SOLVING THE PROBLEM OF KNOWLEDGE IN THE FIELD OF RULE OF LAW PROMOTION:
RULE OF LAW DEVELOPMENT ANALYSIS & PLANNING AS PART OF THE EQUATION

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EXECUTIVE SUMMARY

In Promoting the Rule of Law Abroad: The Problem of Knowledge, Thomas Carothers points to five obstacles to knowledge that have prevented development organizations from knowing how to develop the rule of law in other countries. The author of this article characterizes these five obstacles as deficits in both substantive and process-related rule of law theory. The author contends that these deficits can be overcome, at least in the case of U.S. government rule of law promotion efforts that target criminal law and criminal justice institutions, by combining methods of the strategic planning, intelligence analysis, and program planning methods used in national security, law enforcement, and development analysis and planning. The purpose of the combination of these elements, referred to here as the Rule of Law Development Analysis and Planning (RDAP) process, is to create substantive rule of law knowledge and a framework for cooperative analysis and collective rule of law development action on the part of U.S. national security, criminal justice, and development professionals. The RDAP process is made up of three phases. The first phase, the Strategy Phase, overcomes the first obstacle to knowledge, “the great conceptual and practical complexity,…(of) how law functions in a society.” The second phase, the Analysis and Assessment Phase, overcomes the first half of the second obstacle, lack of “up-to-date, detailed, comprehensive, and insightful information concerning the realities of law in a particular society.” The second phase also makes the fourth obstacle, “development organizations, political science departments, and law schools are not sponsoring the kind of applied policy research” moot. The third phase, the Program Planning, Monitoring and Evaluation Phase, overcomes the second half of the second obstacle as well as the third and fifth obstacles. The third phase draws a connection between the problem identified in the Analysis and Assessment Phase and “what to do” as well as how to monitor and evaluate what is done by using Problem-Oriented Policing methods, military planning techniques, COMPSTAT-style meetings and development monitoring and evaluation methods.
INTRODUCTION

In Promoting the Rule of Law Abroad: The Problem of Knowledge, Thomas Carothers points to several obstacles which have prevented the creation and accumulation of knowledge relating to the development of the rule of law (ROL). These obstacles to knowledge arise as a result of uncertain substantive ROL theories and a lack of process-related theory concerning how to allocate the intellectual resources of ROL development practitioners. The obstacles adversely affect U.S. ROL development efforts targeting criminal law and criminal justice institutions.

The obstacles to knowledge can be overcome by combining elements of the national security strategic planning process, foreign and law enforcement intelligence analysis, Problem-Oriented Policing, military planning techniques, and the COMPSTAT crime control model, with development program monitoring and evaluation methods. This amalgam of processes and methods, created by the author and referred to here as Rule of Law Development Analysis and Planning (RDAP), is a procedure structured to create knowledge to inform U.S. ROL development decisionmakers at various levels. The RDAP process creates a framework for national security, criminal justice, and development professionals to leverage their fields’ body of knowledge and cooperate effectively to overcome the obstacles to knowledge.

THE RULE OF LAW: DEFINITIONS AND RATIONALES

The term “rule of law” lends itself to a multiplicity of definitions. One survey of how the term has been used in France, Germany, the United Kingdom, and the United States concludes that it is an “open-ended concept that invites permanent debate.” Carothers states that development professionals define the ROL as having the “law applied fairly and uniformly to both public officials and ordinary citizens, having law protect various rights that ensure the autonomy of the individual,” and assuring that “the central institutions of the legal system, including courts, prosecutors, and police, are competent and efficient.” Similarly, according to Dr. Michael Dziedzic’s definition of the ROL, “disputes are resolved peacefully, through institutions of government that are

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1 The author uses the term development when referring to foreign rule of law assistance because it is more appropriate than promotion. The term development is more appropriate than promotion because development conveys the idea of fostering lasting positive changes whereas promotion conveys the idea of selling the concept of rule of law.

2 Although the RDAP process was designed for provide a methodology for pre-program analysis and program planning, monitoring and evaluation for development assistance programs targeting criminal justice systems implemented by the United States Government, it can be applied to other areas by other actors as well. There is no reason that the RDAP could not be adapted and applied to civil and commercial sectors of a foreign nation’s justice system. Also, the RDAP process could be used in the context of multilateral assistance.


equally applicable to all: in sum, order, law, and justice.” For the purposes of this paper, the ROL is considered to be the sum of these two definitions.

While there may be no one standardized definition, broadly agreed upon rationales for ROL development, have emerged. Many development professionals believe that the ROL contributes to economic development by fostering successful economic activity through greater “formalization of (economic) entitlements,” and providing such things as “a scheme of clear and registered title” and “non-discretionary rules about property.”6 Many also believe that ROL programs support democratization by rooting civil and political rights in a functioning legal system.7 According to the politico-military rationale, promoting the ROL following intra-state conflict will transform the political context, security environment, and political economy in ways that will help create a durable peace. Lastly, promoting the ROL is also believed to help temper street crime and civil unrest experienced by many democratizing societies.8

THE FIVE OBSTACLES TO KNOWLEDGE

Carothers suggests that the uncertainty of how to develop the ROL stems from five obstacles to knowledge which are caused by “a series of deficits at various analytic levels, descending in generality.”9 These five obstacles are the complexity of developing the ROL, the lack of useful information about the realities of law in other countries and knowing what to do, the insufficient investment of resources into program evaluation by development organizations, and the tendency of both academics and lawyers not to pursue systemic empirical research on ROL programs.10 The first obstacle and the first half of the second, are substantive in nature, and can be attributed to deficits in strategic guidance from high-level officials as well as a lack of analytic studies and first hand accounts concerning foreign criminal justice systems. The remainder of the obstacles can be attributed to a deficiency in process theory11 concerning how to coordinate the input of national security, criminal justice, and development professionals during program planning.

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7 Carothers, The Problem of Knowledge, 7.
8 Carothers, Rule of Law Revival, 99.
9 Carothers, The Problem of Knowledge, 6.
10 See Table 1.
11 “Process theory,…, focuses on how to structure and manage the policy making process in ways that will improve information processing and foster sound judgments, thus increasing the likelihood of better policy decisions.” Alexander L. George, Bridging the Gap: Theory and Practice in Foreign Policy, (Washington, DC: United States Institute of Peace, 1993), xxii.
In his article, in addition to describing the five obstacles to knowledge, Carothers explores whether or not ROL development is a professional field. Although a recognizable set of activities make up ROL development, “it is not yet a field if one considers a requirement for such a designation to include a well-grounded rationale, a clear understanding of the essential problem, a proven analytic method, and an understanding of results achieved.”12 Despite the clear value of the “many types of work with law” done in the countries of the developing and post-communist world, whether ROL development is in fact an established field of economic or political development “or is even on the road to becoming one remains uncertain.”13

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Since ROL development is not an established field, the U.S. government has not been prompted to move beyond an interagency process and establish a single organization solely devoted to ROL development. The ROL development capabilities of the U.S. government are spread across several different departments and agencies. Having ROL development capabilities spread across several different departments and agencies makes U.S. ROL development efforts an interagency process by definition. Conducting U.S. ROL development efforts that target criminal law and criminal justice systems is an interagency process that takes place between the Department of State (STATE), the Agency for International Development (AID), elements of the Department of Justice (JUSTICE) and the U.S. federal law enforcement community. STATE and AID fund programs and JUSTICE and different elements of the U.S. federal law enforcement community implement them.

The strength of an interagency process is that it can operate as either a hierarchy or network depending on the situation at hand. In a crisis management situation an interagency process can act as a hierarchy so as to act with speed and decisiveness. To be resilient and adaptable enough to deal with protracted problems an interagency process can act as a network where “informal personal contacts” are all important and “issues are determined by slowly established consensus.”

Unfortunately, despite the fact that U.S. ROL development efforts are the result of an interagency process, various factors prevent those efforts from benefiting from the strengths of such a process. When the U.S. ROL interagency process acts like a hierarchy, with ROL development program funders acting decisively by diagnosing ROL problems and prescribing responses, ROL programs suffer because in many cases funders have little or no criminal justice experience. When the U.S. ROL interagency process acts as a network, the vast differences in the professional cultures of ROL program funders and ROL program implementers creates a great deal of inter-field and interpersonal uncertainty that hinders establishing a properly informed consensus concerning program objectives and design.

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15 Tucker, The RMA and the Interagency, 70.
THE RULE OF LAW DEVELOPMENT ANALYSIS AND PLANNING PROCESS

The five obstacles to knowledge can be overcome by drawing on the analysis and planning methods used in the professional fields that have an interest in promoting the ROL. If one combines the durable peace and crime control rationales, with those of economic development and democratization, it is clear that ROL development, at least in the criminal justice sense, has politico-military, law enforcement and economic and political development dimensions. Therefore, U.S. ROL development efforts that target criminal law and criminal justice institutions, can and must draw upon the strategic planning, intelligence analysis, and program planning methods used in national security, law enforcement, and development analysis and planning.

Drawing on the analysis and planning methods used in the national security, criminal justice, and international development fields, the RDAP process overcomes all the obstacles to knowledge in three phases. The first phase is the Strategy Phase. The second phase is the Analysis and Assessment Phase. The third phase is the Planning, Monitoring, and Evaluation Phase.

The first phase of the RDAP process, is the Strategy Phase. The Strategy Phase overcomes the first obstacle to knowledge, “the great conceptual and practical complexity,…(of) how law functions in a society.” The Strategy Phase does this by substituting strategic guidance from high-level officials for substantive ROL theory.

The second phase of the RDAP process, the Analysis and Assessment Phase, overcomes the first half of the second obstacle, lack of “up-to-date, detailed, comprehensive, and insightful information concerning the realities of law in a particular society.” The Analysis and Assessment Phase uses foreign and law enforcement intelligence analysis methods and on-site assessment to create an understanding of the “realities of law” in the country in question. This phase also pushes relevant academic research into service during the analysis process thereby making the fourth obstacle moot.

The third and final phase, the Program Planning, Monitoring and Evaluation Phase, overcomes the second half of the second obstacle as well as the third and fifth obstacles. The third phase draws a connection between the problem identified in the Analysis and Assessment Phase and “what to do” by using Problem-Oriented Policing methods and military planning techniques to plan an effective response. The implementation of the response is then monitored and evaluated using COMPSTAT-style meetings and development monitoring and evaluation methods. Robust and relentless monitoring offsets the third obstacle by having ROL professionals to think critically about their work in real time during periodic meetings. The unfamiliarity that criminal justice and development professionals have with each other’s field, noted in the fifth obstacle, is overcome by having representatives of the two fields work cooperatively to

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16 ROL development efforts that target criminal law and criminal justice institutions as opposed to civil, commercial, or constitutional law and institutions.
monitor and evaluate the response. An overview of how the RDAP Process uses these methods to overcome the obstacles to knowledge can be seen in Table 2.
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<th>RDAP PROCESS STEP</th>
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<th>SOURCE OF STEP</th>
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<td>Strategy</td>
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<td>Provides strategic guidance to offset lack of substantive ROL theory</td>
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<td>2. Threat Assessment</td>
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<td>COMPSTAT and Development Planning</td>
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</tbody>
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THE STRATEGY PHASE

Many of the issues faced by a national government, in either the domain of the public or national interest, are of great conceptual and practical complexity but this complexity is dealt with through the promulgation of broad policy guidance, called strategic guidance by national security professionals. When a government is faced with complex issues, the strategic guidance of high officials makes collective action on the part of subordinates possible. Strategic guidance makes collective action possible by explaining to subordinates the underlying purpose of their actions, in what instances they should act, and what they should achieve when they do act.

The complexities of the issues faced by a national government are offset by strategic guidance from individuals at the highest levels of government. For example, fostering economic development and democratization, the sources of the “twin rationales” for ROL promotion, are of great conceptual and practical complexity. For example, the U.S. government defines economic and political development as fostering free markets and democratization, not the promotion of European-style socialist democracy. However, one in the U.S. government would claim that the countries of western Europe are not economically or politically developed. This example shows that dealing with complexity is as much a matter of policy choice as it is a deep understanding of the issue at hand. The U.S. definition of economic and political development outlines to U.S. development professionals the underlying purpose their efforts, in what instances they should undertake them, and what those efforts should achieve.

The first obstacle to knowledge, the conceptual and practical complexity of ROL development, has of yet not been offset by strategic guidance from individuals at the highest levels of government. Strategic guidance could serve as a substitute for readably applicable ROL theory or core concepts. It is for this reason, that the RDAP process starts with the beginning steps of the national security strategy planning process which produces such guidance. Specifically, these steps are defining national interests, assessing the threats to those interests, and crafting strategies that specify objectives that will secure the national interests threatened. National interests are the underlying purpose for all U.S. diplomatic, military, and foreign assistance activities, so they should be the underlying purpose of U.S. ROL development efforts as well. Threat assessments identify which threats are to be countered by U.S. diplomatic, military, and foreign assistance activities to secure U.S. national interests. Here again, U.S. ROL promotion efforts should be no different. The objectives specified in national and

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17 The national interest is what’s good for the nation as a whole in international affairs. what’s good for the nation as a whole in domestic affairs is the public interest. Michael G. Roskin, National Interest: From Abstraction to Strategy, (Carlisle Barracks, PA: Strategic Studies Institute, U.S. Army War College, 1994), 1.
departmental strategies should serve as the goals of U.S. ROL promotion efforts as they do U.S. diplomatic, military, and foreign assistance activities.

**RDAP STEP 1: NATIONAL INTEREST**

**National Interests Generally**

National interests are highly generalized expressions of a nation’s wants and needs. Whoever compiles the list for any given country makes monumentally important decisions, because those interests form the foundation for national security objectives, policies, strategies, and programs.\(^\text{18}\) Usually, these expressions are stated as fundamental concerns of a nation and written as desirable conditions without verbs, action modifiers, or intended actions.\(^\text{19}\) An example of a correctly stated national interest would be, “unrestricted passage through international waters” whereas, “securing sea-lines of communications” would not be.\(^\text{20}\)

The “truly powerful mind” of the Realism school of international relations theory, Hans Morgenthau, envisioned the following two levels of national interest:

- “Vital”, which concerns the very life of the state, and
- “Secondary,” which is typically somewhat removed from the state’s borders but can grow in the minds of statesman until they seem to be vital.\(^\text{21}\)

Morgenthau defined national interests further by distinguishing whether interests are temporary or permanent, general or specific, and complementary or conflicting.\(^\text{22}\) Although, there are other methods of categorizing national interests, Morgenthau’s method for categorizing national interests will be used here.\(^\text{23}\)

**Challenges Faced When Defining National Interests**

Regardless of the schema national leaders and their advisors use to help them objectively define national interests, their efforts are affected by distorting outside influences and application of the term “national interest” to priorities other than those of strategic importance. National interests may be difficult to define due to the distorting effects of ideology, the global system, public and elite convictions, the mass media, and

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\(^\text{19}\) Course materials from the U.S. Army War College’s National Security Seminar, attended by the author in June 1998.
\(^\text{20}\) U.S. Army War College’s National Security Seminar Course Materials.
\(^\text{21}\) Roskin, National Interest; From Abstraction to Strategy, 5.
\(^\text{22}\) Roskin quoting Morgenthau, National Interest; From Abstraction to Strategy, 5.
\(^\text{23}\) Similarly, the United States Army War College (USAWC) organizes national interests into four categories, namely Defense of the Homeland, Economic Well-Being, Favorable World Order, and Promotion of Values, and into three levels of intensity, specifically Vital, Important, and Peripheral. U.S. Army War College’s National Security Seminar Course Materials.
policy inertia. In some instances, the term “national interest” is misapplied to administration priorities, sectoral preferences, and bureaucratic interests.

**The Importance of Defining National Interests**

Despite the intellectually challenging nature of defining national interests, it is an extremely important endeavor. Defining national interests is important because it prompts high-level decisionmakers to do the following:

- Assign the relative value of competing and at times, conflicting, interests;
- Estimate what will happen if interests are not realized;
- Broadly indicate the amount of resources that should be expended to protect each of those interests; and
- Identify which interests are the possible subject of negotiations with other states.

In short, defining national interests sets national priorities and communicates their relative importance with regard to one another.

