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Rule of Law Capacity Building in Iraq

Richard Pregent*

Introduction

This article discusses the US efforts to assist the government of Iraq (GOI) in establishing the rule of law (ROL). It focuses on the period from the summer of 2008 to the summer of 2009, and the perspective is that of a military lawyer seconded to the US Embassy in Iraq. Although dated, the events and observations set forth may provide useful lessons as the United States continues its reconstruction and stabilization efforts in Iraq and elsewhere. Before beginning a detailed review of ROL capacity building in Iraq, the basic concept must be placed within a broader context.

ROL capacity building is one aspect of a broader national strategic goal of reconstruction and stabilization of "fragile, conflict-prone, and post-conflict states."¹ Whether the premise that "weak and failed states are per se among the most significant threats to the United States"² is valid or not is beyond the scope of this discussion; it is simply accepted as true. Within the Department of Defense (DoD) the reconstruction and stabilization mission is described as "stability operations"; ROL capacity building is one part of those operations.³ In a typical post-conflict situation a State's ability to keep the peace by enforcing the law has been compromised. Police, courts and detention capacity may be limited or not exist at all. The ROL plays a key role in establishing and maintaining stability, particularly in disciplining the actions of the State. It is, however, only one part of the good governance

* Colonel, JA, US Army.

needed to help stabilize and rebuild a weakened State. Just as important to stability operations is the State's ability to provide for the essential needs of its citizenry: clean water, adequate food and shelter, a secure environment and a functioning economy with legitimate employment opportunities.

For the purposes of this discussion, the definition of the rule of law set forth in the US Army's *Rule of Law Handbook* has been adopted:

Rule of Law is 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.

That principle can be broken down into seven effects:

- The state monopolizes the use of force in 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 the law in the conduct of their daily lives.⁴

This definition was adopted by both the US Mission–Iraq (the Mission) and Multi-National Forces–Iraq (MNF-I) in their joint campaign plan.

It must also be recognized that ROL capacity building cannot be conducted in an operational vacuum. Some degree of security must exist for technical advisors to focus on a State's compliance with its own laws, building a functional court system, protecting the due process rights of pretrial detainees and the many other ROL capacity-building missions. There will be instances in which security and the types of protections associated with the rule of law will come into tension. In those cases senior leaders will have to make the strategic decision to improve security that some may criticize as compromising the rule of law. Particularly during an active counterinsurgency there will be times when the long-term goals of the rule

of law mission will of necessity be a lower priority than establishing and maintaining security.

Finally, US ROL capacity-building efforts are hampered by a lack of both unity of command and unity of effort. The DoD stability operations doctrine tries to reconcile two conflicting facts: that reconstruction and stabilization efforts are best conducted and led by civilians, and that military personnel will oftentimes be the only assets available to perform these tasks.⁵ At times this conflict has defined the US government's (USG) ad hoc reconstruction and stabilization efforts in Iraq since the invasion.

This article will first discuss the tensions that occasionally arose between security operations and ROL capacity-building efforts, and then focus on the roles the Departments of State (DoS), Defense and Justice (DoJ) played in ROL capacity building in Iraq. Finally, there will be an assessment of the effectiveness of the current USG approach with specific recommendations for improvements.

Security and the Rule of Law

The Awakening

In 2007 many of the Sunni insurgency leaders realized that it was in their best interest to come to terms with the coalition forces (CF) and government in Iraq.⁶ The movement began in Anbar province and became known as the Awakening. As the movement spread, MNF-I entered into agreements with regional Awakening leaders, literally bringing former Sunni insurgents, the Sons of Iraq (SOI), into a contractual relationship with CF. The SOI were paid salaries by CF and were incorporated into CF security plans and operations. Some observers believe this development was a greater contributor to the improvement in security than the increase in combat forces, commonly referred to as the Surge, ordered by the Bush administration in 2007.⁷

In late 2007 the Awakening began to bear political fruit: MNF-I negotiated an agreement with the GOI to incorporate a portion of the SOI into government positions.⁸ SOI members were hired into positions at the Ministry of Interior (MOI) and brought into the Iraqi army. This partial "reconciliation" between the GOI and former insurgents was strategically key to improving security across the country; wherever these agreements were put in place acts of violence decreased dramatically. Even though the agreements were effective, they were also extraordinarily difficult to maintain politically for both the Sunni insurgency leadership and the primarily Shia elected government officials. Elected leaders felt the SOI had boycotted earlier national elections and chosen to become terrorists, while the SOI felt the elected government had been complicit in the vicious sectarian ethnic cleansing that had convulsed the country since the Samarra mosque bombing in

February 2006.⁹ Thus this political compromise was both strategically crucial and extremely fragile.

As insurgents, many of the SOI had committed criminal acts before this reconciliation. In many cases arrest warrants had been legally issued by Iraqi judges. These arrest warrants were not withdrawn with the advent of the Awakening nor when CF—and later the GOI—entered into agreements with the SOI. In 2008 there were several instances of Iraqi security forces (ISF) arresting senior Sunni Awakening leaders based upon these pre-Awakening warrants. These arrests led the SOI to believe the GOI was breaking faith with their agreements, creating a very real risk that the security situation would backslide as the SOI turned back to the insurgency. Although the arrests on their face were lawful, they also created the strategic risk of destabilizing fragile political agreements.

At first glance, CF and Mission leadership seemed to be placed in the position of having to choose between supporting the arrest and prosecution of Sunni leaders for criminal acts or discouraging this enforcement of the law—essentially encouraging Iraqi officials to ignore judicial arrest warrants—in order to support a political agreement that improved the nation's short-term security. In fact, there was no choice in the matter; the realities on the ground dictated that security be maintained and the warrants not be executed. Given the circumstances in Iraq at the time, short-term security necessarily took priority over long-term realization of the principles underlying the rule of law.

The resolution was that the Awakening leadership would not be prosecuted for allegations of criminal acts related to the insurgency that preceded their agreements with CF and the GOI. Criminal allegations that arose for acts committed after the conclusion of these agreements, however, did result in arrests and prosecutions. This political resolution was not formally approved by the Iraqi Parliament; an Awakening amnesty was never enacted. The executive branch simply did not execute the legally valid arrest warrants issued by the courts. In principle, this undercut the rule of law in Iraq. In reality, it made it possible for the SOI to begin a reconciliation process with the GOI and improved security nationwide. The improved security environment made it possible for the GOI, USG and the international community to expand their reconstruction efforts, to include trying to establish the rule of law. Ultimately, the leadership realized that the rule of law capacity-building mission must not block political accommodations between factions that make stability possible.

