplish this in other locations in the future. A listing of DoD activities in those two countries follows.

(U) Embassy Support to DoD. In both Kabul and Baghdad, U.S. military personnel work closely with Interagency ROL personnel to provide military expertise, planning support, and to facilitate communication and liaison with civilian agencies engaged in ROL development efforts. They also ensure that U.S. military efforts are coordinated with international organizations and other third country governmental efforts. In Iraq an Army Judge Advocate officer is assigned to serve as the Director of the Iraq ROL Coordination Cell (IROC) and thus works with the Embassy's ROL Coordinator (a non-standard position on the Country Team staff). In Afghanistan, an Army Judge Advocate officer is assigned to serve as the liaison officer to the U.S. Embassy's ROL Coordinator and he participates in the Special Committee for the ROL (SCROL).

**(U) Military Commands**. Almost all military commands at Division and above have created ad hoc positions for ROL staff officers. They generally are in the office of the command's legal advisor, although some commands will appoint a Civil Affairs officers or other non-Judge Advocate to these duties. Some of these officers serve as full-time ROL coordinators and advisors. In brigades the trend is for an officer in the Brigade Judge Advocate's office to perform part time ROL duties.

(U) Commands that perform institutional development of security institutions (Multi-National Security Transition Command--Iraq and Combined Security Transition Command--Afghanistan) offer topics such as human rights, law of armed conflict, rules of engagement, use of force, detention procedures, and other legal-oriented subjects in their normal training curriculum. The ROL staff officers for these commands also develop and oversee programs such as training of military and civilian ministerial legal advisors to properly administer the military justice and other legal responsibilities of the partner nation's organizations.

(U) Commands that are assigned operational areas or portions of “battle space” often support development of local or provincial government justice and legal agencies within their area of operations. This is yet another face of their COIN efforts at key leader engagement of local personalities. Judicial engagement also helps the host nation to treat detained insurgents as criminals under partner nation law. This engagement includes training, equipping, and mentoring partner nation prosecutors, investigative judges, judges, and judicial administrators. It also involves persuading legal system actors to work together more efficiently. For example, a commander may encourage police to conduct investigations more effectively with a view toward providing the information that the Investigative Judge expects to see if he is to enter a charge into the court system. Then, court officials may be encouraged to cooperate with prison officials by providing sufficient information to ensure the corrections institution knows the basis and duration for the confinement that has been adjudged by the court. Finally, all may be required to exchange sufficient information to enable life cycle case management; thus, each institution (law enforcement, judicial, corrections) to account for the current or historical status of a case involving a particular citizen to ensure transparency for the public and accountability to external inspecting officials (e.g., Inspectors General, public integrity office, human rights enforcement agencies, etc.).

(U) In Iraq and in Afghanistan military commanders have worked with interagency representatives to encourage the partner nation ROL sector officials to increase this cooperation. Multi-National Force Iraq (MNF-I) pioneered execution of the “ROL complex” to create an opportunity for secure cooperation. In Rusaffa MNF-I constructed a secure complex to house district officials and operations from the Iraqi Police, District Court, and Iraqi prison authorities. This complex housed personnel and family members so that the operations, investigations, pretrial detentions, trials, and incarcerations of criminals involved in anti-regime crimes could occur without direct threat or intimidation by insurgent or terrorist groups. This was extremely successful and enabled USG and allied advisors to work at building the Iraqi capacity for integrating ROL in the criminal justice context. This model is now being implemented to varying degrees in provinces in Iraq and Afghanistan. It is also similar to the approach taken in support to various Afghan legal systems of special jurisdiction (National Security and Counter Narcotics).

**(U) Department of State.** As lead for foreign affairs policy formulation and broad oversight coordination of all foreign assistance, development and engagement in USCENTCOM AOR nations, the DOS involvement is critical in clearly defining and synchronizing the foreign policy goals and execution of the ends, ways, and means of ROL development efforts in any given nation. DOS foreign policy guidance in ROL and law enforcement is formulated based on the National Security Strategy, Strategic Goal 2, Governing Justly and Democratically. Diplomatic activity is complemented by foreign assistance covering a broad range of ROL and law enforcement efforts globally. It does this primarily through the Bureau for International Narcotics and Law Enforcement Affairs (INL) and USAID. In Iraq and Afghanistan, the two nations in the AOR where USCENTCOM is most heavily involved in the security and criminal justice aspects of ROL development, in the absence of overall ROL coordinators, the U.S. ambassadors created positions of ROL coordinators and appointed DOJ personnel to these positions, where they are still serving. In Washington, the INL Principal Deputy Assistant Secretary serves as the Interagency Coordinator for Counternarcotics and Justice Reform in Afghanistan. The DOJ is a primary recipient of INL funding to conduct criminal justice related institutional development and training to law enforcement, corrections and prosecutorial institutions.

(U) INL also manages more than 1,600 U.S. police deployed next to their international counterparts in international Civilian Police (CIVPOL) peacekeeping missions. It contracts with private companies to recruit, select, equip, and deploy subject-matter experts in policing, criminal prosecution, court administration, judicial adjudication, criminal appellate practice and correctional programs. Many CIVPOL programs are sponsored by the UN, but regional security organizations such as the Organization for Security and Cooperation in Europe (OSCE) or coalitions of interested countries sponsor others. Following pre-deployment training in the United States, criminal justice program personnel are sent to the mission area or are "seconded" to the UN (or other sponsoring organization - such as OSCE). Within a mission, officers function under the operational control of the sponsoring organization, which also provides them with an allowance to cover food, lodging, and incidental expenses. The contractors maintain offices in the mission areas to handle administrative and support issues, and to assist with programs designed to improve quality of life.

(U) INL's Office of Civilian Police and ROL (CIV) is charged with working with all criminal justice agencies rather than simply the civilian police. INL/CIV now employs senior technical specialists in prosecutorial, judicial and correctional development as well as in the civilian police field. Wherever possible, CIV plans, develops and implements post-conflict reform or redevelopment programs that address each criminal justice system component to maintain equilibrium among all.

(U) The overall CIVPOL program has grown exponentially since its launch in 1994. Longstanding or recent commitments to the program have been fueled by an increase in international strategic objectives, including UN Missions. The demand is expected to continue with resources shifted from one mission to another as necessary. At the end of May 2008, INL had over 115 corrections advisors deployed on UN and bi-lateral missions. Total funding for these programs is in excess of \$70 million. In addition to the advisors, INL is managing approximately \$130 million in prison construction and renovation projects in three countries, including Iraq and Afghanistan.

(U) Bureau for International Narcotics and Law Enforcement Affairs (INL) Funded ROL and Law Enforcement.

(U) INL has and continues to implement funding and a variety of ROL programs in the following countries of the AOR: Afghanistan, Egypt, Iraq, Kyrgyzstan, Lebanon, Pakistan, Palestinian Authority, Jordan, Kazakhstan, Turkmenistan, Uzbekistan, and South and Central Asia.

(U) An explanation of INL activities and assistance to each of the above countries is set forth in Appendix Number 9.

(U) U.S. Agency for International Development (USAID). USAID is the lead action arm for U.S. Government long term developmental assistance, particularly in the governance and economic sectors. While the U.S. military has been heavily engaged in support to ROL work in Afghanistan and Iraq, USAID brings extensive organizational experience in such endeavors such as judicial assistance and justice sector related legislative modernization. USAID does not engage in or support execution of USG Law Enforcement activities.

(U) Overarching ROL policy guidance for USAID missions can be found in the "Guide to ROL Country Analysis: The ROL Strategic Framework." Published in August 2008 by the ROL Division

of the office of Democracy, Conflict, and Humanitarian Assistance, Democracy and Governance (DCHA/DG), the Strategic Framework highlights five essential ROL elements:

- Order and security
- Legitimacy
- Checks and balances
- Fairness (which includes equal application of the law, procedural fairness, protection of human rights and civil liberties, and access to justice)
- Effective application.

(U) The Strategic Framework is designed to help a mission systematically identify the problems and weaknesses with ROL in a country and suggests a range of potential programmatic approaches. The DG office exists in part to help missions undertake strategic analyses that link building ROL with strengthening democracy. These analyses often do not include participation from other USG agencies with expertise in these areas. Anecdotal evidence suggests that some USAID ROL field officers do not conduct a complete assessment of their countries pursuant to the Guide and instead rely on their own best judgment concerning which ROL programs to initiate. Programs requested by the host government normally receive highest priority.

(U) USAID ROL programs developed unilaterally in the field frequently miss the opportunity to engage and draw upon the expertise found in the USG inter-agencies in planning and implementing programs. USAID implements the vast majority of its ROL efforts through private contractors. The October 2008 listing of DCHA/DG ROL activities notes that six primary contractors have indefinite quantity contracts (IQCS) to perform ROL technical assistance services. These primary contractors have a total of 32 subcontractors that have qualified to bid on USAID Mission tasks. The IQCS process for bidding on Mission requested ROL tasks was designed to lessen the amount of time from program conception to implementation. Of note, USAID is not required to use the IQCS process and may open up a certain task to open bidding. However, USAID hesitates to use open bidding, as they view this as an inherently slower process. Of note, programs requested by the government normally receive highest priority.

(U) USAID conducts ROL activities in several countries within the USCENTCOM AOR. USAID ROL activities can be divided into the following functional areas:

- Legal Framework Development (constitution, organizational, procedural and substantive laws, and regulations): Legal framework development addresses a nation's constitution, organizational, procedural and substantive laws and regulations;
- Justice Sector Institution Reform (judges, prosecutors, community policing, public defenders and defense bar): Justice sector institution reforms focus on the judiciary, prosecutors, investigators and the police, public defenders, and the private bar;

- Access to Justice: Access to justice programs focus on promoting equal access to justice to ensure that all individuals are able to seek and obtain redress for their grievances, be they with other private parties or with state officials or organizations; and

(U) Justice Sector Assessments: Work in the area of building constituencies for reform includes, but is not limited to: justice sector assessments, strategy development, and technical assistance, judicial training, human rights training, legal analysis and research (e.g. in common and civil law systems, comparative legal systems, commercial law, etc.), auditing of justice-sector institutions, and procurement of resources (e.g. computers and office supplies for courts).

(U) As a general rule, USAID does not conduct law enforcement training in the USCENCOM AOR. This is in large part because Section 660 of the Foreign Assistance Act restrains the ability of USAID to provide police assistance. While exceptions to the general prohibition of providing police assistance are included in Section 660, USAID legal advisors view these exemptions narrowly; thus, USAID is hindered in providing police, prison, or other law enforcement training, particularly in nations not considered to be “post-conflict.”<sup>58</sup> USAID is usually successful when requesting Congressional waivers. Of note, DOS legal advisors do not view Section 660 as narrowly; consequently, State INL has been more willing to provide such training in non post-conflict nations.

**(U) Department of Justice.** The Department of Justice (DOJ) is active in both ROL assistance and international operational law enforcement activities against transnational crime. The DOJ Strategic Plan cites both anti-transnational crime activities and ROL based justice sector assistance (i.e. law enforcement such as police and border security, corrections, prosecutors and courts) as critical to achieving DOJ’s strategic goal of protecting the homeland against criminal threats.

(U) DOJ’s Criminal Division houses the only two USG entities whose sole mission is providing law enforcement and justice sector development assistance abroad. ICITAP (International Criminal Investigation Training Assistance Program) provides institutional development assistance, technical assistance and training to police, corrections and other law enforcement institutions (e.g., Ministry of Interior) and personnel (e.g., border security). OPDAT (Overseas Prosecutorial Development Assistance and Training) provides institutional development, technical assistance and training to prosecutorial and judicial institutions and personnel, as well as legislative drafting assistance (e.g., penal codes, codes of criminal procedure and individual criminal statutes). ICITAP and OPDAT currently (2009) operate 71 ROL assistance programs around the world.

(U) ICITAP and OPDAT programs, most of which are INL funded, heavily utilize the expertise of the DOJ prosecutors, law enforcement components and the Bureau of Prisons (BOP), both in a “reach

---

<sup>58</sup> Specifically, Section 660 states that “none of the funds made available to carry out” the Act and “none of the local currencies generated under” the Act “shall be used to provide any financial support for police, prisons, or other law enforcement forces for any foreign government.” However, this prohibition does not apply “with respect to assistance provided to reconstitute civilian police authority and capability in the post-conflict restoration of host nation infrastructure for the purposes of supporting a nation emerging from instability, and the provision of professional public safety training, to include training in internationally recognized standards of human rights, the ROL, anti-corruption, and the promotion of civilian police ROLES that support democracy.” The prohibition also does not apply “with respect to assistance provided to customs authorities’ personnel, including training, technical assistance, and equipment, for customs law enforcement and the improvement of customs laws, systems and procedures.”

back” capacity and to provide technical assistance, mentoring and training to their foreign counterparts. This kind of face-to-face interaction of current U.S. prosecutors, judges, corrections officers and law enforcement personnel with their foreign counterparts provides a unique boost in the national security priority of developing strong international partners in counter-terrorism, counternarcotics and other global efforts against transnational crime.

(U) All ICITAP and OPDAT assistance programs are funded out of foreign assistance funds controlled by the DOS (usually INL) or USAID or from such USG entities as the Millennium Challenge Corporation. Thus, within the USG Executive Branch, neither DOJ, the Department of Homeland Security nor other implementing agencies have an institutional or even consistent, informal plenary role in prioritizing, planning or implementing U.S. ROL related foreign assistance. Decisions by the funding agencies, INL and USAID, to utilize DOJ’s expertise and experience or private contractors are made unilaterally by the funding agency.

(U) Federal criminal investigations abroad are overseen by prosecutors in the Criminal Division (e.g., counternarcotics, money laundering and terrorist financing, trafficking in persons, organized crime) and the National Security (Terrorism) Divisions of Main Justice in Washington. The 95 U.S. Attorneys offices around the country likewise participate in these prosecutions. DOJ’s Office of International Affairs (OIA), in partnership with DOS, negotiates international treaties (e.g., bi/multi-lateral assistance treaties and extradition agreement. OIA then enforces and facilitates the operational use of those and related international mechanisms. The DOJ law enforcement components (FBI, DEA, U.S. Marshals Service, and Alcohol, Tobacco, Firearms and Explosives – ATEF) provide complex law enforcement investigative and other expertise (e.g., judicial security by the USMS). The FBI and DEA maintain country or regional offices abroad to assist in operational activities (e.g., the FBI Legal Attaché - “LEGAT.”) and DEA. The Bureau of Prisons (BOP) operates all federal prisons. The U.S. Marshals Service provides substantial support to ROL development in Iraq, Afghanistan and other countries in the USCENTCOM. The USMS accomplishes this through its expertise in the areas of Witness Protection, Judicial Security, Prisoner Operations and Court Security.

(U) For additional information on U.S. Government and international efforts at targeting the Afghan Drug Trade, see Attachment 10.

For additional information regarding the FBI and its involvement in the USCENTCOM see Attachment 11, “Ways the military can assist U. S. civilian law enforcement entities in achieving U. S. goals and objectives in the USCENTCOM Theatre.

**(U) Department of Treasury.** The Department of Treasury has several offices and bureaus that interface with ROL functions in the USCENTCOM AOR. A detailed description of each, including activity in some countries, is set forth in Appendix 10. Each is identified as follows:

(U) Office of Terrorism and Financial Intelligence. The Office of Terrorism and Financial Intelligence (TFI) marshals the department's intelligence and enforcement functions with the twin aims of safeguarding the financial system against illicit use and combating rogue nations, terrorist facilitators, weapons of mass destruction (WMD) proliferators, money launderers, drug kingpins, and other national security threats.

(U) Office of Terrorist Finance and Financial Crimes. As the policy development and outreach office for TFI, the Office of Terrorist Financing and Financial Crimes (TFFC) works across all elements of the national security community, including the law enforcement, regulatory, policy, diplomatic and intelligence communities, and with the private sector and foreign governments to identify and address the threats presented by all forms of illicit finance to the international financial system. TFFC advances this mission by developing initiatives and strategies to deploy the full range of financial authorities to combat money laundering, terrorist financing, WMD proliferation, and other criminal and illicit activities both at home and abroad. These include not only systemic initiatives to enhance the transparency of the international financial system, but also threat-specific strategies and initiatives to apply and implement targeted financial measures to the full range of national security threats.

(U) Office of Intelligence and Analysis. The Office of Intelligence and Analysis (OIA) was established by the Intelligence Authorization Act for Fiscal Year 2004 and is also a component of TFI. The Act specifies that OIA shall be responsible for the receipt, analysis, collation, and dissemination of foreign intelligence and foreign counterintelligence information related to the operation and responsibilities of the Department of the Treasury. OIA's mission is to support the formulation of policy and execution of Treasury authorities by providing:

(U) Expert analysis and intelligence production on financial and other support networks for terrorist groups, proliferators, and other key national security threats; and

(U) Timely, accurate, and focused intelligence support on the full range of economic, political, and security issues.

(U) Office of Foreign Assets Control. The Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.

(U) Treasury Executive Office for Asset Forfeiture. The Treasury Executive Office for Asset Forfeiture (TEOAF) administers the Treasury Forfeiture Fund (TFF). The TFF was established in 1992 as the successor to what was then the Customs Forfeiture Fund. It is the receipt account for the deposit of non-tax forfeitures made by the following Member Agencies:

- Internal Revenue Service Criminal Investigation Division (IRS-CI)
- U.S. Immigration and Customs Enforcement (US ICE), Department of Homeland Security
- U.S. Customs and Border Protection (US CBP); Department of Homeland Security
- U.S. Secret Service, Department of Homeland Security;
- U.S. Coast Guard, Department of Homeland Security.

(U) Office of Technical Assistance (OTA). The OTA provides comprehensive financial advice around the world through its expert advisors' work with foreign governments in order to support their financial systems. The Office also engages in financial reconstruction and stabilization efforts for countries emerging from conflict or those that are considered to be failed states. OTA's program consists of five core areas:

- Budget Policy and Management;
- Financial Institutions Policy and Regulation;
- Government Debt Issuance and Management;
- Financial Enforcement

(U) Tax Policy and Administration.

(U) OTA's Financial Enforcement program provides highly specialized assistance to countries in the development of legal foundations, policies, and anti-corruption entities to address these problems. The work is conducted in three core areas:

Combating money laundering, terrorist financing and other financial crimes;

Confronting organized crime and corruption; and

Reorganizing law enforcement and financial entities in developing economies to help them prevent, detect, investigate, and prosecute complex international financial crimes.

(U) **Other U.S. Activities**. Other organizations in the United States have contributed to development of ROL in USCENTCOM AOR nations. They represent niche capabilities that the U.S. Government may choose to rely upon.

(U) American Bar Association (ABA). The ABA has reinforced efforts by USAID to help in the development of foreign criminal bar capabilities. In some instances, DOJ coordinates with such ABA efforts. In addition, the ABA is known to support development of foreign judicial officials through continuing legal education and other partnering initiatives. The ABA also supports regional educational centers and invites foreign judiciary to participate in training programs at U.S. facilities and institutes. Finally, the ABA participates in linking foreign legal educational institutions to U.S. law schools that are certified by the ABA. There are currently partnership programs involving Iraqi and Afghan law schools with U.S. law schools.

(U) State Bar Associations. Some state bar associations have supported educational and informal engagement with Iraqi and Afghan attorney groups. The Texas Bar Association has provided educational and community outreach materials to attorneys in Afghanistan. Similarly, the Virginia Bar Association has developed a mechanism for attorneys in Afghanistan to consult with experts on issues and with Virginia attorneys of Afghan ancestry.

(U) World Justice Project. The ABA has also engaged experts from across the government and private legal sector to support an independent international project known as the World Justice Project. This effort grew out of a series of symposia hosted by the ABA in 2005 and engaged participants from leaders, ministerial level officials, and leading jurists from more than 40 nations in an effort to mainstream ROL issues, develop a definition and assessment mechanism, and to foster scholarship on ROL. Senior members of the ABA's delegation to this project include three U.S. Supreme Court justices.

(U) The Millennium Challenge Corporation (MCC). The MCC is a United States Government corporation designed to work with some of the poorest countries in the world. Established in January 2004, MCC is based on the principle that aid is most effective when it reinforces good governance, economic freedom and investments in people. MCC's mission is to reduce global poverty through the promotion of sustainable economic growth. The MCC is responsible for the stewardship of the Millennium Challenge Account (MCA), which receives funds appropriated by Congress every year. Fighting corruption is one of its highest priorities. The MCC uses the World Bank Institute's Control of Corruption indicator as part of its selection criteria to determine if a country is eligible to make a proposal for an MCA grant. Among other things, this indicator measures the frequency of "additional payments to get things done," the effects of corruption on the business environment and "grand corruption" in the political arena. Selected countries have responded to MCC's corruption measurement by passing stronger anti corruption laws, strengthening oversight institutions, opening up the public policy making process to greater scrutiny and increasing corruption related investigations and prosecutions.

(U) As an example of support by MCC within the USCENCOM AOR is Yemen. The second year, a \$20.6 million threshold program, developed by the Government of Yemen and MCC is designed to improve Yemen's performance on MCC's ROL, Control of Corruption, Political Rights, Fiscal Policy and Government Effectiveness. Specific objectives are to decrease public sector corruption; increase capacity in the judicial sector; enhance fair elections and improve the investment climate through tax reform, domestic debt management, procurement reform and customs modernization. The USAID will oversee implementation of the program on behalf of MCC. In coordination with USAID, the U.S. Department of Treasury will implement a portion of the program.

(U) International Activities in ROL and Law Enforcement. USCENCOM also works with a number of international organizations and Key Partner Nations to execute ROL development support. Failure to properly engage, coordinate, and build relationships with International Actors operating in the ROL limits the strategic reach of our ROL goals and can undermine the legitimacy of our actions.

(U) USG activities and policies do not operate in a vacuum. This is just as true of its ROL activities as it is of its activities in other functional areas. A failure by USCENCOM to build relationships and engage with the diverse range of actors who operate in this field will fail to maximize the positive and minimize the negative impact that other actors will have on our goals. The ROL environment is one where such goals are likely to converge, albeit that the mechanism for achieving those goals may differ. This is particularly true if we witness a change in methodology from "GWOT" to "Law Enforcement" style solutions to issues such as transnational terrorism.

(U) Outside of the bilateral arrangements and relationships that certain nation states may form with the United States, organizations such as those set out below provide a mechanism to harness national activities. Importantly they will often provide a conduit for garnering and channeling the financial donations that will fund the more ambitious ROL programs. Furthermore, as the United States strives to address its perceived loss of moral and legal authority, its cooperation and involvement with such actors will tend to bring a measure of international and local legitimacy to its actions.

(U) The United Nations. By virtue of its charter,<sup>59</sup> and the makeup of its organization, the UN continues to play a significant role and lead (theoretically, if not practically) in a cross cutting array of activities that impact upon USCENTCOM goals within the AOR.

(U) Legitimacy. The existence or absence of an appropriate UN Security Council mandate (in terms of setting the parameters of peace and post conflict operations) will often either provide or, in its absence, undermine the bedrock legitimacy of our operations. Whether focusing on international peace and security, economic and social development, human rights, humanitarian action or, more likely, a combination of them, our operations will inevitably demand interaction with a broad range of UN funds, programs, agencies and related organizations.

(U) UN Role in Multilateral Agreements. The UN plays a central role in negotiating multilateral agreements concerning issues that are of particular importance to USCENTCOM. The UN also has an implementation and compliance role in this respect. The UN's efforts to provide a legal framework in relation to combating terrorism and drug trafficking are clearly of particular interest. It is important, however, to comprehend the UN insistence that actions to combat such activities are based upon human rights standards. This point is fundamental to its approach in these areas and is based upon the belief that, for example, terrorist acts can be "successfully prevented and punished by legal mechanisms which incorporate human rights protections."<sup>60</sup> This approach, in itself, builds respect for the ROL.

(U) It is not clear if the benefits of interfacing with relevant UN personnel, many of whom will have similar ROL objectives to those of USCENTCOM's, are being adequately exploited. Local conditions will determine where (organizationally), and with whom, the most effective points of contact are. Cutting the UN out of the solution undermines the legitimacy of its actions and ours. The plight of UNAMA's lack of in-depth human capacity may explain why it is an entity that has chosen to monitor and coordinate rather than to assert a responsible leadership role. In short it has a mandate, but it has not produced.