**National Interest and Rule of Law Development**

Despite both the notoriety that the term “rule of law” has gained and the advances the ROL development field has made, it is clear that a full and frank discussion on how ROL relates to US national interests has not taken place. It could be argued that the ROL is a national interest in of itself, instead of a means to an ends as many see it now. A strong case can be made that the rule of international law that concerns international peace and security should be developed instead of relying on the concept that “most nations obey international law most of the time” because they have hand in crafting them and because they want to be trusted by the rest of the international community. A strong case could also be made for helping democratizing nations develop higher levels of what Fareed Zakaria calls “constitutional liberalism,” which locks-in the “Kantian Democratic Peace.” As it stands now, without stating otherwise, developing the ROL as an end in and of itself, must be considered as a promotion of U.S. values and therefore a secondary national interest.

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24 Roskin, National Interest; From Abstraction to Strategy, 9.
26 Roskin, National Interest; From Abstraction to Strategy, 13-14.
RDAP STEP 2: THREAT ASSESSMENT

Threat Assessment Generally Speaking

After categorizing national interests the international environment is assessed, enabling senior politico-military officials to prioritize perceived threats to those national interests.29 The purpose of a threat assessment is to ascertain the challenges to core national interests.30 Threat assessments prioritize threats based on their imminence, geographic proximity, magnitude, and connectivity to core national interests and analyzes and explains which and in what ways national interests are affected.31 The nature and priority of threats determines what could and should be done in order of priority to safeguard national interests.32

Assessing Threats Caused by Foreign Rule of Law Deficiencies

National Security Threats In certain instances, deficiencies in the ROL abroad, specifically a lack of competency and efficiency on the part of foreign criminal justice institutions are threats to our vital national interests because they affect our national security.33 Countries where U.S. military forces are conducting stability operations that do not develop the ROL to foster a durable peace will require the presence of those forces indefinitely. These commitments adversely affect our defense posture because our military forces are in effect, pre-occupied. Some enemies of the U.S. and our allies receive material and economic support from criminal activity34 because of ineffective criminal justice agencies in countries that are source or transit zones for arms and drug trafficking. A lack of the ROL in countries important to U.S. foreign relations may lead that country’s government to be corrupted and manipulated by criminal elements. Lastly, if a government friendly to the U.S. has a politicized criminal justice system which oppresses its citizens, it may cause a political backlash for U.S. foreign relations.

Transnational Threats and Transnational Crime Often a lack of competency and efficiency on the part of foreign criminal justice institutions allow transnational threats and transnational crime to threaten U.S. national interests. As transnational threats spread rapidly and transnational criminal networks are entrepreneurial

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30 U.S. Army War College’s National Security Seminar Course Materials.
32 Collins, Military Strategy, 6.
33 As defined by the Department of Defense’s Dictionary of Military and Associated Terms, national security is defined as “a collective term encompassing both national defense and foreign relations of the United States. Specifically, the condition provided by: a. a military or defense advantage over any nation or group of nations; b. a favorable foreign relations position; c. A defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.” Department of Defense. (2004). Department of Defense Dictionary of Military and Associated Terms. (Joint Pub 1-02). Washington, DC: Department of Defense.
34 These activities include but are not limited to the violation of US or international sanctions, illicit transfer and smuggling of materials for weapons of mass destruction, arms trafficking, narcotics and trafficking in precious gems. Interagency Working Group, International Crime Threat Assessment, (Washington, DC: Whitehouse, 2000) Chapter 2, page 2.
organizations, they will spread to other nations if left unchecked by local authorities. Transnational threats are defined by statute as threats to U.S. national security. Transnational crimes may not threaten the national security of the U.S. but certainly threaten U.S. national interests. Transnational crimes that threaten U.S. national interests include, but are not limited to the following:

- Illegal immigration;
- Human trafficking;
- Environmental crimes;
- Contraband smuggling;
- The violation of intellectual property rights;
- Industrial theft and economic espionage;
- Foreign corrupt business practices;
- Counterfeiting U.S. currency and other monetary instruments;
- High-tech computer crimes; and
- Money laundering.

Conducting transnational threat and transnational crime assessments are difficult because countering those threats straddles the line not only between vital and secondary interests but also the line between the domains of the public and national interests. As stated above, transnational threats are by definition threats to national security. Transnational crimes have both direct and indirect effects on national interests and are present but unclear in their magnitude. Clearly, deficiencies in the ROL and transnational threats that threaten our national security take priority over transnational crimes that threaten secondary national interests. However, the highly cumulative effect of the transnational crimes on multiple secondary national interests makes it clear that failing to actively counter these insidious threats will have dangerous consequences.

**Threats to U.S. Values** The failure of a foreign criminal justice system to protect individual rights, act impartially, deal effectively with criminal activity within their borders, and serve as a forum for the peaceful resolution of disputes are threats to secondary national interests because they run counter to U.S. values. Specific examples of this are the use of criminal justice institutions to oppress religious or ethnic minorities, rising levels of violent crime, and the use of violence for political ends. These phenomena are threats to a narrow list of secondary U.S. national interests. As these phenomena threaten a narrow list of secondary U.S. national interests, countering them should follow countering deficiencies in the ROL and transnational threats that threaten

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35 “Transnational threats are defined in statute as: “(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and delivery systems for such weapons, and organized crime) that threatens the national security of the United States. (B) Any individual or group that engages in an activity referred to in paragraph (A).” 50 USC 402(i)(5). CRS quoting the USC. Congressional Research Service (CRS). (2001). Intelligence and Law Enforcement: Countering Transnational Threats to the U.S. (CRS Report for Congress Order Code RL30252). Washington, DC: CRS, 1.

U.S. national security in priority. More often than not, they should also follow controlling transnational crime in priority.

**RDAP STEP 3: SPECIFIC OBJECTIVES**

**Specifying Objectives to Secure National Interests**

After the completion of a comprehensive threat assessment, the President specifies strategic policy objectives to secure those interests in the National Security Strategy (NSS). The NSS is supported by associated documents such as the national strategies for:

- Combating Terrorism;
- Homeland Security;
- Physical Protection of Critical Infrastructure and Key Assets;
- Combating Weapons of Mass Destruction; and
- Securing Cyberspace.

The Office of the President also promulgates strategies that concern transnational threats and transnational crime such as the National Drug Control Strategy and in the case of the former administration, the International Crime Control Strategy.

Following the promulgation of strategic objectives in the NSS and associated documents by the President, department and agency heads have two tasks before them. These tasks include the following:

- Craft departmental strategies to achieve those objectives; and
- Build their organizations capabilities to implement those departmental strategies.

The former task is an example of “force employing” and is a matter of vision and leadership. The latter task is an example of “force building” and is a matter of management.

**Crafting Strategy**

The thought process of crafting departmental strategies which will achieve the objectives specified in the NSS and associated documents, or “force employing,” involves translating those objectives into departmental objectives, conceptualizing courses of action to achieve those course of action, and allocating the resources needed to support them. For example, the objectives in the NSS are translated into clear, concise,

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37 Department of Defense’s Dictionary of Military and Associated Terms defines national security strategy as the art and science of developing, applying, and coordinating the instruments of national power (diplomatic, economic, military, and informational) to achieve objectives that contribute to national security.

38 Modified from the military strategy section U.S. Army War College’s National Security Seminar Course Materials.
and achievable military objectives by the Chairman of the Joint Chiefs of Staff.\textsuperscript{39} Those military objectives, designed to achieve the strategic objectives in the NSS, are specified in the National Military Strategy.\textsuperscript{40} Other departments and agencies promulgate their own departmental strategies to achieve the objectives in the NSS that relate to their statutory responsibilities. These include STATE’s International Affairs Strategic Plan, JUSTICE’s Strategic Plan, and the AID’s Foreign Aid in the National Interest. Additionally, two or more departments or agencies promulgate joint strategies to deal with issues facing the nation, as in the case of JUSTICE and the Department of Treasury’s National Money Laundering Strategy.\textsuperscript{41}

In crafting a departmental strategy, a department or agency head must to focus on the following:

- Limiting the objectives of that strategy to substantive objectives while excluding administrative objectives;
- Testing the internal logic of the strategy; and
- Reconciling the objectives specified in the strategy and the resources available.

The purpose of limiting the departmental strategy to substantive objectives is to focus the efforts of subordinates on achieving outcomes that will in turn achieve objectives of the NSS and associated documents. Testing the internal logic of the strategy is required to prevent strategic defeat i.e. the failure to secure the national interest in question. When the preferred courses of action (ways) to achieve desired objectives (ends) require more resources (means) than those available, a reconciliation of ways and means is required.

While crafting the departmental strategy to ensure the focusing of attention and resources, substantive objectives must not be confused with administrative objectives. Substantive objectives represent outcome measures whereas administrative objectives represent output measures. If this confusion does occur, energies may become fragmented and subordinates may curtail resources and efforts that should be committed to achieve substantive objectives in order to meet administrative objectives.\textsuperscript{42}

To prevent strategic defeat, the internal logic of the ends, ways, and means of the strategy must be rigorously tested. Testing the internal logic of each of the elements of the strategy begins following the identification of what resources would be needed to support the course of action identified as most likely to achieve the objectives specified.

\textsuperscript{39} “Military Strategy – The art and science of employing the armed forces of a nation to secure the objectives of national policy by the application of force or threat of force…the next crucial step then, is translating national policy objectives and guidance into clear, concise, and achievable military objectives.” U.S. Army War College’s National Security Seminar Course Materials.

\textsuperscript{40} Department of Defense’s Dictionary of Military and Associated Terms defines national military strategy as the art and science of distributing and applying military power to attain national objectives in peace and war.

\textsuperscript{41} See Appendix II for a summary of the objectives from national security and departmental strategies.

Once the necessary resources are identified, the thought process of crafting departmental strategies is reversed to ensure the following:

- The resources identified are adequate to implement the chosen course of action;
- The courses of action will achieve the departmental objectives;
- The departmental objectives correctly satisfy the national objectives in the NSS and associated documents; and
- That those national objectives protect the national interest identified.\(^43\)

After testing the internal logic of each step of the thought process of crafting a departmental strategy, the resources required for the chosen course of action must be measured against the resources available. If the resources available cannot support the chosen course of action adequately, then a reconciliation between the two is required. This reconciliation is done in three ways:

- Reduce the objectives;
- Change the courses of action; or
- Increase the resources.\(^44\)

When a crisis or situation arises that is not covered by existing strategies and there is no existing guidance from policymakers, subordinates must interpret what the national interest is on their own. To be able interpret what the national interest is, Armstrong advises that intelligence analysts continually test their assumptions concerning who really benefits from the priorities in question and who does not. To do this, intelligence analysts need to do the following:

- Follow the policy and political debates;
- Utilize all applicable analytic tools;
- Commit to using varied sources information;
- Recognize the legitimacy of different perspectives during analysis; and
- Steer clear of value judgments and value-laden labels.\(^45\)

Policy analysts should follow the same advice.

**The Importance of Strategy**

The importance of strategy is several fold. Primarily, it defines what “victory” is supposed to look like and provides a framework for focused collective action through the translation of high-level guidance into directives for subordinates. With clearly articulated objectives, different elements of an organization and even different organizations, can work towards a common end. In addition to focusing resources, this has the added benefit of helping to prevent “empire building” by individuals who push

\(^{43}\) U.S. Army War College’s National Security Seminar Course Materials.
\(^{44}\) U.S. Army War College’s National Security Seminar Course Materials.
agendas other than those that will achieve the objectives specified in the strategy. Strategy is also important administratively, because once objectives are identified, the resources required to meet those objectives can be estimated. For example, without a clear set of objectives, department and agency heads will not know what activities should be included in their organization’s budget. Furthermore, if a strategy does not inform an organization, any additional resources made available to that organization will not be absorbed and utilized efficiently.

The Importance of Strategy to the Rule of Law

The importance of a strategy that covers ROL development efforts is that it cuts through the complexity of the ROL by clearly defining specific objectives that help ROL professionals measure the current state of ROL in a given country. Uncertainty may surround how law functions in a country but with specific objectives ROL professionals at least know how the U.S. would like it to function. The role law plays in any country, including our own, is complex, but specific objectives define the role the U.S. would like it to play. Knowing the role the U.S. would like law to play gives ROL professionals a vantage point to evaluate the state of ROL in any particular country. In short, clear understanding of where one would like to be, contributes to understanding of where one is.

The Reluctance of U.S. Criminal Justice Policymakers to Craft Strategy

A variety of factors prevent many U.S. criminal justice officials from seeing the importance of strategy. These factors include the following:

- Ethical concerns about politicization of the administration of justice;
- The fact that criminal justice is an inductive process whereas strategy is a deductive process;
- The belief that criminal justice professionals can only act once a crime has been committed;
- Decentralized operations undermines centralized command;
- Lack of leadership; and
- Lack of management.

Below is an examination of these factors.

Ethical Concerns  U.S. criminal justice officials have ethical concerns about specifying objectives. Many cannot distinguish between specifying objectives and the politicization of the administration of justice. This misunderstanding causes every effort to use criminal justice institutions as an instrument of policy to be seen as potentially undermining the impartiality and fairness of the justice system. U.S. criminal justice officials must come to understand that while political and other forms of partisanship
within the justice process is clearly unacceptable, priority setting is an acceptable aspect of real life jurisprudence.46

**Thinking in the Wrong Direction** An intellectual reason why U.S. criminal justice officials cannot craft strategy is because criminal justice is an inductive process whereas crafting strategy is a deductive process. In the inductive approach “one begins with concrete empirical details, then works toward abstract ideas or general principles.”47 Building a case against some is an inductive process because it moves from specific pieces of evidence to establish legal definitions of guilt. In the deductive approach, “one begins with abstract ideas and then works toward concrete details.”48 Crafting strategy is a deductive process that moves from stating broad national interests to creating courses of action to secure those interests. To learn how to think in the right direction, U.S. criminal justice officials responsible for their department’s international activities should be sent to the various U.S. military War Colleges or academic institutions that teach national security planning.

**Decentralized Operations Undermines Centralized Command** The decentralized nature of law enforcement operations prevents U.S. criminal justice officials from exercising centralized command. Law enforcement operations need a certain level of decentralization because responding to crime requires high levels of flexibility. However there are ways to operate in a decentralized way, with decision making authority being pushed to the lowest levels of the organization, but having subordinate units conduct operations in accordance with organization-wide strategy to achieve organization-wide objectives. One such example is the United States Marine Corps’ concept called “distributed operations.” In “distributed operations” small units act with a high level of autonomy and authority but with strong ties to other units and higher command.49 U.S. criminal justice officials should structure their departments to utilize concepts such as “distributed operations” which balance decentralized operations with centralized command.

**Self-Imposed Impotence** Many U.S. criminal justice officials suffer from self-imposed impotence by believing they cannot act at all until someone has broken the law. Jack Maple, the architect of the New York Police Department’s crime control model, COMPSTAT, refuted this when he translated Sun Tzu’s statement that “the supreme military victory was one in which no men were lost because no fighting was necessary…” into law enforcement terms.50 Maple’s translation was that “crime prevention is preferable to arrests, because arrests only occur when there have already

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48 Neuman, Social Research Methods, 508.
been casualties.”\textsuperscript{51} This translation explicitly states that every successful arrest and prosecution is a pyrrhic victory.

There are several examples of individuals who work hard in the criminal justice system to prevent crime. One example is a dependency court judge in Miami who decided to do something after seeing a neglected and abused child who later became a mother who neglected her child. The judge teamed with a leading expert in child development to start Miami’s Safe Start Initiative which is a program designed to encourage healthy bonding between mother and child.\textsuperscript{52} The judge’s statement on why she took such a proactive role was summed up when she said, “My job is to change human behavior, and I can’t do that with a law degree…I can’t do that alone. I can’t do that without a multi-disciplinary team.”\textsuperscript{53} There are many more examples like the one above. but unfortunately like it too are small in scale, focusing only on one jurisdiction. U.S. criminal justice officials should utilize multi-disciplinary teams on a wide scale to prevent crime and enhance the security of the U.S. and its citizens.