UN Security Council Resolution Detainees

Another example of the tension between ROL capacity building and maintaining security can be found in the disposition of legacy detainees. These individuals were

detained by CF under the authority of a series of UN Security Council Resolutions (UNSCRs), the last being UNSCR 1790,¹⁰ which expired December 31, 2008. It was replaced by the US/Iraq security agreement (SA), which took effect the next day.¹¹ Article 22 of the security agreement states:

Upon entry into force of this Agreement, the United States Forces shall provide to the Government of Iraq available information on all detainees who are being held by them. Competent Iraqi authorities shall issue arrest warrants for persons who are wanted by them. The United States Forces shall act in full and effective coordination with the Government of Iraq to turn over custody of such wanted detainees to Iraqi authorities pursuant to a valid Iraqi arrest warrant and shall release all remaining detainees in a safe and orderly manner, unless otherwise requested by the Government of Iraq and in accordance with Article 4 of this Agreement.¹²

On January 1, 2009 when the SA came into effect, US forces held in excess of 15,000 detainees. The challenge was to devise a process that complied with the SA without undercutting security, and in a way that supported the establishment of the ROL. The end result was a qualified success.

Under the SA, detainees either had to be prosecuted pursuant to Iraqi criminal law or had to be released. At the time, nearly two thousand detainees held by CF under the authority of the UNSCRs were in some stage of criminal prosecution in an Iraqi court. These detainees could be transferred into the Iraqi pretrial detention system as space became available. Both the GOI and CF were concerned that releasing the remaining thousands of detainees at one time could not be done “in a safe and orderly manner.”¹³ It would put hard-earned security improvements at risk. CF established a review and release plan for the remaining detainees.

Lists of detainees were given to the GOI each month with releasable information that supported the detentions. Frequently the information supporting detention was classified so very little evidence was provided. Most disclosures consisted of a conclusory statement that the detainee was involved in supporting the insurgency. The GOI in turn either acceded to the releases or provided warrants for the arrests of the detainees. To the surprise of many, the GOI began to produce hundreds of warrants for detainees CF intended to release. It quickly became evident that the GOI was not issuing warrants as the result of independent assessments of evidence in accordance with Iraqi criminal and constitutional law. The warrants were being mass-produced by the GOI to effect the transfer of legacy detainees from US custody into Iraqi pretrial detention.

Many within the GOI leadership believed that the detainees CF held were security threats and their release would destabilize the country. Many within the US forces leadership felt the same. Because a warrant enabled CF to transfer the

detainees into the Iraqi criminal justice system rather than release the detainees into Iraqi society, many US military leaders welcomed the flood of Iraqi warrants as a positive development rather than a violation of the principles underlying the rule of law. US forces made no effort to encourage the GOI to issue warrants that were based upon adequate evidence. Keeping these detainees off the streets was deemed more important than ensuring that their deprivation of liberty was done in accordance with the law. The result was moving even more pretrial detainees into a criminal justice system that was already glutted and dysfunctional.

One of the many organizations that worked closely with Iraqi officials to help establish the ROL, the Law and Order Task Force (LAOTF), had studied the detainee population records at Rusafa prison, Iraq's largest detention facility. This prison held over 20 percent of Iraq's entire detainee population and would house the vast majority of detainees transferred from US custody. LAOTF's study showed that over 20 percent of the prison population had been arrested by the Iraqi army and no action had been taken on their cases since their detention order. Over 500 of these detainees had been in pretrial confinement more than a year without any action taken on their cases; over 290 of these had been in pretrial confinement for over two years with no action taken. This study highlighted violations of Iraqi law and a significant cause of the constant overcrowding and inhumane conditions for the detainees. The United States was quick to bring this to the attention of the Minister of Justice for corrective action.

Despite this information, US detention leaders chose to continue to equate warrants with success. The warrants enabled the United States to transfer detainees into a broken Iraqi pretrial detention system. This exacerbated the overcrowding and continued to overwhelm the Iraqi courts. Many argued that the warrants were valid on their face, that the United States had no authority to question them and that the SA gave the United States no choice but to transfer the detainees. While each of these statements was true, the reality was that the US leadership made no effort to ensure that Iraq was taking these actions against US-held detainees in accordance with Iraqi law.

The vast majority of the detainees transferred were Sunni, a reflection of the fact that 80 percent of the detainee population was Sunni. It remains to be seen whether the USG detention leaders have created a longer-term strategic risk. Will these detainees be treated like those detained by the Iraqi army and remain in pretrial confinement with no action being taken on their cases for years? If so, will it undercut efforts at reconciliation and radicalize the detainees and their families and tribes once again?

Unlike the case of not executing arrest warrants against the leadership of the Awakening, the decision to transfer thousands of Sunni detainees from US detention into Iraqi custody without some effort to ensure the integrity of the judicial

process was a mistake. These wholesale transfers were expedient from a security point of view. The focus on security, however, has arguably led the United States to be complicit in what is de facto security detention. It is impossible to predict the impact these actions will have on establishing the rule of law in Iraq. The least that can be said is that this was a lost opportunity to encourage the executive branch of the GOI to comply with its own laws.

The Counter-Terrorism Bureau

In 2006 and 2007 Iraq's security forces were virtually incapable of conducting effective counterterrorism operations. The Ministry of Interior in particular had been infiltrated by criminal elements involved in sectarian violence. Iraqi special operations forces (ISOF) were often hamstrung by an inefficient command structure and a lack of funding. In response, and with the support of CF, the Prime Minister (PM) established the Counter-Terrorism Bureau (CTB). The CTB was intended to develop anti-terrorism strategies for the government, as well as conduct counterterrorism operations.¹⁴ The PM removed ISOF from the Ministry of Defense (MOD) and placed them under his direct control. Initially this was done within the context of a statement of emergency (SOE) announced by the PM and approved by the Iraqi Council of Representatives (COR) in accordance with the Iraqi Constitution. The Constitution, however, states that an SOE may only be declared for a period of thirty days and must be extended for similar periods with the COR's approval for each period.¹⁵ The original SOE lapsed and has never been approved again by the COR in accordance with the Constitution.

