

## Publishing Doctrine on Stability Operations and the Rule of Law During Conflict

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In a 2009 article in the *Armed Forces Journal*, Field Artillery Captain (CPT) Robert Chamberlain wrote, “The American military has become relatively self-congratulatory of late about our newfound aptitude for counterinsurgency.”<sup>1</sup> Captain Chamberlain, a veteran of two tours in Iraq, compared the military’s preparation for its counterinsurgency mission with that of Leeroy Jenkins, the World of Warcraft avatar whose YouTube video has been seen by over fifteen million viewers.<sup>2</sup> At the beginning of the video, approximately twenty players of the popular online game are heard planning a dungeon raid in which they expect to engage many enemies. While the players discuss the specific tactics and weapons they will use, one of the players interrupts the planning by shouting, “Alright, times up. Let’s do this! LEEROY JENKINS!” Leeroy then charges in alone, forcing his teammates to abort their planning and follow him into the dungeon, shouting instructions at each other as they fight. Similarly, the doctrine writers continue to publish in reaction to events in Iraq and Afghanistan. They pursue and record the most recent thoughts and practices.

This article discusses several developments during the last eighteen months. These developments show that doctrine writers have tried to reflect recent practices while those practices continue to evolve. In the first part, this article discusses recently published Department of Defense Instruction (DoDI) 3000.05,<sup>3</sup> the progeny of the revolutionary DoD Directive of the same number that placed stability operations on par with combat operations.<sup>4</sup> In the second part, this article discusses the U.S. Government’s

formal adoption of a definition for rule of law that had been in use for several years. This article argues that the vagaries of the definition have failed to communicate the “cornerstone” of what the rule of law means for Soldiers and Marines fighting a counterinsurgency (COIN): an effective and legitimate criminal justice system.<sup>5</sup> Nonetheless, the vagueness of the definition is forgivable since it must be broad enough to provide for the many different government agencies and their necessary perspectives on the rule of law. Operational forces in the U.S. Army and Marine Corps must bear the responsibility for focusing their efforts under an unfocused definition.

### I. Embracing the Tension

The new DoDI 3000.05 fully acknowledges DoD’s awkward position of preparing to lead stability operations as well as supporting them when other agencies lead them.<sup>6</sup> The new instruction is a minor update of its predecessor, DoDD 3000.05.<sup>7</sup> The instruction is initially modest as it demurs to other organizations better suited for nation building. It does this by tasking DoD to “be prepared to . . . [s]upport stability operations activities led by other U.S. Government departments or agencies.”<sup>8</sup> However, the instruction then embraces the reality on the ground in Iraq and Afghanistan when it tasks the DoD with being prepared to “[l]ead stability operations . . . until such time as it is feasible to transition lead responsibility to other U.S. Government agencies, foreign governments and security forces, or international governmental organizations.”<sup>9</sup>

<sup>1</sup> Captain Robert M. Chamberlain, *Let’s Do This! Leeroy Jenkins and the American Way of Advising*, ARMED FORCES J. 32 (June 2009). Captain Chamberlain, a former advisor to an Iraqi Army maneuver battalion, wrote about the U.S. military’s failure to plan for the mission of advising the Iraqi Army and the failure to prepare Soldiers for the task. *Id.* His lessons learned mentoring Iraqi Army officers and Soldiers are applicable to others mentoring Iraqi judges, police, and corrections officers. Accordingly, The Judge Advocate General’s Legal Center and School invited CPT Chamberlain to speak at the Second Rule of Law course in July 2009 where student evaluations rated him as the second best speaker among twenty-five presenters. Captain Chamberlain, a former Truman and Rhodes Scholar, recently concluded his battery command and is now pursuing a Ph.D. at Columbia University.

<sup>2</sup> Leeroy Jenkins, <http://www.youtube.com/watch?v=LkCNJRfSZBU> (Aug. 6, 2006).

<sup>3</sup> U.S. DEP’T OF DEF., INSTR. 3000.05, STABILITY OPERATIONS (16 Sept. 2009) [hereinafter DoDI 3000.05].