(U) North Atlantic Treaty Organization. The NATO role in ROL activities within the USCENTCOM AOR must be viewed in the light of its broader defense role. Historically NATO's focus has been the defense and security of its member countries. That role is now seen in a broader context. This led to its developing a network of partnerships, and the maintenance of capabilities, for conflict prevention and crisis response with other countries beyond the Euro-Atlantic area. This has led to broader

---

<sup>59</sup> "to maintain international peace and security; to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples; to cooperate in solving international economic, social, cultural and humanitarian problems and in promoting respect for human rights and fundamental freedoms; and to be a Center for harmonizing the actions of nations in attaining these ends" (Article 1, Charter of the United Nations)

<sup>60</sup> United Nations Office on Drugs and Crime – Legislative Guide to the Universal Legal Regime Against Terrorism

cooperation with a growing range of partners, both in the planning and conduct of operations. This does not mean that NATO would necessarily be willing or able to mandate its involvement like the full spectrum of ROL Activities that a comprehensive ROL construct may require.

(U) There are recent examples of a willingness to move to a more expansionist role in this functional area. This is particularly true in its increasing and broadening training role. That role has expanded beyond purely military training. The Iraqi NATO Training Mission (NTM-I) has since 2007 included a growing element of Gendarmerie style police training. NATO's Operation Active Endeavour (which commenced in October 2001) demonstrates that, in certain functional areas, NATO does have the will to react to the security threat posed by international terrorism. From a law enforcement perspective, in addition to providing escort support to WFP shipments, Operation Allied Provider has bolstered anti-piracy efforts off the coast of Somalia, albeit with significant national caveats on the limits of their involvement being entered by a number of NATO nations.

(U) Notwithstanding this expanding role in Afghanistan, through its leadership of the UN-mandated International Security Assistance Force (ISAF), NATO's primary mission remains its security role within which development can take place. ISAF's role in security sector reform is limited to its specifically military aspects. While NATO/ISAF believes that overall success in Afghanistan will be achieved through reconstruction and development rather than by way of a military solution, it is clear that NATO does not view itself as a development organization.

(U) Support for reconstruction and development is permitted but only as a key supporting military task. That support allows it to identify and address needs such as restoring water supplies, rehabilitating and building schools and medical facilities and the provision of "appropriate support" for other civil-military projects. Some ROL activities are addressed through the NATO/ISAF PRT mechanism (although this is driven by the priorities of the PRT's national lead). Military involvement in police activities incurs an unacceptable level of political risk and legal prohibition for some NATO nations. Given this, and the fact that NATO decision making is built upon unanimity, it is difficult to foresee any significant ISAF military involvement in ROL activities except for vital, provision of security within which the ROL can flourish.

(U) We must, however, recognize that how NATO/ISAF operations are conducted affects the ROL in Afghanistan. Civilian casualties, whether caused (or perceived to be caused) by NATO/ISAF or OEF, continue to have a strategically important effect in Afghanistan. The manner and timeliness in which such incidents are investigated, reported, and, where appropriate, compensated for, influence the perception and reality of whether NATO/ISAF and OEF take their pronouncements on the importance of ROL seriously.

~~(S//REL TO USA, FVEY)~~

(b)(1)1.4d, (b)(5)

(b)(1)1.4(d), (b)(3) 10 USC 130C, (b)(5)

<sup>61</sup> HQ ISAF SOP 362 – Standard Operating Procedures for Detention of Non-ISAF Personnel

(b)(1) 1.4(d), (b)(3) 10 USC 130C, (b)(5)

(U) In addition to these two issues, it should be noted that ISAF, through the work of HQ ISAF LEGAD (within its Stability Operations role) recently embarked on an effects based approach to ROL activities. The ISAF approach commenced with the development of a Common Operational Picture, and its aims are intended to track those of the Afghanistan National Development Strategy. ISAF personnel accept that the efficacy of their ROL activities will inevitably be limited by the low number of appropriately trained personnel who are ring-fenced to address these issues and the lack of Operational Analysis capacity that is required to assess the effects of their work. COMISAF recognizes the legitimate mandate of UNAMA to coordinate and de-conflict ROL efforts in Afghanistan; however, in practice it is also recognized by ISAF and UNAMA personnel that UNAMA does not have the human capacity to fulfill this function.

(U) Finally, but importantly from a law enforcement perspective, NATO recently provided the political green light for ISAF to become more intimately involved in counternarcotics actions. This green light has not changed the legal authorities that determine the limits of military involvement in this area; however, it has thrust the military into a role of providing military support to civilian authorities that will require it to play a direct role in operational ROL activities. It remains to be seen if U.S. and coalition military are properly trained from a technical or temperamental viewpoint to maximize the strategic ROL benefits of such operations.

(U) Organization for Security Cooperation in Europe (OSCE). The OSCE's direct impact on the USCENTCOM AOR is almost exclusively seen in its work in Central Asia.<sup>63</sup> It focuses on "work on the ground" with a mandate to facilitate political processes, prevent or settle conflicts, and promote civil society and the ROL. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan all have in country programs of assistance.<sup>64</sup> See Appendix 12 for a thumbnail sketch of ROL and Law Enforcement related programs that the OSCE run in these Central Asian countries.

(U) European Union. Through its European Security and Defense Policy, the EU has the following specific operations in the USCENTCOM AO:<sup>65</sup>

(U) EUPOL Afghanistan. This police mission was established in June 2007 for a period of three years. It aims to unify individual national policing efforts under one EU hat. Its stated aim is that of "contributing to the establishment of sustainable and effective civilian policing arrangements under Afghan ownership and in accordance with international standards." The mission is intended to monitor, mentor, advise and train at the level of the Afghan Ministry of Interior, in the regions and the provinces. Its efficacy and reach is currently undermined by its lack of critical mass; and a perceived

<sup>62</sup> The second being the Rules of Engagement

<sup>63</sup> See [http://www.osce.org/documents/cpc/2008/10/3242\\_en.pdf](http://www.osce.org/documents/cpc/2008/10/3242_en.pdf) - for a description of OSCE Field Operations as of 30 Sep 08.

<sup>64</sup> The detail of these programmes can be found at <http://www.osce.org/regions/13003.html>.

<sup>65</sup> [http://consilium.europa.eu/cms3\\_fo/showPage.asp?id=268&lang=EN&mode=g](http://consilium.europa.eu/cms3_fo/showPage.asp?id=268&lang=EN&mode=g)

inertia in the implementation of its training. Effecting unity of effort between CSTC-A in particular, and the beneficial, if limited, EUPOL capacity is a challenge that is currently being addressed.

(U) EU Police Mission in the Palestinian Territories. This mission was established in November 2005 for an initial duration of three years. The mission has a “long term reform focus and provides enhanced support to the Palestinian Authority in establishing sustainable and effective policing arrangements. The structure of the mission, moreover, takes account of strengthened action in the area of the ROL.’ The mission was expanded and extended in 2008, with a mandate to continue its operations until December 2010. The mandate will be further reconsidered in 2009. No assessment of its effectiveness has been possible.

(U) EU Border Assistance Mission Rafah. A mission to provide the third party monitoring role proposed in the agreement between Israel and Palestine to provide for movement and access at the Rafah crossing (Gaza). The mandate for the mission currently runs until November 2009. No assessment of its effectiveness has been possible for the purposes of this study.

(U) EU Integrated ROL Mission for Iraq. This was the first EU ROL specific mission. It began in July 2005 with a remit to provide training activities for Iraqi ROL professionals. The training was intended to strengthen the ROL and promote a culture of respect for human rights in Iraq. The mission did this by providing “professional development opportunities” to senior Iraqi officials working in the criminal justice system. The aim of the courses was to foster confidence, mutual respect and operational cooperation between the different branches of the Iraqi criminal justice system (police, judiciary and corrections). This effort attempts to address vertical integration issues within the ROL spectrum of activities. Although the majority of the mission’s training takes place outside of Iraq, the extension of the mission’s mandate until June 2009 is envisioned to allow for pilot ROL activities in Iraq to be implemented by the mission. No assessment of its effectiveness has been possible for the purposes of this study.

(U) Other Non-Governmental International Efforts. The work of these organizations, if unified in their effort, will help close the ROL capacity gap that currently exists and develop the momentum of change that is ultimately required to develop ROL capacity within the USCENTCOM AOR. There are a multiplicity of other international organizations, NGOs and national initiatives operating ROL activities within the USCENTCOM AOR. In Afghanistan alone, these include, but are in no way limited to, the ICRC, the Organization for Economic Cooperation and Development (and in particular its Development Assistance Committee (OECD DAC)), the International Organization for Migration (IOM), and the International Institute of Humanitarian Law to name but a few.

(U) From the activity described above, it can be seen that countering terrorism and transnational crime continues to be a major obstacle. The Westphalian national sovereignty construct reinforces this obstacle. Law and practice have shown themselves unable to develop fast enough to address transnational crime in a timely manner. The perceived legal lacunas are not being adequately addressed. In assessing the spectrum of international actors in this field, it is worth pointing out that one entity in particular is missing – an international tribunal with jurisdiction over worldwide acts of terrorism. At present the reality is that such acts can only be dealt with by domestic courts. Those same domestic courts, however, are often severely hampered in their efforts when they attempt to deal with criminals who conduct their illegal activities trans-nationally (i.e. an international terrorist). Such

criminals are often able to protect themselves from investigation and prosecution. It is for this reason that the various terrorism related conventions (and their protocols) have been developed. They aim to enable effective extradition and mutual legal assistance in order that national authorities can carry out cross border investigations, and extradite for prosecutions. In the absence of international police forces and courts, the ability and will of nations to effectively implement these conventions is an issue that will require considerable investment in terms of technical expertise and two way strategic, operational and tactical relationship building.

#### **4. (U) Legal Authorities Required to Accomplish USCENTCOM Missions.**

(U) Previous foreign assistance programs were “based on a series of legislative measures and administrative procedures conceived in different times and for different purposes, many of them now obsolete, inconsistent, and unduly rigid and thus unsuited for our present needs and purposes.”

(U) President John F. Kennedy, 1961 upon creating USAID.

(U) In many ways, President Kennedy was echoing the words of Thomas Jefferson when he stated that “I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times.” This is as true for organizational and doctrinal construct as it is for legislative authorities.

(U) The USG is in the midst of a 21st century war against transnational actors with the capability and willingness to inflict great harm on the homeland and U.S. vital interests in the USCENTCOM AOR. Unfortunately U.S. efforts in the GWOT have been hamstrung by outdated and limiting 20th century statutes, regulations, and budgetary processes. Additionally, some new legal authorities that would greatly assist the USG in prosecuting the GWOT are required. In short legal authorities must be aligned with responsibilities to prevent an authorities-mission mismatch.

(U) Recognizing that maintaining the “legislative” status quo was insufficient to meet the requirements of the post 9/11 security environment, Section 1206(f) of the National Defense Authorization Act of 2006 (NDAA) called for the President to submit a report examining:

(U) The strengths and weaknesses of the Foreign Assistance Act of 1961, the Arms Control Export Act, and any other provision of law related to building the capacity of foreign governments or the training and equipping of foreign military forces, including the strengths and weaknesses for the purposes of conducting counterterrorist (CT) operations or supporting stability operations,

(U) The changes, if any, that should be made to the above laws,

(U) The organizational and procedural changes, if any, that should be made in the Departments of State and Defense to improve their ability to conduct programs to build the capacity of foreign governments or train and equip foreign military forces, and,

(U) The resources and funding mechanisms required to assure adequate funding for such programs.

(U) The President's authority to provide this report was delegated to the Secretary of State and prepared with input from DOD. A portion of that report focusing on issues relating to training and equipping foreign security force can be found in Attachment 7.

(U) While some recommendations from the 2006 report have been implemented, significant problems remain. OSD with COCOM input maintains a list of legislative initiatives that would improve DOD's ability to operate in the current strategic environment. Since it is likely that the new Presidential administration will have to review and approve the existing list of initiatives identified by OSD prior to the upcoming legislative cycle, it is strongly recommended that USCENTCOM engage with OSD to ensure that the current list of legislative initiatives is complete.

(U) Of note, the author of the SECSTATE report, Scott Kwak, is part of the CAT and provided the following analysis which focuses on building partnership capacity. Following that analysis is additional information compiled by the CAT intended to augment previous and ongoing efforts to collate legal, budgetary, policy, and resource issues impeding the ability of USCENTCOM to achieve listed strategic goals.

(U) Authorities, Programs and Resources for Building the Capacity of Partner Security Forces. KEY FINDING: U.S. assistance programs, their authorities and processes, and their resources need to be supplemented and improved to meet today's U.S. strategic requirements.

#### **(U) Existing Authorities and Programs<sup>66</sup>**

(U) Current legislation provides the basic framework for effective foreign assistance aimed at building the capacity of foreign governments and the training and equipping of foreign military and other security forces; however, this assistance, its authorities, processes, and resources have not kept up with the current U.S. strategic need. The ability to flexibly adapt to new strategic challenges was affected by additional legislation that too often has as its sole purpose to impose restrictions and limitations. The complex mix of legislation, mainly sanctions legislation that restricts foreign assistance outside of the basic FAA and AECA authorities, imposes constraints on the President's flexibility. Many of these sanctions (e.g., Uzbekistan) should be modified or repealed. Annual appropriations also contain yearly congressional earmarks, primarily to FMF, that limit our ability to put funding towards critical priorities, emerging threats, or new opportunities. In order to build adequate partner capacity, USCENTCOM should continue to support broader DOD efforts to advocate for increased resources (annual appropriations) for all BPC programs, especially FMF, IMET and Section 1206.

(U) Current authorities for the BPC programs allow the United States to address most of the situations and needs with respect to training and equipping foreign militaries and security forces; however, we must continue to seek minor adjustments to existing authorities in order to keep up with the current U.S. strategic need. Our inability to adapt our authorities will weaken the ability of the USCENTCOM

---

<sup>66</sup> The primary tools for building the capacity of partner security forces in the USCENTCOM AOR may be summarized as follows: Under the Arms Export Control Act (AECA): Foreign Military Financing (FMF), Foreign Military Sales (FMS); Under the Foreign Assistance Act of 1961, as amended (FAA), International Military Education and Training (IMET); Under the National Defense Authorization Act (various years): Afghanistan Security Forces Fund (ASFF), Iraq Security Forces Fund (ISFF), Section 1206 Train and Equip, DOD Counternarcotics Program (DOD CN), and CT Fellowship Program (CTFP).

Commander to enable partners to take on the task of defeating terrorist threats, promoting international security, and advancing U.S. interests. This will increase the strain on U.S. forces and potentially endangering our servicemen and women.

### **(U) Changes to Existing Legislation**

(U) Since 2002, DOS and DOD have proposed new legislation to supplement existing legislation to help improve the ability of the U.S. Government to train, equip, and build the capacity of foreign security forces or to help governments provide operational support to the war on terrorism. Indeed these efforts led to the creation of various programs of central importance to USCENTCOM, including: ASFF, ISFF, CTFP, Coalition Support Funds, Global CERP and Section 1206.

(U) More recently the Administration recommended three legislative proposals that would directly have a positive impact on security force capacity building efforts. For FY 2000, Congress did not approve these legislative changes; however, USCENTCOM should continue to advocate for them during the first available opportunity presented to the new Administration to propose legislative changes as follow:

(U) Establish a Defense Coalition Support Account to better support coalition partners in the Global War on Terror. The United States needs to stockpile additional war-fighter equipment (such as night vision devices, communication equipment, and body armor) or to expedite the award of contracts to procure such equipment, so it will be readily available when it is required for transfer to coalition and other partner nations. Advance purchases will focus on high-demand war-fighter support equipment that has long procurement lead times. Long procurement lead times are often the main limiting factor in our ability to provide coalition partners with critical equipment to make them operationally effective.

(U) This proposed legislation would create an improved mechanism that builds on aspects of the Special Defense Acquisition Fund (SDAF) (authorized by the International Security and Development Cooperation Act of 1981, Public Law 97-113, and decapitalized in 1993). This proposed revision to existing SDAF legislation would allow DOD to pre-purchase equipment for sale or temporary use to its partners, using funds that have been made available to DOD through appropriations by the Congress or by using donations from non-U.S. Government sources (e.g., foreign governments, international organizations, and private donors). Under this authority, DOD could accept orders from other federal agencies such as the DOS to purchase or provide temporary use of equipment to coalition partners for GWOT purposes like counter-terrorism, stability operations, border security and peacekeeping activities.

(U) Amend authorization for Section 1206 to codify and make permanent the authority; increase the funding authorization level to \$750M; and to allow assistance to non-military security forces. CT and stability operations are often conducted by security forces in addition to the military forces of partner nations. While the existing Section 1206 authority allows training of military forces essential to ongoing counterterrorism or stability operations, its effectiveness would be enhanced with the proposed modifications that take into account the significant financial requirements and the command

structure of foreign forces.<sup>67</sup> This proposed change would increase the U.S. Government's ability to meet time-sensitive requirements to build the capacity of foreign security forces for counterterrorism operations or stability operations.

(U) Authorize reimbursement of salaries for reserve components in support of security cooperation missions. This proposed modification would increase flexibility by providing permissive authority for the reimbursement of the salaries of Reserve, National Guard, or other members of the Armed Forces who may be ordered to active duty in situations where Department of Defense Appropriations do not fund their salaries.

(U) Authorize the Secretary of Defense to transfer under the authority of an Acquisition and Cross Servicing Agreement (ACSA), on a lease or loan basis, items identified as Significant Military Equipment (SME) for personnel protection or to aid in personnel survivability to nations participating with U.S. Armed Forces in military operations. This proposal would meet a critical need to provide interoperability and adequate personnel protection to coalition partners in combined operations with U.S. forces. Additionally, this proposed change would make permanent the authority of the Department of Defense to transfer under Acquisition and Cross Servicing Agreement (ACSA), on a lease or loan basis, items identified as Significant Military Equipment (SME) for personnel protection or to aid in personnel survivability to nations participating with U.S. Armed Forces in military operations. The Secretary of Defense, with the concurrence of the Secretary of State, must determine in writing that it is in the national security interests of the United States to provide such support.

(U) USCENTCOM should consider further modifying this proposal by allowing SME to be leased or loaned to partners engaged in CT operations - whether they are participating with U.S. forces or not.

**(U) Geographic Combatant Commander's Authority to Transfer Excess Defense Articles.**

Authorize Geographic Combatant Commanders, with the concurrence of the Secretary of State, to transfer on a grant basis, non-lethal excess defense articles to each country within that commander's area of responsibility for the purpose of building the capacity of such countries to conduct counterterrorist operations or to participate in or support military and stability operations in which the U.S. Armed Forces are participants. USCENTCOM should advocate for the appropriate amount required.

**(U) Overseas Humanitarian, Disaster, and Civic Aid (OHDACA).** Amend Section 2561(a) (1) of Title 10, United States Code, by inserting "and, with the concurrence of the relevant Chief of Mission, for stabilization purposes" after "other humanitarian purposes." Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) provides the Department of Defense with a unique capability that enables DOD commanders to access countries and regions that would otherwise be inaccessible to U.S. forces. Unlike the Commanders' Emergency Response Program, OHDACA can be used for planned programmed activities, making it a key shaping tool. Using OHDACA, commanders have a non-combat, results-oriented tool to interact with governments, indigenous organizations, and ordinary citizens to establish long term, positive relationships, mitigating terrorist influence, and preventing conflict.

---

<sup>67</sup> Note: Relevant forces are not always under military command.

### **(U) Change the FMS Processes**

(U) For the vast majority of the BPC programs outlined in the CAT report, the equipment and technical/tactical training is procured and delivered through the Foreign Military Sales (FMS) system. The FMS system is designed to provide defense articles and services to foreign recipients by “piggybacking” onto the U.S. military’s procurement system. Thus, the defense articles and services in high demand by partner forces are often in high demand by U.S. forces as well (e.g., night vision devices, armored vehicles, OCIE, etc.). To exacerbate the situation, many defense articles are only produced by one or a handful of companies leading to a classic problem of high-demand, low-supply.

(U) The FMS system is also mired by deliberative procedures for issues such as determining releasability and foreign disclosure, calculating price and availability, and the LOR (Letter of Request)-LOA (Letter of Offer and Acceptance) process. Most of these FMS processes were designed with the best of intentions to be deliberate -- the FMS system was never envisioned to be a war-time supply system. And certain issues of low-supply cannot be addressed without a significant increase in the U.S. defense industrial base. That said, the USG can and should take a closer look at the every step of the FMS process to see what policy changes can be made to speed up the FMS process. Therefore, in addition to legislative changes proposed in this paper (such as the stockpiling initiative), USCENTCOM should recommend the creation of an interagency team to thoroughly examine every aspect of the FMS process.

### **(U) Other Legal Constraints Identified by the CAT**

(U) The following legislative authorities were listed by USCENTCOM actors as impediments to mission success:

(U) U.S. Information and Education Exchange Act of 1948 (P.L. 402); (the Smith-Mundt Act). The Smith-Mundt Act of 1948 specifies the terms in which the USG can engage in public diplomacy. Specifically, the Act prohibits domestic distribution of information intended for foreign audiences. While the Act as written applied only to DOS, legal interpretations have extended coverage of the Act to the DOD. Since 1948 significant advancements in communications technology make it extremely difficult for either DOS or DOD to fully comply with the Act. As a result, USG strategic communication efforts are significantly constrained.

(U) Title 10 USC. Section 2533a; (Berry Amendment). Enacted in 1941 in order to protect the domestic industrial base in time of war, the Berry Amendment requires DOD to give preference in procurement to domestically produced, manufactured, or home grown products- most notably food, clothing, fabrics, and specialty metals. The Berry Amendment significantly constrains U.S. national providers from procuring goods and services from local providers in Iraq and Afghanistan. As a result, it is far more difficult to use logistics to enhance local employment, security, and governance. While the ability to obtain a waiver exists, it is a time consuming process and such waivers are rarely granted. It should be noted that JTF commands are not bound by the proscriptions of the Berry Amendment and thus can purchase local goods and services. The benefits of Commands in Afghanistan and Iraq “buying local,” while significant, could be exponentially increased if national providers were also able to purchase local goods.

(U) Title 41 USC. Section 10a; (Buy American Act) Enacted in 1933, the Buy American Act requires the USG to prefer U.S.-made products in its purchases. Similar to the Berry Amendment, the Buy American Act hinders the ability to purchase local goods and services in Iraq and Afghanistan and creates a complex legal environment in which to procure items.

(U) Title 10 Sections 2801- Authority to Use O&M Funds for Construction Problems Outside the United States, 2803- Emergency Construction, 2804- Contingency Construction, and 2808- Construction Authority in the Event of a Declaration of War or National Emergency. Existing legislative requirements significantly reduce the ability of the commander to rapidly build necessary facilities and infrastructure in contingency situations.

**(U) Funding of Construction Projects.** There are three possible sources of funding for military construction projects; GWOT MILCON, Contingency Construction Authority (CCA), and Operations and Maintenance (O&M). The “5-year” MILCON process is required for “enduring” projects that will cost in excess of \$750,000. Such projects require Congressional approval. The CCA funding stream is set at a ceiling of \$200 million yearly and can only be used for contingency projects that will not be “enduring”. O&M funds can only be used for projects with a price tag of less than \$750,000. The criticism is that the \$200 million dollar ceiling on CCA funds is too low. The lack of funds in CCA forces commanders to use either MILCON or O&M. The 5-year MILCON process is too slow to support contingency needs and, while O&M does allow commanders to meet contingency needs, the \$750,000 limit precludes its use on many required projects. Past efforts to increase the O&M ceiling have failed leaving commands caught between the lesser of three evils. In short, the existing military construction (MILCON) construct does not provide the flexibility required in a wartime environment. More detailed information on this issue can be found in the Basing and Frameworks Annex.