**Lack of Leadership** One of the main reasons that many U.S. criminal justice officials have trouble crafting strategy is a lack of leadership. Some do not understand that specific objectives are required for subordinates to effectively coordinate. Others believe that coordination at the operational level makes strategy unnecessary. This lack of understanding ignores the fact that in order to coordinate different organizations with different capabilities and purposes, they need clear goals to effectively divvy up the work. The best that can come from coordination without clear objectives is having subordinate organizations de-conflict their activities, i.e. to ensure that their activities do not negatively affect one another. It can be said that other U.S. criminal justice officials do not understand the concept of tactical victory but strategic defeat: that unless they add up to something, many little successes do not matter. For example, NYPD has always arrested large numbers of people (i.e. tactical victory defined as “high body” counts) but it wasn’t until the NYPD leadership provided specific objectives with principles and concepts to implement them that crime reduction was actually realized. U.S. criminal justice officials should learn from the example of the NYPD’s commanders.

**Lack of Management** In addition to a lack of leadership on the part of some U.S. criminal justice policymakers, there is also a lack of management. Since many criminal justice policymakers do not understand the need for specific objectives, it is no wonder that they fail to see the need for timely management information to maintain a clear picture of what and how well their organizations are performing to achieve stated objectives. This widespread lack of understanding has limited the few, sporadic attempts to coordinate JUSTICE’s the international activities to making of lists of what subordinate organizations have done and what they plan to do in the short term. It is management’s function to know what one’s subordinates have done, are doing, and will be doing in order to ensure optimum performance at all times. U.S. criminal justice

\textsuperscript{51} Maple, The Crime Fighter, 136.
\textsuperscript{52} A Scientific Approach to Child Custody www.npr.org/display_pages/features/feature_1181000.html
\textsuperscript{53} A Scientific Approach to Child Custody www.npr.org/display_pages/features/feature_1181000.html
officials should create internal management information systems and procedures to review the performance of their organizations on a regular basis.

A Lack of Specific Objectives Has Negatively Affected U.S. International Crime Control and Rule of Law Efforts

It is perhaps because of some U.S. criminal justice officials’ skepticism of strategy that US international crime control has suffered from lack of coordination. In August 2001, GAO in its report entitled “The Federal Response to International Crime,” stated that “despite the multi-agency nature of the federal response,… no sustained executive level coordination has been apparent.” The report also stated that although various agencies have sections describing their efforts to combat specific types of crime “there has been no effort to consolidate the various federal agencies’ results into an overall performance measurement system.”

ROL development efforts and assistance to foreign criminal justice agencies have also suffered from lack of coordination and effective performance monitoring. As far as coordination, in the case of U.S. assistance to foreign law enforcement agencies, different elements of JUSTICE compete with each other, as well as agencies from the Departments of Treasury and Homeland Security, for program funding. The GAO report entitled, “Former Soviet Union, US ROL Assistance Has Had Limited Impact and Sustainability,” stated that no agencies involved in ROL development programs have “effective monitoring and evaluation systems in place to fully assess longer-term results and sustainability of their efforts.” Many, if not all, of these agencies use output measures, such as “number of courses given” or “number of foreign police officers trained,” as measures of effectiveness as opposed to trying to evaluate what outcome has been achieved by those outputs. Some of these agencies only conduct short training courses as opposed to longer-term, technical advisement, so sustainability is at best questionable.

Crafting a New International Criminal Justice Strategy

A new international criminal justice strategy, which takes into account the changes in the strategic environment, specifies objectives, and provides new principles and concepts, should be promulgated to overcome the lack of coordination and performance monitoring of U.S. international crime control efforts and ROL programs. A new international criminal justice strategy to replace the International Crime Control Strategy is long overdue. On September 11, 2001, the strategic environment changed dramatically. It has significantly impacted how the U.S. sees itself and the world. If and when a new international criminal justice strategy is drafted, it must articulate new objectives to account for this dramatic change. New objectives will require new principles and concepts to inform efforts to achieve them.

55 GAO, Response to International Crime, 2.
The New Strategic Environment  The strategic environment has dramatically changed in that transnational threats rather than conventional or nuclear forces of hostile nations are defining a major nation state’s use of force and diplomacy. For the first time in history, preventing attacks from sub-national actors is one of the primary lenses through which a great power, specifically the world’s remaining superpower, views its national defense and foreign relations. The transnational nature of this threat, requires unprecedented international cooperation and perhaps even, at least in certain instances, redefining traditional notions of national sovereignty.

Primary Objectives  Given the new strategic environment, the primary objectives of a new international criminal justice strategy must include the engagement of the international community, the enforcement of criminal laws, and building foreign criminal justice capacity. Criminal justice-related treaties, to include but not limited to, Mutual Legal Assistance Treaties (MLATS), extradition treaties, and criminal justice conventions, must be drafted and ratified to secure the support of criminal justice agencies of friendly nations and expand the legitimate jurisdiction of U.S. law enforcement agencies. U.S. law enforcement agencies must conduct intelligence-driven operations to track “the last lead down the last dark alley until the last crook is locked away.” ROL development organizations must build foreign criminal justice capacities to be able to support the U.S. and fairly and effectively serve their own citizenry. Most importantly, the efforts of all these international criminal justice instruments, namely the organizations responsible for criminal justice treaties, law enforcement operations, and ROL development assistance, need to be mutually reinforcing.

Secondary Objectives  The secondary objectives of a new international criminal justice strategy must cover activities to support the efforts of U.S. military, diplomatic and development personnel. An example of such activities would be the development of local law enforcement agencies or law enforcement operations in high risk areas to ensure the safety of U.S. personnel and secure overseas facilities. More broadly, as military, diplomatic, and development personnel are valuable instruments of national power, it is imperative that they are assisted so they then can be deployed to other areas where they are needed as soon as possible.

New Principles and Concepts  To achieve the objectives of a new international criminal justice strategy, new principles and concepts are required to inform the use of international criminal justice instruments. As NYPD’s Maple noted, the wisdom of military strategists can be adapted for use by criminal justice professionals. Military strategists “use (the) principles (of war) as checklist to help control the quality of …and plans.” The principles of war, and by extension the principles of counterinsurgency, peacekeeping operations, and United Nations Civilian Police Operations, can inform the

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56 Maple, The Crime Fighter, 182.
58 Collins, Military Strategy, 60.
59 Department of Defense’s Dictionary of Military and Associated Terms defines counterinsurgency as “Those military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency” and insurgency as “An organized movement aimed at the overthrow of a constituted government through use of subversion and armed conflict.”
use of international criminal justice instruments. New international criminal justice concepts could be drawn from the literature concerning countering transnational threats. For a list of international criminal justice principles and concepts see Appendix I.

Making Due Without an updated international criminal justice strategy, there is no strategy to guide international criminal justice activities including ROL development efforts. In the absence of an updated international criminal justice strategy, countering the threats to U.S. national interests described above and the objectives of the current NSS and supporting documents, as well as departmental strategies, serve as a de facto ROL strategy. For the objectives provided by the various national security and departmental strategies to inform the actions of ROL related organizations, those objectives need to be translated into ROL objectives. See Appendix II for such a translation.

Building Organizations to Implement Strategies

To achieve national and departmental objectives, department and agency heads need to “build forces” capable of meeting those objectives. In contrast to crafting departmental strategies which lay out how to “employ forces,” building organizations or “force building,” involves organizing, training, and equipping an organization to achieve specific objectives, rather than defining what those objectives should be. The two approaches to “force building,” are threat-based planning and capability-based planning.

Threat-Based Planning The threat-based planning approach to “force building” is designing an organization to deal with likely scenarios. An example of this kind of planning, referred to as “requirements-based” or “threat-based” planning in defense planning circles, was sizing the U.S. military to have the forces necessary to fight and win two Major Regional Contingencies (MRCs) nearly simultaneously. The advantage of threat-based planning is that it provides a single, simple yardstick against which to measure the adequacy of an organization’s resources and allows an organization’s leadership to coordinate planning by requiring senior management to organize their branches to satisfy the needs of the planning cases.\(^{60}\)

Capability-Based Planning The capability-based planning approach to “force building” is designing an organization with a variety of capabilities to deal with a range of scenarios, when it is uncertain which scenario is most likely. Capabilities-based planning focuses on identifying the right mix of different types of personnel and equipment that maximizes an organization’s range of capabilities.\(^{61}\) The advantage of capabilities-based planning is that it allows for a high level of flexibility and adaptability which enables an organization to deal effectively with uncertainty.


Building U.S. International Crime Control and Rule of Law Forces

First Things First  To effectively direct and coordinate U.S. international criminal justice efforts, the international criminal justice and ROL development “forces,” built either through threat-based or capability-base planning, should be organized into regional commands like those outlined for the military in the Goldwater-Nichols Defense Department Reorganization Act. Each regional command would be headed by a senior U.S. criminal justice official (Regional Criminal Justice Director) who would have operational control over all U.S. criminal justice personnel in that region, regardless of their parent agency.62 The parent agencies personnel would retain administrative control.63 Each regional command should have a headquarters to perform command and control, communications, intelligence, management analysis, and performance monitoring functions. There should be one of these “international criminal justice command centers” located with the headquarters of each of the regional U.S. military commands, the U.S. Special Operations Command (US SOCOM) and one in Washington, DC. Whereas centers such as the FBI’s Strategic Information Operations Center, (SIOC) focus on the “trees” of major investigations, the “international criminal justice command centers” would focus on the “forest” of the international criminal justice environment. See Appendix III for the functions of the Regional Criminal Justice Director (RCJD) and the International Criminal Justice Command Centers.

U.S. International Criminal Justice Threat Based Planning  Applying the “threat-based” planning approach to build international criminal justice “forces” would involve “sizing” those “forces” based on historical averages of work hours. For criminal justice treaty development activities this would involve the average number of work hours to produce a treaty multiplied by the number of projected treaties needed to be developed for the period of the current management plan.

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\text{Total Historical Number of Work Hours} \times \frac{\text{Projected Number of Treaties}}{\text{Total Historical Number of Treaties Completed}} = \text{Future Number of Treaty Work Hours Needed}
\]

For international law enforcement activities, it would involve multiplying the average number of work hours for liaison, criminal intelligence, and investigative duties by the projected number of law enforcement activities.

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62 The Department of Defense’s Dictionary of Military and Associated Terms defines operational control as “the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission.”

63 The Department of Defense’s Dictionary of Military and Associated Terms defines administrative control as the “direction or exercise of authority over subordinate or other organizations in respect to administration and support, including organization of Service forces, control of resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations.”
Rule of Law Threat Based Planning

For ROL development “forces,” “threat based” planning would involve multiplying the average work hours for each type of assistance by the projected number of countries that would receive that type of assistance and adding the results together.64

\[
\text{Future Number of Law Enforcement Activities} = \left( \frac{\text{Total Historical Number of Work Hours}}{\text{Total Historical Number of Law Enforcement Activities}} \right) \times \text{Projected}\quad \times \frac{\text{Future Number of Law Enforcement Activities}}{\text{Work Hours Needed}}
\]

To estimate program funding, add the projected regional initiative funding to the projected vital program funding. Projected regional initiative (RI) funding equals the average RI funding multiplied by the projected number of RI’s.65 Average RI funding equals the total historical funding divided by the total number of RI’s. Projected vital program funding equals the average VP funding multiplied by the projected number of VP’s. Average VP funding equals the total historical funding divided by the total number of VP’s.

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\text{Total Number of ROL Assistance} = \text{Future Number of Type A Assistance} + \text{Future Number of Type B Assistance} + \text{Etc.}
\]

\[
\text{RI Avg. Funding} = \frac{\text{Total Historical Funding for Regional Initiatives}}{\text{Total Historical Number of Regional Initiatives}}
\]

RI Avg. Funding X Projected Number of RI’s = Projected RI Funding

\[
\text{VP Avg. Funding} = \frac{\text{Total Historical Funding for Vital Programs}}{\text{Total Historical Number of Vital Programs}}
\]

64 Types of assistance includes assistance to the judiciary, legal education programs, drafting new codes, civil society programs, law enforcement institutional development.

65 Major regional initiatives such as the criminal justice assistance programs in the Balkans or the Andean Region.
VP Avg. Funding X Projected Number of VP’s = Projected VP Funding

Projected RI Funding + Projected VP Funding = Total Projected ROL Funding

Countries that do not fall into the category of either a regional initiative or vital program should have their programs funded multilaterally.

**International Criminal Justice Capacity Based Planning**  Applying the “capability based” planning approach, to build international criminal justice “forces,” would involve identifying the right mix of different types of personnel to maximize the range of international criminal justice capabilities. This would be accomplished by itemizing the different types of personnel and specific types of skill sets needed for the different types of missions envisioned. Such skill sets would include language ability and foreign legal knowledge.

**Rule of Law Capacity Based Planning**  Using the “capability-based” planning approach to build ROL development “forces,” would involve building a wide array of mutually reinforcing capabilities to develop foreign criminal justice institutions and understand and influence the policy environment they inhabit. Some of these capabilities already exist, such as assistance to foreign judiciaries, legal education programs, drafting new legal codes, civil society programs, or law enforcement institutional development. In contrast, research and analysis capabilities are sorely lacking.

**Rule of Law “Force Building” Would Focus Program Resources**  Regardless of the planning approach used to build ROL forces, the process of “force building” would focus ROL program resources. The process of “force building” prompts decisionmakers to organize, train, and equip their organization’s personnel to be able to meet the specific national and departmental objectives their organizations are to achieve. This results in increasing the focus of the organizations resources because directing resources towards anything other than achieving national or departmental objectives is immediately seen as extraneous. In the case of ROL program resources, specific objectives increase the mass ROL resources by lowering the number of places ROL human, financial, and intellectual resources target because ROL development assistance from the U.S. alone simply would not be given if it does not serve to secure a U.S. national interest.

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\text{ROL Resources} \times \text{Number of Countries} = \text{Mass of ROL Targeted Resources}
\]

Targeted For Assistance
THE ANALYSIS AND ASSESSMENT PHASE

The two steps in the Analysis and Assessment Phase of the RDAP Process solves the first half of the second obstacle. This obstacle is essentially a lack of tailored actionable knowledge and direct knowledge concerning the status of the ROL in countries that are going to receive assistance. The process of defining national interests, assessing the threats to those interests, and crafting strategies that will secure the national interests threatened, (RDAP Steps 1, 2, and 3, respectively) provides the intellectual basis for creating “up-to-date, detailed, comprehensive, and insightful information concerning the realities of law in a particular country.”

RDAP Step 4, Timely and Accurate Intelligence, uses foreign and law enforcement intelligence analysis methods and academic research to help solve the first half of the second obstacle and make the first obstacle moot. The process of creating the tailored actionable knowledge needed to conduct military or law enforcement operations is called intelligence. RDAP Step 4 applies foreign and law enforcement intelligence methods to create a tailored actionable knowledge to provide a range of diagnoses of and proposed responses to, the ROL problem to be addressed. By pushing current academic research into service, RDAP Step 4 makes the fourth obstacle to knowledge, which amounts to having no academy or “ivory tower” devoted to the ROL, a moot point.

To gain direct knowledge of the status of ROL in a country, RDAP Step 5, Define the Problem, uses an on-site assessment to refine the knowledge contained in the ROL intelligence product. If the assessment team agrees with one of the diagnoses and the proposed responses contained in the ROL intelligence product then the measurable indicators collected by the assessment team serves to further refine the knowledge of the country’s ROL problem. If the assessment team does not agree with any of the diagnoses or proposed recommendations of the ROL intelligence product then the team engages in a discourse with those who created the ROL intelligence product until the ROL problem to be addressed, and the course of action to address it, are agreed upon.
RDAP STEP 4: TIMELY AND ACCURATE INTELLIGENCE

A lack of information concerning the realities of law in a particular country stems from a lack of tailored actionable knowledge concerning the status of the ROL in that country. Creating tailored, actionable knowledge of anything, requires collecting as much relevant information as possible and interpreting it for meaning. The process of creating tailored, actionable knowledge of a subject in order to empower decisionmakers to make informed judgments is called the intelligence cycle, in the fields of foreign policy, national security and law enforcement.

The Intelligence Cycle Generally

The intelligence cycle, as it is used here, is the process that turns information into tailored actionable knowledge for a decision-maker. Creating intelligence is a multi-step cyclical process with some variations in the terminology applied to the some of the major steps. The steps in the intelligence cycle used here, in the order in which they occur, are as follows:

- Planning and Direction;
- Collection;
- Processing;
- Analysis;
- Production; and
- Dissemination and Feedback.

As a cycle, the intelligence process should be considered continuous rather than finite with each iteration of the cycle informing the planning and direction for the next iteration.