With the technical assistance of CF, the CTB proved to be an effective counterterrorism force. There were incidents, however, where the CTB appeared to be undisciplined and acting from a sectarian bias. Since it was not part of a ministry, it was not subject to ministerial oversight. Tensions arose between the executive branch and the COR during 2008 as the PM pressed to have legislation enacted legitimizing the CTB.¹⁶ The proposed legislation, however, would have approved the status quo and did not include oversight processes that were independent of the PM's office. In early 2009 the COR passed a statute that prohibited expending funds on any quasi-governmental institutions that were created or operated outside of established legal institutions. This was directly aimed at forcing the executive branch to institutionalize the CTB. Critics were concerned that the CTB, which had grown to nine ISOF brigades located across the country, could become the PM's personal militia.

US forces were intimately involved in the development of the CTB and helped ensure its fighting effectiveness. The CTB in fact made significant contributions to

the counterterrorism fight in Iraq, and was an important factor in creating and maintaining security. The CTB did not, however, have a legitimate basis in Iraqi law. The executive branch had built it unilaterally without concern for the law. The CF and US Mission leadership once again felt the tension of security versus the rule of law. It had helped create an effective fighting force, but one that was operating outside the authorities of the Iraqi Constitution and Iraqi laws. This tension was primarily one between branches of Iraqi government and the US ability to influence that debate grew less as Security Council Resolution 1790 lapsed and the security agreement took effect. To date this internal Iraqi debate has not been resolved.

During the counterinsurgency fight US forces must be mindful that the capabilities it helps the host nation develop are consistent with that nation's legal structure. Supporting the PM's effort to fight the insurgency and terrorism cannot be done in such a way that it undercuts the balance of powers established by that State's constitution. To do so could result in the re-establishment of a strongman State rather than a State governed by the rule of law.

Rule of Law Capacity Building

In 2008 both MNF-I and the Mission were anticipating the expiration of UN Security Council Resolution 1790 at the end of the calendar year.¹⁷ This would bring to an end the United Nations Chapter VII authority for coalition forces to conduct military operations in Iraq as they had since the formal end of occupation in June 2004. Without the consent of the government of Iraq, the host nation, there would no longer be legal authority for CF to be present on Iraqi territory, never mind conduct unilateral military operations. Bilateral negotiations had begun seeking an arrangement that would respect Iraq's sovereignty and growing sense of nationalism, while simultaneously allowing for the support and technical assistance provided by US forces—assistance both sides recognized as absolutely essential to maintain and improve security.

It was in this context that a periodic review of progress in achieving the goals of the joint campaign plan (JCP) was conducted for the ambassador and MNF-I commander in the summer of 2008. At that time the JCP focused on four lines of operation: security, economic, political and diplomatic. The Awakening, the surge of US forces and the increases in the capabilities of Iraqi security forces had resulted in a dramatic improvement in the security environment; by virtually every statistical measure acts of violence had reached levels last seen in 2003. Economically, Iraq was facing a budget surplus. This was due primarily to record high prices for oil (approximately 95 percent of the Iraqi economy is based upon oil revenues). Another contributing factor was government inefficiency; ministries simply could

not execute their budgets. While oil production was still inefficient, it was envisioned that the budget surplus would provide the opportunity to make needed capital investments to improve output. On the political front, progress had been made by the COR in passing some “benchmark” legislation,¹⁸ the executive branch appeared to be making efforts to conduct security operations and govern in a generally non-sectarian manner, and preparations were on track for provincial elections in December 2008. Finally, in the diplomatic arena, Iraq’s international relations were progressing. More nations, particularly regional neighbors, were sending delegations to, and opening missions in, Iraq, and Iraq was increasing its participation in regional and international forums. Thus, impressive progress had been achieved in each line of operation. The same could not be said for the establishment of the rule of law.

While the Iraqi judiciary was legally independent of the other branches of government, it was also overwhelmed. The High Judicial Council recognized a need for 3,000 judges;¹⁹ there were only about 1,250. Judicial security was a significant problem; dozens of judges had been assassinated since 2003. These problems led to significant backlogs of cases, which exacerbated the existing pretrial detention challenges. Pretrial detention conditions rarely met the most basic international standards. Conditions of overcrowding, inadequate hygiene facilities and very limited medical support—in some cases there was none—existed in nearly every pretrial detention facility. Forcing confessions from prisoners was a well-established police practice. MNF-I police training teams reported scores of detainee abuse cases at Iraqi detention facilities every month, supported by physical evidence. In addition, there were significant challenges beyond “courts, cops, and corrections,” the areas military forces traditionally focus on during post-conflict operations. Official corruption was endemic and the GOI had not developed the oversight mechanisms needed to combat it. The ministry inspectors general were neither resourced nor empowered to act. The Board of Supreme Audit and the Commission on Integrity were similarly hampered. Most problematic was Article 136b of the Criminal Procedure Code, which gave individual ministers the authority to block the criminal prosecution of any member of their ministries. After this periodic review the ambassador and MNF-I commander decided to make the rule of law a separate line of operation of the JCP.

The persons tasked to lead the lines of operations were the senior officers responsible for the US government efforts in those areas: the MNF-I Deputy Commanding General for Operations for the security line, and the Mission’s senior political, economic and diplomatic officers for those lines. The lead for the rule of law line of operation was shared by the Mission’s Rule of Law Coordinator (ROLC) and the MNF-I Staff Judge Advocate (SJA), a US Army colonel. This was a

reflection of both the realities on the ground and the manner in which the United States had conducted operations in Iraq since the invasion. While the ambassador was the senior representative of the United States, there was an overwhelming military presence. In August 2008 there were over 160,000 coalition forces in Iraq, with nearly as many contractors supporting the military presence. These military and civilian assets were spread across the country. The number of Mission personnel and contractors was a small fraction by comparison, and most were concentrated in Baghdad.