(U) Foreign Assistance Act of 1961. In 1961 Congress passed the Foreign Assistance Act which reorganized the U.S. foreign assistance programs including separating military and non-military aid. Since 1961 there have been numerous failed attempts to revise the Foreign Assistance Act as many have identified significant problems with the existing legislation to include too many earmarks, reporting requirements, and restrictions which hamper program effectiveness. Because the Foreign Assistance Act prohibits the use of economic assistance funds for military assistance, USAID is unable to work with ministries of defense or military forces. Because it is unable to work with military forces, USAID is constrained in its ability to participate in the entire range of DDR (Disarmament, Demobilization, and Reconstruction) activities and thus leads to inefficiencies and inconsistencies within the DDR regime. USAID is currently examining this issue and considering possible courses of action. It may be in USCENTCOM’s interest to monitor progress on this front and assist as appropriate.

(U) Section 660 of the Foreign Assistance Act of 1961. As noted earlier Section 660 of the Foreign Assistance Act essentially restrains the ability of DOS and USAID to provide police assistance. To the extent that USAID’s inability or unwillingness to perform such training is perceived to hinder the accomplishment of USCENTCOM’s strategic goals, it might be prudent to engage USAID on this issue. Of note, DOS legal advisors do not view Section 660 as narrowly and thus State INL has been more willing to provide such training in non post-conflict nations.

**(U) Counter Terrorism Legislative or International Law Authorities.**

(U) Security Detention Authority. In the post Guantanamo landscape, both intelligence exploitation issues and security concerns exist due to release issues.

(U) Criteria Based Targeting. Targeting based on position/duties rather than particularized conduct. There is a need to engage with key coalition allies to determine how best to address the recent ICRC conclusions on direct participation in hostilities (DPH) and Military objective issues under international law.

(U) Rapid/Worldwide Deployability of SOF Forces. Expanding 121 authority throughout the GCC (more than just the limited 3). Any discussion of this issue must be sensitive to security classification concerns.

**(U) Maritime Interdiction Authority**

<del>(S//REL TO USA, FVEY)</del>	(b)(1)1.4d, (b)(5)
(b)(1)1.4d, (b)(5)	

(U) Piracy. With respect to combating piracy, multiple initiatives are ready to be unveiled that will require numerous modifications to legal authorities beyond the recent UNSCR which allows for entry into Somalia in “hot pursuit” of pirates. It remains to be seen if these initiatives adequately address NAVCENTs stated desire to shift the burden of protecting vessels from various militaries to the private sector. Moreover, any anti-piracy initiative must address the need to provide the necessary incentives, and build the requisite capacity and capability, to successfully prosecute those detained in either planning or participating in acts of piracy.

(U) Existing GWOT legal authorities, particularly related to detention, contribute to the reduction of U.S. influence and the negative perception

(U) Counter-drug legislative or international law authorities. Section 1004 and 1033 CN funds cannot be transferred to international organizations, such as the UN Office on Drugs and Crime (UNODC) or used for the payment of supplemental pay/bono-pay to members of host-nation BG and/or law enforcement organizations. This hinders the CN effort in that UNODC is the primary organization under which salary supplements are distributed in Central Asia. Salary supplements are part of a larger effort to limit corruption and help attract more qualified law enforcement officials.

**(U) Budgetary Constraints.**

(U) NDAA Section 1207. Section 1207 of the NDAA authorizes DOD to transfer up to \$100 million to DOS for stability and reconstruction. The money is managed by DOS S/CRS, but DOD retains a significant say in how the money is spent. There are several political reasons why this arrangement is in place; but the major problem is that DOS lacks sufficient funds to undertake what DOD recognizes

as DOS mission to conduct stability and reconstruction. SECDEF has stressed that DOS needs its own funding to conduct this vital mission. The CAT team believes that the USCENTCOM commander can and should amplify this message.

(U) CERP, 1206, 1207. Given the significance of CERP, 1206, and 1207 to the GWOT Congress must ensure that these funding streams are permanent and predictable. Failure to ensure that these authorities are included in the baseline budget without sun set clauses will result in continued inability to conduct necessary long range planning.

(U) Foreign Assistance Act Earmarks. Earmarking funds to various USAID program areas significantly reduces the field office's agility in Afghanistan which often results in missed opportunities. The current lack of flexibility in the field to rapidly move funds between projects hinders USAID's ability adapt to the dynamic wartime environment.

**(U) Political Constraints.**

(b)(1)1.4(d), (b)(5)

**(U) Policy/Resource Constraints.**

(U) Lack of Resources and Disjointed Policy Inhibits Strategic Communications (SC).

(U) The President designated DOS as the lead agency for Strategic Communication. The Under Secretary of State for Public Diplomacy is the official responsible for all USG strategic communication efforts; however, he has neither the authority nor resources to direct action outside the limits of the DOS. As a result, SC efforts across the USG have lacked coordination, at times caused “information fratricide,” and contributed to an overall reduction in U.S. influence around the globe.

(U) Of note, DOD has significantly greater SC resources, particularly financial, than the DOS; however, DOD is legally and bureaucratically constrained in transferring funds to DOS for SC purposes thus ensuring that DOS remains under resourced for this critical task.

(U) With respect to policy, DOD Directives 0-3600.01 and 5122.05 essentially establish a wall between DOD Information Operations and DOD Public Affairs. This unnecessary division has led to the promulgation of uncoordinated, counterproductive policies that have served to impeded effective SC.

(U) UNAMA. The Afghan team identified an issue related to the inability of UNAMA to accept personnel offered by cooperating nations. While various nations are willing to offer first rate people to be seconded to UNAMA, UNAMA is unable to accept them due to a cumbersome UN administrative system.

(U) Central Asia. Due to the fact that the region receives its assistance funding from limited and decreasing FREEDOM Support Act (FSA) appropriations, it is almost impossible to obtain Economic Support Funds and Development Assistance funds for use in Central Asia. The steady, sharp decline in FSA funding for Eurasia in general and Central Asia in particular in the last four fiscal years has severely limited the assistance activities that can be supported. Programs have been seriously under-funded and we are in the position of making difficult choices about which effective programs can be preserved.

(U) Sanctions imposed following the 2005 Andijan uprising in Uzbekistan limit USG assistance. Because of funds authorized/appropriated several years ago and programmed in late 2008, there is a limited FMF program. The FREEDOM Support Act contains a “notwithstanding” clause that has been invoked to permit assistance activities on anti-trafficking and human rights. Other USAID activities in Uzbekistan include limited political party training, health reform, assistance to people with disabilities, and condominium association development.

**TABS to Appendix 1 to Annex G**

**Tab A: Central Asia**

**Tab B: Iraq**

**Tab C: Afghanistan-Pakistan**

**Tab D: Arabian Peninsula**

**Tab E: Levant and Egypt**

**Tab F: Seven Effects of ROL**

**Tab G: Strategic Goals to Guide ROL**

**Tab H: Report to Congress: Section 1206(f) of the National Defense Authorization Act**

**Tab I: INL Country Report**

**Tab J: International Efforts Targeting the Afghan Drug Trade**

**Tab A: (U) Central Asia to Appendix 1 to Annex G**

**1. (U) Disclaimer**

(U) The U.S. embassies in each of the Central Asian States (CAS) stressed that it is unwise to view “Central Asia” as a homogenous entity. Rather, the recommended approach is to consider each nation as group of independent actors each with their own unique set of problems. It thus follows that recommended solutions to those problems must be tailored to meet the needs of each nation. However, for the following reasons I do not believe it would be detrimental to this assessment to view the CAS as a whole with regards to ROL issues: 1) recent scholarly works and press articles indicate that significant common ROL trends exist across the CAS, and, 2) the results of my assessment in Tajikistan, as well as my discussions with the USAID regional coordinator for ROL, comport with the basic findings set forth in these recent articles and scholarly works.

(U) With respect to law enforcement (LE) issues, where possible I will focus on specific activities international actors are engaged in to assist the various LE entities within each CAS. Both the USG and the international community are conducting significant LE activities in Tajikistan, a country being used as a transit nation for drugs, money, and likely weapons and people, from and to Afghanistan.

**2. (U) Goal(s).**

(U) Since the dissolution of the Soviet Union in 1991, CAS states have made little progress toward genuine ROL. Corrupt presidents operating behind a façade of democracy control all major levers of national power. As such, ROL initiatives perceived as potentially infringing on the power of the executive have met stiff resistance.

(U) The OSCE, EU, UN, as well as NGOs, are the major external actors promoting the ROL in Central Asia. It is unclear from my assessment what goals the various international actors engaged in ROL activities have set. However, based on my research and discussions with ROL actors in Central Asia, as well as an examination of Embassy Mission Strategic Plans, I believe that those participating in ROL activities in CAS *should be* working towards achieving the following goals:

(U) Near term (18 months)

- 1) Increasing coordination among ROL actors within each country and across the region. (Nations, IGOs, NGOs)
- 2) Establishing and articulating clear benchmarks for ROL and Human Rights reforms. (External actors such as the OSEC, World Trade Organization (WTO), and World Bank can exert pressure in the form of requirements for membership)
- 3) Focusing efforts on those ROL activities least likely to meet significant Presidential resistance. (e.g. penitentiary reform and those which foster economic investment)
- 4) Working with CAS to ensure policies and laws designed to repress religious expression do not result in a backlash that could actually foster a rise in the power of radical Islamic movements.

(U) Mid-term (5 years)

- 5) Enhancing the political will of CAS to move toward the ROL.
- 6) Reducing corruption which is endemic throughout society to include the legal system.

(U) Long Term (10-20 years)

- 7) Convincing CAS to enact constitutional reforms in order to establish a viable system of checks and balances.
- 8) Establishing an independent judiciary.
- 9) Reducing the power of the prosecutor general's office.
- 10) Introducing of a more adversarial criminal justice system.

### 3. (U) ROL and Law Enforcement Activities by Country

#### (U) Tajikistan

(b)(1)1.4(d), (b)(5)

(U) Many laws on the books appear to be solid and similar to those found in other democracies but implementation is sketchy. Human rights are often violated by the government. Many Tajiks unaware of their constitutional and human rights thus often do not "stand up" for their rights. Some laws regarding defamation allow government to suppress free press- frequent occurrences of attacking or prosecuting those that would establish independent newspapers. Government owns all printing presses. Freedom of speech is controlled by government or self censorship by those who fear government reprisal. A significant lack of transparency exists in the making of laws.

(b)(1)1.4(d), (b)(5)

(b)(1)1.4(d), (b)(5)

(U) *INL*-staff 1 Full Time Equivalent (FTE) American citizen (AMCIT), 1 FTE local staff, 30% of time if INL senior officer

(U) Cost: \$8 million budget; 2/3 to LE/security; 1/3 to ROL

(U) Current ROL activities include improving access to justice for disadvantaged (women, rural dwellers, minors, poor, etc.); improving criminal legislation through advocacy and technical assistance; advocating legal understanding between secular and Sharia law through programs at the Islamic Institute and the National University Law Department; legal ethics by assisting in the development of a legal code of ethics; strengthening the defense bar through technical assistance to foster cooperation and eventual unification; access to law through provision of databases and written material on Tajikistan's laws; providing transparency in law through court monitoring.

(U) Planned ROL activities: anti-money laundering, anti-corruption

(U) INL Outlook for future of ROL: Could take generations. If Tajik could be tied down with international agreements and covenants especially regarding financial institutions then they can be nudged in the right direction. Problem is that others who do not share USG interests provide Tajik Government with lifeline in form of soft loans with no strings attached.

(U) INL comment on what USCENTCOM could do to assist with ROL: build infrastructure and provide equipment (courtrooms, legal training centers, legal resource centers, forensics laboratories), renewable energy resources for legal institutions. Recommends steer clear of institution building.

(U) *DoD*

(U) DIILS was visiting Tajikistan for unknown training this month; DIILS has been there in the past.

(U) *USAID*

(U) No significant ROL programs at this time. In the past USAID had a program in the north which involved the distribution of books related to land and business law however the funding for this project dried up. USAID believes that ROL activities in the future should be geared towards supporting economic growth.

*(U) OSCE*

(U) Staff- Police Reform Section- 1 Counterterrorism and Police Advisor, 1 Program assistant Border Management Section- 4 personnel.

(U) Judicial Reform Index country study baseline (ABA) - results to be shared with government and civil society.

(U) 2007 Training in Human Rights and International Public Law - 40 university students- split between law and non law majors - to receive 2 weeks of training in theory and application of international human rights principles.

(U) Worked with UN Office of the High Commissioner for Human Rights (OHCHR) to support project which facilitated parliamentary resolution which requires teaching of human rights to all 10<sup>th</sup> and 11<sup>th</sup> graders (note- few Tajiks appear to make it through to 11<sup>th</sup> grade).

(U) Human Trafficking- OSCE trained journalists on reporting anti-trafficking cases, supported public awareness campaigns, helped identify gaps in national legislation and provided advice for development of the national anti-trafficking action plan.

(U) Property rights project- especially regarding illegal confiscation of individual property by municipal authorities.

(U) Project to coordinate with Government and civil authorities promoting the functions of the Human Rights Ombudsman, a national institution which Tajik has pledged to create and utilize in favor of shedding light on various human rights violations and citizens complaints

(U) Since 2002 OSCE has supported prison reform but little progress-cases of human rights violations, lack of due process, abuse, and reports of torture still exist. Since 2006 OSCE has been a member of Penitentiary Reform Working Group – body made up of international organizations concerned about conditions of detentions and detainees. OSCE hopes to include the Tajik Government into the working group and to advocate for access by ICRC.

(U) Assists Tajik Government in modernizing its electoral legislation and procedures; brought in election observers for 2005 and 2006 elections. 2008 sponsored workshops to discuss recommended reforms necessary for ensuring free and fair elections in future. Considering sending some Tajiks aboard to observe OSCE member country elections.

(U) Problem- some people who pass border are lawful but they are arrested anyway in violation of International Human Rights laws. Gitmo release caused a problem- returned and ailed without knowledge of international community- family and lawyers unable to visit.

(U) Law and Religion Project facilitates country-wide seminars on law and religion to encourage dialogue between religious leaders and local government authorities. Idea is to build confidence and prevent conflict in areas where there is tension between religious organizations and local authorities. This project is sponsored by the Ministry of Culture.

(U) In past has funded NGO observers to monitor and analyze court proceedings to see if meet international fair trial standards

**(U) NGO's**

(U) Society and Law NGO (a Tajik run NGO)  
Public Committee for Development and Democratic Processes  
American Councils for International Education

**(U) Law Enforcement Activities**

(U) There are several entities within the Tajik LE and military community that are receiving training or funding from the USG and/or international actors. They include:

**LE**

State Customs Committee  
Border Guards Service operating under State Committee for National Security (Former KGB –GKNB)  
MVD- National Police Agency  
Drug Control Agency  
State Committee for National Security (independent-they control entire country-work for President)

**MOD**

DoD direct counterpart in Tajik- highly ineffective- Army (this is where DoD engaged in mil-mil)

Paramilitary (fall between LE and military)

Tajik National Guard  
Presidential Security Service  
MVD Omon- Spetnaz

**(U) U.S. Mission Tajikistan**

(U) Country team has established the Border and Law Enforcement Working Group (BLEWG). Comprised of DEA, INL, DATT, ODC, RSO - all entities within mission that are dealing with border issues. Significant efforts have been made to date to build infrastructure at border and provide equipment (radios, vehicles, computers, etc...). BLEWG coordinates with EU and OSCE who also have border programs. BLEWG attempting to facilitate training with Afghan LE - meeting resistance, SOCCENT uses DoD CN money to train special border guards on long range reconnaissance. DATT coordinating construction of \$9 million CT training center that will be open to all Tajik LE agencies (using CN/CT money). Develops and implements police assistance projects in cooperation with Ministry of Internal Affairs (MIA). 2008 needs assessment will serve as basis for MOU with MIA and the development of several extra-budgetary projects.

**(U) OSCE**

(U) International Police Advisor works with MIAs on canine training.

(U) Works with Tajik Drug Control Agency to prevent drug abuse and information operations (IO) campaign targets population in border districts.

(U) Conducted Interpol Assessment Meeting - technical assessment to connect LE agencies with real-time link to Interpol.

(U) Anti terrorism programs designed to enhance LE capacity to combat terrorism and political extremism. Supports participation of Tajik officials in various international workshops on combating terrorism, drug trafficking, organized crime, and improving the security of travel documents.

(U) Since 2005 Russian border guards have been withdrawn - Tajik Government has had to bear burden of developing an effective system of border management. In June 2006 OSCE, in response to request from Tajik Delegation, conducted assessment of needs. Currently working the National Border Strategy with the Tajiks to be completed in February 2009. There has been some coordination with the United States, EU, and other stakeholders. Project is on line but not completely funded to provide observation equipment and tactical/technical training to border units. Also has ideas to work with Tajiks at Chinese border and wants to create a Border Management Staff College (not yet funded) as well as an Afghan Mentoring and Border Training Facility.

**(U) Kazakhstan**

**(U) ROL Activities**

**(U) USAID**

(U) Kazakhstan actually requested ROL assistance from USAID. External pressure from WTO and OSCE has pushed Kazak government toward allowing external actors like USAID undertake development activities. Focus thus far has been on the judiciary and commercial courts. Indeed, the Kazak Supreme Court has asked for training programs for its judges—focus is on technical training on complex commercial cases.

(U) Previous USAID ROL efforts involved a successful program to increase judicial transparency by placing cameras and video recording equipment in courtrooms. This simple effort led to a reduction in the rates of appeals by defendants and the Kazakh government is now funding cameras for all of its country's courtrooms and has requested further USAID assistance to meet WTO requirements.

USAID has approximately \$800,000 in programs dedicated to ROL activities in Kazakhstan.

**(U) EU and OSCE**

(U) The EU and OSCE are planning to unveil a rather ambitious ROL program in Kazakhstan in 2009 after 2 years of assessments and planning.

**(U) Law Enforcement Activities**

(U) United Nations Office of Drugs and Crime (UNODC) project called Central Asian Information Coordination Center (CARICC). INL and USCENTCOM are large donors. DEA has a temporary duty (TDY) employee there to assist with startup of CARICC and plans to open an office in Almaty on a permanent basis. INL is also working with the MVD on an interdiction program.

**(U) Kyrgyzstan**

**(U) ROL Activities**

**(U) USAID**

(U) USAID has only one ROL program in Kyrgyzstan mainly because the Millennium Challenge Corporation (MCC) has been given \$8 million dollars to conduct ROL activities. The MCC program requires the host nation to meet certain standards in order to qualify for various programs. However, Kyrgyzstan did not meet these standards. Given the significance of U.S. basing rights at Manas, the MCC money was made available. One MCC project includes modernization of the visa and passport regime.

(U) It should be noted that USAID's legal education program, which focuses on teaching basic legal rights to Muslim students in madrasses, appears to be an exceptionally successful program and may provide a model for similar programs in other countries. It is believed that this program can help moderate the rhetoric of Muslim extremists and help in winning the hearts and minds of locals.

(U) *UNODC* is has initiated a project on penal reform.

**(U) Law Enforcement Activities**

(U) UNODC project, funding through INL, in 2003 established a Kyrgyz Drug Control Agency. This agency follows international selection procedures including vetting and use of the polygraph. Supplemental pay is also being provided to DCA agents in an attempt to reduce corruption. DEA is working with the DCA in advancing long term investigations of drug trafficking organizations.

(U) Mobile interdiction units have also been established under a UNODC project funded by USCENTCOM and INL CN money. These mobile interdiction units include a Kyrgyz interagency drug interdiction task forces. DEA has two U.S. funded mentor/advisors working with the interagency task force.

**(U) Uzbekistan**

**(U) ROL Activities**

**(U) USAID**

(U) USAID has not conducted any ROL activities in Uzbekistan since Andijan and the K2 base incident. Essentially all USAID programs were shut down after these incidents. Prior to that USAID had conducted activities focused on Habeas Corpus and Freedom of Association laws as well as working with the government to draft laws getting rid of the death penalty. USAID, in attempting to increase access to justice, also had assisted with a public defenders center which worked with lawyers that assisted the indigent, particularly in land use cases.

**(U) Law Enforcement Activities**

(U) *INL* has funded a unit within the Uzbek NVD which focuses on human trafficking.

**(U) Turkmenistan**

**(U) ROL Activities**

**(U) USAID**

(U) USAID spent less than \$500,000 on ROL activities in 2008. USAID helped establish a public defender/legal resource center as part of a broader program to promote government/local interaction. This type of program was not permitted in many areas of the country.

**(U) UN/OSCE**

(U) Both United Nations Development Programme (UNDP) and OSCE have engaged in some ROL activities in Turkmenistan. The UN opened its first Office of Preventative Diplomacy in the Turkmen capital which may serve as a model for other such offices in Central Asia.

**(U) Law Enforcement Activities**

(U) The government, with INL and USCENTCOM funding assistance, has established a state committee on narcotics control. DEA has placed a TDY employee there to assist with the startup of this agency. INL and DEA are coordinating a plan to assist with the start up. Also, USCENTCOM funding has helped construct and equip four model border guard facilities at points on the Afghan and Iranian borders.

**4. (U) Obstacles to progress.**

*(U) Of note the below analysis includes excerpts from “A ROL Agenda for Central Asia” by Gerald Staberock, Essex Human Rights Review Vol. 2 No. 1—findings comport with my Tajik assessment and interview with from C. Asian USAID ROL Regional Director.*

(U) Central Asia is characterized by corrupt, authoritarian governments operating behind a facade of democracy. Russia is the dominant external actor in Central Asia and still exerts significant influence on all CAS governments. All five CAS have constitutions that seemingly provide the underpinnings for the ROL. However, there is a considerable lack of political will across Central Asia to move towards the ROL. Progress towards the ROL is possible only so long as it is not

perceived as a threat to presidential power which is deeply entrenched in the various CAS constitutions. Moreover, the human rights record is poor in all five CAS and political pluralism is permitted only so long as it does not reach the threshold of a threat to presidential authority. It is a common experience for those working on ROL reforms in Central Asia that prior Presidential approval is the key to any proposed reform.

(U) Since the collapse of the Soviet Union in 1991 Central Asian nations have been states in *transition*. The dissolution of the Soviet Union arrived without strong independent or civil rights movements. As such, Central Asia still carries most insignia of the Soviet legal legacy. There has been limited overhaul of old institutions, structures, and elites and there is no societal consensus and vision concerning either a pluralistic democracy or the viability of the ROL.

**(U) The legal tradition and culture of the former Soviet Union constitutes a major stumbling block to overcome in the establishment of the ROL and respect for human rights in Central Asia.** In the USSR the function of law was to allow the government to rule. This notion of rule by law is entrenched in the institutional, legal, and judicial systems of all five CAS.

**(U) The criminal system is dominated by the Prosecutor's Offices (Prokuratura),** which exercises not only traditional criminal law functions but also maintains overall legal oversight over the whole legal system, overshadowing the judiciary as well. Individual rights during an investigation and the equality of arms at trial are very limited. Pretrial detention is used to facilitate the investigation and it, as well as the penitentiary system, is rife with human rights abuses.

**(U) CAS presidents have vast powers to appoint and dismiss judges thus severely impeding the independence of the judiciary.** Presidential influence also extends over the prosecutor's offices. CAS presidents are seen as the guarantors of the constitution and human rights. There are few if any checks and balances on presidential powers and in fact constitutional reforms since 1991 have increased the powers of the CAS presidents. Setting up a functioning system of checks and balances must become a priority of the ROL is to be anchored in the constitutional reality of the five CAS. A genuine and complete review and overhaul of the constitutional framework based on a true separation of powers will be required.

(U) Another key priority for the ROL in Central Asia is the establishment of a legislative framework that complies with its obligations under international human rights law. There has been no genuine progress of adapting legislation to international human rights treaties which all five CAS have signed.

**(U) There is no transparency in the law making process and little input from civil society.** This transparency gap is connected to the limited political relevance and democratic legitimacy of Parliaments. In reality the Presidential apparatus dominates important legislative developments.