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68 Intelligence Cycle “Planning and Direction; Collection; Processing and Exploitation; Analysis and Production; Dissemination.” Mark M. Lowenthal, Intelligence: From Secrets to Policy, 2nd ed. (Washington, DC: CQ Press, 2003), 50.

The Importance of Intelligence

Intelligence contributes to the “two essential functions in policymaking: the diagnostic task and the prescriptive one.”\textsuperscript{71} The intelligence process provides policymakers with an understanding of the situation at hand and an ability to evaluate different courses of action to respond to it. At the level of policy implementation, intelligence provides implementers with tailored knowledge to support planning efforts. Thus, it can be said that “good intelligence cannot guarantee good policy, but poor intelligence frequently contributes to policy failure.”\textsuperscript{72}

Resistance to Intelligence By Rule of Law Program Implementers

Many criminal justice professionals who are ROL development program implementers (implementers) are resistant to the idea of “intelligence” for use by their organization. Some individuals would prefer to make decisions based on their intuition or professional experience and believe that conducting a two-week assessment is adequate for gaining an understanding of the problems faced by an entire foreign criminal justice system. Others view intelligence analysis as a luxury they cannot afford because of limited program funding. Still others are resistant because such an analysis may be seen as encroaching on the ground of ROL development program funders (funders) who often diagnosis problems and propose solutions.

The Importance of Rule of Law Intelligence

In the field of ROL development, intelligence concerning the institutions of the criminal justice system in question, and the policy environment they inhabit, is of infinite importance. Implementers should realize the value of intelligence, because, in law enforcement operations, “effective response to crime increases proportionally as the accuracy of … criminal intelligence increases.”\textsuperscript{73,74} If intelligence is required for actual law enforcement operations, then it also should be required for an activity such as ROL development that is wrought with even more uncertainty.

Assessment Alone is Inadequate

Full understanding of the ROL situation on the ground cannot be gained only by conducting an assessment. Assessment alone is inadequate because “the direct experience of events isn’t necessarily the best path toward understanding them, … your field of vision extends no further than your own immediate senses.”\textsuperscript{75} At the very least, an intelligence report (ROL intelligence product) on a country, its criminal justice system, and the criminal justice policy environment, would inform the assessment team about the country and alert them to pressing issues faced by

\textsuperscript{70} Course materials from High Intensity Drug Trafficking Area (HIDTA) CD-ROM course Introduction to Analytical Techniques currently being taken by the author.
\textsuperscript{71} George says this of intelligence. George, Bridging the Gap, xx.
\textsuperscript{73} McDonald, Managing Police Operations, 10.
its criminal justice system so the team could make a more targeted assessment. More broadly, a ROL intelligence product could lay the contextual foundation for an onsite assessment and for ROL development program planning by forecasting the internal and external factors that may affect the criminal justice system and the criminal justice policy environment in question.

Rule of Law Intelligence is an Invaluable Necessity  
ROL intelligence is not a luxury that implementers cannot afford; rather it is a requirement for proper program planning that cannot be ignored. Despite the various disagreements in the field of ROL development, it has become a truism that programs should be tailored to local conditions. Tailoring programs to local conditions requires the collection and analysis of information about the country and its criminal justice system.76

Funders Won’t Mind  
The production of ROL intelligence does not encroach on the policy-making ground of funders but rather is a required first step in achieving the specific objectives funders seek to serve when prescribing a ROL development program. ROL intelligence would help implementers understand the foreign policy and national security implications of their programs. This understanding would enable implementers to link specific objectives to ROL development courses of action to achieve those objectives. For their part, funders, who are often not criminal justice professionals, should refrain from specifying the type and substance of a ROL development program. Rather, when speaking to implementers, who often have criminal justice experience, funders should state the foreign policy, national security, or economic or political development objective they would like to achieve.

Rule of Law Intelligence Functions

Intelligence Functions Generally  
In the fields of foreign and law enforcement intelligence, intelligence analysts perform primary and secondary functions. Their primary functions include making knowledge by organizing and analyzing collected information, giving timely warning of threats and opportunities, and keeping track of those threats and opportunities.77 The secondary functions include helping to define threats and opportunities, forecasting of how those threats and opportunities will develop over the short term, and determining the range of possible outcomes resulting from them.78

All of these functions serve the ultimate goal of assisting decisionmakers to make policy or operational decisions. The extent to which an intelligence analyst goes beyond keeping decisionmakers properly informed and moves towards making policy or operational recommendations varies by field. In the field of foreign intelligence, in order

77 Wheaton, Warning Solution, 19.
78 Wheaton, Warning Solution, 19.
to maintain objectivity, there is a strict dividing line between intelligence and policymaking. Foreign intelligence analysts are expected to maintain a certain objectivity and not lapse into advocacy for specific policies, choices, or outcomes.\(^79\) In contrast, law enforcement, intelligence analysts are expected to recommend courses of action based upon their analysis.\(^80\)

**Rule of Law Intelligence Functions Generally** Although they should perform intelligence functions in support of their duties, ROL development professionals are ultimately policy analysts, not intelligence analysts, and as such have a broader range of responsibilities. As policy analysts ROL development professionals are responsible not only for the diagnosis of ROL problems but also for designing responses to them. Stemming from these additional responsibilities, in addition to analytic functions, ROL development professionals need to perform networking, research, and policy recommendation functions.

**Rule of Law Intelligence, the Analytic Functions** ROL development professionals should perform functions similar to those of intelligence analysts to diagnosis current ROL problems, track ROL indicators, and give warning of imminent ROL problems. ROL development professionals should also create knowledge in the form of intelligence reports concerning the status of the ROL in countries being considered for assistance. They should also create knowledge in the form of statistical analyses that track the status of, explain the reasons for, and estimate the future trends of ROL indicators (such as the number of extra-judicial killings, crime rates, etc.) for the countries for which they are responsible. Moreover, they should give timely warning of possible threats to the ROL and opportunities for development assistance by keeping track of changes in the criminal justice policy environment of foreign countries and the factors that affect capabilities and responsibilities of foreign criminal justice systems.

**Rule of Law Intelligence, the Networking Function** As considerable knowledge about how to go about developing the ROL “tends to stay within the minds of individual practitioners”\(^81\) ROL development professionals need to fulfill a networking function. Individuals tasked with diagnosis and designing responses to ROL problems should develop a network of veteran ROL development program implementers that can be called upon to share their experiences. Drawing on the professional knowledge of criminal justice and development professionals would also prove useful to a ROL development professional designing a ROL development program. Managing these networks would ensure lessons learned by ROL development program veterans, as well as cutting-edge professional knowledge from the fields of criminal justice and development, were integrated into the design of future programs.

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\(^79\) Lowenthal, Secrets to Policy, 3-4.
\(^80\) Course materials from Introduction to Analysis attended by the author in March 2002.
\(^81\) Carothers, The Problem of Knowledge, 11.
Rule of Law Intelligence, the Research Function  Diagnosing and designing responses to ROL problems requires staying up-to-date on current ROL-related research. While development organizations are generally not sponsoring the kind of applied policy research that would build ROL development knowledge, interesting research is being done. ROL professionals should capitalize on this research. Notable examples of such research warrant mentioning here. Individuals at Harvard University’s Center for International Development have conducted studies on ROL ranging from overview of how ROL development has been conceptualized over time to the politics of legal transplantation.\(^{82}\) In *After the Big Bang? Obstacles to the Emergence of the ROL in Post-Communist Societies*, Karla Hoff of the World Bank and Joseph E. Stiglitz of Columbia University, created an equilibrium model of the demand for the ROL. In the post-conflict ROL world, Dr. Michael Dziedzic (Col., USAF retired) wrote *Policing the New World Disorder: Peace Operations and Public Security* and is finishing a follow up text concerning how ROL fosters a durable peace following conflict.

Diagnosing and designing responses to ROL programs also requires that ROL professionals pull as much knowledge as they can from existing academic research. While there is an insufficient amount of applied policy research, ROL implementers could push research from various disciplines into service for ROL development efforts. During the Kennedy Administration, when U.S. special operations forces were given the mission of counterinsurgency, they turned to the behavioral and social sciences, including psychology, anthropology, political science, economics, history, and international relations, to forge methods needed for waging counterinsurgency campaigns.\(^{83}\) Implementers, specifically law enforcement officers, have not conducted a similar exercise to pull knowledge from existing academic disciplines in order to conduct ROL development research to support planning efforts, nor do they see the need to. Additionally, legal experts often ignore the “history, culture and traditions, including pre-existing legal traditions” of the countries they wish to assist.\(^{84}\) There is much to be gained from drawing upon the knowledge base in the behavioral and social sciences and jewels to be found in the fields of comparative law and comparative criminal justice systems. ROL professionals just need to start looking.

Rule of Law Intelligence, the Policy Recommendation Function  As policy analysts, ROL development professionals need not only to diagnose a problem but also fulfill a prescriptive, policy recommendation function. The policy recommendation function builds on the other three functions. The recommendations of ROL professionals concerning what response should be mounted to address a ROL problem should be based

\(^{82}\) “Law and Developments” by Professor David Kennedy, and “The Politics and Incentives of Legal Transplantation by Frederick Schauer, respectively.


on an understanding of U.S. interests and objectives, analysis, counsel of ROL development program veterans, and research.

**Rule of Law Intelligence Planning and Direction**

Planning and direction “is the beginning and end of the (intelligence) cycle – the beginning because it involves drawing up collection requirements and the end because finished intelligence, which supports policy decisions, generates new requirements.”

At the beginning of the intelligence cycle decisionmakers make requests for intelligence and then intelligence officials “draw up collection requirements.” “Drawing up collection requirements” means identifying the types of information that needs to be collected and analyzed in order to meet the intelligence needs of decisionmakers. At the end of the intelligence cycle, having been better informed about issues by completed intelligence products, decisionmakers make more refined intelligence requests.

Collection requirements vary because decisionmakers at different levels have different intelligence needs. High level decisionmakers, such as the President, his aids, and department heads need **strategic intelligence**. Strategic intelligence is defined as “intelligence that is required for the formulation of strategy, policy, and military plans and operations at national and theater levels.”

Mid-level decision makers, such as regional military commanders, need **operational intelligence**. Operational intelligence is defined as “intelligence that is required for planning and conducting campaigns and major operations to accomplish strategic objectives within theaters or operational areas.”

Small-unit leaders need **tactical intelligence**. Tactical intelligence can be defined as the intelligence that is required for planning and employing units to achieve operational objectives.

Similarly, ROL professionals at various levels have different intelligence needs. High level officials involved in crafting the ROL component of a new international criminal justice strategy and funders would need strategic ROL intelligence. Strategic ROL intelligence is intelligence concerning “the abilities, strengths, weaknesses, and trends” of transnational threats and transnational criminal enterprises and the capabilities and intentions of foreign criminal justice systems, needed to formulate international criminal justice strategy and policy. ROL program implementing organizations, regional criminal justice directors and ROL program managers would need

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86 Department of Defense’s Dictionary of Military and Associated Terms.
87 Department of Defense’s Dictionary of Military and Associated Terms.
88 The Department of Defense’s Dictionary of Military and Associated Terms defines tactical intelligence as “Intelligence that is required for planning and conducting tactical operations” and the tactical level of war as “The level of war at which battles and engagements are planned and executed to accomplish military objectives assigned to tactical units or task forces. Activities at this level focus on the ordered arrangement and maneuver of combat elements in relation to each other and to the enemy to achieve combat objectives.”
operational ROL intelligence, or the intelligence necessary to set program objectives and identify to the projects necessary to meet those objectives. The two basic and essential questions at the operational level are the following:

1. What ROL problem, directly or indirectly, threatens an authentic and identifiable U.S. national interest; and
2. In what specific way does the ROL need to be developed to achieve specific U.S. objectives.

ROL project implementers would need tactical ROL intelligence or intelligence the necessary to conduct a ROL project. Tactical ROL intelligence would include but not be limited to, information concerning what teaching methods would be most appropriate in a given cultural context and the history of the issue the country to be dealt with by ROL development efforts. Appendix IV contains an “intelligence problem and need” table for each of these levels. The focus of RDAP Step 4 is creating operational criminal justice intelligence.

**Collecting Information Relevant to the Rule of Law**

Following the identification of the knowledge required to plan and implement a ROL development program, the planning of how to best collect relevant information can begin. The simplest plan for collecting relevant information is a three-step process. These steps include the following:

1. Preparing a list of relevant information;
2. Identifying sources based on this list; and
3. Tasking personnel to collect information from the selected sources.90

**Types of Information Relevant to the Rule of Law** Given that the factors that generates the ROL are uncertain, it is difficult to identify what information is relevant and what is not, ROL practitioners need to cast a wide net when collecting information. There is a lack of clarity as to where the “essence of the ROL actually resides,”91 meaning the key independent variables that lead to the ROL are unclear. Stated another way, ROL practitioners are unsure of the “center of gravity” for the ROL.92 All of this uncertainty should prompt the collectors of information relevant to the ROL, ideally, foreign and law enforcement intelligence analysts, to broadly define their search for information. The collectors should collect the following types of information:

- Anthropological;
- Biographic;

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92 Department of Defense’s Dictionary of Military and Associated Terms defines centers of gravity (COG) as “those characteristics, capabilities, or sources of power from which a military force derives its freedom of action, physical strength, or will to fight.” For the ROL, COG means the characteristics, capabilities, and changes external factors that need to be realized by a society and its justice system to develop the ROL.
• Crime and Criminal Justice;
• Economic;
• Geographic;
• Historical;
• Legal;
• Political;
• Public Health and Welfare;
• Psychological;
• Religious and Philosophical;
• Sociological; and
• Psychological Information.

Collectors should also collect information on the country’s international relations, military, intelligence community, and infrastructure.

**Identifying Sources**  The second step of collection, identifying sources of relevant information, can be broken down into having those collecting the information ask the following four questions:

- Can we find this information in our existing knowledge bases?
- Can we get this information from someone we know?
- Can we buy this information from a private sector vendor?
- If we cannot obtain this information by the above means is there any other way to do so?\(^\text{93}\)

During the collection process, emphasis should be put on using open sources in order to be able to widely disseminate the finished ROL intelligence product later on.

**Open Source Information**  Information relevant to the ROL can be collected from various unclassified and publicly available sources. Information concerning the country, its criminal justice system, and the crime that system responds to can be found in:

- Government publications,
- FBIS,
- Books,
- Journals,
- Magazines,
- Newspapers,
- Maps,
- Online services,
- LEXIS/NEXIS,
- Reuters, and

\(^{93}\) Steele, The New Craft, 15.
Information concerning how human rights are respected and protected by foreign criminal justice systems can be found in the STATE’s Human Rights Report and the publications of Human Rights Watch and Amnesty International.