Civilian-Led Rule of Law Capacity-Building Assets

The ROLC was a senior executive service officer seconded to the Mission from the Department of Justice. It should be noted that rule of law capacity building was only part of his responsibilities. Both DoJ and the Mission looked to that person to oversee all USG justice activity in Iraq, the ROLC basically serving the role of legal attaché, as well as rule of law coordinator. In August 2008 the number of personnel under the ROLC's technical supervision included personnel from the US Marshals Service, the Federal Bureau of Investigation and Department of Homeland Security, but few of these assets were in Iraq to support the ROL capacity-building mission. ROLC personnel dedicated to the ROL mission included the ROLC deputy, one action officer and liaisons to the Ministry of Justice (MOJ), Ministry of Interior (MOI), the Iraqi High Tribunal (IHT), the Bureau of International Narcotics and Law Enforcement (INL) office, and the International Criminal Investigative Training Assistance Program (ICITAP) office. There were also resident legal advisors (RLAs) located with most of the Provincial Reconstruction Teams (PRTs). The numbers and sizes of PRT offices fluctuated frequently, but in the summer of 2008 there were about twenty-six PRTs spread across the country. There were several in Baghdad and some of the eighteen provinces had two or more, while the Kurdistan region had only one. The PRTs and their RLAs fell under the authority of the Chief of the Office of Provincial Reconstruction (OPR) and not the ROLC.

The ROLC MOJ and MOI liaisons had limited impact. The capacity-building mission for the MOI rested with MNF-I.²⁰ Thus the Mission's liaison was an observer of events within the Ministry of Interior and developed a network within the ministry to arrange key leader engagements. This was an important function, but did not make a critical contribution to ROL capacity building. Regarding the MOJ liaison, it must be noted that, in the summer of 2008, the acting Minister of Justice, who had been in place for nearly a year, refused to cooperate with either CF or the Mission. This continued until early 2009 when a new minister was appointed. Thus, the Mission's MOJ liaison could accomplish very little. The IHT liaison

office was known as the Regime Crimes Liaison Office from 2003 to 2007. In the earlier years it had a larger staff and provided significant amounts of technical assistance to the IHT. By 2008 the IHT was well established and the liaison office was reduced to a single officer who observed the court's activities and provided technical assistance as needed. The bulk of the ROL capacity-building contributions by the ROLC were made by ICITAP, INL and the RLAs with the PRTs.

ICITAP's role was to provide technical assistance to the GOI to improve the quality of correctional facilities and the professionalism of the Iraqi Corrections Service. ICITAP had been present in Iraq since 2003 and helped the GOI make enormous strides in its correctional system. In 2008 it had a senior corrections professional in the ROLC managing over eighty contractors divided into teams spread across eleven prisons and six detention facilities. Although ICITAP's focus was on post-trial detention facilities, it maintained a presence in some pretrial facilities. ICITAP worked closely with MNF-I's Task Force (TF) 134 to train Iraqi corrections officers and help the GOI institutionalize this training capacity. The ICITAP contractors were the USG's eyes and ears into Iraqi corrections facilities. ICITAP was greatly responsible for the fact that by 2008 MOJ-run facilities usually met international standards and rarely generated allegations of detainee abuse. As discussed later, conditions in pretrial detention facilities were appalling, but most of those facilities were run by the MOI.

The RLAs focused on rule of law capacity building at the provincial level and below. As previously indicated, they were part of the PRTs, falling under the authority of the embassy's Office of Provincial Reconstruction, not the ROLC. The PRTs had the broader reconstruction and stabilization goals of supporting good governance by improving the local governments' ability to provide essential services, employment and educational opportunities, and health services, as well as increasing the transparency of government to battle corruption. The RLAs focused on the rule of law aspect of reconstruction and stabilization, tailoring their efforts to the needs of a given region. The RLAs frequently served in austere and dangerous environments, and relied on MNF-I assets for security and movement support. Several RLAs were retired military lawyers or assistant US attorneys on detail and served for at least a year.

Although the INL office had no rule of law capacity-building practitioners, it controlled the funding for the civilian rule of law capacity-building efforts and managed related contracts. INL funded ICITAP, most of the RLAs, Iraqi judicial and law enforcement assistance programs, various information technology initiatives and the construction of five prisons. INL also managed a \$400 million contract for the DoD to provide over 750 police and border advisors. The ROLC had no authority over the director of the INL office. This was a significant source

of friction in the Mission's rule of law capacity-building efforts. Frequently, the INL office would act independently without coordinating its actions with the ROLC. At other times, the INL office would disagree with the rule of law priorities set by the ROLC and refuse to fund them. The tension between these offices reflected the greater tension between the Department of Justice and Department of State. DoS lacked subject-matter expertise in rule of law capacity building and turned to DoJ for this support. Yet DoS refused to give that officer authority over the funding of rule of law capacity building. This fundamental gap between DoS capabilities and responsibilities is at the heart of USG failings in reconstruction and stabilization efforts.

Military-Led Rule of Law Capacity-Building Assets

By comparison to the civilian-led effort the US military applied far more assets to the stabilization and reconstruction mission, including rule of law capacity building. In 2004, then-major general Petraeus built the Multi-National Security Transition Command-Iraq (MNSTC-I), consolidating US government efforts to provide technical assistance to the GOI in rebuilding the Ministries of Defense and Interior, as well as the Iraqi military and police forces. In its early years MNSTC-I focused on force generation to increase the number of ISF available to conduct counterinsurgency operations. As the security situation improved in 2008, MNSTC-I began to shift its focus to professionalizing those forces and improving their respective ministries' ability to support and oversee their operations. MNSTC-I assisted both the MOI and MOD in developing codes of conduct, and establishing open and transparent internal court systems to discipline their forces. Dozens of MNSTC-I advisors and contractors worked within the ministries to institutionalize oversight mechanisms (inspectors general and human rights offices) and at the training bases to assist in establishing training standards that included respect for basic human rights and the rule of law. These advisors also worked to "train the trainers," helping to develop a cadre of Iraqis who understood the subjects and who had developed the skills needed to pass that knowledge on to new trainees. MNSTC-I also trained CF training teams that were then assigned to the field commanders within Multi-National Corps-Iraq (MNC-I), MNF-I's subordinate, operational command.

In 2008, MNC-I had 120 military training teams, 35 national police training teams and 244 police training teams operating in Iraq. These teams were partnered with Iraqi units and worked with them on a daily basis to provide technical assistance in conducting operations and professionalizing the forces. MNC-I required each subordinate command to inspect all Iraqi detention facilities within its area of

responsibility every quarter. Training teams were often used to conduct these assessments. Monthly reports were provided to the MNC-I Provost Marshal and proved to be an invaluable tool to identify the areas with the most significant problems. MNC-I also had a contract for law enforcement support in addition to the \$400 million contract managed by INL referred to above. About 150 civilian law enforcement professionals were provided under this contract and were distributed down to the battalion level to work with the police training teams and partnered Iraqi units. In 2008 over two hundred military lawyers and paralegals were serving within MNC-I. Many of them worked with the PRT RLAs and local Iraqi judicial and law enforcement officers on various rule of law capacity-building projects.