**(U) There is no process that allows for the screening or auditing of legislation or draft laws for their compliance with international human rights standards.** The legislative framework continues to reflect a control approach and severely limits the exercise of key liberties, such as freedom of association, assembly or expression. Legislation often reflects the implicit assumption

that human rights are granted by the state and that the exercise of human rights are a concern for public order and must therefore be subject to prior approval, authorization, or other forms of preventative control. In fact much legislation contradicts human rights standards.

(U) In Central Asia the judiciary has not yet assumed any real role in protecting human rights. **The judicial system lacks independence and integrity, is unable or unwilling to protect human rights, and is dominated by the Soviet-style prosecutor's offices.**

(U) **Lack of judicial independence is one of the most fundamental impediments of moving towards the ROL in Central Asia.** CAS Presidents have the unabridged power to determine how many judges the countries have, where they should be posted, and how much they should be paid. Presidents can remove judges from office largely at will. The use of "telephone justice" is persistent. Prosecutors as opposed to judges retain the right to issue search and arrest warrants. There is a lack of transparency in the judicial appointment process and limited terms. This leads to the wide perception that judges are not appointed based on competence but political considerations. The removal process is used to rid the judicial ranks of any independent minded judges. Many judges have been known to pay a price to retain their positions. Judicial corruption is endemic in all parts of the legal system.

(U) A critical feature of many CAS is the **arbitrary application of the law**. People falling into dissent are often targeted for selective application of the law. The problem is not the laws themselves but the arbitrary application of them. For example, defamation laws are often used by government officials to inhibit freedom of the press. Each CAS has abused its judicial system for the purpose of political prosecution. This has eroded the legitimacy and credibility of the legal system and thus severely limits the long term prospect for a genuine ROL in CAS.

(U) Among the most fundamental systematic challenges to the ROL in CAS are the **lack of legal safeguards and non-existing checks and balances in the criminal justice systems**. Human rights abuses are notorious in the investigative process. The main roadblock to improvement is the continued use of the Soviet-style Prokuratura. Of particular concern the Prosecutors unlimited authority over all intrusive investigative measures such as house searches, wiretapping, arrest, and detention in contradiction of human rights standards. Pretrial detention continues to be used as a means to facilitate investigations through various forms of pressure, isolation, abuse, and torture and the success of an investigations and prosecution often turns on the use of confessions.

(U) In the criminal justice systems of the CAS sufficient reference to a right to a fair trial exist but in reality **accused individuals can hardly expect a trial in line with international fair standards**. The acquittal rates hover between 1% and 3%. The principle of "re-investigation" is pervasive with cases often bouncing back and forth between the courts to the investigative stage on a regular basis so prosecutors can perfect their cases. Also, prosecutors have an automatic right to appeal in some CAS whereas the individual must request leave for appeal.

(U) **The penitentiary systems are in urgent need of improvement. Severe overcrowding, corruption, conditions, and lack of access to the outside world (lawyers, families, doctors) is prevalent.** Studies suggest that poor conditions and practices in CAS are less a result of lack of resources than the lack of different approaches and understanding. There have been some positive

efforts in the penitentiary reform area to include the opening of prison training colleges in Kazakhstan and Kyrgyzstan and a retraining center in Uzbekistan. The reasons for the relative success of reforms in the area of prisons are threefold: 1) the penitentiary system was bankrupt, 2) the process was heavily supported by international organizations, and 3) *the reforms posed less of a threat to presidential power.*

(U) There have been attempts to create independent human rights institutions in some CAS—namely human right ombudsman. However, these efforts have largely been opposed and instead of investigating human rights abuses independently the ombudsman often refer cases to the prosecutor's office where they do not receive a transparent inquiry. The most important challenge to independent national human rights institutions is the lack of a legal or factual independence from presidential powers.

(U) Another obstacle to progress is the fact that **few Central Asian citizens are fully aware of their constitutionally guaranteed human rights** and therefore are unable to assert their rights. Lack of access to information, and lack of a truly independent and free press exacerbates this issue.

(U) Corruption is pervasive throughout Central Asia, to include its legal systems, and is a significant obstacle impeding progress toward the ROL.

(U) Thus far the lack of movement toward the ROL in CAS divides it from the rest of the former Soviet Union. The clear lack of true progress toward the ROL in the CAS requires a reinforced effort building on the momentum existing in the other former Soviet states. It is essential that the international community set clear benchmarks for progress towards the ROL. These should include constitutional reforms in order to establish a system of checks and balances, a systematic overhaul of the legislative framework to ensure compliance with international obligations accepted by CAS, establish a truly independent judiciary, introduction of a more adversarial criminal justice system to include reduction of the power of the prosecutor's office. This all requires political will and commitment which is severely lacking. *Experiences in Central and Eastern Europe and other parts of the former Soviet Union confirm the need for a strong international process to support this political will and give it direction.*

(U) There are several external actors attempting to move the various CAS toward the ROL. In particular the OSCE and the EU have played critical roles to this point. A broader process is required in order to ensure that the various bilateral and international organizations (OSCE, UN High Commissioner for Refugees (UNHCR), EU, financial IGOs, NGOs, the United States, other nations) work less in isolation on ROL issues and with a clear understanding of the benchmarks for such reforms. International human rights treaties (e.g. ICCPR) can constitute such a benchmark.

(U) Of note: there will be little prospect for the ROL in CAS if the international community compromises on human rights and the ROL because of the fight against terrorism.

## 5. (U) Assessment of Effort

(U) Thus far ROL activities have shown little progress across Central Asia due mainly to a lack of political will and the continuing legacy of the Soviet legal system. Across Central Asia the law

remains primarily a tool with which to exercise power and is far from a ROL that would be capable of protecting or be willing to protect individual rights against the state. Central Asian countries have failed to address any of the deeper, more systematic underlying problems of their legal systems. This divides Central Asia increasingly from other parts of the former Soviet Union and has placed a considerable gap between them and other countries in Central and Eastern Europe. (*Staberock*)

**6. (U) Authorities Issues**

(U) None discovered at this time. However it was noted that to this point DoD and INL CN money drives LE training in Central Asia. However, INL funding has been decreased and this has limited LE opportunities. One recommendation was made to return INL CN.

**Tab B: (U) Iraq to Appendix 1 to Annex G**

(U) GOALS

(U) Criminal Justice

(U) Within the MOI, the Iraqi National Police (INP) is a para-military force with the primary responsibility of combating terrorism (including the insurgency) in partnership with the Iraqi and Coalition militaries. Goal - in the intermediate term, the NPS possesses sufficient capability, capacity, professionalism and legitimacy to serve as a full partner with the Iraqi military in fighting internal terrorism. In the long term, the NPS serves as an integrated component of the MOI civilian police capability reserved for “gendarmerie” type forces (e.g., counterterrorism, crowd control, SWAT, hostage rescue) and complex crime investigations such as counternarcotics and organized crime

(U) Also within the MOI, the Iraqi Police Service (IPS) serves as traditional civilian police. The goal in the intermediate term is for the IPS to continue to develop the capability, capacity, legitimacy, professionalism and credibility among the Iraqi people to serve as the primary Iraqi law enforcement force. In the long term, the IPS will fully develop such a capacity.

(U) The Iraqi criminal justice system includes the police, prosecuting magistrates (assisted by judicial investigators) and adjudicative (trial and appellate) judges (Higher Juridical Counsel - HJC,) corrections (Iraqi Corrections Service [ICS], located within the Ministry of Justice – MOJ) and defense bar (Iraqi Bar Association.) The court system is comprised of two branches: The Central Criminal Court of Iraq (CCCI), which has jurisdiction over major felonies, including terrorism. There is also a long standing system of District Courts which have jurisdiction of all other criminal matters and all civil matters not covered by Sharia Law.

(U) Significantly greater integration, coordination and cooperation amongst civilian ROL assistance providers and programs are being achieved through the Interagency ROL Coordinating Committee (IROCC). Goals critical to the continued development of ROL in Iraq are as follows:

- Full implementation of December 2008 agreement between the HJC and MOI for the MOI to provide judicial security.
- The MOI, HJC, MOJ and Iraqi Bar Association will develop into sustainable, effective and professional institutions that strengthen the ROL.
- The HJC is provided with both the legal authority and process, as well as resources to develop and implement the process for enforcing judicial orders and judgments;
- The quality of criminal investigations for matters brought before the CCCI is significantly improved;
- Courts (CCCI and/or District and Appellate courts) develop the administrative and judicial capability and capacity to process cases in an efficient, timely and modern manner

- The CCCI expands and/or continues to identify from District Courts and the lawyer population candidates for judges; training will be provided to qualify and for sitting judges as well.
- The anti-corruption system (Board of Supreme Audit, Commission on Public Integrity [CPI] and Ministry Inspectors General [IG]) will be better integrated and capability and professionalism of the CPI and IGs will be significantly improved. The ICS, having brought marked improvement in prisons conditions and treatment of prisoners, should receive increased resources for construction of prisons and continued training of ICS prison guards; and, per the agreement entered into in 2004 between the MOI and MOJ, all prison facilities, including local holding facilities maintained by the MOI, should be operated or, in the case of MOI operated facilities, overseen by the ICS.

(U) Economic Development

(U) Areas of Economic Development germane to the continued development of ROL are as follows:

- Development of a Commercial Code (coverage/qualities desired)
- Development of professional and efficient governmental permit, licensing and creation and regulation of commercial/corporate entities;
- Development of civil courts<sup>68</sup> and commercial alternate dispute resolution system (e.g., mediation, arbitration)

(U) CURRENT EFFORTS

(U) Department of Justice (DOJ)

(U) DOJ entities engaged in Iraq are ICITAP (International Criminal Investigation Training Assistance Program – law enforcement and corrections), OPDAT (Overseas Prosecutorial Development Assistance and Training – prosecutors/investigating magistrates, judges and statutory development and drafting), FBI, Drug Enforcement Agency (DEA), and the U.S. Marshals Service (USMS,) and Bureau of Prisons.

- ROL Coordinator – formally created by Ambassador Khalilzhad; Senior DOJ (OPDAT) Resident Legal Adviser (RLA) appointed to this position by COM. Fourth incumbent from DOJ will assume this position in January, 2009 (Mr. Douglas Allen.) Effort has been outstanding. Impact of effort has been limited due to lack of resources assigned to the ROL Coordinator, diverse reporting chains and the absence of a formal designation of the lead agency best qualified to provide ROL management and coordination.

---

<sup>68</sup> [MUST DETERMINE CURRENT JURISDICTION OF “SHARIA COURTS” OR OTHER ISLAMIC BASED OR TRIBAL DISPUTE RESOLUTION SYSTEMS; ASSURE THAT CIVIL/COMMERCIAL STATUTORY, REGULATORY AND DISPUTE RESOLUTION SYSTEMS DO NOT INFRINGE UPON SHARIA COURT JURISDICTION – DOES ANY OTHER TYPE OF TRADITIONAL DISPUTE RESOLUTION SYSTEM EXIST?]

- CCCI – DOJ (OPDAT) and MNF-I have provided significant assistance to the GOI in establishing the CCCI and training trial judges. The CCCI, which has now expanded to include Provincial Panels, is a credible, legitimate court for terrorism and other major felonies.
- Major Crimes Task Force (MCTF) – includes DOJ RLAs, FBI, USMS, and DEA. Personnel mentor Iraqi counterparts in complex criminal investigations. The MCTF has produced both a significant number of indictments while improving the Iraqi investigative capability.
- Improvised Explosives Device Initiative - This FBI program has a comprehensive investigative strategy to use Confidential Human Sources to identify numerous networks targeting U.S. interests as well as those of our allies. The objectives are to identify, disrupt and dismantle IED cells, especially those operating in conflict areas. This strategy will ultimately identify IED facilitators, their safe houses, IED manufacturing facilities, financiers and planners.
- Explosives Exploitation Cell – The FBI is committed to preventing IED attacks through the unified efforts of law enforcement, intelligence and military assets.
- Sensitive Site Exploitation (SSE) Operations – The FBI and the military continue to work closely in tactical SSE operations. Their mutual mission is to obtain strategic and actionable intelligence and includes collecting intelligence to help determine the location of individuals held in detention facilities. Detention facilities may include non-conventional holding areas such as cellars, hidden rooms, residences, bunkers and so forth.
- Corrections and Border – Since the fall of 2003, DOJ (ICITAP) has provided correctional experts from the Bureau of Prisons, military and state prisons systems to improve the deplorable Iraqi prisons systems. DOJ helped establish the Iraqi Corrections Service (ICS), located in the MOJ, and the ICS Academy in Baghdad. Through its “Train the Trainers Program,” DOJ was able to transition from 95% U.S. and Coalition instructors to 90% Iraqi instructors within two years. While remaining over crowded, ICS operated correctional facilities have shown marked improvement in the conditions of confinement and the treatment of prisoners.
- Iraqi Police Service (IPS) – From 2003 to 2007, DOJ (ICITAP) and Coalition military provided significant and varied assistance to the IPS<sup>69</sup>. DOJ created the TIP (Transition of Iraqi Police) training program beginning in 2003 to existing IPS personnel. In 2004 DOJ helped to establish, create the curriculum and staff the Baghdad Police Academy and, over time, seven regional academies. Also, DOJ, including the FBI, developed the Advanced Criminal Investigation training program, which provided advanced training to IPS veterans and graduates of the IPS Academies. These efforts trained over 160,000 IPS personnel by 2007.
- PRT Resident Legal Advisers – Six of the current DOJ RLAs lead the ROL assistance efforts in separate PRTs. These RLAs work to coordinate and integrate criminal justice assistance efforts in the field, including providing criminal investigative training to investigating magistrates, judicial investigators and police.

---

<sup>69</sup> In 2007 INL replaced the ICITAP Police Trainers with Dyn Corp. contractors.

- U.S. Marshals Service – The USMS provides substantial support to ROL development in Iraq (Afghanistan and other countries) in USCENTCOM. The USMS accomplishes this through its expertise in the areas of Witness Protection, Judicial Security, Prisoner Operations and Court Security.

(U) Dept of State – INL

(U) OBSTACLES TO PROGRESS

(U) Unity of effort in Iraq is impeded by the absence of subject matter experts exercising senior level management in ROL programs. Those at State/INL or USAID who provide direction to contractors (particularly in police training) are not subject matter experts. Existing subject matter experts, such as the DOJ Resident Legal Adviser designated by the Chief of Mission as the ROL Coordinator, is a GS-15 with one deputy and little administrative support. The INL officer managing INL ROL programs is an SES with a staff of 19 who reports not to the ROL Coordinator but the DCM.

(U) Unity of effort is also impeded by the absence of a designated lead agency in ROL based upon the comparative advantage in experience and expertise in planning and implementing ROL programs. S/INL as the funding agency has a critical role in fiscal oversight as well as foreign policy guidance. The de facto ROL Coordinator position was initially filled by two former ambassadors without significant ROL and/or criminal justice experience. In 2005 Ambassador Khalilzad formally created the ROL Coordinator position, delegating coordination authority to the position, and appointing the senior DOJ Resident Legal Advisor (RLA) to the position. His two successors have also been DOJ RLAs. The ROL Coordinator is necessarily constrained by the statutory authority of the participating agencies. But the absence of real authority and staff significantly limits the position from having the desired impact.

(U) The apparent absence of updated metrics for law enforcement and justice system assistance to replace the essentially quantitative metrics relied upon in the past prevents the real gains in every sector from being clearly and objectively demonstrated. For example, in 2007 the Italian Carabinieri assumed responsibility for the institutional development and training of the para-military Iraqi National Police (INP.) The unvetted and untrained INP had regularly engaged in sectarian violence. The Carabinieri has made significant progress toward transforming the INP into a strong COIN partner with the Iraqi National Army (INA) and Coalition forces. DOJ and military JAG corps' work with the CCCI has resulted in a legitimate and credible judicial venue for the adjudication of terrorism and other major felonies. While CCCI judges reject (i.e., referral back to the investigating magistrate for additional investigation, dismissal or not-guilty verdict) a high percentage (reportedly above 50%) this action appears to reflect the need for more intensive criminal investigation training of investigating magistrates, judicial investigators and police, rather than a corrupt CCCI judiciary. DOJ's work with the ICS has resulted in significantly improved prison conditions in those facilities under the jurisdiction of the MOJ.

(U) Given the long term nature of ROL assistance, the very uncertain future of force protection for civilian ROL personnel as a result of the December 2008 Iraqi-U.S. Security Agreement poses a major obstacle to success. Clearly, civilian agencies will not have the resources to fund and the logistics to

deploy force protection assets that are even a fraction of those now supplied by the military. None of the ROL programs will have achieved the critical mass necessary to achieve sufficient capability and sustainability by the December, 2011 troop withdrawal date. It will cost more than DoS now funds, but in the past the military has been willing to transfer funds to DoS to provide police training, and that such funds might be availability if the cost of maintaining forces in Iraq is reduced. It is the force protection capability and capacity of DOD that cannot be replicated by the civilian agencies, no matter how much money is poured into it. That kind of country wide force protection is not just a function of substituting civilians for troops in convoys. It is a function of forward operating bases in strategic locations, the deterrence of military retaliation for terrorist activities etc.

(U) Task Force 134 has the immense responsibility to release to either Iraqi authorities for criminal prosecution or to set free, "in a safe and orderly manner" some 15,000 detainees. This process must be closely monitored to assure that Iraqi authorities (HJC, MOI and MOJ-corrections) are not overwhelmed by the number of putative defendants and the process breaks down, resulting in the premature release of demonstrably violent threats to the citizenry.

#### (U) ASSESSMENT OF EFFORT

(U) The number, complexity and daunting obstacles overcome in the ROL programs discussed above is remarkable. There is no previous USG post-conflict assistance effort conducted in the midst of continuing and, though mid-2007, a growing violent insurgency and sectarian violence. The failure to anticipate the need for a very significant post-conflict assistance program placed both civilian and military personnel engaged in ROL and other reconstruction and stabilization efforts at a huge disadvantage from the outset. The accomplishments discussed above are a testament to the ingenuity, dedication and courage of each of those individuals and the organizations they represent.

(U) As noted above, the ROL effort continues to be hampered by serious deficiencies in unity of effort. Both military and civilian personnel, including the Chief of Mission and other embassy officials, have continually grappled with this problem and implemented a series of IA organizational efforts to address it. Most recently, the embassy formed the Interagency ROL Coordination Center (IROCC), which includes the ROL Coordinator. Its mission is to promote greater coordination between the civilian and military ROL related efforts.

### **Tab C: (U) Afghanistan-Pakistan to Appendix 1 to Annex G**

**1. (U) Introduction.** This assessment focuses on the functional issues of USCENTCOM participation in development of Afghan and Pakistani ROL, the cooperation between USCENTCOM and U.S./partner nation law enforcement activities in the sub-region, and to identify legal authorities that can be amended or clarified to better support accomplishment of the mission in this subregion. Note that CJTF-101 ROL program is the most impressive and well thought out ROL efforts seen at the division level in recent history.

**2. (U) Goals.** All ROL and Law Enforcement activities are assessed against a goal that endeavors to "Support development of Afghan and Pakistan ROL, provide military/civilian cooperation and support for U.S. and friendly nation law enforcement activities in the sub-region, and seek legal authorities

required to properly perform USCENTCOM mission, all to contribute to stability and security within the subregion and support U.S. and USCENTCOM strategic goals.”

**3. (U) Current Efforts:**

a. (U) Synchronizing. Currently, USCENTCOM and USG ROL activities are synchronized and coordinated between military and interagency representatives at the U.S. Embassy, Kabul, in a body known as the “Special Committee for ROL (SCROL).” All USG agencies involved in ROL, including military commands (ISAF, CSTC-A, and CJTF-101) attend this meeting. This is the capstone coordination body that works with and provides synchronizing guidance and information to Provincial Reconstruction Teams and subordinate military command representatives. There does not appear to be a special coordinating mechanism for developmental ROL efforts in Pakistan.

b. (U) Training & Mentoring

(1) (U) Afghanistan:

- (a) DoS/INL, DOJ/DEA: Afghan Criminal Justice Task Force.
- (b) DoS/INL, DOJ: Afghanistan Administration of Justice (Justice Sector Support Program and Corrections System Support Program--reforming criminal justice and corrections systems).
- (c) USAID: Training for Judges in Kabul.
- (d) CSTC-A: Basic Police Legal Training.
- (e) CJTF-101: Training for Judicial personnel at provincial level.

(2) (U) Pakistan:

- (a) DoS/INL: Border Security, Narcotics Law Enforcement.
- (b) DOJ/DEA: Pakistani Anti-Narcotics Force Investigative Cell training in Quantico, VA.

c. (U) Supporting

(1) (U) Afghanistan:

- (a) (U) DoS/INL funding: DOJ Senior Federal Prosecutors Program (SFPP) – developed Counternarcotics Training, Counternarcotics Law, Counter Narcotics Tribunal and Counternarcotics Justice Center: The DOJ SEPP drafted and successfully supported adoption of Afghan Law on Counternarcotics and counternarcotics extradition treaty with U.S.; in partnership with DOJ’s DEA provides CN training to criminal investigators, prosecutors (Office of the Attorney General) and judges; Counternarcotics Justice Center provides central, secure location housing CN investigators and prosecutors, judges that hear CN criminal cases and holding facility for major CN defendants.
- (b) (U) DoS/INL grants: Afghan law professor training in U.S.; International Assoc. of Women Judges to support Afghan women in the legal profession; U.S. Institute for Peace

for specific policy and reform issues, including looking for linkages with the informal justice system; two multilateral trust funds to augment low salaries for judges, prosecutors & corrections personnel.

(c) (U) USAID: Afghanistan ROL Project court administration; judicial training and professional development; commercial dispute resolution; legal education; legislative process reform; women's rights under Islam; Access to justice and building links to the informal justice system. Updating the Kabul University Law School curriculum. Implementing a new court administration system. Chief Justice effort to reduce corruption in court system.

(d) (U) CSTC-A with MOI redrafting personnel regulation governing the ANP, Development of MOI/MOD and ANA Legal Staffs through training and education.

(e) (U) CJTF-101: Development of private legal bar association (at request of the Afghan ministry responsible for licensing and certification of legal professionals), assessing informal legal systems at sub-provincial level, hiring Afghan civilian attorneys to support interagency ROL efforts at provincial level and below, construction of integrated provincial judicial/police/corrections facilities as requested by ministerial and local officials.

(2) (U) Pakistan. DoS/INL: Pakistan Opium Poppy Eradication; Drug Demand Reduction.

#### 4. (U) Assessment of effort.

a. (U) ROL Support in Afghanistan.

(1) (U) USCENTCOM and USG efforts to support Afghan development of ROL are substantial and improving. CJTF-101 efforts to engage civilian interagency partners and to utilize Commander's Emergency Response Program (CERP) funding to enhance compliance with ROL in their sector improve with each rotation of that headquarters. The current ROL effort in CJTF-101 is the best divisional program of this kind that this team has assessed in theater. Interagency cooperation is cordial and productive, but not consistent.

(2) (U) Interagency ROL coordination below capital level is ad hoc and not conducted through the Provincial Reconstruction Teams (PRTs) as well as it could be. Part of the reason is that there do not appear to be civilian interagency ROL coordinators serving full time on the PRTs.

(3) (U) International ROL efforts appear less resourced and coordinated. UK efforts in RC South are similar in nature to RC East/CJTF-101, although their resources do not permit them to conduct as much construction and hiring of Afghan personnel. Interestingly though, the Canadian government has been able to supplement income for Afghan judges through contribution to a development trust fund, thus solving a significant problem involving under compensation of Afghan judicial personnel who sometimes make less than police officers with whom they interact. In addition, there is a concerted attempt to coordinate efforts at various levels. In Kandahar Province, for example, there are at least three attempts ongoing to synchronize/coordinate projects in crucial areas of

development. Such efforts are viewed with some urgency, considering the expected increase of U.S. troops in this sector.

(U) It is difficult to gauge achievements in Afghanistan because of a lack of coordination between the civil justice sector and civil law enforcement training and among the many U.S. and international partner entities (government civilian and military, contractors and non-government) involved in the effort.