<sup>4</sup> U.S. DEP’T OF DEF., DIR. 3000.05, MILITARY SUPPORT FOR STABILITY, SECURITY, TRANSITION, AND RECONSTRUCTION (SSTR) para. 4(a) (28 Nov. 2005) [hereinafter DoDD 3000.05].

<sup>5</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY 1-131 (15 Dec. 2006) [hereinafter FM 3-24].

<sup>6</sup> The instruction defines stability operations as an “overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.” DoDI 3000.05, *supra* note 3, para. 3.

<sup>7</sup> DoDD 3000.05, *supra* note 4, at 4.1.

<sup>8</sup> DoDI 3000.05, *supra* note 3, at 4(a)(2).

<sup>9</sup> *Id.* para.4(a)(3). See also JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, JOINT OPERATIONS, at V-24 (17 Sept. 2006) (C1, 13 Feb. 2008); Thomas B. Nachbar, *Defining the Rule of Law Problem*, 12 GREEN BAG 2D 303 (2009). Nachbar argues,

The military is the U.S. government’s development agency of last resort, likely leading rule of law development programs only when indigenous capacity is so diminished that U.S. forces are providing not only development assistance but

The tension between leading versus supporting stability operations ultimately derives not from the Secretary of Defense (SECDEF) but from the President. National Security Presidential Directive 44 (NSPD-44) tasked the Secretary of State to “coordinate and lead integrated United States Government efforts” to stabilize and reconstruct post-conflict countries.<sup>10</sup> The President ordered all other agencies to “enable” and “assist” the Secretary of State. The tension lies in the fact that the agency with the mandate to lead does not have the resources, personnel, or the ability to project an effective amount of either into post-conflict countries like Afghanistan or Iraq. Though relatively significant for the interagency processes for those working in Washington, D.C., NSPD-44 did not have nearly as much impact on the operating forces as DoDD 3000.05<sup>11</sup> published about ten days before.

Department of Defense Directive 3000.05 “dramatically changed” DoD policy towards nation building.<sup>12</sup> The change came with the declaration that stability operations were a “core U.S. military mission” on par with combat operations.<sup>13</sup> This created another tension as Soldiers and Marines compared the amount of training their units spent preparing for combat with what they realized the actual mission to be: building police stations and prisons, recruiting and training police officers, mentoring judges and corrections officers, and working with tribal councils. The directive appeared to be a change of direction for the U.S. Army, which had recently reaffirmed its mission to “fight

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security itself. In those situations, the definition of the rule of law that drives the development effort may not be as important as the one that defines the approach that U.S. forces take to their own operations.

*Id.* at 318.

<sup>10</sup> NAT’L SEC. PRESIDENTIAL DIR./NSPD-44, MANAGEMENT OF INTERAGENCY EFFORTS CONCERNING RECONSTRUCTING AND STABILIZATION 1 (Dec. 7, 2005).

<sup>11</sup> DoDD 3000.05, *supra* note 4, para. 4(a).

<sup>12</sup> Major Timothy Austin Furin, *Legally Funding Support to Stability, Security, Transition, and Reconstruction Operations*, ARMY LAW., Oct. 2008, at 10. While DoDD 3000.05 may have drastically changed policy, others argue that the U.S. Army and Marine Corps have performed this mission throughout their histories. See Lieutenant Commander Vasilios Tasikas, *Developing the Rule of Law in Afghanistan: The Need for a New Strategic Paradigm*, ARMY LAW., July 2007, at 45. In the article, Lieutenant Commander Tasikas argued that the

U.S. military has spent the last two decades trying to ignore or curtail the reality of lengthy and costly post-conflict operations. This neglect stems from a long-standing, but inaccurate, perception of the proper role of the military as an instrument of national power. . . . The truth is that the United States has always engaged in protracted military endeavors short of full-scale wars.