**Sensitive Information** Specific and sensitive information can be gained from U.S. and friendly government foreign policy, military, law enforcement and development agencies. All attempts should be made to acquire detailed information about major crime problems via the U.S. embassy. This information includes information on the following:

- Offenders, victims, and others who may be involved;
- The time of occurrence, locations, and the history of crime problems;
- The motivations, gains, and losses of all involved parties;
- The apparent causes and competing interests; and
- The results of current responses.95

Sources of this information would include the following:

- Calls for service data;
- Information reported to criminal justice agencies by the public;
- Local police officers’ intelligence and field interrogation reports;
- Prisoner debriefings; and
- Information from informants, private security (CCTV), citizen patrols, or auxiliary police.96

**Knowing When You Have Enough Information** Although gathering all available relevant information is the optimal goal of the collection process, that goal is extremely difficult to achieve and failure to do so does not necessarily impact upon the ability of an intelligence analyst to produce a proper analysis of the subject at hand. Since intelligence issues, almost by definition, involve a considerable amount of uncertainty analysts commonly work with incomplete, ambiguous, and often contradictory data.97 Moreover, the research of experimental psychologists has found that once an experienced analyst has the minimum information necessary to make an informed judgment, obtaining additional information generally does not improve the accuracy of his or her estimates.98 For the most part, analysts have the minimum information necessary to make an informed judgment when:

- The analyst reads a new book or article on the subject and feels that he or she have read it already;

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The analyst can make sense of new developments, even those that appear senseless;
The analyst can stay abreast of the subject by reading the headlines; and
The analyst feels that patterns of connected information start to emerge spontaneously and can distinguish important information from unimportant information.99

**Processing Information Relevant to the Rule of Law**

Processing collected ROL information would involve collating and evaluating that information. Collation involves removing useless information, placing the remaining information in an orderly arrangement that aids in understanding the material, and storing the information systematically for rapid retrieval. Examples of collation include “filing documents, condensing information by categories or relationships, and employing electronic database programs to store, sort, and arrange large quantities of information or data in preconceived or self-generating patterns.”100 Arranging collected data refines the collection process because what data is missing becomes increasingly clear.101 Collected information should be evaluated for the following:

- **Reliability**, based on the source’s past performance,
- **Proximity**, based source’s closeness to the information, and
- **Appropriateness**, based on whether the source speaks from a position of authority.102

The objectivity of the source and whether the information itself is current should also be taken into account.103

**Intelligence Analysis Generally**

**Categories of Analysis** Analysis, the core of all intelligence functions and the heart of the intelligence cycle, generally falls into two categories: data-driven analysis and conceptually-driven analysis. Whether analysis is data-driven or concept-driven depends on the “mental model” driving the analysis. A “mental model” can be defined as the knowledge and assumptions as to which variables are most important and how those variables relate. In data-driven analysis, the mental model can be made explicit so that other analysts may be taught to understand and follow the same analytical procedures and arrive at the same or similar results.104 Analyzing the combat readiness of a military

102 Krizan, *Intelligence Essentials*, 27.
division is an example of data-driven analysis. In conceptually-driven analysis, constructing “mental models” and deciding which one is best are unclear processes and there are no standardized analytical procedures. In conceptually-driven analysis, the accuracy of the analysis depends upon the accuracy of the “mental model” used by the analyst doing the analysis. In certain instances, political analysis is an example of conceptually-driven analysis.

**Challenges Faced When Producing Intelligence Generally** Significant factors can negatively affect the timeliness and accuracy of intelligence products. These factors include the “Decisionmakers Problem,” “group think,” analysts lacking insight into their own mental models, and the hazards of forecasting a single outcome. The “Decisionmaker’s Problem” begins at the point when an issue, analysts is “front page news,” analysts are inundated with information and requests for support and the number of available options to deal with the issue begins to decrease. “Group think” can be defined as rigid adherence to basic assumptions held by the personnel of an organization that prevents them from adopting other perspectives and properly integrating additional information. It is important to note that in “group think,” basic assumptions are adhered to because they are widely held by the organization’s personnel as much as because they are valid assumptions, and these assumptions may not even be explicit to those that hold them. Analysts lacking insight into their own mental models is phenomenon similar to “group think” but happens on an individual scale. Analysts often view their own mental processes as being considerably more complex than they actually are and therefore are unaware not of only of which variables should have the greatest influence, but also of which variables actually have the greatest influence. The last factor to negatively affect intelligence products covered here, are the hazards of forecasting a single outcome. These hazards include difficulties with the following:

- Dealing with uncertainty;
- Managing the greater and lesser probabilities of different outcomes or events; and
- Coping with discontinuity (an event D not following the trend in events A, B, and C) and apparently unlikely outcomes.

**Overcoming the Challenges Faced When Producing Intelligence** Professionals in the intelligence field have devised methods to offset the “Decisionmaker’s Problem,” “group think,” inexplicit mental models, and the hazards of forecasting a single outcome. The “warning solution” solves the “Decisionmaker’s Problem.” The “Warning Solution” is having intelligence analysts properly warn decisionmakers of a crisis following some “triggering event that moves the crisis off-center just enough to cause alarm” but prior to the point that the number options for dealing with the problem begins to decline. Competitive or redundant analysis, sometimes called the “A Team/B Team” approach, prevents “group think,” because

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105 Heuer, The Psychology of Intelligence, chapter 5, page 5.
different groups work on the same subject but independently from each other.\footnote{Another serious problem to be avoided is mindset of “group-think” … it is essential that competitive or redundant analysis be encouraged.” Independent Task Force, \textit{Making Intelligence Smarter}, 19.} In order to make their mental models explicit and ensure that they are applying the appropriate assumptions to the problems they are analyzing, Richards J. Heuer, author of \textit{Psychology of Intelligence Analysis}, proposed intelligence analysts use the Analysis of Competing Hypothesis (ACH). ACH requires an analyst to explicitly identify all reasonable hypotheses and have them compete based on the evidence for and against each of them.\footnote{DCI Robert Gates proposed “an “A Team/B Team” approach to assure diversity of opinions. Holden-Rhodes, \textit{Sharing the Secrets}, 14.} Lastly, when analysts provide a range of possible outcomes with the relative probabilities of those outcomes they avoid the hazards of single outcome forecasting.

\begin{table}[h]
\centering
\caption{Step-by-Step Outline of Analysis of Competing Hypotheses}
\begin{tabular}{p{1.5\textwidth}}
\hline
1. Identify the possible hypotheses to be considered. Use a group of analysts with different perspectives to brainstorm the possibilities. \\
2. Make a list of significant evidence and arguments for and against each hypothesis. \\
3. Prepare a matrix with hypotheses across the top and evidence down the side. Analyze the “diagnosticity” of the evidence and arguments - - that is, identify which items are most helpful in judging the relative likelihood of the hypotheses. \\
4. Refine the matrix. Reconsider the hypotheses and delete evidence and arguments that have no diagnostic value. \\
5. Draw tentative conclusions about the relative likelihood of each hypothesis. Proceed by trying to disprove the hypotheses rather than prove them. \\
6. Analyze how sensitive your conclusion is to a few critical items of evidence. Consider the consequences for your analysis if that evidence were wrong, misleading, or subject to a different interpretation. \\
7. Report conclusions. Discuss the relative likelihood of all the hypotheses, not just the most likely one. \\
8. Identify milestones for future observation that may indicate events are taking a different course than expected. \\
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\textbf{Rule of Law Intelligence Analysis}

\textbf{Rule of Law Intelligence Analysis is Both Data and Concept Driven} Trying to analyze the status of the ROL involves both data-driven and conceptually-driven analysis. Taking crime incident data and mapping it so decisionmakers know where crime “hot spots” are in a city, is an example of data driven analysis. Trying to analyze why a

\footnote{Heuer, \textit{The Psychology of Intelligence}, chapter 8, page 1-2.}
government does or does not comply with law, is an example of conceptually-driven analysis. There are various ways to analyze the information relevant to the ROL. See Appendix V for a table showing different types of information relevant to the ROL and what analytic techniques should be applied to them.

**Current Challenges Faced When Diagnosing Rule of Law Problems** The significant factors that can negatively affect the accuracy of intelligence products also negatively affect the diagnosis of ROL problems and prescribing responses to them. In many cases, ROL development program planning does not begin until after the “Decisionsmaker’s Problem” is well in effect. “Group think” can be seen in the various approaches to ROL development taken by the different types of agencies that weigh in on ROL programs. The mental models of criminal justice professionals are not explicitly explained when those professionals propose what the main thrusts of a ROL development program should be. The hazards of single outcome forecasting affect efforts to analyze, diagnosis, and propose responses to ROL problems because there is usually only one diagnosis made of a country’s ROL problem as well as one response proposed to deal with that problem.

**The Rule of Law Decisionmakers Problem** Since implementers are primarily criminal justice professionals and therefore reactive in outlook, they usually often do not begin planning ROL programs until well after the “Decisionsmaker’s Problem” is in effect. Criminal justice professionals are used to getting involved after a crime has been committed. Although many law enforcement officers use their problem-solving skills to prevent crime, it is not uncommon for some to become reactive over time due to the need to respond to a high volume of 9-1-1 calls. Similarly, prosecutors do not get involved until someone brings them a case. It is for this reason that implementers often do not conduct pre-program planning until a funder requests they do so. The problem with this approach is that funders usually ask for program proposals at the height of a crisis.

**Rule of Law “Group Think”** The phenomenon of “group think” is evident among the foreign policy, military, criminal justice, and development professionals who weigh in on ROL programs. Many foreign policy professionals still do not recognize the fact that in ROL programs, all elements of the justice system must be addressed, not just the law enforcement agencies, and that two week training programs do not have a sustainable impact. Many foreign policy and military professionals overemphasize the “durable peace” rationale for ROL programs at the detriment of recognizing the criminal justice and development implications of such programs. Many criminal justice professionals tend only to focus on the institutional development of the operational elements of the institutions they assist, ignoring support elements, the criminal justice policy environment, and the concerns of the citizenry. Emphasis on management issues over community concerns is often seen when U.S. law enforcement agencies try to reform themselves. Some development professionals often identify civil society as a

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112 “But even when police are instructed in the meaning of “substantive” problems and are then asked to focus on them, they are apparently so conditioned to thinking in terms of the problems of the organization that they frequently slip back to identifying concerns in the management of the agency. *Thus, focusing on the substantive, community problems that the police must handle is a much more radical step than it*
required element of ROL development assistance but do not recognize that developing external sources of accountability before institutions are developed leads to unrealized expectations and dashed hopes. In short, these development professionals miss the point that there needs be a machine in place before one can rage against it.

Inexplicit Mental Models  When proposing what the main thrusts of a ROL development program should be, many criminal justice professionals do not explicitly explain the mental models they use to arrive at their recommendations. Specifically, active and former law enforcement officers frequently do not know how to “show the math” on how they arrive at their conclusions following an on-site assessment of foreign criminal justice institutions. This probably stems from the fact that activities such as responding to calls for service and tracking criminals make up an interpersonal business in which instincts, intuition, and professional knowledge leads to quick thinking rather than explicit explanations of why things are done.

Modernization Theory Lives Again  The mental model that many law enforcement officers and other criminal justice professionals utilize when approaching foreign ROL issues is their underlying belief that all will be well when the foreign criminal institutions they assist operate as criminal justice institutions do in the US. In the nomenclature of development professionals, this mental model is called “modernization.” Modernization is frequently defined “in terms of developing specializations and a variety of structures and institutions, but in common parlance it means adopting the symbols, styles, and technologies of first world countries.” Modernization theory has long been discarded by development professionals for a variety reasons but most notably because “a country can be modern in style and technique and not any closer to an ability to influence its future or pursue its potential.” In the criminal justice field, this shortcoming of modernization theory can be seen in the U.S. where there are exceedingly professional and technically advanced law enforcement agencies which sometimes lack legitimacy in the eyes of the people they serve and face “crime waves” from time to time.

The Hazards of a Single Rule of Law Diagnosis and Single Recommendation  Current efforts to diagnose and respond to ROL problems suffer from there being usually only one ROL diagnosis and one recommendation made prior to program planning and implementation. Given that ROL development assistance is an area of “great conceptual and practical complexity,” and therefore wrought with uncertainty, depending on a single ROL diagnosis and recommendation from one group of people (the assessment team) is intellectually foolhardy. Since funders usually have little or no criminal justice experience they are unsure of how to evaluate the substance of program recommendations. This is referred to here as “substantive uncertainty.” Additionally,

\[\text{initially appears to be, for it requires the police to go beyond taking satisfaction in the smooth operation of their organization; it requires that they extend their concern to dealing effectively with the problems that justify creating a police agency in the first instance.} \]

Goldstein, Problem-Oriented Policing, 35.


114 Bryant and White, Managing Development, 15.
funders are also unsure of how to evaluate to those who make program recommendations because the cultures of the professional fields of funders and implementers are so different. This is referred to here as “interpersonal uncertainty.”

**Overcoming the Challenges Faced When Diagnosing Rule of Law Problems**

ROL development professionals can use the methods used by intelligence professionals to offset the challenges faced when producing intelligence to overcome the challenges faced when diagnosing ROL problems. To avoid the “Decisionmaker’s Problem” ROL professionals can watch for “triggering events” that indicate a ROL development program will be needed. ROL professionals can negate the possibility of group think through the use of multiple teams to diagnosis ROL problems. The mental models of ROL professionals can be made explicit by using ACH during the diagnosis process. Providing 3-4 ROL diagnoses and recommendations will help ROL professionals avoid the hazards of making a single diagnosis and recommendation.

To avoid the “Decisionmaker’s Problem,” ROL professionals should begin a diagnosis of a country’s ROL problems following “triggering events” that indicate a ROL development program in that country is likely. Such “triggering events” include, but are not limited, to the following:

- Murmurs of peace agreements;
- Increasing corruption of a country’s government or criminal-ization of its economy;
- The stated intent of a country to democratize or move towards a free market economy;
- Marked but subtle increases in transnational threats or transnational crime that threaten U.S. national interests; and
- Rising levels of human rights abuses.

Using the “Warning Solution” could yield as much as 4-6 months of lead time prior to the request for a program proposal from a funder. It is during this lead time that RDAP steps 4-7 should occur.

To avoid “group think,” the task of diagnosing the country’s ROL problem should be given to multiple analytic teams from ROL program implementing organizations and groups of representitives from ROL-related NGO’s. Ideally, the analytic teams from ROL program implementing organizations would be made up of criminologists, political scientists, and foreign and criminal intelligence analysts from ROL program implementing organizations. The members of the analytic teams would serve as facilitators for groups of representatives from the various ROL-related NGOs.

To make mental models explicit and avoid the hazards of single outcome forecasting, each of the analytic teams and NGO groups should utilize ACH to arrive at 3-4 possible diagnoses of the country’s ROL problem. Following the analysis of the
various types of open source information relevant to the ROL, using analytic techniques applicable to each type of information, the resulting analytic products must be synthesized and diagnoses based on that synthesis should be generated. Synthesizing means re-organizing data into a cohesive whole which usually provides new information about the data. In the case of ROL intelligence analysis, the analytic products should be organized so that they provide insight into the status of the ROL in the country in question. Following the synthesis of analytic products, the synthesis with descriptions of the information analyzed and the analytic techniques applied to them, would given to the analytic teams and NGO groups who would then generate 3-4 diagnoses of the country’s ROL problem. The analytic team members and a representative from each ROL NGO group would then apply ACH to the diagnoses of each analytic team and NGO group, to arrive at 3-4 “final analysis” diagnoses.

The analytic teams should then develop a Concept of Implementation (COI) for the impending ROL development program in response to each of the 3-4 “final analysis” diagnoses. The COI should give an overall picture of the specific U.S. objective concerned, outlines broad courses of action to achieve them based on the given ROL diagnosis, and then specify projects that make up those courses of action and their sequence. The proposed courses of action should be based on the diagnosis of the ROL problem but should also take the following into account:

- Proposed responses from the diagnosis working groups;
- Current best practices in the fields of criminal justice and international development; and
- Input from veteran ROL development program on-site field implementers.

Production of Rule of Law Intelligence

Following analysis, the next step in the intelligence cycle is production. Production, as it is used here, means desktop publishing. The following should all be combined into a single publication, a ROL intelligence product:

- The analytic products;
- The diagnoses that competed during each ROL working group session;

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115 ROL professionals keep the sensitive information to themselves and analyze it following the same procedure as the NGO groups analyzing the open source information.


117 Concept of Implementation is the ROL translation of the military’s term Concept of Operations. Concept of Operations is “a graphic, verbal, or written statement in broad outline that gives an overall picture of a commander’s assumptions or intent in regard to an operation of a series of operations; includes at a minimum the scheme of maneuver and fire support plan. It is described in sufficient detail for the staff and subordinate commanders to understand what they are to do and how to fight the battle without further instructions.” John F. Antal, Armor Attacks, The Tank Platoon: An Interactive Exercise in Small-Unit Tactics and Leadership, (Novato, CA: Presido, 1991), 322.
The diagnoses that competed to be one of the “final analysis” diagnoses;
The “final analysis” diagnoses; and
The COI for each of the “final analysis” diagnoses.

The collected information analyzed to create the analytic products should be available upon request. The ROL intelligence product should be produced in such a way as to facilitate absorption of the material and ease of use by both the funders and members of the on-site assessment team.

**Dissemination of Rule of Law Intelligence**

Once an intelligence product is produced, it is disseminated to the consumers of the knowledge contained in that product. The ROL intelligence product described above should be disseminated to funders and members of the on-site assessment team prior to their departure. Both funders and members of the assessment team should be informed of the state of the country’s criminal justice system. The funders, as foreign policy or development professionals, need to be briefed on criminal justice matters in general and the possible responses to the ROL deficiencies identified in the intelligence product. The members of the on-site assessment team, primarily made up of criminal justice professionals, need to be informed about the country generally, and of the broader implications of a ROL program in that country. Additionally, as the product was created primarily using open sources, the NGOs represented in the various working groups should also receive copies after any sensitive information is removed from it. Over time, through their involvement in ROL diagnosis working groups and with the proliferation of ROL intelligence products, ROL analytic techniques and methods will become standardized.