TF 134 was created in 2004 to manage detention operations for CF. Although the task force's principal mission was running detention facilities at Camps Cropper and Bucca, which housed thousands of security detainees, it also made significant contributions to rule of law capacity building. The TF 134 legal office was staffed with dozens of attorneys whose mission was to support the prosecution of security detainees in the Central Criminal Court of Iraq. These lawyers marshaled the evidence and provided it to the investigating judge in an effort to turn security detainees held under the authority of Security Council Resolution 1790 into prisoners convicted and sentenced under Iraqi criminal law. Although this effort was intended primarily to prosecute and punish those who attacked CF, it had the added benefit of improving to some degree the efficiency and professionalism of one of Iraq's largest criminal courts.²¹

TF 134 also conducted inspections of Iraqi prison facilities to ensure that the facilities met basic standards before transferring detainees that were charged with, or convicted of, committing offenses under Iraqi law. In addition, TF 134 trained Iraqi corrections officers and integrated them into the guard force rotations at Camps Cropper and Bucca, providing carefully supervised on-the-job training. In 2009, TF 134 initiated and oversaw, in coordination with ICITAP, the construction of a multimillion-dollar training center near Camp Cropper. This effort included the development of programs of instruction and training Iraqi trainers. Despite the downsizing of MNF-I in 2009, TF 134 also built a capability to field nine corrections assistance transition teams. Much like the police training teams described earlier, these teams travel to Iraqi detention facilities ICITAP cannot support, and provide technical assistance to the Iraqi guard force and facility managers.

MNF-I created the Law and Order Task Force (LAOTF) in 2008. It was intended to help build "Iraqi capacity for independent, evidence based, and transparent investigation and trial of major and other crimes before the Central Criminal Court of Iraq."²² LAOTF was located at Forward Operating Base Shield near Rusafa prison, Iraq's largest detention facility, and the Rusafa criminal courts. Rusafa

prison included both sentenced prisoners and pretrial detainees. Although the conditions were better than most Iraqi pretrial detention facilities, it was notoriously overcrowded. The detention facility was poorly managed; corruption and sectarian bias were rampant. ICITAP's efforts to improve prison conditions were frequently frustrated by the inertia of the Rusafa criminal courts. In August 2008 the courts were so slow that it would take three years to retire the backlog of cases. Thousands of pretrial detainees languished awaiting trial. LAOTF's mission was to improve the Rusafa criminal court's throughput.

LAOTF was initially staffed with US military lawyers, and criminal investigators from Australia, the United Kingdom and US armed forces. It was intended that the criminal investigators be paired with Iraqi criminal investigators to improve the quality and efficiency of their investigations. The military lawyers were titled "mentors" for the Iraqi investigative and trial judges.²³ LAOTF also established Iraq's first defense clinic near the prison. The clinic was run by an experienced US DoJ civilian attorney and a military judge advocate. It was comprised of about twenty Iraqi defense counsel who were "mentored" on how to provide support to Rusafa detainees. It must be noted that the Iraqi criminal justice system is inquisitorial rather than adversarial, leaving a very limited role for defense counsel. Most Western-trained attorneys found it difficult to accept that the investigative judge served the roles of prosecutor and defense counsel, as well as that of independent judge.²⁴ The goal of the defense clinic was not to change Iraqi criminal law or practice, but a more modest one of providing detainees with advocates who might be able to move their cases through the investigative process more quickly.

LAOTF also assumed a role in coordinating Iraqi judicial support to military operations following the expiration of Resolution 1790. As the expiration date approached, MNF-I conventional forces began to conduct all operations "by, through, and with" their Iraqi counterparts. These operations were based upon warrants issued by Iraqi criminal courts. LAOTF worked closely with the units and Central Criminal Court of Iraq judges to assist in the presentation of evidence supporting the issuance of warrants and the follow-on prosecution of those cases. This support helped to some degree in disciplining the operations of the Iraqi security forces who were not accustomed to conducting counterinsurgency operations with a goal of criminally prosecuting the detainees, an important rule of law goal.

Rule of Law Coordinating Center

As the importance of rule of law capacity building was being recognized by the Mission and MNF-I leadership by making it a separate line of operation in the joint campaign plan, the ROLC and MNF-I Staff Judge Advocate recognized that there

were numerous actors working in the field. They also recognized that those efforts were being conducted by separate commands and agencies; there was no unity of command. Trying to achieve a unity of effort, they decided to create the Inter-agency Rule of Law Coordinating Center (IROCC).

The IROCC was intended to coordinate and synchronize rule of law capacity building. In military parlance, it would serve the role of a fusion cell. The concept of the IROCC was initially opposed by the senior DoS leadership in the Mission, a result of the ingrained institutional concern about the “militarization of diplomacy.” Only after repeated assurances that the IROCC would have no authority over any DoS assets did the Mission relent.

The concept was that the IROCC would be staffed with action officers from the ROLC office and the MNF-I SJA’s rule of law office. Those officers would continue to work on rule of law issues but do so together in one office ensuring that all would have a broad situational awareness, avoiding redundancies and achieving synergies. The IROCC would be led by an Army judge advocate colonel working for both the ROLC and the MNF-I SJA. When the draft fragmentary order (FRAGO) was initially staffed, civilians within the ROLC office who would be working within the IROCC objected. These were DoJ employees who balked at working within an organization led by a military officer. Once again, it was reiterated that the IROCC was a coordinating body and had no tasking authority over either DoS or DoJ personnel.

Once the FRAGO was issued by the MNF-I commander,²⁵ the military entities involved in rule of law capacity building (MNC-I, MNSTC-I, TF 134 and LAOTF) immediately engaged in the coordination process led by the IROCC. Mission representatives (ROLC, OPR, ICITAP, MOJ and MOI liaisons, INL, Baghdad PRT RLAs) also participated. At the action officer level it was quickly discovered that the IROCC was a useful (and non-threatening) coordinating body. Weekly video-conferences were held with all rule of law capacity builders at the operational level and above participating.