(U) The general consensus is that the Afghan National Police will remain a paramilitary force for some time to come. Canada is the lead-nation in RC-South, trains and mentors police. While coordinating with U.S. efforts by DoS/INL and U.S. military (CSTIK-A), although not without some tensions.

(U) ROL functions in the military where the military court enforces the uniform code of military justice. It also functions well in the specific area of counternarcotics efforts with a focused program of training and mentoring of vetted police investigators, judges and prosecutors that includes the involvement of DOS/INL, DOJ/DEA, and the U.S. military.

#### **5. (U) Obstacles to progress.**

(U) There is no unity of effort in Afghanistan regarding ROL. The efforts are a mixed bag of progress, training programs, training entities and funding. There is discussion on asking partner nations to provide more civilian involvement on development and other soft projects, while the U.S. provides the military support for security. This would not, however, guarantee that coordination of effort would improve in ROL and other areas.

(U) Lack of a doctrine for delivering ROL in less secure areas hinders establishing a comprehensive ROL program, especially in the southern provinces. In Kandahar City, where some progress is being made in the area of policing, lack of security for judges has limited the extent of this progress. None of the ROL initiatives found in more permissive areas are to be found in the South, such as training for prosecutors and judges, except for those tied to counternarcotics.

(U) U.S. respect for Afghan sovereignty does not extend to including Afghan opinions or views when decisions are made about how development of the structure of ROL, should be delivered. We plan a ROL structure without considering the traditional or religious aspects of Afghan systems of justice. We build courthouses that remain empty.

(U) To foster an environment in which ROL prevails, U.S. legitimacy at every level must serve as an example.

**6. (U) Authorities issues.** Lead-nation designations for specific locations should be revisited with a view to assigning lead-nation responsibility to specific action, such as police training, judicial training, etc., instead of to a region. To date, at least four areas have received police training according to lead-nation methods. Revising the responsibility to an action or activity would, in the end, give the Afghans a unified system.

**Tab D: (U) Arabian Peninsula to Appendix 1 to Annex G**

(U) The Arabian Peninsula, for the most part, has organized and functioning justice sectors, such that U.S. efforts here should largely be directed toward refining capabilities through cooperation. The goal is insulating these stable and moderate countries from external threats and ensuring that local trading infrastructure and financial markets are not exploited by hostile elements. In short, border security and banking transparency are critical. Enhanced border security will protect these countries from infiltration by hostile transients, and will eliminate trans-shipment points for embargoed military goods and potentially-dangerous dual-use technology bound for Iran and Iraqi insurgents. New diplomatic channels for law enforcement evidence-sharing and opportunities for front-line law enforcement cooperation will ensure that the Arabian Peninsula effectively responds to complex financial crimes, many of which have U.S. security implications.

(U) The United States has not attempted to leverage its broader relationships with these countries, leading to modest results and leaving regional attaches to adopt stopgap measures. There have been meaningful efforts at cooperation. DOJ has advised on export control and anti-money laundering legislation, and has trained on best investigative approaches to complex financial crimes. DOJ/FBI/DEA has attempted informal sharing of investigative leads and critical evidence. U.S. Department of Treasury (DOTr) has focused on capacity-building in areas such as smuggling interdiction and financial regulatory reform. U.S. Department of Commerce (DOC) has pressured for more effective border control, while the U.S. Department of Homeland Security (DHS) has advised on aviation security and embedded inspection teams at critical ports. There are no known U.S. military and interagency efforts to build partnership capacity with Gulf state ROL institutions. USG efforts should continue, but they cannot overcome entrenched obstacles on their own.

(b)(1)1.4(d), (b)(5)

(U) New U.S. approaches can rest on international treaty principles and bilateral, contractual relationships with regional countries. The United States should enter into mutual legal assistance treaties with evidence-sharing and extradition obligations and perhaps signal an interest in reevaluating DOD partnerships in light of military technology exports to hostile elements. In the meantime, increased resources for regional attaches through U.S. departmental budgets can sustain valuable capacity-building. U.S. departments have targeted critical law enforcement gaps in the area, have developed strong relationships with local counterparts, and should be given additional personnel and funding. These efforts have already established a platform for the time when U.S. diplomacy forces improvement in local willpower for meaningful operational cooperation.

**Tab E: (U) Levant and Egypt to Appendix 1 to Annex G**

**(U) Introduction**

(U) The ROL related information obtained by the USCENCOM Assessment Team for the Levant and Egypt did not allow for a detailed, or rigorous, assessment of this functional area to be produced. Much of the information provided was single source and was either extremely generic, or extremely issue specific, in nature. With that caveat in mind, the following observations are worthy of note.

**(U) Current Efforts**

(U) Within Egypt, USAID runs / funds ROL related programs in a broad range of areas including projects related to the efficient administration of justice, the training and appointment of female judges, access to justice initiatives and human rights (including free public defense systems). ROL programs are aimed at both “classic” ROL audiences (judges, prosecutors etc) and civil society in general. This supply and demand approach to ROL efforts is seen as being particularly useful in addressing access to justice issues.

(U) Jordan has seen some noticeable USAID successes, including a high profile and successful project to introduce a computerized court case management system within Jordanian courts, judicial training programs (Jordan is now “exporting” its judicial expertise throughout the region) and initiatives aimed at ensuring a transparent, merit based, approach to judicial appointments.

(U) The U.S. Embassy Cairo benefits from having a legal attaché and a Department of Justice Attaché. The ROL team was unable to talk with the Legal Attaché as part of its review, although a brief synopsis of the Country Team’s visit at the U.S. Embassy Cairo indicated that he enjoyed a good level of law enforcement cooperation with his Egyptian counterparts.

(U) The remit of the Justice Attaché is to formulate strategy and ensure coordination of DOJ activities in his area of operations (AO). Conversations with the Justice Attaché indicated that a significant part of that remit related to counter-terrorist related issues within the constructs of mutual legal assistance, extradition and anti money laundering, all areas in which USCENCOM could have a legitimate interest.

(U) The Lebanese Armed Forces training, and in particular the Police Training of Lebanese Internal Security Forces (LISF) is reported as a success story (see Obstacles to Progress below). The INL implementation of the 2007 Letters of Agreement between USG and the Government of Lebanon has been described as strengthening the LISF capacity to enforce the ROL and “cement sovereign Lebanese Government control over its territory and protect the Lebanese people.” This project is intended to run for four years and it will train both cadets, and instructors. Hand in hand with the training, the project has also involved equipment and facility upgrades and additions.

**(U) Obstacles to Progress and Assessment of Effect**

(U) Three observations stood out prominently in an analysis of the ROL environment in the Levant and Egypt AO, two of which are single country related, the third being applicable generally throughout the AO.

(U) In Lebanon, the headline success story of the U.S. training of the Lebanese Police was tinged with concerns about the risk that the police are becoming increasingly military in their outlook – as visibly evidenced by their style of uniform – at the expense of their law enforcement role. Although the understandable requirement to strengthen the army and police in order to establish security was recognized, the inability to properly address the subtle differences that the security and justice apparatus demand creates the danger of an institutionalized cleavage in a vital component of the ROL / justice sector. This may ultimately undermine the perception of the government’s legitimacy if it is seen as failing to provide law and order vice security.

(U) In Egypt, the overarching perception is that the cited threat of Islamic fundamentalism has helped Egypt justify its move away from democratic principles to an authoritarian approach to the extent that it is now viewed by some as one of the most politically restrictive countries in the world. The long standing state of emergency, and the powers that go with it under The Emergency Law (which, amongst other matters, allow for criminal trials of civilians in military courts and, arguably more corrosively, removes the judiciary of its ability to perform its constitutional and legislative duties) is seen as being used to effectively silence political and public opposition. There is a corresponding perception that the judiciary and legislature have been similarly repressed with power being concentrated in the hands of those who are subservient to the ruling regime. One is left with the distinct impression that, notwithstanding the significant investment USG has made in Egypt through USAID and other agencies, the ROL writ large has, in fact, regressed.

(b)(1)1.4(d), (b)(5)

(U) That said, it is worth noting that Jordan and Bahrain were singled out as providing a good level of cooperation overall on such issues.

(U) It was also reported that the legacies of Abu Ghraib, Guantanamo and other U.S. practices (specifically mentioned was its approach to extradition and deportation issues) served to undermine the messages that the United States were trying to send in the ROL arena, and the actions that it expected from countries in the region. By way of example, the point was well made that criticism of the

Egyptian use of military courts to deal with criminal cases against civilians under the Emergency Law was difficult to take seriously in the face of the Military Commissions operating at Guantanamo.

(U) On the data available, it would almost inevitably be misleading to judge the totality of the effect of ROL and Law Enforcement efforts across the Levant and Egypt. Although it is clear that there have been some successes, Jordan apart, there is little appreciable forward momentum across this sector. However, there was a genuinely held belief that there were benefits to be achieved from building enduring professional relationships within the AO, these relationships being the oil that lubricated the mechanisms of the formal legal agreements that USG seek to rely on from time to time.

(U) In addition, and perhaps importantly for USCENTCOM, the region offers a potential opportunity. That opportunity arises out of the expertise and, apparent, capacity in some ROL functional areas, which countries such as Egypt and Jordan may be able to bring to ROL efforts in Afghanistan. Although the issue of individual state willingness to participate will need to be further investigated, historical links between the Egyptian and Afghan judicial systems, the prodigious capacity of Cairo University's law faculty, Jordan's International Police Training Center (which was used to such good effect in training Iraqi law enforcement officials) and its pool of legal and judicial expertise, all suggest possible avenues that can be explored. Crucially, the involvement of such USCENTCOM regional countries in solving Afghan ROL problems would bring an Islamic context and cultural compliance that is so visibly missing from the current Western footprint that is stamped across ROL efforts in Afghanistan.

(U) **Authorities**

~~(S//REL TO USA, FVEY)~~ The following specific "authority" related issues were raised:

- - 
  - 
  - 
  -
- (b)(1)1.4(d), (b)(5)

**Tab F: (U) Seven Effects to Appendix 1 to Annex G Attachment 6**

(U) The principal of the ROL can be broken down into seven effects:<sup>70</sup>

- The state monopolizes the use of force in the resolution of disputes
- Individuals are secure in their persons and property
- The state is itself bound by law and does not act arbitrarily
- The law can be readily determined and is stable enough to allow individuals to plan their affairs.
- Individuals have meaningful access to an effective and impartial legal system
- Human rights and fundamental freedoms are protected by the state
- Individuals rely on the existence of legal institutions and the content of law in the conduct of their daily lives

---

<sup>70</sup> ROL Handbook, A Practitioner's Guide for Judge Advocates, The Judge Advocate General's Legal Center & School, U. S. Army. Center for Law and Military Operations, 2008. pg.6

**Tab G: (U) Relevant Strategic Goals to Appendix 1 to Annex G**

1. (U) National Defense Strategy Ends.

Defend the homeland.  
Win the Long War.  
Promote Security.  
Deter conflict.  
Win our nation's wars.

2. (U) Guidance for Employment of the Force USCENTCOM Strategic End States.

- Iraq and Afghanistan stable and military operations and activities contribute to their emergence as responsible, self-governing, democratic members of the community of nations. ROL and Law Enforcement activities are critical to achieving these end states.
- Violent Extremist Organizations do not have capability/intent to strike globally and catastrophically and their capacity to strike is outweighed by capacity of local governments. Environment inhospitable to terrorism and violent extremism. ROL and Law Enforcement are critical to achieving these end states.
- Original provision classified – left blank.
- Prevent proliferation, use, new development of WMD and ensure stockpiles secure. ROL and Law Enforcement are critical to achieving these end states.
- Friends and allies in the AOR are capable of deterring, defending and cooperating against attack; control borders, eliminate ungoverned spaces, achieving stability, and maintaining friendly relations with neighbors and the United States. ROL and Law Enforcement are critical to achieving some of these end states.
- Freedom of movement and unimpeded flow of legal commerce maintained and critical access is secured. ROL and Law Enforcement are critical to achieving these end states.

3. (U) Department of State and U.S. Agency for International Development Joint Strategic Plan for FY 2007-2012 Strategic Goals.

Strategic Goal 1: Achieving Peace and Security.  
Strategic Goal 2: Governing Justly and Democratically.  
Strategic Goal 3: Investing in People.  
Strategic Goal 4: Promoting Economic Growth and Prosperity.  
Strategic Goal 5: Providing Humanitarian Assistance.  
Strategic Goal 6: Promoting International Understanding.  
Strategic Goal 7: Strengthening Consular and Management Capabilities.

4. (U) U.S. Central Command Theater Strategy U.S. Strategic Imperatives.

- Contribute to the Security That Establish the Foundation for Enduring Regional Stability.
- Ensure the Free Flow of Strategic Resources.
- Support USG Initiatives to Advance Principled, Pragmatic Governance.
- Work with Allies and Partners in Pursuit of Common Interests.

**Tab H: (U) 1206F Report to the National Defense Authorization Act Appendix 1 to Annex G**

**(U) Introduction**

(U) Section 1206(f) of the National Defense Authorization Act, 2006 (NDAA), calls for the President to submit a report examining the issues highlighted below:

- "The strengths and weaknesses of the Foreign Assistance Act of 1961, the Arms Export Control Act, and any other provision of law related to building the capacity of foreign governments or the training and equipping of foreign military forces," including strengths and weaknesses for the purposes of conducting counterterrorist operations or participating or supporting stability operations.
- "The changes, if any, that should be made to the Foreign Assistance Act of 1961, the Arms Export Control Act, and any other relevant provision of law that would improve the ability of the United States Government to build the capacity of foreign governments or train and equip foreign military forces," including for the purposes of conducting counterterrorist operations or participating or supporting stability operations.
- "The organizational and procedural changes, if any, that should be made in the Departments of State and Defense to improve their ability to conduct programs to build the capacity of foreign governments or train and equip foreign military forces," including for the purposes of conducting counterterrorist operations or participating or supporting stability operations.
- "The resources and funding mechanisms required to assure adequate funding for such programs."

(U) The President's authority to provide this report has been delegated to the Secretary of State. The following report, which has been prepared with input from the Department of Defense, addresses only a portion of the entire realm of foreign assistance for which the Secretary of State is primarily responsible that relates to assistance to train and equip foreign security forces.

(U) Security cooperation remains a critical foreign policy tool that allows the USG to advance its national security interests worldwide, from continuing partnerships with our allies to promoting key American values with respect to democracy, human rights, and civilian rule of the military. Building partner nation security capacity is one of the most important strategic requirements for the USG to promote international security, advance U.S. interests and prevail in the war against terrorism, and meet other national security challenges. Adversaries like Al Qaeda confront the United States and our allies with terror and other asymmetric means. We know they have the ability to operate within the borders of nations friendly to the United States and likely will not be overcome by the direct application of U.S. military force alone. Too often, such adversaries and their nation-state supporters can quickly and effectively propagate terror and stage political, social, and economic campaigns.

(U) Effective partners are key to disrupting terrorist networks and other transnational threats around the globe, thereby preventing crises that would require the deployment of U.S. forces. Security cooperation increases the capacity of U.S. military forces by providing necessary funding and training to coalition partners and friendly nations, thus enabling those nations to work towards common security goals, share burdens in joint missions, manage ungoverned spaces and external threats, and address security issues without direct U.S. involvement.

(U) Our longstanding security assistance, its authorities, and resources should be supplemented to be capable of meeting today's U.S. strategic requirements. Existing Department of State authorities include the Foreign Military Financing (FMF), International Military Education and Training (IMET), and Peacekeeping Operations (PKO) accounts authorized by the Foreign Assistance Act of 1961, as amended (FAA), and the Arms Export Control Act (AECA). While this kind of assistance is critical, new tools are required in today's security environment. Select new authorities form the basis of closer cooperation between the Department of State and the Department of Defense. Among these is Section 1206 of the National Defense Authorization Act (NDAA), 2006, as amended, that has the potential, if sufficiently resourced, to enhance implementation of assistance programs worldwide. These authorities augment the existing tools available to both Secretaries to respond to opportunities or unforeseen challenges that make the initiation or expansion of a training, equipping, or advisory program necessary. To be clear: maintaining the status quo with respect to security assistance tools - particularly resources - will not meet the requirements of today's security environment or strain on U.S. forces.

## (U) SECTION I

### (U) Strengths and Weaknesses of the Existing Legislation:

#### (U) *Strengths*

(U) Over the last fifteen years, the United States has faced a string of complex and often unexpected challenges from Afghanistan to Haiti, and from Lebanon to Sudan. Improving our whole-of-government response to crises and emerging threats and our ability to take advantage of unexpected opportunities has been our first priority. It has yielded some impressive results.

(U) Among the most welcome developments has been Congressional support for reconstruction and stabilization efforts such as the State Coordinator for Reconstruction and Stabilization, Section 1207 of the FY 2006 NDAA, and recent Congressional support for reconstruction and stabilization authorities and resources, including for a Civilian Reserve Corps.

(U) Current legislation provides the basic framework for effective foreign assistance aimed at building the capacity of foreign governments and the training and equipping of foreign military forces. However, this assistance, its authorities, and resources has not kept up with the current U.S. strategic need. The oversight provided by the current system minimizes the potential for misuse of the assistance, including accountability for the transfer of U.S.-origin equipment. The existing Foreign Military Sales process requires that host nations "buy-in" for purchases of defense articles and services - an essential element to ensure that the equipment and training is sustainable by the host nation and is not the continuing responsibility of the USG to fund. Foreign recipients view our system as one that allows little or no room for corruption within their own countries.

(U) Specifically, the strengths of certain key specific authorities relating to the training and equipping of foreign military forces may be summarized as follows:

(U) Under the Arms Export Control Act (AECA):

-- Foreign Military Financing (FMF) - authorizes grants, credits or loans, and loan guarantees, all of which may be implemented in a highly flexible manner, but are hampered by specific earmarks and insufficient funding that too often limit that flexibility.

-- Cooperative research, development, and production - authorizes cooperative research, development, and production of defense articles and services, permitting some of the most creative security cooperation with our allies. Section 27 of the AECA provides the most expansive of these authorities, as it permits cooperative production (e.g., Joint Strike Fighter (JSF)).

(U) Under the Foreign Assistance Act of 1961, as amended (FAA):

-- International Military Education and Training (IMET) - authorizes military education and training of both foreign government military and civilian personnel, a system that has been effectively implemented. However, because IMET programs must be conducted primarily by bringing recipients to the United States, there is a need for complementary programs that can educate or train partners quickly and effectively in-theater or in host nations.

-- Peacekeeping Operations (PKO) - although not a military assistance authority per se, it authorizes assistance for voluntarily funded peacekeeping and other programs in the national security interest of the United States, and hence can be used liberally to train and equip foreign militaries.

-- Drawdowns - diverse drawdowns under the FAA, specifically sections 506 and 552, can be used to train and equip military forces, drawing on the resources of other U.S. Government agencies, when recommended by the Secretary of State to the President.

-- Excess defense article authorities - the FAA authorizes the provision of excess defense articles as foreign assistance.

-- Nonproliferation and Export Control - Nonproliferation authority that supports programs to prevent proliferation of WMD, including training of border guards. FAA §581 et seq.

-- Anti-Terrorism Assistance - Although not military in nature, this is a complementary authority to enhance the ability of foreign law enforcement forces to combat terrorism. FAA §571 et seq.

-- International Organizations and programs - FAA section 301, particularly as it relates to voluntary contributions to support IAEA nonproliferation programs.

-- International Counternarcotics - §481 et seq., insofar as it has been used to provide assistance to military forces engaged in counternarcotics efforts.

-- Other - Complementary authorities, such as those found in §607 of the FAA, permit sales of commodities and services for peacekeeping uses, among other things, and emergency waiver authorities in the FAA permit overcoming certain legislative restrictions.

(U) Although beyond the scope of the reporting requirement, we would note that the very useful authorities cited above have long been supplemented by select Department of Defense authorities, including:

- Acquisition and Cross-Servicing Agreement (ACS A) [10 U.S.C. §§2341 -2350; also temporary authority under FY 2007 NDAA § 1202]
- Combatant Commander Initiative Fund [10 U.S.C. § 166(a)]
- Cooperative Research, Development, Test and Evaluation and Production [10 U.S.C. § § 2350(a), 2358]
- Overseas Humanitarian, Disaster, and Civic Aid [10 U.S.C. §2561]
- Humanitarian Civic Assistance and Humanitarian Mine Action [10 U.S.C. §§401 and 407]
- Joint Combined Exchange Training (JCET) [10 U.S.C. § 2011]
- Regional Centers for Security Studies [10 U.S.C. §§ 184. Also see FY 2007 NDAA §904]
- Regional Combating Terrorism Fellowship Program (CTFP) [10 U.S.C. §2249(c); FY 2007 NDAA § 1204]
- Warsaw Initiative Funds Supporting Partnership for Peace Programs [10 U.S.C. §§ 168, 1051, 2021]
- Afghanistan Security Forces Fund [FY 2007 NDAA § 1517]
- Commanders' Emergency Response Program [FY 2006 NDAA § 1202]
- DoD Counter Drug Program [FY 1991 NDAA, § 1004]
- Iraq Freedom Fund [FY 2007 NDAA § 1515]
- Iraq Security Forces Fund [FY 2007 NDAA § 1516]
- Logistic Support for Allied Forces [FY 2007 NDAA § 1201]
- Section 1206 Train and Equip [FY 2007 NDAA § 1206]
- Section 1207 Support for Civilian Stabilization and Reconstruction [FY 2006 NDAA § 1207]
- Section 1208 Special Operations Forces authority [FY 2005 NDAA Section 1208]

**(U) *Weaknesses***

(U) As previously noted, current legislation allows us to address many issues with respect to training and equipping foreign militaries. However, this assistance has not kept up with the current U.S. strategic need. This weakens the U.S. ability to enable partners to take on the task of defeating terrorist threats, promoting international security, and advancing U.S. interests, thereby increasing the strain on U.S. forces and endangering our servicemen and women. The ability to flexibly adapt to new strategic challenges has been affected by additional legislation that too often has as its sole purpose to impose restrictions and limitations. The complex mix of legislation, mainly sanctions legislation that restricts foreign assistance outside of the basic FAA and AECA authorities, impose unhelpful constraints on the President's flexibility; many of these sanctions should be repealed. Annual appropriations also contain yearly congressional earmarks that limit our ability to put funding towards critical priorities, emerging threats, or new opportunities. In this era, we need, at a minimum, to preserve flexibility in order to help us to deal with a rapidly changing strategic and tactical environment and an adaptive set of enemies. To maximize flexibility and efficiency, the period of availability of single-year security-related appropriations funds for foreign assistance could usefully be expanded to multi-year periods - as is employed for non-security assistance accounts.

(U) Today's threats need more flexible responses and require us to engage with a range of foreign security forces, some not under the traditional military structure. We have recognized this new dynamic by providing some FMF-funded defense articles to counterterrorism entities where the country's national structure places responsibility for counterterrorism activities in a ministry other than the Ministry of Defense, but only when the purposes of the assistance is to counter a terrorist threat. We could benefit from enhanced authority to provide assistance of this sort, including the ability to train civil gendarmes to supplement international peacekeeping missions (e.g., the Global Peace Operations Initiative) and provide training to counterterrorism units.

**(U) Shared Congressional and Executive Branch Interests:**

**(U) *Funding***

(U) The Congress has recognized the urgency of targeted contingency tools, particularly emergency accounts, typically in supplemental appropriations legislation designed specifically to respond to urgent crises. Since 9/11, Congress, working closely with the Administration, has provided substantial resources in, among others, the Emergency Response Fund (ERF); several emergency accounts in the first and second Iraq and Afghanistan supplemental appropriations acts, including: Iraq Freedom Fund, the Coalition Support Fund, and the Commanders' Emergency Response Program (CERP); and separate funds first designed to train and equip Afghan and Iraqi military and now expanded to all security forces of both countries, the Iraq Security Forces Fund and the Afghanistan Security Forces Fund. On the reconstruction side, these supplemental appropriations acts have provided the Iraq Relief and Reconstruction Fund (IRRF) and a similar Tsunami relief and reconstruction fund.