**Evaluation of Rule of Law Intelligence**

After the funders and the on-site assessment team have received and reviewed the ROL intelligence product, it is important for them to give feedback to the ROL professionals who produced the product and for that product to be evaluated. The ROL professionals who produced the product should receive feedback on how useful their product was in understanding the following:

- U.S. interests;
- The country;
- The country’s criminal justice system;
- The country’s criminal justice policy environment;
- The related, current criminal justice best practices; and
- The related, current development best practices.

This feedback would be used to improve future analytic efforts in terms of content, format, relevancy, and accuracy. The ROL professionals who produced the ROL intelligence product must also evaluate their own work in light of new information.
acquired since the publication of the intelligence product.\textsuperscript{118} Moreover, ROL intelligence analysts should periodically re-diagnose the country’s ROL problem and create a new COI by starting from scratch and using the latest information, to check the veracity of previous ROL intelligence products.\textsuperscript{119} Producing a new ROL intelligence product is especially important following the end of a ROL development program.

**RDAP STEP 5: DEFINE THE PROBLEM**

An assessment team should be sent abroad to gain direct knowledge of the country in question, its criminal justice system, and the criminal justice policy environment, as soon as possible following the completion of the ROL intelligence product described in RDAP Step 4. The direct knowledge gained by the assessment team, when combined with the knowledge contained in the ROL intelligence product, will define the ROL problem. Defining the ROL problem serves as the intellectual foundation for the planning, monitoring, and evaluation of ROL programs later on in the RDAP process. It is important to define the ROL problem as specifically as possible otherwise program planning, monitoring, and evaluation will be muddled.

**The Composition of the Assessment Team**

The recruitment process for the on-site assessment team should start when the process of diagnosing the country’s ROL problem begins. Writing on police reform abroad, David Bayley stated that “police reform cannot be left to police experts.”\textsuperscript{120} Although criminal justice professionals clearly represent the tip of the professional experience spear, ROL development programs, including police reform efforts, cannot be left to them alone. An ideal ROL assessment team roster would comprise the following:

- Law enforcement officers (federal, state, and local officers);
- Prosecutors;
- Defense attorneys;
- Judges;
- Corrections professionals;
- Criminologists;
- Law enforcement intelligence analysts; and
- Development professionals.

Professional associations such as the International Association of Chiefs of Police (IACP), the Police Executive Research Forum (PERF), the American Bar Associations (ABA), and the American Prosecutors Research Institute (APRI) should be looked to for support and guidance when selecting state and local criminal justice professionals for the assessment teams. The remaining members can be recruited from the ranks of the federal government. Clearly putting together an assessment team as varied as the ideal

\textsuperscript{118} HIDTA Introduction to Analytical Techniques course materials.
\textsuperscript{119} Heuer, The Psychology of Intelligence, Chapter 14, page 8.
\textsuperscript{120} Bayley, Democratizing Police, 37.
assessment team described above would be cost prohibitive. ROL program funders and implementers need to continually press for increased funding for assessments. Additionally, it should not be considered out of the question to ask professional associations, NGOs and academic institutions to cover the travel costs of their employees if those employees are asked to be part of an assessment team. Covering the travel costs of their employees for an assessment proves intent and therefore may warrant special consideration for program funding in the future.

**The Rule of Law Intelligence Product and an On-Site Assessment Act as a Checks and Balances of Each Other**

Having both a completed ROL intelligence product and an on-site assessment report will help manage the interpersonal and inter-field uncertainty that has plagued the design of ROL programs in the past. The ROL intelligence product and the on-site assessment report will serve as checks and balances of each other. The direct knowledge gained by the assessment team will serve as a check to the veracity of the ROL intelligence product, particularly the COI’s. However, if the assessment team does question the veracity of the ROL intelligence product, they will have to produce evidence that disproves the contentions of the product. This will force the criminal justice professionals on the assessment team to “show the math” concerning their conclusions and recommendations. The intelligence product will also serve to focus the assessment team on U.S. objectives. This will prevent the team from recommending measures that do not clearly and explicitly serve U.S. national interests. Funders, who are predominately individuals with no criminal justice experience, will be less apt to make overly specific suggestions concerning the substantive objectives of the program because their opinions will need to be evaluated against the contentions of both the ROL intelligence product and the onsite assessment.

**The Functions of the Assessment Team**

The assessment team’s mission is to either confirm or challenge the ROL intelligence product’s diagnosis or the COI. As intelligence analysts need to go “two levels down” from their subject, the onsite assessment team should not only cluster their efforts around the country’s capital but also seek to understand the status of ROL in each province and each major city. The criminal justice professionals on the team should interview as many interior ministry/criminal justice leaders and officials as possible and observe how the indigenous criminal justice institutions are organized, trained, and equipped. If not done previously during RDAP Step 4, the law enforcement intelligence analysts on the team should collect and analyze all available incident and criminal intelligence data. The prosecutors and defense attorneys on the team should collect criminal statutes and broadly shepherdize the local criminal and criminal procedure code if this has not already been done in RDAP Step 4. The criminologists should direct their focus to conducting citizen, victim, and offender surveys. The development professionals with support from the criminologists on the team, should work with the other team members to translate their observations into measurable indicators.
Assessing Criminal Threats

When the criminal justice professionals and the law enforcement intelligence analysts above assess the severity of criminal threats they should groups incidents together to identify crime problems. The incident is the primary work unit for patrol officers and they will handle several incidents, such as a car theft, a neighborhood dispute, a robbery, and a request for information, over the course of a typical day. Moving beyond just handling the symptoms of problems requires recognizing the relationships between incidents and taking an in-depth interest in the conditions and factors that give rise to them. When grouping incidents, it must be remembered that use of the statutory labels may mask important distinctions. It is better to identify problems by grouping incidents by “behavior, territory, persons, and time.” Once problems are identified by grouping incidents, problems in multiple municipalities can be categorized as provincial problems, and problems in multiple provinces categorized as national problems.

Assessing Criminal Justice Institutions

To assess the needs of local criminal justice institutions, the criminal justice professionals on the assessment team should examine the elements of those institutions not unlike the elements that would be the focus of a management study. These elements include:

- Organizational culture;
- Leadership and management;
- Financial resource generation and allocation;
- Policy, procedures, and administrative practices;
- Communication;
- Organizational operational capacity;
- Training and education;
- Community/client relationship; and
- Performance evaluation.

The are several methodologies for assessing criminal justice institutions. JUSTICE’s National Criminal Justice Reference Service is the national clearinghouse for such assessment tools.

121 Goldstein, Problem-Oriented Policing, 32-33.
122 Goldstein, Problem-Oriented Policing, 33.
123 Goldstein, Problem-Oriented Policing, 39.
124 Goldstein, Problem-Oriented Policing, 67-68.
Assessing the Criminal Justice Policy Environment

As ROL development assistance, like all foreign assistance, is a political act that affects the power relationships of those targeted for assistance, the identification of the ROL problems should be followed by an examination of the interests of those involved in controlling those problems. The assessment team should examine the interests of citizens, criminal justice agencies, and the country’s political leadership. Goldstein states, “the nature of the citizenry’s concern for and interest in (crime) problems is of critical importance in deciding how best to respond to them.” The same is true of ROL problems. Similarly, examining the level and tenor of the country’s criminal justice agencies’ and a political leadership’s interest in ROL problems is also important. The level and tenor of their interest will indicate how readily reform measures will be accepted and implemented.

127 Goldstein, Problem-Oriented Policing, 40.
THE PROGRAM PLANNING, MONITORING AND EVALUATION PHASE

The steps in the Planning, Monitoring, and Evaluation Phase of the RDAP Process solves the second half of the second obstacle and the third and fifth obstacles to knowledge. Defining the ROL problem to be addressed as precisely as possible, the purpose of RDAP Steps 4 and 5, is a necessary precursor to proper program planning, monitoring and evaluation. Without a specific ROL problem to address, ROL program implementers will be unable to set the objectives for a ROL program. In the absence of clear program objectives, identifying the projects necessary to meet those objectives will be impossible. Without a proper understanding of the country’s current ROL situation to act as a baseline, implementers will never be able to monitor or evaluate the effects of their efforts because they will not have anything with which to compare measurements taken following commencement of the program.

The second half of the second obstacle, not understanding “what to do” about the problems faced by a particular criminal justice system, is caused by a lack of a process linking desired outcomes to courses of action to achieve them. Having the ROL intelligence product describe the criminal justice system in detail and the ROL problem to be addressed specified, enables implementers to plan an effective response to that problem. Planning an effective response involves linking desired outcomes (program objectives) to projects that will achieve those outcomes. RDAP step 6, Effective Response uses Problem-Oriented Policing methods and military planning techniques to link program objectives to projects to be implemented.

The third obstacle, development organizations not devoting adequate resources to serious reflection and research on their own efforts, indicates a need for a program monitoring and evaluation methodology. Program monitoring and evaluation requires the completion of the following tasks:

- Defining the nature and extent of the problem the program is to solve;
- Monitoring and measuring the actions taken to solve the problem;
- Controlling for influences other than the actions taken; and
- Comparing the initial measurement of the problem with a measurement of the problem following the actions taken.

RDAP Steps 4 and 5 accomplish the first of these tasks. RDAP Step 7 uses COMPSTAT-style meetings, social science research, and development program monitoring and evaluation methods for the final three.

The fifth and final obstacle to knowledge, lawyers not being oriented for “empirical research” and “developmental, process-oriented issues,” and development organizations being unfamiliar with “legal development work,” amounts to a need for a process that enables these different fields to conduct ROL policy research and analysis cooperatively. The robust and relentless program monitoring of RDAP Step 7 creates a venue for criminal justice and development professionals to conduct live policy research cooperatively. In the short term, the COMPSTAT-style ROL meetings serve as de facto
on the job training in development for criminal justice professionals and on the job training in criminal justice for development professionals. In the long-term, each COMPSTAT-style ROL meeting, program, and iteration of the RDAP Process serves to create a body of knowledge that serves as the basis for not only lessons learned and lessons applied, but ROL theory as well.

**RDAP STEP 6: EFFECTIVE RESPONSE**

**The Art of Rule of Law Development Program Planning**

Once the ROL intelligence product and the on-site assessment report have defined the ROL problem to be addressed, planning “what to do” can begin. David Bayley stated that foreign police assistance programs, and by extension ROL development programs, “need as much advance planning as military operations, clearly specifying objectives, implementation actions, resources requirements, and timetables.”\(^{128}\) When planning military operations military commanders engage in the operational art, or the “employment of military forces to attain strategic and/or operational objectives through the design, organization, integration, and conduct of strategies, campaigns, major operations and battles.”\(^{129}\) ROL development program implementers need an equivalent of the operational art in order to plan viable programs.

ROL program planners should draw on planning techniques used in the military to plan ROL programs. However, due to ROL’s great conceptual and practical uncertainty, the definition of the operational art needs to be adapted to ROL before ROL planners can link U.S. objectives to ROL program objectives to ROL projects. Traditional definitions and concepts of strategy\(^{130}\) and the operational art are not adaptive and comprehensive enough to compensate for ROL’s conceptual and practical uncertainty. The art of rule of law development program planning can be defined as the following:

> the skillful design of broad courses of action which ensures the coordinated implementation of various projects and guides the employment of rule of law personnel and resources, taking into account the actions and positions of interested parties and the effects of the criminal justice policy environment, overtime, to achieve program objectives which in turn achieve U.S. objectives and/or serve U.S. national interests.

**OBSTACLE 2.B Drawing a connection between them (the ROL problems need to be addressed) and “what to do” is a daunting challenge.**

\(^{128}\) Bayley, Democratizing Police, 37.

\(^{129}\) The Department of Defense’s Dictionary of Military and Associated Terms.

\(^{130}\) “Strategic art, broadly defined, is therefore: The skillful formation, coordination, and application of ends (objectives), ways (courses of action), and means (supporting resources) to promote and defend the national interests.” Richard A, Chilcoat (M Gen, USA, Ret’d). Strategic Art: The New Discipline for 21st Century, (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 1995), 4.
See Appendix VI for a “walk through” of what to consider when engaging in the art of rule of law development program planning.

The Capacity Building is the Key Concept

Capacity building is the key concept that should be kept in the forefront of ROL development program planners’ (planners) minds when engaging in the “the art of ROL development program planning,” the art of linking U.S. objectives to ROL program objectives to ROL projects. To development professionals capacity building goes beyond the building of particular institutions. Capacity building “refers to a broad set of activities which cuts across institutional boundaries” and “includes influencing the policy environment within which the services provided by institutions are used for socially beneficial purposes.”

Driving the concept of capacity building is the definition of development, namely “increasing the capacity of people to influence their future” and therefore “planned change has to be concerned with the potential of individuals and with the inviolability of their persons.” It follows from this definition of development that not only do “programs and projects need to accomplish physical and concrete changes, but also that they do so in such a way that the people concerned have a greater capacity to choose and respond to these changes.” Viewing development as an increase in the capacity of peoples to influence their future requires ROL planners paying attention to equity, empowerment, and sustainability.

Equity To be true development, either economic or ROL development needs to be equitable. Economic development includes distributional issues because “no matter how “developed” an economy is, if only a small segment of the population benefits from it, development has not occurred.” Similarly, if there is a segment of a country’s population that receives disproportionately better service and treatment from the criminal justice system or is disproportionately the subject of arrest and prosecution, true ROL development has not occurred. However, it is important to note disproportionate arrest and prosecution of segment of a population may not indicate a criminal justice system’s lack of impartiality but rather social and economic structures that relegates that segment of the population to criminality.

Empowerment In economic development, empowerment is important to capacity building because “without a sense of personal efficacy, without any experience in expressing their needs, without an awareness of where to go with their demands, individuals can hardly develop a capacity” to make choices about their future. This can be scene in “the fact that those who are poor are powerless has a great deal to do with the

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132 Bryant and White, Managing Development, 14-15.
133 Bryant and White, Managing Development, 14-15.
134 Bryant and White, Managing Development, 16.
135 Bryant and White, Managing Development, 17.
amount of (economic) inequity that continues to exist.” 136 As “economic growth will not be automatically broadly distributed” the only way to correct “grossly unfair allocative decisions is” for poor people to have the influence necessary “to raise their issues onto the agenda.” 137

In ROL development, the role empowerment plays is similar to the role it plays in economic development. A country will not meet the institutional criteria of ROL development, namely that the elements of the criminal justice system are “competent and efficient,” if those elements are not empowered to compete for the funding or lobby for the legislation necessary to organize train, equip, and retain quality personnel. 138 Also, unless citizens, crime victims, and crime witnesses are empowered, especially those that are from groups that are marginalized by society, they will not be able to secure proper treatment from the criminal justice system. 139

Ultimately, empowerment may serve to reduce simple violent and property crime. 140 In the field of economic development it has been theorized that if “… the real problem of poverty is rooted in basic social structures which relegate the poor to conditions of dependency … then the central problem may be to reduce dependency by measures which increase the potential of the poor to take independent and instrumental political action on their own behalf.” 141 Likewise, if criminality is based on “basic social structures” that relegate segments of a population to criminality then empowering would-be petty criminals to self-organize to meet their basic needs in legal ways, should be a goal of ROL development efforts

Sustainability To have long term impact development has to be sustainable. In economic development, sustainability concerns, “the question if whether present production decisions allows us to sustain ourselves over time” despite finite resources. In ROL development sustainability concerns whether or not the effects of ROL assistance efforts will last over the long term following the completion of those efforts. For example, it is pointless to train individuals to perform a certain function if their parent organization has no department or unit that performs that function. Likewise, it is ill advised to propose that a national prosecutorial agency adopt a country-wide information technology based case management system in a country without the requisite power systems. Furthermore, ROL development sustainability concerns ensuring that the positive efforts made by those who are receiving or have received assistance, are also sustainable. For example, if a foreign law enforcement agency is patrolling areas as taught by a U.S. technical advisor but does so in a way that allows criminals to return to

136 Bryant and White, Managing Development, 16.
137 Bryant and White, Managing Development, 16.
138 Being able to retain personnel is important. In Bosnia because the national border service paid its officers more than the entity (province) law enforcement agencies, there was a flight of personnel from the entity law enforcement agencies to the national border service.
139 In the U.S., it took a great deal of work on the part of citizen groups to change how law enforcement agencies trained their officers to respond to crimes that involved violence against women.
140 It is important to note that this tactic will not work against organized crime or sexual predators. Citizen empowerment and civil society have their place but only hard law enforcement can fight hard crime.
141 Bryant and White, Managing Development, 17.
those areas once the law enforcement agency moves out, then the results of U.S. efforts have not been sustained.