Initially the IROCC focused on Iraqi detention facility inspections. A central database, accessible to all ROL capacity builders, was developed for inspection reports, as was a central inspection/assessment calendar to de-conflict the oversight process. MNSTC-I advisors to the Ministry of Defense Human Rights Office and Ministry of Interior Inspector General offices were able to better coordinate logistical support for Iraqi inspections of Iraqi detention facilities. MNC-I was able to more quickly provide reports of inspections and serious incident reports to the MNSTC-I liaison officers to ensure inspection reports were not stale and could be investigated by the Iraqis. The results of all inspections were more efficiently and broadly shared across the inspecting community. Significant incidents or particularly bad

conditions could be quickly brought to the attention of both the Mission and MNF-I leadership. The IROCC supported a “targeting” process for key leader engagements.

The IROCC became the established mechanism for USG rule of law capacity builders to coordinate and de-conflict their efforts. During the weekly meetings rule of law capacity-building initiatives were presented, ranging from real property dispute resolution to coupons for legal representation for the indigent. The IROCC held a separate forensics forum, gathering subject-matter experts from MNSTC-I, MNC-I, ROLC, MNF-I, LAOTF and TF 134, and the UK Mission, to discuss initiatives to help the Iraqis develop a forensic capability within its Ministry of Interior and courts. It was quickly discovered that there were overlapping efforts and opportunities that had not been identified earlier. The forum helped the leadership dispel “urban legends” that the Iraqi courts would not accept forensic evidence, and to focus their efforts on the weakest link in the forensic arena—police training. The IROCC also held an information technology forum during which it gathered all those who were developing databases or information management systems for the Iraqis (TF 134, LAOTF, INL and MNC-I). The goal was to achieve compatibility and avoid creating a series of separate, unique and incompatible information management systems.

The International Committee of the Red Cross attended several IROCC meetings, as did the UK Mission legal advisors. After six months the IROCC attempted to engage with the international community to coordinate ROL capacity-building efforts there as well. The Mission leadership objected, saying that this was the exclusive province of the DoS and the ROLC office. It should be noted that to date there is no organization comparable to the IROCC within the international community in Iraq.

Despite the bureaucratic hesitation, the IROCC proved to be a useful coordinating mechanism. It remains to be seen whether the various agencies involved in reconstruction and stabilization operations in the future will embrace the concept of a fusion cell in the field.

State Department Leadership in Reconstruction and Stabilization

The concept of “nation building,” widely criticized during the 1990s with US involvements in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo, took on a new legitimacy after the attacks of 9/11. During those earlier peacekeeping and humanitarian operations, US support to the capacity-building efforts fell to the military because of both a lack of interest on the part of policymakers within the Clinton administration and a lack of capacity within the Department of State. After 9/11

many now viewed weak and failing States as potential threats to the United States because of their inability to deny safe haven to transnational terrorists, or, as in the case of the Taliban, a willingness to provide such a haven.²⁶ The lack of a civilian capacity to plan, coordinate and execute post-conflict governance and capacity building became clear after the invasion of Iraq and the toppling of the Saddam Hussein regime.

In 2004 the State Department established the Office of the Coordinator for Reconstruction and Stabilization (S/CRS). In the same year Congress supported the creation of the S/CRS with funding in its Consolidated Appropriations Act for fiscal year 2005. The congressional language set forth a broad stability and reconstruction leadership role for DoS, including developing a readily deployable capability of civilian subject-matter experts to lead reconstruction activities in regions or countries trying to overcome crises.²⁷ In December 2005 President Bush signed National Security Presidential Directive 44 (NSPD 44), explicitly tasking the Secretary of State to lead and coordinate all US government stabilization and reconstruction efforts.²⁸ The Secretary of State was given the responsibility to not simply lead the interagency process on this subject, but also develop a strong civilian response capacity for post-conflict situations.

Over the last four years the S/CRS established an Active Component (CRC-A) and Standby Component. The S/CRS's goal is to have 250 government personnel working in the CRC-A full-time and 2,000 working in other federal agencies outside DoS but available for surge requirements. The S/CRS also seeks to create a reserve force of up to two thousand persons not employed by the government but available for deployments.²⁹ This force structure has not been authorized or funded to date. The Bush administration proposed a Civilian Stabilization Initiative for fiscal year 2009, requesting \$248.6 million to finance the first year of the initiative. This sum represents a small fraction of the monies expended by the USG in Iraq each year for stabilization and reconstruction.³⁰ In the last two years a very limited number of DoS personnel have been deployed by the S/CRS to support capacity-building initiatives in Sudan, Haiti, Chad and Liberia.³¹ It must be noted that, since its creation in 2004, the S/CRS has had no significant involvement in Iraq and has made virtually no contribution to the reconstruction and stabilization efforts there.

Virtually all USG rule of law practitioners currently working in Iraq are military, DoJ or contractor personnel. Although INL and the United States Agency for International Development (USAID) administer many large ROL-related contracts, neither organization has a DoS rule of law subject-matter expert serving in Iraq. It is particularly noteworthy that the Mission's Rule of Law Coordinator is seconded to the Mission from DoJ. In Iraq, the State Department outsources the

management of rule of law capacity building and contracts out all reconstruction and stabilization efforts. It is unclear whether either DoS or USAID has the subject-matter expertise on staff to manage these contracts.

In the fall of 2008 the American Academy of Diplomacy issued a report on what it described as a “crisis in diplomatic readiness.”³² The report recognizes that DoS is incapable of performing the missions given it by NSPD 44 and acknowledges that the military has assumed a greater role in diplomacy as a result: “The ‘militarization of diplomacy’ is noticeably expanding as DoD personnel assume public diplomacy and assistance responsibilities that the civilian agencies do not have the trained staff to fill.”³³ The report illustrates DoS problems in several areas. In 2008 there was a 2,400 personnel shortfall; in 2006, 29 percent of the positions that required language proficiency were filled with persons without those skills. Additionally, USAID has 2,200 persons to administer \$8 billion in development funds, while in 1990 they had 3,500 to manage \$5 billion annually. The report makes specific recommendations to deal with the problems, including increasing staffing authorizations by more than 4,700, increasing funding by hundreds of millions of dollars and transferring authority over security assistance programs from DoD to DoS.³⁴