**(U) *Oversight and Reporting Requirements***

(U) The Administration respects the oversight role of the Congress and is sensitive to the imperative to provide, on an ongoing basis, transparent and detailed information to enable Congress and the

Administration to act as partners in efforts to address national security issues. Notification and reporting requirements, as well as the offer of briefings, are used to provide Congress with clear and comprehensive information needed to legislate judiciously. These tools of oversight should be reviewed to ensure timely action that is reflective of today's security environment. We seek to reduce unnecessary and often obsolete reporting requirements that were in many cases designed to address issues that have long since been resolved or that otherwise may have passed their original sunset provisions. Our primary goal is to ensure transparent and complete disclosure to Congress while effectively addressing emergent threats or opportunities.

## (U) SECTION II

### (U) Changes to Existing Legislation:

(U) As Secretary Rice has articulated, United States security is linked to the capacity of foreign states to govern justly and effectively, invest in and improve the lives of their people, create the conditions for economic growth and development, and conduct themselves responsibly within the international system. Foreign assistance is an essential component of achieving those aims. In order to transform our capabilities to use foreign assistance to meet our current and long term challenges, the Secretary has, as discussed further below, established the Office of the Director of Foreign Assistance to serve as an umbrella leadership structure for aligning and coordinating all foreign assistance policy, planning, and oversight and to maximize and account for foreign assistance resources.

(U) The Departments of State and Defense have from time to time proposed new legislation that would supplement existing legislation to help improve the ability of the U.S. Government to train, equip, and build the capacity of foreign governments to assist in the war on terrorism, to respond to humanitarian crises, or to participate in peacekeeping and coalition operations. Some of those proposals that have fully cleared the interagency process, including the Office of Management and Budget, follow:

#### (U) *Supplement or revise the FAA and AECA*

(U) In March 2005, the State Department included a chapter in its proposed foreign relations authorization bill for FY 2006-2007 that included extensive targeted amendments aimed at updating and making even more flexible existing foreign assistance authorizations found in the FAA and the AECA - many of which were included by the Senate Foreign Relations Committee in S. 600. These included essential increases in thresholds for Congressional notifications for arms sales and defense exports, expanded waiver and comparable authorities, and consolidated reporting requirements. Particularly relevant proposals are noted below, along with some that have since been proposed by the Administration:

- **Non-MoD Forces:** To clarify that it has only been a matter of policy practice and stress that military assistance may be made available for purposes of the AECA, which include maintaining internal security and countering terrorist forces, it has been proposed that the purposes of military assistance be clarified to include anti-terrorism (and nonproliferation) purposes. This would simply reaffirm that FMF may be used, like military assistance authorized under section 502 of the FAA, for anti-terrorism purposes, regardless of whether the foreign governmental force is organized under a defense or civilian ministry of that country.

This amendment was made to the FAA to clarify that such purposes are included in those for which military assistance may be provided. However, at the time of that amendment, a parallel change was not made to the AECA. To provide greater flexibility to peacekeeping operations authorities to support counterterrorism activities when performed by civilian law enforcement units, the State Department has requested on several occasions that a "notwithstanding" authority be added to that authorization and also that the ban on assistance for civilian law enforcement units, in section 660 of the FAA, be repealed or amended with regard to peacekeeping operations (PKO) funds. This is particularly important in view of the availability of national police force gendarme units in many nations that could be trained to supplement military peacekeepers in peace support operations.

**(U) Section 506 Drawdown Authority:** Drawdown authority of Section 506 of the FAA needs to be amended, at a minimum, to: 1) increase the annual drawdown limit; 2) expand the purposes for drawdown to include training and equipping foreign military and security forces to disrupt or destroy terrorist networks, close safe havens, or participate in or support U.S., coalition, or international military or stability operations, and to permit reconstruction and stabilization assistance; and 3) allow the Department of Defense to drawdown funds to procure new defense articles and services (i.e., not limited only to Defense stocks). These changes would enhance the utility of the drawdown authority, which has diminished over time due to the "just in time" acquisition policy that resulted in the virtual elimination of stocks.

**(U) Thresholds for Congressional Notification of FMF and Licensed Exports:** In the March 2005 proposed bill, the Administration requested substantial increases to the arms sales and exports notifications thresholds, from \$50M to \$100M and \$14M to \$50M for defense articles, and from \$200M to \$350M for defense services. The FY 2003 Foreign Relations Authorization Act increased modestly the thresholds for Congressional notification of FMS and licensed transfers to NATO countries, Japan, Australia, and New Zealand from \$14M to \$25M for Major Defense Equipment (MDE) and from \$50M to \$100M for other defense articles and services. While welcome, these increased thresholds still do not reflect the increased costs of modern military equipment. Moreover, these increased thresholds are not applicable to transfers to many of our key coalition partners in the war on terrorism.

**(U) Waiver Authorities:** Request an amendment to State Department extraordinary waiver authorities in FAA section 614 and 451, including increases in the latter.

**(U) Establishment of a Defense Coalition Support Account:** Authorize the President to establish a Defense Coalition Support Account to better support coalition partners. This proposal would build upon aspects of the Special Defense Acquisition Fund (SDAF) and on some aspects of the Defense Cooperation Account. The proposed revision to existing SDAF legislation would allow the Department of Defense to pre-purchase equipment for sale or temporary use, with concurrence of the Secretary of State, to its coalition partners, using funds that have been made available to Defense through appropriations by the Congress or by using donations from non-U.S. Government sources.

**(U) Supplemental Relevant Defense Authorities**

**(U) Section 1206 Authorization Level:** Amend Section 1206 of the FY 2007 NDAA to increase the funding authorization level from \$300M to \$750M, to allow assistance to non-military security forces; to eliminate the sunset clause; to enable training of forces to participate in or support military and stability operations that are consistent with the security interests of the United States; and to build the capacity of security forces in a country when U.S. forces are deployed in large-scale stability operations in that country. While the existing Section 1206 authority allows training of military forces essential to ongoing counterterrorism or stability operations, its effectiveness would be enhanced with the proposed modifications that take into account the significant financial requirements and the command structure of foreign forces (note: relevant forces are not always under military command). The proposed change would remove the provisions that incorporated restrictions from the FAA or foreign operations appropriations acts. Finally, the proposal would allow a waiver of restrictions by the President or the Secretary of State under existing waiver authorities or upon determining that it is in the national security interests of the United States to do so. These proposed changes would increase the U.S. Government's ability to meet time-sensitive requirements to build the capacity of foreign security forces for counterterrorism operations or stability operations.

**(U) Significant Military Equipment:** Authorize the Secretary of Defense, with Secretary of State concurrence, to transfer under the authority of an Acquisition and Cross Servicing Agreement (ACSA), on a lease or loan basis, items identified as Significant Military Equipment for personnel protection or to aid in personnel survivability to nations participating with U.S. Armed Forces in all military operations (not just Iraq and Afghanistan) if the Secretary of Defense, with the concurrence of the Secretary of State, determines in writing that it is in the national security interests of the United States to provide such support.

**(U) Education and Training:** Make permanent, and with the concurrence of the Secretary of State, the authority of the Secretary of Defense to expend operations and maintenance funds to provide electronically-distributed learning content and related information technology for the education and training of foreign military and civilian government personnel to enhance interoperability during multinational operations. Providing this type of training allows our foreign partners to develop capabilities in a manner that will ensure interoperability with U.S. forces on the battlefield.

**(U) Centers of Excellence:** Make permanent, and with the concurrence of the Secretary of State, the authority which authorized the Secretary of Defense to enter into agreements with the North Atlantic Treaty Organization (NATO) alliance members, major non-NATO allies, and other friendly foreign countries to participate in organizations that are Centers of Excellence (COE), established to enhance interoperability, develop military doctrine, and develop and test new concepts. The proposal would increase the authorization for expenditures for the U.S. share of operating expenses from \$3M to \$5M. The USG benefits from this participation through its ability to influence the commonality of doctrine, education, training, and development of new capabilities. This process improves interoperability between U.S. and foreign militaries and enhances security cooperation efforts to prosecute the War on Terror. Strengthening our relationships through

participation in organization supportive transformational concepts also strengthens the current transformational efforts of the Department of Defense.

**(U) Section 1208 Support to Foreign Forces: Make permanent** the authority of the Secretary of Defense, with the concurrence of the relevant Chief of Mission, to expend up to \$25,000,000 during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism. The activities authorized under Section 1208 of the FY 2005 NDAA have proven to be an invaluable tool for Special Operations Forces in the fight against international terrorism. The current authority will expire at the end of FY 2007.

**(U) Geographic Combatant Commander's Authority to Transfer Excess Defense Articles:** Authorize Geographic Combatant Commanders, with the concurrence of the Secretary of State, to transfer on a grant basis, a total of \$25,000 per year of non-lethal excess defense articles to each country within that commander's area of responsibility for the purpose of building the capacity of such countries to conduct counterterrorist operations, or to participate in or support military and stability operations in which the United States armed forces are a participant.

**(U) Overseas Humanitarian, Disaster, and Civic Aid (OHDACA):** Amend Section 2561(a)(1) of Title 10, United States Code, by inserting "and, with the concurrence of the relevant Chief of Mission, for stabilization purposes" after "other humanitarian purposes." Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) provides the Department of Defense with a unique capability that enables DoD commanders to access countries and regions that would otherwise be inaccessible to U.S. forces. Unlike the Commanders' Emergency Response Program, OHDACA can be used for planned programmed activities, making it a key shaping tool. Using OHDACA, commanders have a non-combat, results-oriented tool to interact with governments, indigenous organizations, and ordinary citizens to establish long term, positive relationships, mitigating terrorist influence, and preventing conflict.

**(U) DoD Rewards Program:** Amend Section 127b(a) of Title 10, United States Code to allow payment of rewards, with the concurrence of the relevant Chief of Mission, for information or non-lethal assistance provided to the government personnel of coalition nations and nations in which the U.S. Armed Forces are stationed or operating. The amendment would also expand the purpose for which rewards may be given to include assistance that benefits the force protection for coalition forces or forces of a country in which the U.S. Armed Forces are operating. This authority is useful to encourage the local citizens of foreign countries to provide information and other assistance, including the delivery of dangerous personnel and weapons to U.S. military authorities. Extending it to encourage the provision of information to our partners, to enhance their force protection, provides a key vehicle to improve U.S. and partner nation personnel survivability and improve the United States' ability to sustain partners that deploy alongside U.S. Armed Forces.

**(U) Commanders Emergency Response Program (CERP):** Make permanent the CERP and extend the authority beyond Iraq and Afghanistan. This authority would allow the Secretary of Defense to authorize U.S. military commanders to use Department of Defense funds appropriated to the CERP or other operations and maintenance funds for urgent humanitarian relief and reconstruction assistance to local populations where U.S. forces are operating. Resources under this

section would be available for all military and security operations, including humanitarian, civic assistance, disaster relief, and peace operations. The Departments of Defense and State shall jointly develop procedures for the exercise of this authority. Such procedures shall provide for expeditious coordination between the Department of Defense and the Department of State to achieve agile, appropriate, and effective use of this authority to promote the security interests of the United States.

**(U) SECTION III**

**(U) Organizational and Procedural Changes:**

(U) The Administration does not seek legislated changes in isolation. Many changes were also required within the Executive Branch. Several major initiatives are underway to reform processes in the Executive Branch to improve our ability to carry out foreign assistance activities and programs, such as train and equip programs.

(U) The Department of State has:

-- Created the Office of the Director of Foreign Assistance. The Office is responsible for ensuring that all U.S. foreign assistance is driven by a coherent framework and is accountable, transparent, and consistent with country-specific foreign policy goals.

-- The State Department is continuing foreign assistance reform with implementation of the FY 2007 foreign assistance budget and operational planning and development of a strategic FY 2008 budget.

-- Created the Office of the Coordinator for Reconstruction and Stabilization (S/CRS) to strengthen U.S. institutional capacity to respond to crises involving failing, failed, and post-conflict states and complex emergencies. The Coordinator was recently dual-hatted as a Deputy Director in the Office of U.S. Foreign Assistance, as part of an alignment of S/CRS' operational expertise and planning mandate with the funding authorities and budget processes of the Office of U.S. Foreign Assistance.

-- Defined a single overarching goal "transformational diplomacy" (*to help build and sustain democratic well-governed states that respond to the needs of their people, reduce widespread poverty, and conduct themselves responsibly in the international system*) to which all \$20.3 billion of U.S. foreign assistance under the authority of the Department of State and USAID, as well as resources provided by the Millennium Challenge Corporation, are applied. The new Strategic Framework for U.S. Foreign Assistance articulates a strategy for achieving the transformational diplomacy goal, focusing on five objectives that together address the underlying causes of persistent poverty, despotic governance, economic stagnation, and insecurity.

(U) The Department of Defense has:

-- Identified and started to take action on many limitations on unity of effort and meeting irregular challenges, as identified in the 2006 Quadrennial Defense Review, which include:

- Training and education initiatives such as the expansion of the Army Peacekeeping and Stability Operations Institute and the establishment of the Joint Center for International Security Force Assistance and the establishment with the State Department of a Center for Complex operations;
- Efforts to increase the culture and language skills necessary for U.S. forces to work effectively with strategic partners overseas;
- Initiatives to improve interagency operations overseas and at home, to include examining ways in which Combatant Commanders may coordinate more closely with Chiefs of Mission and other State Department offices; exploring improved interagency training and education; supporting new authorizations and appropriations to make available resources for other agencies and departments involved in the War on Terrorism and stability operations; and examining new interagency planning processes; and
- Reform of the Regional Centers for Security Studies to be more effective outreach, training, and education tools for Combatant Commanders.
- Developed the Military Support for Stability, Security, Transition, and Reconstruction Operations (SSTR) Directive to provide strategic guidance for the U.S. military to change its planning, training, and preparing to conduct and support stability operations, and designating that stability operations are a core military mission given priority comparable with combat.
- Ensured that the global posture of U.S. forces is managed effectively to meet Department of Defense planning and security cooperation requirements.
- Emphasized building partnership capacity as a primary focus for the Department of Defense and began necessary reforms to ensure that building partnership capacity is effectively managed as a Department of Defense portfolio, with adequate attention to planning, programming, and budgeting.
- Identified and reformed planning processes to better meet irregular challenges by emphasizing partner nation security capacity building and preventive lines of operation.
- Incorporated critical elements of partnership capacity into operational and contingency planning for U.S. military forces and initiated a process to open planning to interagency participation.
- Realigned the Office of the Under Secretary of Defense for Policy and key offices in the Joint Staff to support strategy-driven policy to build effective international partnerships.
- Established new Strategic Communications Integration Group and a Policy office for Defense Support to Public Diplomacy to integrate and synchronize Strategic Communications efforts vital to effective partnerships.

#### **(U) SECTION IV**

#### **(U) Conclusion: Ensuring the Efficacy of Security Assistance**

(U) The intent of these recommendations is to provide a flexible, timely, and effective whole-of-government approach to today's security environment that is well coordinated in the interagency both in Washington at the policy level and in the field at the operational level, and with appropriate, relevant oversight by Congress. The recommendations in this report can address some persistent challenges by providing supplemental tools and resources. Building effective civilian and military partnerships overseas will advance the shared national security goals of the USG and its partners and help people around the world build better, safer lives. Efficient interagency solutions are possible - we have created them for narrow sectors and, when pressed, for crisis response. This report provides a starting place for broader consideration of additional supplementary authorities and sufficient resources that will ensure that security assistance is a strategic, responsive, and effective tool to shape the future.

(U) We will continue to improve our internal processes and policies to ensure the efficacy of security assistance, working closely with the Department of Defense in so doing. We also hope to continue working closely with the Congress to ensure that we are maximizing the use of USG funds - for sustainable, accountable, and fully transparent security assistance efforts serving shared foreign policy and national security objectives in a rapidly changing strategic and operational environment.

**Tab I: (U) DOS INL ROL and Law Enforcement Activities to Appendix 1 to Annex G**

(U) Afghanistan. INL funds a number of projects implemented by DOJ, including the Counternarcotics Program, which includes the Criminal Justice Task Force, the Counternarcotics Tribunal and Counternarcotics Justice Center; the Justice Sector Support Program, and the Corrections System Support Program. INL grants have been awarded to an Afghan law professor training in the U.S.; the International Association of Women Judges to support Afghan women in the legal profession; the U.S. Institute for Peace for specific policy and reform issues, including looking into linkages with the informal justice system; and, two multilateral trust funds to augment low salaries for judges, prosecutors and corrections personnel. In addition, INL funds more than 580 civilian police advisors who work in conjunction with the U.S. military to assist the Government of Afghanistan with the development of a democratic police force capable of enforcing the ROL INL civilian police advisors provide training and mentoring to the Afghan National Police as well as guidance to senior officials in the Ministry of Interior.

(U) Egypt. The Egyptian Policing Project supports the modernization of management and policing approaches of the Egyptian National Police through a comprehensive training strategy focusing on police force leadership and management, building of strategic planning capacity, and improving organizational transparency.

(U) Iraq. INL partners with other U.S. agencies along with private and public sector entities to supply expertise to expand the capacities of Iraq's police, courts, judiciary, and corrections institutions. It funds and administers these programs and develops related policy through dedicated INL offices in Washington and at the U.S. Embassy in Baghdad. INL funds training for Iraqi anti-corruption agencies. In conjunction with DOD, INL funds an extensive training program for Iraqi Border Security Agents in basic skills, which includes a module on narcotics. Over CIVPOL officers work alongside their U.S. military counterparts to train, mentor, and advise the Iraqi Police Service and Ministry of Interior in the largest post-conflict police development mission ever undertaken by the United States.

(U) Jordan. Programs with the Government of Jordan to improve law enforcement capacity center on Anti-Money Laundering/Financial Intelligence Unit development, Intellectual Property Rights enforcement, and gender-based violence reduction. The anti-money laundering and financial intelligence unit development provides training for creating an effective national anti-money laundering and counter-terrorist financing program. In response to the growing need for reduction in gender-based violence, training and capacity building for both law enforcement and justice sector officials, including police officers, judges, prosecutors, and attorneys who handle domestic violence cases, is being provided.

(U) Kazakhstan. With UNODC, INL is implementing a project to establish seven checkpoints on major Kazakhstani traffic arteries to interdict drugs moving north toward Russia. Project costs are shared with the Government, which provides the land, buildings, infrastructure and officers to staff the posts. INL provides training, technical assistance and equipment. Ongoing bilateral programs with the Border Guards provide grants to the International Organization for Migration (IOM) to improve security along the southern borders with Kyrgyzstan, Uzbekistan, and Turkmenistan. The Border Guards provide office space, infrastructure, and dedicated personnel as trainers. Anti-Money Laundering and Counter-Terrorism Financing training programs for financial crimes investigators and

analysts have been funded. The Anti-Trafficking in Persons Center in the Legal Institute of the Ministry of Internal Affairs Institute in Karaganda to train Migration Police and Ministry of Interior (MoI) Police to identify and combat trafficking has been funded and renovated and revision of the curriculum is underway. The Center can train approximately 30 officers per session; five sessions a year are planned. INL will continue to increase the capacity of local police and drug enforcement agencies to investigate and prosecute complex drug smuggling and organized crime cases. Anti-corruption efforts also include establishing accountable management systems within the legal profession and MoI that help in detecting and preventing official corruption.

(U) Kyrgyzstan. An INL-UNODC-Government of Kyrgyzstan project established a Drug Control Agency (DCA) staffed by fully vetted and polygraphed officials and resident international technical advisors. The goal is to establish progressively a sustainable drug control agency responsible for all drug control activity in the country. The DCA is currently operational and coordinating narcotics interdictions with its Central Asian neighbors. INL has also supported the development of four mobile drug interdiction teams that run real time interdiction operations in the heavily trafficked region of Osh. Assistance is being given to create sustainable improvement in the Government's operational capabilities and its ability to respond effectively to present and emerging transnational crime. This includes equipment and technical assistance necessary to support the long term improvements in the targeted law enforcement entities, particularly the traffic police. Programs also emphasize professionalization of police forces through curriculum development at Kyrgyzstan's main police training academy. INL also assists in implementing key U.S. foreign policy priorities related to improving the administration of justice in Kyrgyzstan, strengthening the capacity of Kyrgyz law enforcement to tackle threats from terrorism and narcotics trafficking, and reducing corruption in key judicial and law enforcement institutions. Additional justice sector programs include anti-corruption education, establishing a unified National Bar, and creating an Advocates' Training Center (ATC). These programs are implemented through providing technical legal assistance on the legislative reform, conducting trainings for judges and advocates, raising public awareness on the new and existing legislation, and delivering lectures on anti-corruption in middle schools across the country.

(U) Lebanon. The INL-funded Internal Security Forces Police Reform Program in Lebanon is a multi-pronged effort to help build the capacity of the ISF through training, technical assistance, equipment donations and infrastructure development. The INL program is critical to Lebanon's security and assists the Government of Lebanon (GOL) with implementation of United Nations Security Resolution (UNSCR) 1701 by helping establish GOL sovereignty over its territory. INL works with interagency and international partners to ensure the INL Lebanon assistance program is understood and coordinated with other donors.

(U) Pakistan. INL provides funding for the Counternarcotics Program and the Border Security Project that provide funding to conduct counternarcotics operations and provides vehicles and surveillance and communications equipment and other commodities. It also funds training to the Anti-Narcotics Force, the Frontier Corps, the Frontier Constabulary, and the newly raised Federally Administered Tribal Area (FATA) levy forces (recruited from the tribes in the FATA). The Border Security Project includes building and refurbishing of Frontier Corps outposts in Baluchistan and the North West Frontier Province (NWFP). Thirty-nine outposts are under construction in Baluchistan and the NWFP and 137 have already been built under this project. In the border areas of the FATA, 113 kilometers of roads are complete and 226 are under construction, allowing law enforcement entities improved

mobility in their areas of operation. These initiatives will enhance security throughout the seven FATA agencies and enable USAID and other development agencies to move forward with projects. INL also funds the DOJ ICITAP and OPDAT program through which justice sector and law enforcement programs are being implemented

(U) Palestinian Territories West Bank. CIVPOL works with the U.S. Security Coordinator in Jerusalem to enhance the capabilities of the Palestinian Authority Security Forces in the West Bank. The assistance is focused on providing basic, leadership, and refresher training for the National Security Forces and the Presidential Guard; upgrading their training facilities and providing non-lethal equipment to support operations; and working with the Palestinian Authority to develop a Strategic Planning Directorate in the Ministry of Interior to enhance the Ministry's long term capacity for planning, oversight, and reform.

(U) Tajikistan. INL's strategy in Tajikistan to date has emphasized top-down law enforcement reform programs with the Ministry of Internal Affairs (MOI), and Drug Control Agency (DCA), and the Prosecutor's Office. These programs are now complemented by new projects to reform civil law institutions and create grassroots community policing initiatives. Projects in the Law Enforcement Restructuring and Reform Programs consist of a Senior Law Enforcement Advisor to oversee all law enforcement development; a Community Police Partnership; MOI projects, including a training manager, Forensics Training and Equipping Program, and a training and infrastructure program. These programs aim at institutional development of Tajikistan's core law enforcement ministries to improve the ability of the police to investigate all types of crime, develop internationally recognized organizational standards, and promote information sharing between Tajik law enforcement and their Central Asian, European, and U.S. counterparts. In addition, counternarcotics assistance is being provided to the Tajik Drug Control Agency and drug demand reduction. INL has consistently funded UNODC's programs to develop the organization and operational capacity of the Drug Control Agency, which is an independent, DEA-like drug law enforcement agency. Three Border Security Programs receive funding related to counternarcotics interdiction. The justice sector reform is in tandem with improvements in traditional narcotics interdiction and law enforcement institution building. INL's current Dushanbe justice sector programs consists of three projects implemented through the American Bar Association/ROL Initiative (ABA/ROLI) that address reform of the defense bar and ROL education. Beginning in FY2009, INL will further develop ROL in Tajikistan with legal training for judges, advocates and law students; improving access to justice; strengthening local bar associations; reforming the existing criminal code; and monitoring of court cases to ensure compliance with local and international norms.