*Id.*

<sup>13</sup> DoDD 3000.05, *supra* note 3, para. 4.1.

and win the Nation’s wars.”<sup>14</sup> Although the mission remains intact, the directive caused a broadening of the definition of war and a resulting broader mission for the U.S. Army.<sup>15</sup> Additionally, the SECDEF acknowledged the change as he directed the services to integrate stability operations into all of their activities, to include “doctrine, organizations, training, education, exercises, materiel, leadership, personnel, facilities, and planning.”<sup>16</sup>

One of the most prolific areas of change has been in doctrine. The changing mission of the U.S. Army and Marine Corps was first reflected in their counterinsurgency manual published in 2006. It stated,

The purpose of America’s ground forces is to fight and win the Nation’s wars. Throughout history, however, the Army and Marine Corps have been called on to perform many tasks beyond pure combat; this has been particularly true during the conduct of COIN operations. COIN requires Soldiers and Marines to be ready both to fight and to build—depending on the security situation and a variety of other factors.<sup>17</sup>

The COIN manual’s foreword, signed by then-Army Lieutenant General Petraeus and Marine Corps Lieutenant General Amos, expressed in even more plain terms that this broadening definition of war would be a reality not only at the strategic and operational level, but also at the tactical level for individual Soldiers and Marines. They wrote,

Soldiers and Marines are expected to be nation builders as well as warriors. They must be prepared to help reestablish institutions and local security forces and assist in rebuilding infrastructure and basic services. They must be able to facilitate establishing local governance and the rule of law. The list of such tasks is long; performing them involves extensive coordination and cooperation with many intergovernmental, host-nation, and international agencies.<sup>18</sup>

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<sup>14</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 1, THE ARMY para. 1-2 (14 June 2005).

<sup>15</sup> Jack D. Kern, *The Army’s Primary Purpose: Fight and Win the Nation’s Wars?*, COMBINED ARMS CENTER BLOG, Mar. 24, 2009, <http://usacac.army.mil/blog/blogs/reflectionsfromfront/archive/2009/03/24/the-army-s-primary-purpose-fight-and-win-the-nation-s-wars.aspx>.

<sup>16</sup> DoDD 3000.05, *supra* note 4.

<sup>17</sup> FM 3-24, *supra* note 5, at 1-105.

<sup>18</sup> *Id.* at foreword.

The next significant doctrinal publication to reflect the changing mission was the 2008 republication of Field Manual (FM) 3-0. It stated,

Winning battles and engagements is important but alone is not sufficient. Shaping the civil situation is just as important to success. Informing the public and influencing specific audiences is central to mission accomplishment. Within the context of current operations worldwide, stability operations are often as important as—or more important than—offensive and defensive operations.<sup>19</sup>

In summary, the broadening definition of war has changed the way individual Soldiers and Marines conceive of their role on the world stage.

A second area of great change ordered by DoDD 3000.05 was in the education provided by various schools throughout the DoD. In 2007, The Judge Advocate General's Legal Center School (TJAGLCS) offered its first one-hour class on the rule of law for the 55th Graduate Course, as well as sixteen hours in an elective seminar. By 2010, the 58th Graduate Course received four hours of instruction and application, as well as thirty-two hours of elective seminars on rule of law operations; students also received comparative law instruction that was specifically focused in the context of rule of law operations. The School had also integrated rule of law instruction and seminars into the Judge Advocate Officer Basic Course, the Senior Officer Legal Orientation, the Operational Law of War Course, and the Judge Advocate Officer Advanced Course. For judge advocates outside the School, TJAGLCS provided the first Rule of Law Course in 2008, which was also open to attorneys from the Department of State (DoS) and Department of Justice scheduled for assignments overseas to engage in rule of law activities. The course has become an annually recurring event. As the foundational text for each of these courses, TJAGLCS used the *Rule of Law Handbook*, which is published by the Center for Law and Military Operations (CLAMO) and is continually updated.<sup>20</sup>

## II. U.S. Government Adopts a Definition

### A. A “New” Definition

In February 2009, three agencies of the U.S. Government finally agreed upon a definition for the rule of

<sup>19</sup> FM 3-0, *supra* note 9, at vii.