**ROL Capacity Building**

ROL capacity building, like all capacity building, involves both institution building and influencing the policy environment. Criminal justice institution building usually involves implementing the following:

- Legal reform projects,
- Projects to organize, train, and equip criminal justice institutions; and
- Crime control projects.

Projects to influence the criminal justice policy environment are required to ensure political will on the part of host country criminal justice institutions to support ROL development efforts. Projects to influence the criminal justice policy environment could include the following:

- Public information and civil society projects;
- Targeted political and economic development efforts;
- Diplomatic efforts;
- Military civil affairs and psychological operations; and
- Covert operations such as propaganda, political activity, and economic activity.

**Rule of Law Institution Building**

**Legal Reform Projects** Law is the basis for all criminal justice institution building. Before one can speak of building criminal justice institutions it is imperative to know if there are statutes, similar to U.S. Code Title 10, that created and layout the powers and responsibilities of the country’s criminal justice agencies. Before efforts to train criminal justice personnel and develop policy and procedures of law enforcement operations can be planned, the country’s criminal code and criminal procedure code need to be thoroughly studied. If the country’s law on these subjects are inadequate then projects to draft new or revised laws are required. When drafting new or revised legal codes, it is imperative that the drafters take into account the country’s legal tradition, jurisprudence, and institutional norms. The ideal legal reform project would be implemented by a team made up of both U.S. and local personnel. Furthermore, training programs should developed to train criminal justice professionals to operate under the new code.

**Institution Building Generally** Institution building is a major component of building capacity. Institution building requires a broad set of activities. These activities include the following:

- Improving the functioning of institutional relationships and the environment for their interaction;
• Strengthening the capacity of institutions to set goals, evaluate alternative courses of action, and exercise leadership;
• Making better use of human and financial resources in meeting client needs;
• Building social support for long-term effectiveness and legitimacy; and
• Sustaining capacity over time, including the capacity to learn and evolve constructively in response to changing circumstances and demands.\textsuperscript{142}

\textbf{Criminal Justice Institution Building Activities} Although criminal justice institution building activities are similar activities to build other types of institutions in many ways, they differ in that, not only is the substance of criminal justice institution building activities important but the sequence of those activities is also important. The sequence of building criminal justice institution activities is not unlike the “force building” process in RDAP Step 3.

1. Planning – Before they can be assisted in any other way, criminal justice institutions need assistance to create mission statements and plans to achieve those missions.
2. Organizational Design – Once criminal justice institutions have a statement of their mission they can be assisted to structure their organization to accomplish that mission.
3. Definition of Roles – Following the design of an organization the responsibilities of the different units of that organization as well as the position descriptions of individuals who make up those units can be refined or defined.
4. Policy and Procedures – Operational and administrative policy and procedures consistent with and which help execute the organization’s mission can be developed once unit responsibilities and position descriptions have been defined.
5. Recruitment and Selection – Once the unit responsibilities and position descriptions have been defined, assistance to develop and implement recruitment selection standards and processes is possible.
6. Training/Technical Assistance - Following recruitment and selection, new recruits or newly promoted individuals can be provided with training in specific professional and technical subject areas. Once units have been stood up they can be provided with technical assistance.
7. Equipment – After recruits have been trained and units have been stood up they can be donated equipment. Technical assistance in setting up equipment acquisition and maintenance processes should be provided as well.
8. Inspection – The final type of assistance is assistance to conduct internal inspections to monitor the readiness and effectiveness of operations and make changes to policy, training, personnel levels, etc.\textsuperscript{143}

The substance and sequence of the different types of criminal justice institution building activities above anticipates the assistance needed across the spectrum of project

\textsuperscript{143} This approach to criminal justice institution building was created by Richard Mayer, former Deputy Director of the U.S. Department of Justice’s International Criminal Investigative Training Assistance Program (ICITAP).
scenarios. The spectrum of project scenarios, in order of decreasing depth of needed assistance, includes the following:

- Establishing and Building;
- Reform and Restructuring;
- Training; and
- Mentoring and Monitoring.

After the provision of the needed assistance for each scenario is completed, providing the assistance needed for the scenario at the next depth of assistance can begin.

An establishing and building scenario requires the greatest depth of assistance relative to the other three project scenarios. Establishing and building new local criminal justice institutions, either whole or in part, is necessary when no functioning local criminal justice institutions exist.\(^{144}\) During this assistance scenario, all eight of the different types of institution building activities, in order, are required. Additionally, it may be necessary for the country providing assistance to perform criminal justice functions until local institutions can be established and built.

Reforming and restructuring criminal justice institutions is necessary when an existing and functioning local criminal justice institution requires assistance to change its organizational culture or structure to perform in new or more effective ways.\(^{145}\) Foreign criminal justice institutions require this depth of assistance when their countries make democratic reforms. This depth of assistance emphasizes the second and third of the eight types of institutional building activities but the first may be needed and the fourth through eighth surely will be.

Providing training to individuals and units is required when an existing, functioning, and properly organized criminal justice institution, with effective operational and administrative policy and procedures, does not have the numbers of trained individuals or units for a particular subject area or range of subject areas. The four distinct audiences for individual training include the following:

- New recruits;
- Currently serving personnel;
- Middle and senior management; and
- Local trainers.

Unit training may be required for law enforcement units responsible for civil disorder management and intelligence analysis. This depth of assistance emphasizes the training half of the sixth as well as the final two types of institution building activities.


Providing technical assistance to mentor and monitor the different individuals and units of a criminal justice institution can begin once they are fully trained. When mentoring, a U.S. criminal justice professional directly engages a foreign colleague, counseling and guiding him/her in the performance of their duties. Mentoring is an important follow-on to training as it assists in bringing the knowledge gained from course material and practical exercises during training down to day-to-day tasks. Monitoring foreign criminal justice institutions involves observing, recording, analyzing, and reporting on how those institutions operate. Monitoring is one method which ROL implementing organizations can not only assess the local criminal justice institutions’ absorption of the training provided to them but also lock in such training.

Planning Crime Control Projects The core part of criminal justice institution building is building those institutions to be able to respond effectively to their country’s criminal threats. Those responsible for planning and implementing foreign criminal justice assistance programs need to decide how best to respond to the country’s crime problems and then build the foreign institutions to be able to implement those responses without outside assistance. Based on crime analysis, criminal intelligence products and the assessment of the capabilities of the various host country law enforcement agencies, project planners, with help of the leadership of the institutions they wish to assist, should develop two plans. The first plan should concern countering the crime problems identified in the assessment with the resources and capabilities available. The second plan should concern what would be done in an ideal case given local conditions. The ability to implement the second plan then becomes the goal of institution building efforts. The full range of possible responses should be explored for each plan. These responses can include, but should not be limited to, the following:

- Concentrating attention on those individuals who account for a disproportionate share of a problem;
- Connecting criminal justice agencies with other government and private services;
- Using mediation and negotiation skills;
- Conveying information;
- Mobilizing the community;
- Making use of existing forms of social control in addition to the community;
- Altering the physical environment to reduce opportunities for problems to recur
- Increased regulation through statutes or ordinances, of conditions that contribute to problems;
- Developing new forms of limited authority to intervene and detain;
- Using the criminal justice system discriminately; and
- Using civil law to control public nuisances, offensive behavior, and conditions contributing to crime

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146 United Nations, CIVPOL Principles and Guidelines, 36-37.
147 United Nations, CIVPOL Principles and Guidelines, 37.
148 Goldstein, Problem-Oriented Policing, 104-139.
Although the drafting of operational plans based on the locations of crime hotspots and criminal networks seems only relevant to law enforcement officers, as arrests by those officers represent the entry of individuals into the criminal justice system, it also has implications for the rest of the criminal justice system being assisted. Community prosecution attorneys have found it useful to have their neighborhood assignments correspond to the geographic area of responsibility of the law enforcement commander’s to allow attorneys, law enforcement officers, and citizens to focus on the same crime and disorder problems, the same problem locations, and the same problem people.\textsuperscript{149} Community courts have also found it important to re-organize based on community problems to better serve their communities.\textsuperscript{150} Clearly, stemming from the high rates of recidivism for certain crimes, any plan created to respond to crime problems should incorporate the information from local corrections professionals who deal with probation and parole.

**Projects to Influence the Policy Environment**

As legal reform, criminal justice building, and crime control efforts will fall by the wayside without political support, ROL development programs must be accompanied by efforts to influence the criminal justice policy environment in ways that will foster the political will for ROL development. Development professionals should develop public information and civil society projects as well as projects to enable the host country’s executive and legislative branches to support ROL development efforts or at the very least not stand in their way. Furthermore, the possibility of utilizing other instruments of national power such as targeted political and economic development efforts as well as diplomatic efforts, military civil affairs and psychological operations, should be considered. In extreme instances, when providing ROL development assistance or overtly influencing the ROL policy environment are not options because of such things as extreme corruption of the host government, covert efforts to influence the policy environment such as propaganda, political activity, economic activity should be considered.\textsuperscript{151} It is important that if other instruments of national power are used to support a ROL development program that they be put under the operational control of the ROL development program manager.

**Selecting, Wargaming, and Combining, Rule of Law Project Plans**

Once projects plans are created to update foreign legal codes, build criminal justice institutions, foster crime control, and positively influence the policy environment, ROL program implementers need to do the following:

- Select the best project plan for each project type;
- “Wargame” each of the selected project plan; and

\textsuperscript{149} Boland, *Community Prosecutions*, 8.
\textsuperscript{151} An instance where covert assistance would have been appropriate would be the covert financing of political candidates running against Pablo Escobar when he ran for office in the Columbian legislature.
• Combine the projects plans into a program plan.

Selecting the best project plan from among a group of proposed project plans for each project type involves estimating the probability of success for each plan relative to plans of the same type. Methods of how to make such an estimation can be seen below. Once project plans have been selected for each project type, those plans need to be wargamed to check that they are the best plans and to help forecast what the responses to those plans will be. Following wargaming the selected project plans need to be combined into a program plan in a way that ensures that they are mutually reinforcing.

Selecting From Among Legal Reform and Policy Environment Influencing Projects Plans Funders and implementers need to select legal reform project plans and plans for projects to influence the policy environment, based on a variety of factors. These factors include the likelihood of the projects helping achieve program and/or U.S. objectives, fostering equal treatment before the law, as well as the project plans’ respect for the country’s legal tradition and culture and the project plan’s level of parsimony. To estimate the relative strength of a project plan in these areas, funders and implementers need to ask themselves the following questions:

• Which project is most likely to achieve program and/or U.S. objectives?
• Which project is respectful of the country’s history, culture, and legal traditions?
• Which project is most likely to foster equal treatment before the law? and
• Which project has the simplest conceptual underpinnings?

Selecting From Among Proposed Criminal Justice Institution Building Projects Plans Funders and implementers need to select which criminal justice institution building project plans will be implemented based on the relative likelihood that those project plans will help achieve the program objective while leading to equitable, empowering, and sustainable outcomes. The ideal criminal justice institution building project plan would consist of the full range of efforts described previously, but because of limited time, program funding, and political will for institutional reform, funders and implementers will be forced to select from a range of less comprehensive efforts. Although limited time, program funding, and political will may limit the type and scope of possible projects, the process of selecting which criminal justice institution building project plan will be implemented needs to go beyond the considerations of time management, benefit-cost ratios, and political feasibility. When faced with a limited number of criminal justice institution building project plan choices, funders and implementers need to ask the following questions:

• Which project is most likely to achieve program and/or U.S. objectives?
• Which project is most likely to foster equitable treatment of all the country’s citizens by the entire criminal justice system?
• Which project is most likely to empower criminal justice institutions and the country’s citizens, especially victims and witnesses of crime? and
• Which project is most likely to have a sustainable impact?
Selecting From Among Proposed Crime Control Project Plans  Deciding which crime control project to implement is in effect selecting the best response to a country’s criminal threats because the response should be the substance of the criminal control project implemented. Once possible responses to the country’s criminal threats have been identified, selecting one of them should be done by considering a variety factors, including but not limited to, the following:

- The potential that the response has to reduce the problem;
- The specific impact that the response will have on the most serious aspect of the problem (or those social interests deemed most important);
- The extent to which the response is preventative in nature, thereby reducing recurrence or more acute consequences that are more difficult to handle;
- The degree to which the response intrudes into the lives of individuals and depends on legal sanctions and the potential use of force;
- The attitude of the different communities most likely to be affected by the adoption of the response;
- The availability of the authority and resources of criminal justice agencies;
- The legality and civility of the response, the way in which it is likely to affect the public’s relationship with criminal justice agencies; and
- The ease with which the response can be implemented.152

Clearly, as financial resources are usually limited, a common way to determine the feasibility of a project “is to use economic analysis either to compare the costs and benefits of several projects.”153

\[
\text{Present worth of benefits} \quad \text{Benefit-Cost Ratio} = \quad \text{Present worth of costs}
\]

In addition to estimating the feasibility of a project, cost-benefit analysis can be used later for project evaluation.154

Wargaming Rule of Law Project Plans  After project plans have been selected, and the ROL development program planners need to “wargame” them to ensure those plans are in fact the best choice and help forecast the reactions to them. In the military, “wargaming is a mental process of visualizing each step of the battle, considering friendly and enemy actions and counteractions.”155 When facing a decision concerning how to deploy their troops, military commanders wargame each of their options and choose the best course of action from among them. In ROL terms, “wargaming” means visualizing the effects of and the reactions to the updated legal codes, criminal justice institution building and crime control efforts, and projects to influence the policy environment. The ROL development planners should go two moves out, meaning that after an initial wargame iteration, they should wargame the results from that wargame.

152 Goldstein, Problem-Oriented Policing, 143.
153 Bryant and White, Managing Development, 119-121.
154 Bryant and White, Managing Development, 121.
155 Antal, Armor Attacks, 313.
Wargaming the project plans will further refine them. If possible a group of individuals should act as the “criminals” while “war-gaming” the integrated criminal justice strategies.

**Combining the Different Rule of Law Projects Plans** Once project plans are adjusted based on the result of two iterations of wargaming, those project plans need to be combined into a comprehensive program plan. Combining these different project plans does not mean placing them together in a three-ring binder but rather de-conflicting them. De-conflicting the project plans involves identifying and eliminating instances where they work at cross purposes. All efforts must be made to ensure that the different project mutually are reinforcing.

**Branch Planning for and Testing the Logic of, Rule of Law Program Plans**

Following the combination of the various project plans into a program plan, branch planning needs to be conducted to supplement the program plan and the logic of the program plan needs to be tested. The program plan needs to be supplemented by “branch plans,” i.e. plans for when things go right and for when things go wrong during the program’s implementation. The logic of program plan needs to be tested to ensure the program will help achieve U.S. objectives and to map out the program’s inputs, outputs, and measures of program fulfillment.

**Branch Planning for Rule of Law Program Plans** Once the different project plans are combined into one program plan, branch plans should be made for each project so program managers will be able to compensate for various contingencies. The process of branch planning involves visualizing possible negative and positive events that could affect each project during the life of the program and determining the best response to those events ahead of time. Branch plans will allow implementers to be able to compensate for when things go wrong while still being able to retain the framework and substance of the program plan and to be able to capitalize on when things go better than expected.

**Testing the Logic of Rule of Law Program Plans** After the project plans have been combined into a program plan, that plan as well as the different projects that make it up must undergo Logical Framework Analysis (LFA). LFA is a device used in development planning that lays out the “flow of project inputs and anticipated outputs and indicate possible measures of project fulfillment.”\(^{156}\) This analysis tests the logic of a project by analyzing its means and ends to “clarify how the planned activities will achieve the objectives” and “be explicit about the implications of carrying out the planned activities in terms of resources, assumptions and risks.”\(^{157}\) LFA is advantageous because the process of working it through assists planners in coming to consensus about the project’s skeletal framework. Additionally, if this framework is “established at the start of a project, achievement can be measured at regular intervals during

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\(^{156}\) Bryant and White, *Managing Development*, 118.