(U) Turkmenistan. INL is currently working with the Government of Turkmenistan to develop the capacity of law enforcement to interdict narcotics and investigate drug-related crime. The Justice System Development Program, in support of democracy building efforts to develop internationally recognized standard for the ROL, has exposed legal professionals and police to U.S. and European justice systems, including skills training in the U.S. and Turkmenistan for prosecutors and other law enforcement officials aimed at improving capabilities for investigating and prosecuting narcotics trafficking and money laundering offenses. INL has supported UNODC in their efforts to improve narcotics interdiction on Turkmenistan's borders. This project provides a range of counternarcotics detection and interdiction techniques to border guards, customs agents, and police. INL will continue to improve narcotics interdiction on Turkmenistan's border with Afghanistan by creating formal

communication networks and training initiatives with their Afghan counterparts. INL is also looking to help the Government improve security at their Caspian ports through an assessment of port facilities at the main port of Turkmenbashi, development of a written action plan, and drug interdiction training and equipment. Finally, INL is working to improve communication between Turkmenistan's law enforcement and their Central Asian neighbors, Afghanistan, and Europe through English language training classes for Customs, Border Guards, and Police Officers.

(U) Uzbekistan. INL is supporting the UNODC project to increase the capability of border guards, customs and law enforcement bodies posted in the Termez River Port and improving their interdiction abilities relating to both drugs and precursor chemicals. This project will provide equipment such as communication equipment, X-Ray machines, detection equipment and specialized training in order to update and upgrade the expertise of law enforcement personnel. It is also aimed at improving cooperation and coordination between law enforcement agencies serving at Termez River Port.

(U) International Narcotics Control Strategy Report (INCSR) 2008 and <http://www.state.gov/p/inl/>

**Tab J: (U) USG and International Counter-Narcotics Efforts to Appendix 1 to Annex G**

**(U) Nature of the Problem:**

(U) The primary counternarcotics issue within the area of responsibility of USCENTCOM is the illicit production of Afghan opiates (opium, morphine and heroin) and their export to world markets via Iran, Pakistan and Central Asia. Afghan opiates supply more than ninety percent of the world's illicit demand and are a destabilizing factor in both Afghanistan and the surrounding region. The Afghan drug trade negatively impacts both Afghanistan and its neighbors: it is used as a source of revenue for insurgency and terrorism, fuels growing drug abuse rates, destabilizes governmental authority and legitimacy, detracts from legitimate economic development, and obstructs development of the ROL.

**(U) Introduction:**

(U) The Afghan Counter Narcotics Police (CNP-A) is a division of the Afghan National Police with a dedicated drug law enforcement mission. As part of nation-building efforts, the United States, the United Kingdom (UK), and the United Nations (UN) have provided the CNP-A with substantial infrastructure necessary to conduct effective drug investigations and interdiction operations. The capabilities of the Afghan Counternarcotics Police (CNP-A) require further development; however, the CNP-A shows real potential to conduct effective counternarcotics (CN) operations in Afghanistan, as well as drive leads into the surrounding region.

(U) The development of the CNP-A is a success story for the international community. By contrast, during early 2002 U.S. and UK drug law enforcement agencies-the U.S. Drug Enforcement Administration (DEA) and the UK Serious Organized Crimes Agency (SOCA)-created a regional drug enforcement strategy known as Operation Containment; formed largely in response to the reality that fledgling Afghan drug law enforcement authorities were not ready to investigate significant drug trafficking organizations (much less the involvement of high-level officials or warlords) and would not be ready in the near future. Operation Containment brought together heads of drug law enforcement agencies from the region and worked to identify major drug trafficking organizations (DTOs) and brokers operating along the drug transit routes surrounding Afghanistan. Operation Containment identified six major targets and created multi-lateral strategies for investigating the targets and bringing them to successful prosecution.<sup>71</sup>

(U) The majority of operational results developed as a result of Operation Containment were obtained from regional, as opposed to Afghan-led investigations. The CNP-A had little capacity to utilize leads from these investigations to further identify the drug networks involved, and even less capacity to prosecute DTOs under the Afghan criminal justice system.

(U) The development of the CNP-A into a capable drug law enforcement agency now presents the opposite question: will an effective CNP-A find willing and capable partners in the drug transit zones surrounding Afghanistan? While efforts have been made to develop regional, multilateral investigations of large DTOs; the reality is that drug law enforcement agencies in the region

---

<sup>71</sup> Of the six original designations, five have been brought to justice. One is indicted and is a fugitive. Four of the targets have been brought to the U.S. for prosecution under Federal drug trafficking statutes.

surrounding Afghanistan conduct their investigations without identification and prosecution of the Afghan DTO(s) central to the investigation. A major challenge in the region continues to be the development of full-scope, multilateral investigations; as opposed to short-term investigations which identify and prosecute only a portion of an international DTO. A significant collateral impact of this investigative method is that little information is developed regarding how DTOs move their operating capital and obtain the precursor chemicals necessary to sustain illicit heroin and morphine production.<sup>72</sup>

(U) The general purpose of this paper is to outline the current capacities of the CNP-A, and to identify that the developing abilities of the CNP-A and the Afghan Criminal Justice System hold tremendous potential to develop investigations of regional/trans-national DTOs, including full identification of DTOs and their sources of supply for opiates. A central premise to this idea is that Afghan-led CN investigations can be used to drive regional CN investigations and create investigations under which drug networks can be identified from source country to end markets. Comprehensive investigations of DTOs will in turn generate increased amounts of information on the ways in which the operating capital and profits of Afghan DTOs are transmitted and precursor chemicals are transported to illicit processing labs in Afghanistan; as well as develop links between DTOs and influential Afghan actors, the insurgency, and corrupt officials.

(U) The primary obstacle to the full development of this goal no longer derives from an absence of effective Afghan CN agencies; it now derives from the inability of regional counterparts to conduct investigations complementary to the increased capabilities of the CNP-A.

**(U) Background on the Development of the CNP-A and the Criminal Justice Task Force:**

(U) The primary actors in the development of the CNP-A as the dedicated drug law enforcement arm of the Afghan National Police (ANP) are the U.S., the UK, and the UN. The CNP-A is a division of the ANP, and operates under the overall direction and authority of the Afghan Minister of Interior.

(U) USG efforts to develop the CNP-A are guided by an interagency plan to develop the CNP-A into an effective, professional and self-sustaining drug law enforcement agency. The primary USG agencies on this effort are DoD, the State Department Bureau of International Narcotics and Law Enforcement Affairs (INL), and the DEA.<sup>73</sup> DoD efforts are executed primarily through the use of counternarcotics

---

<sup>72</sup> Partner nation drug law enforcement agencies in Central and South Asia have a very weak base of information on the manner in which precursor chemicals are transported to Afghanistan, the manner in which drug trafficking organizations move operating capital and proceeds, and the manner in which large drug transactions are cleared financially. This deficiency is partially attributable to the lack of a proper legal and operational framework to investigate these acts as crimes, as well as an absence of well-placed informants; however, the lack of in-depth, long term investigations into DTOs is a predominant factor. The inability of drug law enforcement agencies in Central Asia to use judicial wiretaps for example, prevents them from developing information on drug money laundering. Anecdotal information indicates that large DTOs are using several means of laundering money that are completely outside of the current abilities of Central Asian drug enforcement agencies to detect and interdict.

<sup>73</sup> In 2007 these three agencies created a five-year interagency plan for the development of the CNP-A and associated programs. See "Strategic Concept for the Development of the CNP-A and Associated DEA Programs." The plan helped the partner agencies identify resources required for multi-year development of the CNP-A, build those requirements into their planning cycles, and assign clear ROLES and responsibilities.

funding, which is used by several components of DoD to build and equip the CNP-A.<sup>74</sup> A general framework of this interagency relationship is that DoD uses its CN funding to build, train and equip the CNP-A, INL maintains the infrastructure through operational and maintenance costs, and DEA provides specialized training, operational support and technical assistance. Execution of the DoD mission is greatly aided by the existence of the Combined Forces Security Transition Command for Afghanistan (CSTC-A) and its ability to build, train and equip the CNP-A “from whole cloth.”

(U) The CNP-A presently consists of approximately 2,737 members, stationed in Kabul and a network of provincial and district offices.<sup>75</sup> Current CSTC-A planning is to bring the CNP-A to its full authorized table of organization (“Tashkiel”) of 3,800. CNP-A officers are trained at a CNP-A drug enforcement academy after they have completed basic police officer training at an ANP training academy. Following completion of the CNP-A course of instruction, several mechanisms have been established for the delivery of specialized and advanced drug enforcement training. The recent establishment of a DEA training team dedicated to providing training to the CNP-A has greatly aided in the delivery of specialized training topics to the CNP-A, particularly to the CNP-A National Interdiction Unit (NIU.)

(U) The CNP-A includes three inter-related specialized units that have been extensively trained and equipped by the USG to conduct complex drug law enforcement investigations and operations. These units operate with both the infrastructure and the statutory capability to investigate and prosecute drug trafficking offenses utilizing informants, search warrants, wiretaps, and conspiracy laws. The largest of these units is the NIU, a group that works on a daily basis with USG advisors and the DEA. The NIU has been trained and equipped by the USG to act as a tactical interdiction unit that can operate effectively and safely, including the use of airborne operations. A critical element of NIU operations is the MI-17 helicopter corps, created by CSTC-A and USCENTCOM as a joint U.S./Afghan program in which refurbished MI-17 helicopters provide medium lift capabilities for NIU interdiction operations. The MI-17 helicopter unit is used extensively to support NIU interdiction operations with its international partners, DEA and SOCA. The MI-17 corps is supplemented by an INL fleet of UH-1A helicopters that provides close air cover to high-risk NIU operations.

(U) The NIU is on track to grow towards its ceiling of 288 total members and deploys from a secure compound in Kabul to bases in the provinces with DEA Forward Assigned Support and Training Teams (FAST) teams<sup>76</sup> and Enforcement Groups. The NIU will form a crucial part of DEA plans for an Afghan expansion plan,<sup>77</sup> as it will deploy in squads (25-35) along with 10-man DEA enforcement groups and be accompanied by Afghan and USG air assets.

---

<sup>74</sup> DoD CN Funding is appropriated under sections 1004 and 1033 of the National Defense Authorization Act. Afghanistan is a named country under section 1033 and therefore eligible for use of 1033 funding, as well as 1004 funding.

<sup>75</sup> Based on reporting contained in a U.S. State Department INSCR report (International Narcotics and Strategy Control Report) dated December, 2008.

<sup>76</sup> DEA FAST Teams are Special Agents assigned to the Forward Assigned Support and Training Teams (FAST) for a minimum two-year assignment. The FAST teams receive specialized military training and are able to conduct CN operations in hostile areas, such as Afghanistan. FAST teams maintain a presence in Afghanistan via phased deployments. While in-country they work on a daily basis with the NIU, providing mentoring and training, while coordinating CN operations and interacting extensively with ISAF forces.

<sup>77</sup> As part of a broader plan by the USG to increase civilian direct-hire staffing at the U.S. Mission to Afghanistan, the “Kabul 40” plan underway by the USG interagency approves the expansion of permanent DEA staff in Afghanistan from thirteen to eighty. DEA plans call for four enforcement groups to project out from Kabul to the provinces. The DEA deployment and expansion will correspond to the four regional commands maintained by ISAF forces. Each DEA

(U) The Sensitive Investigative Unit (SIU) is a 56-man vetted unit, consisting of specially vetted members who have passed DEA screening and received specialized training from DEA on how to conduct long term investigations of drug trafficking organizations. The primary mission of the SIU is to conduct investigations of significant DTOs that are regional in scope and to develop cases with international partners. The SIU contains a Technical Investigative Unit (TIU), which is authorized and equipped to conduct intercepts of the electronic communications of DTOs. The SIU and TIU work on a daily basis with their DEA counterparts and are qualified to work with sensitive DEA intelligence information.

(U) In addition to the creation of CNP-A specialized units, the USG assisted in the development of a specialized group of prosecutors who prosecute drug cases developed by the CNP-A that meet threshold levels for prosecution. The drug prosecution task force, known as the Criminal Justice Task Force (CJTF), operates in conjunction with a dedicated Counternarcotics Tribunal (CNT.) The CJTF and the CNT receive substantial USG assistance, including the construction of a secure judicial compound, legal advice and mentoring, salary supplements, and technical assistance provided by the U.S. Marshals Service on courtroom security and witness security.

(U) Substantial progress has been made on the development of the CNP-A specialized units and their ability to confront large DTOs. Further work is required on the development of the CNP-A agency-wide, particularly its ability to run a network of effective provincial and district offices. A recently established program, funded from DOD CN funds, has placed experienced U.S. mentor/advisors among CNP-A executives and is assisting the CNP-A in its development as a professional, capable drug law enforcement agency. Plans are underway to expand the DoD mentor program so that they can work with CNP-A leaders in the provinces and regions, as well as at CNP-A central headquarters.

#### **(U) Further Development of the CNP-A:**

(U) The USG, UK and the UN will continue to develop the capability of the CNP-A and bring it towards its authorized Tashkiel of 3,800. The five-year USG plan for development of the CNP-A also outlines a longer-term goal of bringing the CNP-A to five or six thousand total members. Members of the USG interagency recently conducted a progress review of development of the CNP-A and revised the plan in order to address the following areas:

- Expansion of the current USG mentor/advisor program in order to provide experienced mentor/advisors to CNP-A leaders in provincial, regional and district offices.
- Expansion of the DEA-led training program in order to develop CNP-A wide training efforts and create a CNP-A training cadre.
- Development of a DoD polygraph training program in order to train a select group of Afghan nationals who can implement a CNP-A wide polygraph system, including use of polygraph examinations in vetting of CNP-A officers and in integrity/corruption investigations.
- Expansion of the SIU/TIU program in order to permit the SIU and TIU to assume an Afghan lead on significant DTO investigations.

---

enforcement group will work in concert with an NIU squad on conducting CN investigations and operations. An anticipated result of this build-out will be greater cross-border cooperation between the CNP-A and counterpart agencies in Central Asia, Iran and Pakistan.

**(U) U.S. and ISAF Military Support for CN Law Enforcement Operations:**

(U) As described above, key elements within DoD (OSD/CN, USCENTCOM CN, CSTC-A) have been an instrumental partner in the development of the CNP-A as a functioning CN law enforcement agency. In addition to DoD's role as a builder of infrastructure, a close operational relationship between DEA, the U.S. Military and ISAF has developed the recognition that the illicit Afghan opiate economy is fueling the insurgency and frustrating progress in Afghanistan. DEA has focused its DTO investigations on DTOs that are tied to the insurgency and has designated those DTOs as High Value Targets (HVTs). Information on DEA HVTs is actively shared with DoD and ISAF via an ISAF CN Coordination Cell and is being utilized by ISAF to aid targeting decisions. A recent resolution by the NATO Ministers of Defense regarding provision of direct support for CN operations by ISAF forces is in process of being adopted. Several recent operations conducted by the CNP-A with DEA and U.S. Military forces targeted large illicit production sites known to be tied to the insurgency. Strong, organized armed resistance to the operations was overcome by a well-coordinated response from NIU, DEA and U.S. Military Forces. The provision of effective air support to the operations was crucial and prevented friendly casualties.

(U) DoD and several members of the USG interagency are also in process of creating an Afghan Threat Finance Cell (ATFC.) The ATFC will operate out of two fusion cells in Afghanistan and collect and analyze multiple sources of information on how the insurgency is funded and how the Afghan drug economy operates financially.

(U) One area that could clearly benefit from a greater involvement of ISAF forces is eradication. There is a general recognition that Afghan ground eradication forces require greater force protection. This will become particularly true as Afghan eradication forces begin to target areas of cultivation under the influence of wealthy landowners and significant regional actors. DoD and INL have created an additional Kandak (battalion) within the Afghan Ministry of Defense that will be available to provide dedicated force protection to eradication forces. Afghan eradication forces will undoubtedly benefit from an outer ring of ISAF force protection, even if it is staged parallel to eradication operations. Overall CN efforts must remain engaged on all three key CN pillars (interdiction, eradication and alternative development. The inability of eradication operations to operate against difficult targets and in hostile areas will continue a perception that eradication efforts spare influential actors and are not sufficiently extending the ROL Afghan-wide.

**(U) Developing Regional Investigations, Operations and Prosecutions:**

(U) Optimal utilization of the CNP-A and its capabilities will require substantial development of counterpart drug law enforcement and border security agencies in the drug transit zones surrounding Afghanistan. While USG efforts in developing drug enforcement and border security agencies in both Central Asia and Pakistan have been extensive, they require an integrated approach by the USG and international partners. These efforts also require a ROL framework in which the infrastructure developed can be effectively used. For example, in Central Asia, USG assistance and cooperation on security has tended to fall under three "stove-piped" areas: CN, CT and Border Security. The result is that numerous USG actors have been engaged in segregated efforts and lack an integrated plan for development of the partner nations to develop secure borders and link those efforts with the investigation and interdiction of transnational crime.

(U) Regional and transnational success in attacking DTOs will require that the operational tools provided to the CNP-A be similarly matched by the capacities of regional partners. While this capacity is preferably developed via single mission drug law enforcement agencies, the essential requirement is that regional counterparts of the CNP-A have the ability to conduct and coordinate complex drug enforcement investigations, coupled with the ability to fully prosecute a DTO along its logistics trail--from source market to end market.

(U) The U.S. Department of Justice applies the following framework of analysis in determining whether a partner country will be able to confront organized crime in an effective manner:

- Do the host-nation criminal laws allow for the prosecution of the entire criminal enterprise?
- Does the host-nation permit the use of confidential informants and undercover activity?
- Does the host-nation facilitate the use of cooperating witness testimony in court proceedings?
- Does the host-nation authorize electronic surveillance and the use of wiretap evidence in court proceedings?
- Does the host-nation have an effective witness protection program?<sup>78</sup>

(U) In Central Asia, for example, the international community (primarily through projects administered by the UN Office on Drugs and Crime) and the USG have played a central role in establishing drug control agencies in Tajikistan and Kyrgyzstan. Establishment of the two “DCAs” is a substantial and laudable effort at assisting these two nations develop sole-mission, professional drug law enforcement agencies from whole cloth. However, practical experience has demonstrated that establishment of the DCAs in the absence of an integrated national drug enforcement strategy has sharply limited their operational capabilities. Neither DCA has clear authority to conduct wiretaps in drug investigations, nor has either been provided with wiretapping equipment. There is also no clear legal basis for use of wiretap evidence in drug prosecutions. Traditionally, Central Asian intelligence services maintain a monopoly on the use of wiretaps. Neither drug control agency has sufficient operating funds to maintain networks of confidential informants, nor do their legal systems permit the use of informant testimony. Neither agency has clear authority to conduct drug investigations on the borders, nor can they depend on a reliable prosecutorial partner to move forward sensitive investigations.

(U) Despite these substantial shortcomings, Central Asia and Russia (comprising the “Northern Route” for Afghan opiates) represent a promising area of cooperation for development of effective law enforcement partners for the CNP-A and future development by the international community and the U.S. The Central Asian States (CAS) and Russia have demonstrated serious interest in combating the transit of Afghan opiates through their territories and are concerned with the threat posed by Afghan opiates. A network of national police agencies (known by their Russian acronym “MVD”) and sole-mission drug law enforcement agencies in Tajikistan, Kyrgyzstan, Turkmenistan and Russia provide a substantial framework for cooperation and joint operations. The DEA has had a good record of cooperation with CAS and Russian drug law enforcement agencies on multilateral drug investigations since 2002. Border security agencies in Central Asia have been the focus of numerous international development programs, including substantial infrastructure building projects by the USG.

---

<sup>78</sup> “What Russia Must do to Fight Organized Crime,” Thomas Firestone, Demokratizatsiya, Winter, 2006.

(U) CAS and Russian Criminal Justice Systems are also supported by a network of interagency Memorandums of Understanding (MOUs) and regional agreements on information sharing and extraditions. Their criminal laws and procedure are also remarkably uniform, a holdover from the Soviet Union. While criminal prosecutions along the Northern Route are not commonly used to support broad dismantlement of transnational DTOs, there are existing frameworks of cooperation that hold potential to be used as a mechanism for developing prosecutions of regional and transnational DTOs.<sup>79</sup>

(b)(1)1.4(d), (b)(5)

(U) Substantial work will be required in order to develop an integrated approach to CN and border security development in the CAS. Detailed assessments must be conducted of host-nation criminal laws and procedure as a precursor to assisting CAS states with the reforms and training necessary to effectively prosecute DTOs. Political will to establish effective criminal justice, asset forfeiture and anti-money laundering provisions will be a key element to success and must remain a focus of diplomatic engagement. U.S. and international agencies will be required to develop an integrated approach to the development of the capacities of CN, police, and border security agencies that will be part of an effective CN framework. An integrated plan will require a clear review of existing resources and coordination of USG agency roles and responsibilities.

**(U) Conclusion:**

(U) The USG has to-date been a substantial actor in the development of CAS drug law enforcement and border security agencies. Different USG agencies and units within USCENTCOM have used a variety of funding sources and programs in order to develop partner nation capacities that are not yet A) effectively inter-related, B) synchronized with Afghan capabilities, and C) supported by the partner nations' ROL framework. Use of Afghan CN capabilities to create regional CN operations in Central Asia will require stronger ROL frameworks and legal reform. Utilizing various funding sources (Freedom Support Act, National Defense Authorization Act Sections 1004 and 1033, and DEA operational funding) and a strong USG interagency relationship; USG agencies (DOJ, DEA, INL, DoD, USCENTCOM, SOCCENT) currently engaged on CN and border security development can achieve optimal results. Linking efforts of the USG with international donor efforts in the CAS will be an easier task once an effective interagency approach is implemented.

---

<sup>79</sup> CAS and Russian criminal procedure is primarily accusatorial, as opposed to adversarial. The Russian criminal justice system has implemented some aspects of adversarial systems, including trial by jury. All of the criminal justice systems along the Northern Route continue to use "sledstviye," which places an investigative division between the police agencies and the prosecutors. Their criminal laws are generally interpreted as requiring that a drug trafficker be located in the jurisdiction of the prosecuting country with "dirty hands;" meaning that the defendant is located with either the drugs or with the money. There are provisions however that appear to support conspiracy prosecutions of DTOs as organized criminal groups. The ability of "sledstviye" divisions to certify and transmit evidence among jurisdictions is a tool that is not widely used. Further analysis of these provisions is warranted, towards the goal of developing prosecutions of transnational DTOs.

**APPENDIX 2: (U) List of Persons Consulted to Annex G**

Contacts listed in order interviewed:

(b)(6) Treasury TFFC

(b)(6), Treasury TFFC

(b)(6) Treasury ECON

(b)(6) USAID

(b)(6), CSTC-A

(b)(6) NATO SCR

(b)(6) ISAF Legal Advisor

(b)(6), Formerly of World Bank

(b)(6) MPRI Training

(b)(6) USAID Deputy Mission Director

(b)(6), Treasury Attache

(b)(6) U.S. Embassy Kabul Rule of Law Coordinator's Office

(b)(6), NATO

(b)(6) Treasury Monetary Policy

(b)(6), Treasury TFF

(b)(6), Treasury TFF

(b)(6), USAID

(b)(6) Treasury OTA

(b)(6) Treasury OTA

(b)(6) Treasury OTA

(b)(6) NSC

(b)(6) USAID ROL

(b)(6) U.S. Joint Forces Command

(b)(6), Department of State CRS

Professor (b)(6), Peacekeeping and Stability Operations Institute

(b)(6), Department of State, CRS,

COL (b)(6), Military Commissions

(b)(6), Department of State INL

Professor (b)(6), National War College

COL (b)(6), Office of The Judge Advocate General

LTC (b)(6), (b)(3) CJTF-101

MAJ (b)(6), (b)(3) CJTF-101

(b)(6), US Institute of Peace

Dr. (b)(6), Institute for State Effectiveness

(b)(6)

(b)(6) DoJ, Director of ICITAP

(b)(6), DoJ, Director of OPDAT

**APPENDIX 3: (U) Chapter 1, Joint Forces Command Draft ROL Handbook to Annex G**

**(U) The Rule of Law and Security Sector Reform Handbook: A Practical Guide for Operational Planners and Commanders – Handbook Introduction**

(U) The USJFCOM-CALL *Rule of Law and Security Sector Reform Handbook* is intended to provide an overview of the rule of law issues that operational and tactical commands may encounter in Campaign Planning and Execution. The Handbook defines the “Rule of Law” (ROL) in functional terms across the spectrum of policing, governance and prisons; explains the interrelationship between ROL, Governance, and Security and the role of Security Sector Reform (SSR) in building partner capacity to strengthen security and the ROL. It provides templates, tools, and lessons learned for planning and execution at the theater-of- operations level and below.