<sup>20</sup> THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., CTR. FOR LAW & MILITARY OPERATIONS, *RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES* (2009) [hereinafter *RULE OF LAW HANDBOOK*]. The *Rule of Law Handbook* was first published in 2007 and is revised annually.

law that had been in use by the Multi-National Corps–Iraq (MNC–I) commander for several years.<sup>21</sup> The DoD, the U.S. Agency for International Development (USAID), and the DoS published the following abbreviated version of the definition:

Rule of law 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 which are consistent with international human rights law.<sup>22</sup>

The U.N. Office of the Secretary General originally provided this definition in 2004.<sup>23</sup> Despite the definition's failure to emphasize the role of security in providing for the rule of law,<sup>24</sup> the commander of MNC–I adopted the

<sup>21</sup> MULTI-NATIONAL CORPS–IRAQ, OPERATIONS ORDER 06-03, APPENDIX 2 TO ANNEX G (2007).

<sup>22</sup> U.S. AGENCY FOR INT'L DEV., U.S. DEP'T OF STATE, U.S. DEP'T OF DEF., SECURITY SECTOR REFORM 4 (Feb. 2009), *available at* [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/SSR\\_JS\\_Mar2009.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/SSR_JS_Mar2009.pdf). The complete definition, contained in a separate document, stated,

Rule of law 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 which are consistent with international human rights law. It also requires 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. Human rights derive from the inherent dignity of the individual and are to be enjoyed by all without distinction as to race, color, sex, language, religion, national or social origin, property, birth or other status. They include fundamental freedoms of expression, association, peaceful assembly and religion set out in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. They also include rights in labor conventions and provisions of national civil rights legislation. They reflect a common sense of decency, fairness and justice; and states have a duty to respect and ensure these rights and incorporate them into the processes of government and law.

U.S. DEP'T OF STATE, SUPPLEMENTAL REFERENCE: FOREIGN ASSISTANCE STANDARDIZED PROGRAM STRUCTURE AND DEFINITIONS 26, 26–27, Oct. 15, 2007, *available at* <http://www.state.gov/documents/organization/93447.pdf> (providing definitions for “Rule of Law and Human Rights”).

<sup>23</sup> The Secretary-General, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, U.N. Doc. S/2004/616, at 4 (Aug. 23, 2004).

<sup>24</sup> See Major Tonya Jankunis, *Military Strategists Are from Mars, Rule of Law Theorists Are from Venus*, 197 MIL. L. REV. 16, 55 (2008). See also

definition for use in operation orders as early as 2006.<sup>25</sup> U.S. Army doctrine had subsequently adopted the definition, which first appeared in U.S. Army FM 3-07, *Stability Operations*, in 2008<sup>26</sup> and later appeared in FM 1-04, U.S. Army JAG Corps doctrine, during 2009.<sup>27</sup>

Both FM 3-07 and FM 1-04 supplemented the definition with seven effects that are achieved by the rule of law in an ideal society.<sup>28</sup> Those effects add value when used alongside the U.N. definition because they emphasize security, as exemplified by the first two effects, which state, “The state monopolizes the use of force in the resolution of disputes,” and “Individuals are secure in their persons and property.”<sup>29</sup> Three law school professors were the first to offer the effects as part of their effort to provide a more practical definition

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Nachbar, *supra* note 9, at 308. Nachbar illustrates the irony that a corps operations order would adopt a definition that neglects security, since

[i]n many ways, providing security is the ultimate purpose of any state. For any deployed military force, providing security is going to be the first element in any rule of law plan and, depending on the status of operations, it may be the only real contribution that U.S. forces can make to implementing the rule of law.

*Id.*

<sup>25</sup> MULTI-NATIONAL CORPS IRAQ, OPERATIONS ORDER 06-03, APPENDIX 2 TO ANNEX G.

<sup>26</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS 1-40 (6 Oct. 2008) [hereinafter FM 3-07].

<sup>27</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY, at D-4 (15 Apr. 2009) [hereinafter FM 1-04]. See Major Joseph N. Orenstein, *Doctrine Practice Note: Publication of Field Manual 1-04*, ARMY LAW., Aug. 2009, at 48.