Department of Defense Stability Operations

In 2005 the Department of Defense made stability operations a core military mission.³⁵ This was a fundamental change to US military doctrine; DoD had accepted that it had an important role in post-conflict reconstruction and stability operations. The directive tasked the development of doctrine and force structure. It acknowledged that the immediate goals of these operations were establishing security and providing for the population’s humanitarian needs. The longer-term goals were developing indigenous security capacity, a market economy, rule of law, democratic institutions and a civil society. The directive also stated that “integrated civilian and military efforts are key to successful stability operations.”³⁶ Most important, the directive fundamentally changed US military doctrine by elevating stability operations to the same level of importance as traditional combat operations.³⁷

The US Army published Field Manual 3-07,³⁸ its stability operations doctrine, in October 2008. The doctrine was developed to implement the DoD stability operations directive and provide guidance on how US forces and personnel would contribute to achieving the reconstruction and stabilization goals of the national strategy³⁹ and NSPD 44 missions. Field Manual 3-07 sets out a series of security, stabilization and reconstruction tasks that must be accomplished in post-conflict situations; rule of law capacity building is included with the provision of essential services for the general populace. Echoing the directive, Field Manual 3-07 acknowledges

that many of the stability operations tasks would be most effectively performed by host-nation or USG civilian personnel, but recognizes that civilians may not be available to perform these tasks: "In the event civilians are not prepared to perform those tasks, military forces will assume that responsibility."⁴⁰ While Field Manual 3-07 appears to recognize the reality of the limited USG civilian reconstruction and stabilization capabilities, it arguably creates more problems than it resolves.

How does the Department of Defense plan for the inability or unwillingness of the Department of State to accomplish its mission? Does the State Department's inability to field stability and reconstruction experts to perform and manage those efforts in Iraq justify DoD's development of the force structure, doctrine, training and funding to meet another agency's responsibilities? Will Congress allow DoD to develop a budget that is to some extent a contingency plan for DoS failures?

Mission Definition

Finally, the inability to clearly define the rule of law capacity-building mission in Iraq must be addressed. A mission's goal must be defined with some degree of clarity before resources can be allocated in a disciplined manner and objective metrics developed to assess progress. In Iraq this was the function of the joint campaign plan. As noted earlier, rule of law became a line of operation in the new plan published in December of 2008. The challenge with the rule of law annex was how to define success or measure progress. The annex identified six broad areas to focus rule of law capacity-building efforts. The first two dealt with detainees and are beyond the scope of this discussion. The last four focused on judicial security, Iraqi detention conditions and capacity, corruption, and improving the civil and criminal justice systems.

At the beginning of a post-conflict operation, rule of law goals can often be quantified. For example, immediately after the overthrow of the Saddam Hussein regime, police stations, courts and detention facilities needed to be reopened. This required physical structures and trained staffs. Objective metrics can be used to determine if there is sufficient bed space, or adequate numbers of judges or police. This was true in Iraq for the first several years. The greater challenge is in trying to quantify progress in "establishing the rule of law." By 2008 the rule of law planners in Iraq were frequently faced with trying to quantify the unquantifiable. How efficient must the courts be? How well trained must the police be? How "modern" must the law be?

The end result was a rule of law annex that set forth broad goals with intermediate steps that might assist the Iraqis in enhancing the rule of law. The annex was

broad enough that it could consume whatever military or civilian assets might be available; the only constraint was the Iraqi willingness to accept the technical support. The rule of law annex identified where MNF-I and the Mission needed to make an effort in rule of law capacity building, but failed to define what the level of effort should be. The result is that the rule of law capacity-building mission in Iraq could be a never-ending saga; it is capable of absorbing an infinite amount of resources.

Recommendations

- A. The State Department should embrace its responsibilities in reconstruction and stabilization operations. The S/CRS has no presence in Iraq. If that organization is responsible for reconstruction and stabilization efforts, it should fill the rule of law coordinator post at the US Mission in Baghdad. DoS has spent five years developing a very limited capacity and missed the opportunity to develop subject-matter expertise by practice. DoS needs to focus on existing operations, as well as developing a capacity for the future.
- B. The rule of law mission in Iraq must be clearly defined by DoS in coordination with DoD. Only then can requirements be defined and specific metrics developed. DoS must lead this effort and not outsource its responsibilities.
- C. Congress should fully fund the Civilian Stabilization Initiative, as well as the recommendations of the American Academy of Diplomacy.
- D. As DoS develops the civilian capacity to plan, coordinate and execute reconstruction and stabilization operations, DoD and other government agencies should continue to fill the voids in the field.
- E. Until DoS develops this capacity, DoS should accept the need for DoD to accomplish the mission. The two departments must work together cooperatively until DoS can assume the lead and DoD can assume a supporting role.
- F. An annual report to Congress should be required cataloguing these interagency contributions, as well as DoS progress or lack of progress in developing the capabilities needed to meet its responsibilities.

Conclusion

The US rule of law capacity-building efforts in Iraq have been, and continue to be, extensive in terms of both manpower and funding. These efforts have been well intentioned, and in many areas have accomplished a great deal. This said, it must be noted that the USG rule of law capacity-building community in Iraq lacks unity of command. This is a result of DoS's lack of will, as well as capacity, to assume its leadership role. The institutional concern over the "militarization of diplomacy" focuses on DoD's intrusion into what DoS believes is its area of responsibility. It fails to recognize, however, that DoD is filling a void caused by DoS's lack of capacity.

Rule of law capacity-building missions must be clearly defined. Without that clarity resourcing will never be adequate nor will progress be quantifiable. These missions must be defined, planned for and executed under the leadership of an adequately funded and empowered State Department.

Notes

1. Nina M. Serafino, Congressional Research Service, *Peacekeeping/Stabilization and Conflict Transitions: Background and Congressional Action on the Civilian Response/Reserve Corps and Other Civilian Stabilization and Reconstruction Capabilities*, No. RL32862 (July 23, 2009), at 3, available at http://assets.opencrs.com/rpts/RL32862_20090723.pdf.

2. *Id.* at 10.

3. Headquarters, Department of the Army, FM 3-07, Stability Operations paras. 1-40–1-43, at 1-9 (2008), available at http://downloads.army.mil/docs/fm_3-07.pdf [hereinafter FM 3-07].