(U) The Handbook does not contain the answers to every question regarding ROL or SSR that may arise. The authors recognize that strengthening the ROL can mean very different things to different stakeholders, and the requirements will vary widely depending on the type of operation or intervention, and the political, geographic and cultural context in which an operation takes place. What this Handbook is intended to do is to provide the military commander and planner with a practical guide to conducting mission analysis, assessments, and coordination. It should always be recognized that ROL and SSR will not be exclusively military concerns, but will involve whole-of-government engagement by all agencies of the USG.

(U) To the maximum extent possible, the *Handbook* is intended to compliment other ROL and SSR guidance including the relevant joint and service<sup>i</sup> military doctrinal publications, systems governing the interagency process, and civilian guides published by the US Agency for International Development (USAID), Department of State, and others. Additionally, the Handbook incorporates the fundamental principles of SSR as endorsed by the international community and codified in the *OECD DAC Handbook on Security System Reform*.

**(U) Chapter 1: Rule of Law and Security Sector Reform – A Comprehensive Approach to Planning and Coordination**<sup>ii</sup>

**(U) Purpose and Scope**

(U) This Chapter defines Rule of Law (ROL) and Security Sector Reform (SSR) in operational terms; explains the interrelationship between ROL, Justice, Governance, and Security; provides an operational template for analyzing the ROL foundation necessary to conduct an operation; and distinguishes the operational issue of “ROL” from the legal body of “Operational Law.” It also contains the basic planning Framework for an Integrated ROL Strategy.

**(U) The Military Problem**

Recognizing that security sector reform and long term stability of a host nation are dependent on the existence of the rule of law, how does the U.S. Military support and strengthen the rule of law in host nations in a manner that increases stability, prevents or

resolves conflict, and furthers U.S. interests when: 1) there is no consensus among key interagency and coalition partners on what the “rule of law” means or how it is to be achieved; 2) appropriate military roles and responsibilities are unclear and ill-defined; 3) the degree of operational involvement, and measures of effectiveness will vary from operation to operation; and 4) long term success will ultimately depend on host nation political will and capacity to enforce the rule of law within its own governing system.

## (U) Introduction

(U) From an operational perspective, the first problem a military planner encounters when confronted with a mission statement that refers to “ROL,” is determining what the term actually means. Researching ROL yields abstract phrases such as “strengthen ROL,” or “support the institution of ROL,” without further definition. Alternatively, the search yields narrow, conflicting definitions of ROL that focus on isolated institutions within the partner nation based on a “ROL program” that is available through the institution providing the definition. Even in the context of United Nations peacekeeping operations, mandates tend to be broad, calling for the “re-establishment” or “restoration” of the ROL, without explaining what that might entail. As a result, military commanders and civilian leaders tend to resort to activities-based approaches, such as training of police, justice, and prison personnel, assisting in institution-building, advising on legal reform, and monitoring.<sup>iii</sup> In recent operations these activities were frequently done in a piecemeal, uncoordinated fashion, and were not tied together in a coherent, whole of government strategy that measures impact and effect across all relevant organizational and institutional lines.

(U) Current references are not terribly helpful. The US Army and Marine Corps *Counterinsurgency Manual* states, for example:

*“Establishing the rule of law is a key goal and end state in COIN. Defining that end state requires extensive coordination between the instruments of U.S. power, the host nation, and multinational partners. Additionally, attaining that end state is usually the province of HN authorities, international and intergovernmental organizations, the Department of State, and other U.S. Government agencies, with support from U.S. forces in some cases.”<sup>iv</sup>*

(U) While the COIN manual supports the idea that ROL is a “key goal and end state”, it accepts that ROL “will be defined at a later date.”<sup>v</sup> This offers little concrete guidance to a military planner or practitioner, particularly during the essential stage of initial planning.

(U) US civilian interagency partners also disagree over the definition of ROL. For example, the U.S. Agency for International Development defines “rule of law” in macro terms as embodying “*the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights.*”<sup>vi</sup> Other agencies and organizations focus on the existence of predictable and transparent set of laws and institutions, while some define ROL in terms of law and order, governmental accountability, or technocratic governing processes. The divergence is compounded in a coalition or multilateral operation. The wide divergence of categories and

approaches leads in turn to difficulties in understanding and planning for the range of achievable effects, measuring progress, and coordination.

(U) Finally, some commanders or judge advocates seize on the word “law” within the term “rule of law” and attempt to define ROL as encompassing every *legal* aspect of stability operations. However, this fails to distinguish operations undertaken to support, strengthen, or partner with host nation systems, from the myriad legal issues facing US or Coalition forces while conducting stability operations. The latter include issues such as US rules of engagement, US fiscal law, US statutory or international legal parameters, and military justice. While these legal restrictions contribute to compliance by US or coalition forces with the ROL, and increase public perceptions of the legitimacy of an intervention, they are not “ROL operations.”

(U) While the conduct of US and other intervening forces can impact ROL in the host nation, this handbook uses a definition that confines ROL to operations establishing or enhancing the rule of law *within* the host nation. Legal authorities and restrictions on US or coalition operations are “operational law” and while operational law considerations are incorporated into the planning process for operations to support or strengthen the ROL, the field of operational law itself is generally outside the scope of this Handbook.

### **(U) A Comprehensive Definition**

(U) In order to ensure the full range of ROL considerations in military planning and execution, this Handbook adopts a United Nations definition of ROL as a starting point for mission analysis. Although it is not an official definition, the UN definition has the advantage of wide acceptance and understanding, and is free from some of the programmatic and funding-dependent biases that are present in the definitions used by other organizations. Furthermore, the UN definition is effects based, and articulates a strategic end state that is flexible enough to guide mission analysis, but specific enough to allow for the development of achievable effects.

### **(U) The United Nations Definition of the Rule of Law<sup>vii</sup>**

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.

(U) Embodied in this definition are numerous operational issues including host nation legitimacy, criminal and commercial law, dispute resolution, good governance, regulatory and administrative capacity, accountability and oversight, public safety and security, and the host nation’s protection of its national sovereignty. In effects based terminology, this definition provides the strategic framework for the following effects that guide the military planner.

**(U) Effects Achieved Through Operations to Strengthen the Rule of Law<sup>viii</sup>**

- 1 -- The state monopolizes the use of force in the resolution of disputes
- 2 -- Individuals are secure in their persons and property
- 3 -- The state is itself bound by law and does not act arbitrarily
- 4 -- The law can be readily determined and is stable enough to allow individuals to plan their affairs
- 5 -- Individuals have meaningful access to an effective and impartial legal system
- 6 -- Basic human rights are protected by the state
- 7 -- Individuals rely on the existence of legal institutions and the content of law in the conduct of their daily lives

(U) The effects listed describe the ideal end state of a stable society. ROL will exist in varying degrees in different contexts, or even in different areas within the same country or territory. Military / national plans will adopt objectives short of the ideal end states based on available time, resources, and conflicting national interests. Objectives and standards of success will vary, as will the means employed to further them. However, as an underlying premise, the UN definition, and the effects that it embodies, enable the start of a campaign plan to strengthen the ROL and governance, and serve as a guide for related capacity building operations.

(U) Activities to strengthen the rule of law should not be conducted in a vacuum. Rather, the military planner plans ROL activities with the express purpose of achieving one of the seven articulated ROL effects stated above in order to achieve greater stability. The military planner must ask, “What effect am I trying to achieve and how does this effort affect the institutions that make up a nation’s security sector?” Effective follow-on execution will then require unity of effort and vision across all agencies, organizations, institutions, and forces.

**ROL Planning Considerations -- Thinking About Unintended Effects**

A commonly stated ROL objective is to process criminal justice cases more quickly. However, without a comprehensive understanding of the nation’s criminal justice system, one cannot know whether the current system is fair or corrupt, and cannot appreciate the effect on the entire security sector. Accordingly, a ROL activity designed in a vacuum to quicken criminal justice cases – without parallel activities to make the justice system less corrupt through vetting and training of court personnel, government oversight, and transparent court procedures – will do nothing more than produce more efficient corruption.

**(U) The Role of Security Sector Reform (SSR) in strengthening the ROL**

*When the Joint Force Commander is engaged in building partner capacity to strengthen security and the rule of law, the JFC is supporting Security Sector Reform.*

(U) SSR refers to reform or development efforts directed at the institutions, processes, and forces that provide security and promote the rule of law. Over the past decade, the US Government (USG), along with like-minded bilateral and multilateral donors, has begun to develop a more comprehensive approach to SSR by better integrating its defense, development, and diplomatic tools and resources.

The objective of this new approach is to assist partner governments to provide effective, legitimate, and accountable security for their citizens. In so doing, SSR assists these governments to respond appropriately to threats within and outside their borders.

(U) As defined by the principle US agencies involved in SSR programming, *Security Sector Reform*<sup>ix</sup> is the set of policies, plans, programs, and activities that a government undertakes to improve the way it provides safety, security, and justice. The overall objective is to provide an effective and legitimate public service that is transparent, accountable to civilian authority, and responsive to the needs of the public. From a donor perspective, SSR is an umbrella term that might include integrated activities in support of: defense and armed forces reform; civilian management and oversight; justice; police; corrections; intelligence reform; national security planning and strategy support; border management; demobilization, disarmament, and reintegration (DDR); and/or reduction of armed violence. To summarize, effective SSR treats security, justice, and governance as a holistic, interdependent system of systems, and attempts to address capacity building from a systems perspective, rather than the traditional institution or single functions-based approach.

(U) In addition to building professional security forces, SSR programs support:

- ✓ Establishment of relevant legal and policy frameworks
- ✓ Improvement of civilian management, leadership, oversight, planning, and budgeting capacities
- ✓ Enhancement of coordination and cooperation among security-related and civil institutions, to include non-state actors, and
- ✓ Management of the legacies and sources of past or present conflict or insecurity.

(U) Experience suggests that integrating these different lines of operation into a comprehensive package – in support of US and partner nation priorities – ultimately proves more successful and sustainable. Where we have pursued more holistic approaches – for example, in supporting the democratization of countries such as Poland, Hungary, or Czech Republic; through US security and development assistance in support of Plan Colombia; or in post-conflict reconstruction efforts such as in El Salvador – we have helped partners to transform their security sectors in ways that have had a direct, positive, and sustainable impact.

### **(U) Interagency Coordination for ROL and SSR**

(U) US policy<sup>x</sup> states that the Department of State and USAID have the overall USG lead for SSR and ROL activities, with the military focusing primarily on the defense sector. Commanders and planners should have a thorough understanding of their legal and funding authorities to engage in specific ROL-related activities before any engagement occurs. Ordinarily, the chief of mission (normally the ambassador) is responsible for all USG ROL activities in a given country. Therefore, the Commander should integrate military assessment, planning, and implementation efforts with other USG agencies, and coordinate closely with the host nation, international donor community, and nongovernmental organization (NGO) or intergovernmental organization (IGO) implementers in order to most effectively promote ROL efforts in support of stability operations. It may be necessary to focus on one or two particular programs or areas in which the JFC can make a positive difference, rather than trying to cover every aspect of ROL, and thereby doing nothing well, but those efforts still need to be aligned

with related civilian-led programming and assistance. Prioritization in the face of such a potentially tremendous challenge will be critical to success.

(U) Specifically for the conduct of SSR, the US has delineated the roles and responsibilities of each agency as follows:<sup>xi</sup>

- The *Dept. of State* leads U.S. interagency policy initiatives and oversees policy and programmatic support to SSR through its bureaus, offices, and overseas missions as directed by NSPD-1, and leads integrated USG reconstruction and stabilization efforts as directed by NSPD-44. The Department of State's responsibilities also include oversight of other USG foreign policy and programming that may have an impact on the security sector.

- The *Dept. of Defense's* primary role in SSR is supporting the reform, restructuring, or re-establishment of the armed forces and the defense sector across the operational spectrum.

- *USAID's* primary SSR role is to support governance, conflict mitigation and response, reintegration and reconciliation, and rule of law programs aimed at building civilian capacity to manage, oversee, and provide security and justice.

(U) Effective SSR programs also draw on the capabilities existent across the USG, where appropriate. In addition to the Department of State, DOD, and USAID, other USG departments and agencies provide important capabilities in the conduct of SSR programs. In particular, the Departments of Justice (DOJ),<sup>xii</sup> Homeland Security,<sup>xiii</sup> Energy, and Treasury may play substantial or leading roles in the development and execution of SSR and ROL programs. As always, these programs should be coordinated among the departments and agencies in Washington, D.C. as well as through country teams consistent with Chief of Mission authority.

### **(U) Integrated Planning for Rule of Law and SSR – A Generic Planning Template**

(U) Unified action<sup>xiv</sup> requires a flexible approach to planning that adapts military planning methods to stability and civil-military operations. Effective planning tools provide the commander and their staffs with structures to develop the basis of knowledge necessary to think critically and holistically. This leads to effective application of resources to achieve a desired effect or effects. The ROL Planning Template is intended to provide a tool which fills the doctrinal void for planning operations to restore or strengthen the ROL.

(U) Planning for operations to strengthen ROL and conduct SSR activities is both an art and a science. The art of planning requires an understanding of the relationships between military forces, the civilian agencies of the USG, the people and the institutions of the host nation and international agencies. The science of planning for these complex missions dictates an understanding of not only military capabilities and constraints but the resources, abilities and legal authorities of the other players conducting ROL/SSR operations. Understanding the threats to mission success requires coordination with non-military organizations at the beginning of the planning process in order to develop a comprehensive picture of the operating environment from which to harmonize each other's efforts. The process should include a realistic regard for time-distance factors as well, including civilian funding timelines, and the processes used by civilian partners to initiate and achieve desired outcomes.

For the Joint Force Commander, balancing the immediate security imperatives with development and diplomatic engagement necessary to achieve long term stability and reform is a challenge that requires constant assessment and coordination across agency and functional lines.

(U) The start point for achieving unity of effort and vision is to use a common framework for collaborative planning. This also serves as a catalyst for defining roles and missions, as well as a tool to determine sequencing and the most appropriate use of resources. The ROL Planning Template provides a flexible framework that can be used to facilitate collaborative planning with myriad interagency and multilateral partners. It is organized into a “menu” of 21 possible lines of operations (LOO), that will apply to one degree or another in almost any operation or assistance project. Each LOO contains essential elements that should be present in a functioning State or system. There is deliberate redundancy among essential elements, because not all LOOs will be necessary in any operation. Additionally, LOOs have different purposes. Some are primarily functional; some are focused on capacity building issues; and some are more strategic in nature, and others address difficult issues of legitimacy and sovereignty that are essential to the ROL, but difficult to define or quantify.

(U) The Essential Elements within each LOO are not tasks. Rather, they are intended to refer planners to the questions they should ask at the beginning of the planning process concerning what degree that element is present and functioning in a way that enables the host nation’s system of governance, justice, and security to work. This process should then lead to a discussion of whether or not elements contained in the LOO requires further analysis or coordination. Finally, the Template contains a list of cross-cutting planning considerations that should be addressed regardless of which LOOs are conducted.

(U) All of the LOOs and Essential Elements have been developed based on past operations, and will need to be tailored to the actual operational area. None of the LOOs, Essential Elements, or cross-cutting is prescriptive – instead, they provide an adaptable framework for analysis from which to adapt the planning effort to meet operational requirements. An important aspect of this analysis is identifying the other organizations which should be consulted in the planning process. Military support to ROL and SSR will require the effective and appropriate application of resources to achieve unity of effort towards common goals. Adapting the ROL Framework to the actual environment is a tool the military planner should find useful. Each chapter and subchapter of this Handbook describes the actors with whom the planner should consult and coordinate when planning rule of law operations.

### **(U) Summary of the Lines of Operations**

(U) Structural LOOs – Structural lines of operation articulate the components of national and local institutional structures and functions, and the public knowledge and participation in those structures that are essential to enabling the ROL. Structural LOOs are intended to help planners understand the operating environment, and guide engagement on ROL issues, and capacity building strategies. Structural LOOs include:

- Host Nation Legal Framework
- Host Nation Justice Architecture
- Host Nation Security Architecture
- Law Enforcement

- Corrections
- Civil Governance
- Integrated Border Management
- Infrastructure and Sustainability

(U) Strategic LOOs – Strategic lines of operation deal primarily with the political and strategic context required to enable or sustain the ROL. Operations to strengthen ROL and SSR should be aligned with this larger context if they are to be successful and sustainable.

- Strategic Communications and Perception Management
- Sovereignty
- Human Rights
- Legitimacy

(U) Operational LOOs – Although they also contain essential elements, operational Lines of operation tend to be more task-oriented in that they cover specific types of ROL-related missions that the JFC is commonly called upon to perform. They include:

- Countering Transnational Crime
- Accountability, Oversight and Anti-Corruption
- Public Information and Public Records Management
- Conflict Resolution and Peace Implementation
- Reconciliation, Restoration, Restoration, and Re-integration
- Security Sector Reform (SSR)
- Demobilization, Disarmament and Reintegration (DDR)
- Intelligence and Information Sharing
- Use and Integration of Government Contractors

## **(U) Conclusion**

(U) Planning for operations to strengthen the rule of law can be a complex undertaking. However, by adhering to a commonly accepted set of definitions and engaging with appropriate civilian and multilateral partners early in the planning process, military planners should be able to identify those issues that are critical to understanding the operating environment and formulating viable, sustainable courses of action. The comprehensive ROL planning template can inform this process, and facilitate dialogue, even among non-ROL practitioners. It can also provide a roadmap for identifying essential tasks, and appropriate roles and responsibilities between military and civilian implementers.

#### APPENDIX 4: (U) Leadership Challenges in ROL to Annex G

##### (U) Purpose.

(U) The purpose of this annex is to describe the ROL Functional Team's discussion of the issue of leadership and unity of effort in ROL development programs. These discussions included resurrection of a longstanding debate about the alleged failure of the other civilian and military agencies to work cooperatively under the leadership of INL representatives in Washington, D.C., and in foreign countries.

(U) Originally, the team unanimously agreed to develop a consensus analysis and recommendation to the Commander, USCENTCOM. However, a representative of the Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL) submitted a dissenting comment for inclusion in the report. Upon submission of the dissent, representatives of other agencies on the team objected to inclusion of this dissent because it would violate the operating agreement the team had adopted. Therefore, it was decided that they would be allowed to insert a response comment to afford them an opportunity to provide a balanced perspective and allow all to express their opinion on the issue.

(U) As discussed in the Annex, USCENTCOM and the ROL Functional Team of the CENTCOM Assessment Team takes no position regarding the issue of INL serving as lead agency. The comments that follow are a collection of personal comments by various team members.

##### (U) Unedited Dissent Submitted by INL Representative.

(U) Dissenting View.

(U) The ROL functional annex and situation assessment suggest a change in policy that leans towards putting a domestic agency in charge of overseeing foreign assistance ROL and law enforcement programs. It is not a position that has total acceptance. It is important to recognize that these programs in the foreign assistance area have significant diplomatic nuances that affect programs beyond the USCENTCOM AOR. It would be within the scope of the project assessment for USCENTCOM to support strengthening the lead role that the Department of State has globally in establishing and managing foreign affairs policy, including in ROL and law enforcement development. It is noteworthy that the majority of ROL and law enforcement assistance programs to foreign countries are under the Department of State, whether through the Bureau for International Narcotics and Law Enforcement Affairs (INL) or through the Agency for International Development (USAID). INL assigns and funds projects either through Memoranda of Understanding with domestic USG agencies to deliver training or implement projects or through individual contracts. USAID delivers most of its projects through contracts. It is important for this assessment to not overlook the support for increased resources and staffing capacity that have been made to re-strengthen the Department of State. During his campaign, President Barak Obama said that, among other things, the infrastructure within INL should be built to deliver effective counterterrorism training and that the shared security partnership program he envisions would be housed in INL (washingtonpost.com, Q&A: Obama on Foreign Policy, March 2, 2008). Secretary of Defense Robert Gates; the Chairman of the Joint Chiefs

of Staff, Admiral Mike Mullens; and Senator John Kerry, Chairman of the Senate Committee on Foreign Relations, have strongly vocalized their support for renewed diplomatic strength.

(U) While the subject matter expertise in ROL and policing that the domestic agencies bring to the table is important in implementing projects and training, the diplomatic and management expertise of the Department of State and the Foreign Service is fundamental in carrying out foreign policy that serves the overall national strategy of the USG.

**(U) Description of situation from perspective of non-INL USG civilian agencies.**

(U) Many in USG civilian agencies and the scholarly community agree that the controversy between the USG civilian ROL agencies can only be improved by changing the lead agency. One proposal is to conduct an “objective comparative advantage analysis” in order to determine what agency is best qualified to lead integrated, interagency ROL development efforts. An alternative proposal is to create an interagency working group (including the National Security Council) to conduct these operations in particular partner nations.

(U) Members of the team were concerned when representatives of INL told the team that criticism of INL in its performance in leading USG efforts for justice reform and law enforcement capacity building is unnecessary and unsupportable because INL has a statutory mandate to lead all ROL efforts. No citation or other factual basis for this assertion was provided by the INL representative. Indeed, S/INL has never previously argued that INL has a specific statutory authority to serve as lead agency in ROL development efforts. These representatives stated that any unity of effort problems were solely the result of agencies not cooperating with INL. Other than undocumented, dated, and anecdotal information, no evidence was provided by INL to support this assertion.

---

<sup>i</sup> See e.g. 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).

<sup>ii</sup> The material in this chapter is taken principally from the writings of Michelle A. Hughes, Esq., LtCol Gregory Gillette, and COL (Ret.) Thomas Pope. Consultants include representatives from the Depr. Of Justice; Dept. of State (S/CRS, INL, and PM); USAID; Dept. of Defense – Office of the General Counsel and the Chairman’s Legal Advisor.

<sup>iii</sup> The UN Security Council and the Rule of Law, Final Report and Recommendations from the Austrian Initiative, 2004-2008, para. 17.

<sup>iv</sup> FM 3-24/MCWP 3-33.5, *Counterinsurgency (The US Army-Marine Corps Counterinsurgency Field Manual)*, para. D-38.

<sup>v</sup> Id.

<sup>vi</sup> [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/rule\\_of\\_law/](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/)

<sup>vii</sup> UN Doc. S/2004/616 (2004), para.6. See also UN Doc. A/61/636-S/2006/980 (2006).

<sup>viii</sup> These effects are largely derived from a discussion in Jane Stromseth, David Wippman & Rosa Brooks, *Can Might Make Rights?: Building the Rule of Law After Military Interventions* (Cambridge: Cambridge University Press, 2006), 78.

<sup>ix</sup> Security sector reform is also referred to as security system reform, security sector development, and security sector transformation.

<sup>x</sup> See generally NSPD-1, NSPD-44 (Stability and Reconstruction).

<sup>xi</sup> See USAID, Department of Defense, and Department of State White Paper on Security Sector Reform, Jan 15, 2009.

<sup>xii</sup> Within DoJ, relevant components may include the Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the U.S. Marshall Service, the Bureau of Alcohol, Tobacco and Firearms (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)).

---

<sup>xiii</sup> Within DHS, principle agencies that contribute to SSR include the United States Coast Guard (USCG), Immigration and Customs Enforcement (ICE), the Transportation Safety Administration (TSA), the Dept. of Customs and Border Protection (CBP), and others that have substantive overseas missions that contribute to strengthening the ROL and the conduct of SSR.

<sup>xiv</sup> 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 1-02, JP 1)