<sup>28</sup> Those effects are listed as follows:

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;

The state protects basic human rights and fundamental freedoms, and

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

FM 3-07, *supra* note 26, at 1-40; FM 1-04, *supra* note 27, at D-4. The effects first appeared in the initial edition of the *Rule of Law Handbook*, published for judge advocates by the Center for Law and Military Operations (CLAMO). See RULE OF LAW HANDBOOK, *supra* note 20.

<sup>29</sup> FM 3-07, *supra* note 26, at 1-40; FM 1-04, *supra* note 27, at D-4.

for the rule of law.<sup>30</sup> The combination of the definition and the effects is sometimes visually depicted by the rule of law temple, which is reproduced in an appendix to this article.<sup>31</sup>

By adopting the U.N. definition and augmenting it with the seven effects, the DoD has provided a broad end state in which units in the field may nest more specific rule of law activities that are designed to address specific weaknesses in specific locations. While this definition lacks the focus that some may desire, focus can be added by units as they task subordinate units.

## B. Failing to Focus on the Three Cs

The recently adopted definition and the seven effects fail to directly acknowledge what the counterinsurgent sees as the “cornerstone” of the rule of law, which is whether a country has an effective criminal justice system.<sup>32</sup> Using Soldiers and Marines to detain insurgents in a U.S. detention facility is not the best COIN tactic because, while it labels the insurgent a criminal in the eyes of the U.S. military, it is less likely to label the insurgent as a criminal in the eyes of the most important audience: local nationals. Local nationals are more likely to see an insurgent as a criminal when a local national policeman detains him, a local national judge convicts him of a crime, and a local national incarcerates him in a local prison. Accordingly, mothers and fathers may be less willing to allow a son to join a criminal organization than an alternatively identified sectarian or ethnic organization.

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<sup>30</sup> JANE STROMSETH ET AL., CAN MIGHT MAKE RIGHTS: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 78 (2006). See also Nachbar, *supra* note 9, at 307.

<sup>31</sup> Lieutenant Colonel Al Goshi, Military Rule of Law Programs in Afghanistan (Mar 11, 2009) (slide on file with author). See *infra* Appendix (providing an “Operational Construct for Rule of Law”).

<sup>32</sup> FM 3-24, *supra* note 5, at 1-131.

The cornerstone of any COIN effort is establishing security for the civilian populace. Without a secure environment, no permanent reforms can be implemented and disorder spreads. To establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support. Using a legal system established in line with local culture and practices to deal with such criminals enhances the HN government’s legitimacy. Soldiers and Marines help establish HN institutions that sustain that legal regime, including police forces, court systems, and penal facilities. It is important to remember that the violence level must be reduced enough for police forces to maintain order prior to any transition; otherwise, COIN forces will be unable to secure the populace and may lose the legitimacy gained by the transition.

*Id.*

Whether using the shorthand “three Cs” for courts, cops and corrections or the “three Ps” for police, prosecutors, and prisons, those engaged in rule of law operations have been focusing their activities on strengthening the capacity and legitimacy of the Iraqi and Afghan criminal justice systems for several years. In 2007, prior to the Anbar Awakening that has been viewed as a watershed moment when security in Anbar province greatly increased, the Second Marine Expeditionary Force (Forward) defined rule of law using the U.N. definition required at the time by MNC–I, but focused its efforts on “improvement of the Iraqi Criminal Justice System.”<sup>33</sup> The command’s “priority was a functioning criminal justice system.”<sup>34</sup>

The definitions used by other organizations more strongly emphasize the role of the criminal justice system in their understanding of the rule of law. Doctrine for U.S. Army Civil Affairs expressly addresses the police and prisons while strongly implying the role of the courts when it describes the rule of law as “the fair, competent, and efficient application and fair and effective enforcement of the civil and criminal laws of a society through impartial legal institutions and competent police and corrections institutions.”<sup>35</sup> The Counterinsurgency Guide published in 2009 for the entire executive branch of the U.S. Government<sup>36</sup> expressly addresses the need to focus on the criminal justice system when it encourages rule of law activities that focus on “ineffective” systems such as the “judiciary . . . court and prison systems, police, prosecutors, defense attorneys, and legal record-keeping systems.”<sup>37</sup>