4. THE RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES 5–6 (Katherine Gorove & Thomas B. Nachbar eds., 2008).

5. US Department of Defense, Directive 3000.05, Military Support for Stability, Security, Transition and Reconstruction (SSTR) Operations para. 4.3 (2005), available at <http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf> [hereinafter DoD Directive 3000.05]; Chairman of the Joint Chiefs of Staff, Joint Publication 3-0, Joint Operations, at V-24 (2006), available at http://www.dtic.mil/doctrine/jel/new_pubs/jp3_0.pdf ("US military forces should be prepared to lead the activities necessary to [secure and safeguard the populace, reestablish civil law and order, protect or rebuild key infrastructure, and restore public services] when indigenous civil, USG, multinational or international capacity does not exist or is incapable of assuming responsibility").

6. Thomas Ricks & Stephen Biddle, "*The Gamble*": *Did the Surge Work?*, WASHINGTONPOST.COM, Feb. 23, 2006, <http://www.washingtonpost.com/wp-dyn/content/discussion/2009/02/05/DI2009020502774.html>.

7. *See id.*

8. Greg Bruno, *Finding a Place for the 'Sons of Iraq,'* CFR.ORG, Jan. 9, 2009, <http://www.cfr.org/publication/16088/#p7>.

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9. Ellen Knickmeyer & K.I. Ibrahim, *Bombing Shatters Mosque in Iraq*, WASHINGTONPOST.COM, Feb. 23, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/22/AR2006022200454.html>.
10. S.C. Res. 1790, U.N. Doc. S/RES/1790 (Dec. 18, 2007).
11. Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, U.S.-Iraq, Nov. 17, 2008, *available at* http://www.mnf-iraq.com/images/CGs_Messages/security_agreement.pdf.
12. *See id.*, art. 22.
13. *See id.*
14. US Department of Defense, *Measuring Stability and Security in Iraq: Report to Congress* (Mar. 7, 2008).
15. Iraq Const. art. 61, para. 9 (2005), *available at* http://www.uniraq.org/documents/iraqi_constitution.pdf.
16. Jim Michaels, *Chain of command concerns raised in Iraq*, USATODAY.COM, Feb. 23, 2009, http://www.usatoday.com/news/world/iraq/2009-02-23-maliki_N.htm.
17. S.C. Res. 1790, *supra* note 10.
18. In 2007 the USG identified eighteen specific areas it believed Iraq needed to address, including reconciliation, oil revenue sharing, transparent elections and corruption. *See* U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28 (2007).
19. Iraqi High Judicial Council Five Year Strategic Plan (undated) (on file with the MNF-I Office of the Staff Judge Advocate).
20. In the summer of 2009 an assessment was conducted to determine how this might be shifted to the Mission, but to date providing technical assistance to the MOI remains with the military.
21. TF 134-supported prosecutions maintained about a 50 percent conviction rate, while the rest of Iraqi criminal courts' conviction rate hovered around 10 percent.
22. MNF-I Commander's Memorandum on Areas of Focus for LAOTF (Mar. 15, 2008) (on file with the MNF-I Office of the Staff Judge Advocate).
23. It must be noted that none of these military lawyers could speak Arabic nor were they experienced or schooled in Iraqi law. Thus the title "mentor" was presumptuous. Accepting this criticism, the judge advocates assigned to these duties normally established close ties with the Iraqi judges, who took pride in teaching the US lawyers about their legal system and traditions. The judge advocates also shared with the Iraqi jurists US legal practices and traditions. The end results included small improvements in Iraqi judicial efficiency and work ethics. Like so many areas within rule of law capacity building, however, these incremental improvements are nearly impossible to measure.
24. Of particular note is the lack of a right to be warned against self-incrimination. For a detailed analysis of the issue and the "corrective" action taken during the occupation by the Coalition Provisional Authority, see Dan E. Stigall, *Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction*, 29 LOYOLA OF LOS ANGELES INTERNATIONAL & COMPARATIVE LAW REVIEW 1, 30-31 (2007).
25. Fragmentary Order (FRAGO) Transitional Justice (Aug. 16, 2008) (copy on file with the Center for Law and Military Operations, The US Army Judge Advocate General's School and Law Center).
26. Serafino, *supra* note 1.
27. Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

28. National Security Presidential Directive/NSPD 44, Management of Interagency Efforts Concerning Reconstruction and Stabilization (Dec. 7, 2005), *available at* <http://www.fas.org/irp/offdocs/nspd/nspd-44.html>.

29. AMERICAN ACADEMY OF DIPLOMACY, A FOREIGN AFFAIRS BUDGET FOR THE FUTURE: FIXING THE CRISIS IN DIPLOMATIC READINESS 21 (2008), *available at* http://www.stimson.org/budgeting/Publications/Long_Final_11_08.pdf [hereinafter *FIXING THE CRISIS*].

30. Accurate figures for the costs of reconstruction and stabilization efforts in Iraq are not readily available. For the purposes of this discussion it is worth noting that this funding proposal does not even match the cost of one contract for law enforcement professionals discussed above. Each year DoD funds and INL administers that \$400 million dollar effort, which represents a relatively small part of the overall rule of law capacity-building effort—and rule of law capacity building is only one part of reconstruction and stabilization in Iraq.

31. *FIXING THE CRISIS*, *supra* note 29, at 43.

32. *Id.*

33. *Id.* at 3.

34. *Id.* at 4.

35. DoD Directive 3000.05, *supra* note 5.

36. *Id.*, para. 4.c.

37. *Id.*, para. 4.a.

38. FM 3-07, *supra* note 3.

39. Defined as follows:

1-48. National strategy is based on a distinctly American policy of internationalism that reflects the interests and values of the country. It clearly aims to make the world a safer, better place, where a community of nations lives in relative peace. To that end, the *National Security Strategy* and subordinate supporting strategies focus on a path to progress that promotes political and economic freedom, peaceful relations with other nations, and universal respect for human dignity.

1-49. The body of security strategy that shapes the conduct of stability operations includes the *National Security Strategy*, the *National Defense Strategy*, and *The National Military Strategy of the United States of America* (known as the *National Military Strategy*). Related strategies include the *National Strategy for Combating Terrorism*, the *National Strategy for Homeland Security*, and the *National Strategy to Combat Weapons of Mass Destruction*. Together with national policy, strategy provides the broad direction necessary to conduct operations to support national interests.

Id., paras. 1-48, 1-49, at 1-10.

40. *Id.*, para. 1-73, at 1-15.