Despite its vagaries, the DoD definition does indirectly provide the substance for those who want to focus on the three Cs of courts, cops, and corrections. All three are public “institutions” that should be “accountable to the laws” of the state.<sup>38</sup> In other words, every state has laws on the books that regulate its criminal justice system, but Soldiers and Marines must assess how the real system measures up to the law on the books. The definition’s requirement that the laws be “equally enforced” could apply to the police, prosecutors, and investigative judges. Rule of law operators could assess whether the police and judges respond to legitimate allegations of criminal conduct or only respond to ethnic, tribal, class, or sectarian affinities. The definition’s

requirement that the laws be “independently adjudicated” could be similarly assessed. Finally, “human rights norms” could be used to measure the effectiveness of a state’s correctional facilities. While states’ inability to agree on what comprises human rights norms is a legitimate criticism of the definition,<sup>39</sup> most of the issues encountered in post-conflict countries are likely to be obvious and uncontroversial, such as that prisons should feed their prisoners.<sup>40</sup>

In summary, rule of law definitions must be a large umbrella that encompasses the many different concerns that various agencies may have. For example, the rule of law must satisfactorily provide for the protection of commercial property rights if a corporation is going to invest significant capital in a post-conflict nation. However, U.S. military units must ignore the breadth of the definition and focus on the criminal justice system if commanders hope to get their enemy off the streets through a legitimate, local national criminal justice system. While the recently adopted DoD definition does not address the three Cs as directly as some other definitions, the adopted definition’s indirect references to the three Cs does provide enough substance for units in the field.

### III. Conclusion

Just as Leeroy’s teammates shouted instructions at each other as they fought their way through the dungeon, military doctrine writers continue to publish in reaction to events in Iraq and Afghanistan. This must continue as the military develops counterinsurgency techniques, tactics, and procedures to defeat insurgent threats. However, doctrine must be broad enough to anticipate and guide Soldiers and Marines in a variety of situations. Just as rule of law operations may be different from province to province or country to country, they are different from conflict to conflict. What worked in Iraq does not work in Afghanistan. What worked in Iraq and Afghanistan may not be necessary in Haiti. Accordingly, doctrine must be flexible enough to provide for each and every context in which units may engage in stability operations. Department of Defense

<sup>33</sup> Lieutenant Colonel Alex Peterson, Deputy Staff Judge Advocate, II Marine Expeditionary Force, MNF–W Rule of Law Case Studies (Apr. 3, 2008).

<sup>34</sup> *Id.*

<sup>35</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 3-05.40, CIVIL AFFAIRS OPERATIONS 2-6 (29 Sept. 2006) [hereinafter FM 3-05.40].

<sup>36</sup> The departments and agencies contributing to this “whole of government” formulation include the Departments of State, Defense, Justice, Treasury, Homeland Security, Agriculture, Transportation, USAID, and the Director of National Intelligence.

<sup>37</sup> U.S. DEP’T OF STATE, COUNTERINSURGENCY GUIDE 38 (2009).

<sup>38</sup> FM 3-07, *supra* note 26, at 1-40.

<sup>39</sup> INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., OPLAW HANDBOOK ch. 3 (2009) (Human Rights).

<sup>40</sup> In 2008, Major General John Kelly, the Commanding General, I MEF (FWD) in Anbar Province, Iraq, found out while he was reading Michael Totten’s blog that the Iraqi jails in Fallujah and Ramadi were not feeding prisoners. The Dungeon of Fallujah—Upgraded, <http://www.michaeltotten.com/2008/03/the-dungeon-of-fallujah-upgraded.php> (Mar. 25, 2008, 11:31 EST).

Instruction 3000.05 provides enough flexibility for the DoD regardless of whether it is leading a stability operation or supporting another agency. Similarly, the recently adopted definition for the rule of law provides broad enough substance for a variety of U.S. Government perspectives

while simultaneously providing the indirect support for DoD units that need to focus on a criminal justice system. Commanders and staffs in the field will continue to innovate and task subordinate units in order to address the specific threats encountered in their context.

## An Operational Construct for Rule of Law