\(^{157}\) Save the Children, *Toolkits*, 178.
implementation.”158 Table 3 contains a general LFA matrix. Tables 4 and 5 contains a sample LFA matrix for a ROL program and one of the projects that make it up.

158 Bryant and White, Managing Development, 119.
TABLE 3: LOGICAL FRAMEWORK ANALYSIS

**Source:** Managing Development in the Third World

<table>
<thead>
<tr>
<th>Narrative Summary</th>
<th>Objectively Verifiable Indicators</th>
<th>Means of Verification</th>
<th>Important Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program or Sector Goal</td>
<td>Measures of Goal Achievement</td>
<td>Examination of Records, Statistics, and Surveys</td>
<td>Assumptions for Achieving Goal Targets</td>
</tr>
<tr>
<td>Project Purpose</td>
<td>Conditions which Indicate Purpose Achieved</td>
<td>Evaluation Data</td>
<td>Assumptions for Achieving Goal Purpose</td>
</tr>
<tr>
<td>Outputs</td>
<td>Magnitude of Outputs</td>
<td>Measures and Observation Data</td>
<td>Assumptions for Achieving Outputs</td>
</tr>
<tr>
<td>Inputs</td>
<td>Implementation Target</td>
<td>Government Records and Documents</td>
<td>Assumptions for Providing Inputs</td>
</tr>
<tr>
<td>Narrative Summary</td>
<td>Objectively Verifiable Indicators</td>
<td>Means of Verification</td>
<td>Important Assumptions</td>
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</tbody>
</table>
| **U.S. National or Departmental Objective:**  
  • Defeat Terrorists and Their Organizations | **Measures of U.S. National or Departmental Objective Achievement:**  
  • Reduced Geographic Scope and Capability of Terrorist Organization Y | **Examination of Records, Statistics, and Surveys:**  
  • Review of Pre/Post-Program Rule of Law Intelligence Products  
  • COMPSTAT-Style Rule of Law Meetings | **Assumptions for Achieving the U.S. National or Departmental Objectives:**  
  • Increasing Country X’s Criminal Justice Capacity Will Help Counter Terrorist Organization Y |
| **Program Objective:**  
  • Build the Capacity of Country X’s Criminal Justice Institutions to Counter Global Terrorist Organization Y in Country X. | **Conditions Which Indicate Program Objective Achievement:**  
  • Increased Criminal Justice Institutional Impartiality, Effectiveness, and Efficiency  
  • Positive Changes in the Criminal Justice Policy Environment | **Evaluation Data:**  
  • Prevention of Terrorist Attacks  
  • Impartial Arrests, Prosecutions, Adjudications, and Sentencings of Terrorists  
  • Measures of Support for Counterterrorism Country X’s Criminal Justice Institutions’ Efforts | **Assumptions for Achieving the Program Objective:**  
  • The Selected Criminal Justice Institution Building Projects and Projects to Influence the Criminal Justice Policy Environment Will Build Country X’s Criminal Justice Capacity |
| **Outputs:**  
  • Criminal Justice Institution Building Projects  
  • Projects to Influence the Criminal Justice Policy Environment | **Magnitude of Outputs:**  
  • All Types of: Projects Implemented | **Measures and Observation Data:**  
  • Monthly Totals of Numbers of Projects by Type | **Assumptions for Achieving Outputs:**  
  • Rule of Law Development Program Implementing Agencies’ Headquarters Personnel Have the Capacity to Plan and Implement the Selected Program and Projects |
| **Inputs:**  
  • Program Personnel  
  • Project Personnel  
  • “Back Office” Costs | **Implementation Target:**  
  • Program and Project Personnel Fully Deployed, Organized, and Equipped | **Government Records and Documents:**  
  • Monthly Program and Project Reports | **Assumptions for Providing Inputs:**  
  • Funding Will Be Made Available as Soon as Possible |
### TABLE 5: SAMPLE LOGICAL FRAMEWORK ANALYSIS FOR A COUNTERTERRORISM RULE OF LAW PROJECT

**Source:** Author

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<tr>
<td><strong>Inputs:</strong></td>
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<td>Government Records and Documents:</td>
<td>Assumptions for Providing Inputs:</td>
</tr>
<tr>
<td>• Project Personnel</td>
<td>• Project Personnel Fully Deployed, Organized, and Equipped</td>
<td>• Monthly Project Reports</td>
<td>• Funding Will Be Made Available as Soon as Possible</td>
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<tr>
<td>• “Back Office” Costs</td>
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<tr>
<td>• Donated Equipment</td>
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</tbody>
</table>
RDAP STEP 7: PROGRAM MONITORING AND EVALUATION

Robust and relentless program monitoring during meetings enable funders and implementers to think critically about their efforts “live and in person” as opposed to in a written report. In the short term, these meetings serve as de facto on the job training in development for criminal justice professionals and on the job training in criminal justice for development professionals. In the long-term, the meetings create a body of knowledge that serves as the basis for future project and program planning.

Performance Monitoring At NYPD

NYPD’s leadership conducts monthly meetings to monitor and measure police performance and the impact of crime control strategies and tactics on an ongoing basis. The reason for this continual monitoring and measurement was summed up by COMPSTAT’s creator Maple, when he stated that “the most effective operational systems in the world will fail eventually if they’re not relentlessly tested to prevent the inevitable slippage from destroying them.”\(^{159}\) He described a COMPSTAT meeting as a “live audit of overall police performance.”\(^{160}\) This live audit serves several purposes outlined in table 5.

<table>
<thead>
<tr>
<th>TABLE 6: THE PURPOSE OF COMPSTAT SYTLE MEETINGS</th>
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<tr>
<td><strong>Source:</strong> <em>Managing Police Operations</em></td>
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</table>

- Ensure that Patrol Commanders are paying attention to crime in their geographic areas
- Ensure that the strategies and tactics designed to attack a problem are as creative and varied as possible
- Following up on events from the previous meeting to demonstrate consistency and stay focused on crimes tied to the objectives
- Ensure that all departmental and external resources that could be brought to bear on a program are coordinated and available
- Provide an ongoing teaching/learning situation in which those who attend can learn about developing strategies and assessing their impact
- Review the impact of tactics and strategies that are developed and applied

As law enforcement commanders “have to constantly seek ways to identify and disseminate best practices,” COMPSTAT meetings serves the invaluable purpose of providing both those undergoing the audit and those watching it, with a chance to learn

\(^{159}\) Maple, *The Crime Fighter*, 188.
what strategies and tactics work and which do not firsthand. In support of this audit the methods of evaluation and the variables monitored, are changed according to the tactic or problem being assessed and all means are employed to provide both qualitative and quantitative assessment. Law enforcement commanders have found it useful to continually evaluate how subordinates collect the data that will be analyzed in order to prevent “cooking the books.”

Rule of Law Program Monitoring

COMPSTAT-Style Rule of Law Meetings Procedures In order to monitor and evaluate ROL development programs and efforts to positively influence the criminal justice policy environment of the host country, funders and implementers should conduct periodic meetings similar to COMPSTAT meetings. These meetings should be attended by all personnel from ROL program funding and implementing organizations responsible for countries in a given region. The interaction at meetings should begin with the reporting country program manager providing a summary of events and progress for the relevant time period. Project leaders may be asked to contribute greater detail. Funders and representatives from ROL program implementing agencies, acting as the meeting facilitators, should question the program manager at any time during the presentation so that the information exchange is relevant and to the point. The program managers and project leaders should be prepared to speak on the following four topics:

1. The difficulties encountered;
2. The efforts used to overcome these difficulties;
3. The results of the those efforts; and
4. The necessary follow-up.

These periodic ROL meetings would require implementers to “reflect critically on their own work” and therefore learn lessons during the live audit. Learning specific lessons during the live audit will prompt ROL professionals to “reflect critically on their own work” and prevent lessons learned from being “too general or obvious, or both.”

During the periodic ROL meetings, ROL development programs should be monitored at the levels of the specific national or departmental objective, program objective, and project targets for outputs and inputs. By identifying indicators for program objectives and outputs during LFA, monitoring and evaluation should be relatively straightforward, and where targets have also been set, these can be used to assess progress quantitatively. As in economic and political development programs, each party involved in funding and implementing the program should relentlessly track program funding and continually conduct benefit-cost analysis.

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162 McDonald, Managing Police Operations, 22.
163 Maple, The Crime Fighter, 179.
164 Traditionally, despite the fact that ROL professionals identify the need to “reflect critically on their own work,” most of the lessons learned presented in official reports are often “too general or obvious, or both. Carothers, The Problem of Knowledge, 11.
165 Save the Children, Toolkits, 183.
It is important that during these meetings the accent be put on evaluating whether or not program outcomes meet the specified national or departmental objectives because “program evaluations that emphasize outputs rather than outcomes as a measure of success inhibit organizational creativity.”166 Putting an emphasis on evaluating outcomes also prevents implementers from declaring “mission accomplished” by reporting outputs such as “We have trained X number of foreign law enforcement personnel” or “We have held Y number of conferences or training programs.” In order to determine if program objectives are being met, program funders should use the periodic meetings to ensure that implementers and policy environment influencers, as well as the host country criminal justice agencies, branches of government, and the elements of civil society that they support, are meeting their responsibilities.

In addition to discerning whether or not objectives and targets are being met at various program levels, the periodic ROL meetings should also be an arena to test the internal logic of the program plan to expand the boundaries of ROL development professional knowledge. Evaluating the internal logic of the program design and assessing what and at what level problems occurred if the program fails to meet objectives or targets can be done by utilizing LFA to recall program and project goals and purposes, indicators that can be used for verification, and assumptions made at the time of program design.167 It is important to evaluate the internal logic of ROL development program plans because policy failure may occur, even with correct diagnosis of the problem, if the policy prescription is incorrect. Additionally, failure can occur at any level of the program because the level above or below fails or is conceptualized or implemented incorrectly. This methodology can help elucidate what outcome outputs will have and hopefully mitigate the historic inability of many ROL development program implementers to understand the long-term impact of specific changes in relevant institutions caused by development efforts.168

By monitoring and evaluating program outcomes and project outputs cooperatively at COMPSTAT-style ROL meetings funders and implementers will conduct live ROL policy research and learn the substance and process of each other’s field. COMPSTAT-style meetings provide a venue for those present to learn what works and what doesn’t firsthand. By being prompted to continually ask themselves whether their programs are meeting U.S. objectives and thereby serving U.S. national interests, the criminal justice professionals who will manage ROL programs will learn the deductive process of national security and foreign policy planning. Through using LFA

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166 Bayley, Democratizing Police, 24.
167 Bryant and White, Managing Development, 119.
168 What Effects Will Change Have?: “Even when aid programs are able to facilitate fairly specific changes in relevant institutions, it is rarely clear what the longer-term effects of those changes are on the overall development of the ROL in the country in question.” Carothers, The Problem of Knowledge, 11.
to monitor and evaluate their program’s outcomes and project’s outputs criminal justice professionals will gain a working knowledge of economic and political development program monitoring and evaluation practices. By witnessing the use of the situational awareness created by law enforcement intelligence to drive the design and implementation of crime control projects, the foreign policy and development professionals, who fund ROL programs, will gain an appreciation and understanding of criminal justice operations.

Strategic Level Monitoring at COMPSTAT-Style Rule of Law Meetings
Policymakers, Regional Criminal Justice Directors, and funders need to monitor programs at the strategic level. Monitoring a ROL program at the strategic level involves continually and analyzing whether the program supports or detracts from efforts to meet specific U.S. objectives. Policymakers, Regional Criminal Justice Directors, and funders should be prepared to modify program objectives in response to situational changes or changes in U.S. policy.

Program Level Monitoring at COMPSTAT-Style Rule of Law Meetings
Program managers need to monitor that the projects that make up the program are meeting the program objectives and that the projects are mutually reinforcing. To monitor whether projects are meeting program objectives they should refer to the program level indicators noted in the LFA. The program manager must also continually make sure that regardless of the successes and failures of individual projects that all the projects are mutually reinforcing and that they will achieve the objectives of the program. As obtaining program objectives should help efforts to meet U.S. objectives, program managers must also be prepared to modify program objectives if the specific U.S. objective with regard to the country changes.

Criminal Justice Institution Building Project Monitoring at COMPSTAT-Style Rule of Law Meetings
To monitor criminal justice institution building projects, program managers need to pay attention to the outcome and output indicators contained in the LFA for each project. Outcome indicators would be observable measurements of the assisted criminal justice institutions having the capability to perform in accordance with the ROL. Output indicators would include the results of the required criminal justice institution building activities.

Crime Control Monitoring at COMPSTAT-Style Rule of Law Meetings
To monitor an crime control efforts, program managers should follow such factors as changes in crime patterns, continued existence of hot spots, continued citizen complaints, suspect identification, changes of patterns in call-for-service, and arrests resulting in prosecutions. All efforts should be made to have implementers, as well as the host country institutions, do the following:

- Maintain detailed records of successes and failures of individual crime control tactics and strategies and then analyze them at regular time periods to determine which techniques led to success;

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169 McDonald, Managing Police Operations, 22.
• Conduct long-term trend analysis and short-term tactic-specific evaluations;
• Evaluate overall crime trends within a jurisdiction on annual, semiannual, or monthly basis; and
• Accumulate demographic and other data that might provide additional information explaining the dynamics of a crime trend.\textsuperscript{170}

**Monitoring Projects to Influence the Policy Environment at COMPSTAT-Style Rule of Law Meetings** The methods used to monitor projects to influence the policy environment will differ with the type of project. Public information campaigns, civil society programs, and public diplomacy efforts can be monitored through the use of surveys. The effects of diplomatic efforts that target elites can be monitored through the use of political analysis techniques used by the U.S. intelligence community. Targeted economic and political development efforts, military psychological and civil affairs operations, and covert operations can be monitored by tracking indicators determined during the LFA of those projects. Those implementing efforts to influence the policy environment should keep track of changes in attitudes, “lightning rod issues,” media coverage of ROL-related issues, and changes in rhetoric of both elites and citizen groups.

**Controlling for Outside Influences** ROL development analysts should continually collect data to control for outside influences and there should be impartial assessments done by outside parties periodically during the program’s period of performance. As there is a great deal of uncertainty about what factors cause or detract from the ROL, ROL development analysts should use econometric methods to control for the effects of outside influences on the ROL in the host country other than that of the ROL program. This will ensure that the outcomes observed over the life of the program are in fact the results of the program, and of the program alone. In order to catch intangible factors, that are sometimes masked by statistics, an assessment team, other than the “on the ground” implementers, should be sent to assess the ROL status in the country periodically during the life of the program. Use of third party assessments during the life of the program will prevent “on the ground” implementers from being railroaded by ROL professionals at headquarters and hopefully mitigate headquarters-field battles. These assessments can also serve as additional way to check the veracity of the reports sent to funders from the field.

**Flexibility** Continual monitoring during the life of the program will provide program managers the situational awareness needed to understand when to revise the project targets or implement one of the branch plans in response to changes in the ROL situation in the host country. Development professionals have stated that “it is important to revise targets continuously during the project.”\textsuperscript{171} Without knowing what is going on with the program, there is no way of knowing how to revise the program objective or project targets. It has been also stated that “institutional development requires flexibility, innovation, and willingness to consider all other contingencies.”\textsuperscript{172} The same could be said of capacity building, and ROL development is no exception. Extensive branch

\textsuperscript{170} McDonald, Managing Police Operations, 22.
\textsuperscript{171} Save the Children, Toolkits, 183.
\textsuperscript{172} World Bank, Technical Assistance Handbook, 11.
planning prior to program implementation will allow for program objectives to be adapted to changing local ROL conditions while still being able to meet specific U.S. objectives.

**Rule of Law Program Evaluation**

ROL program evaluation is essentially ROL monitoring with a few additional tasks. At the final COMPSTAT-style ROL meeting, funders and implementers need to take final measurements of indicators and compare them to both the second to last measurements and the baseline measurements from the first meeting. If possible, post-program ROL intelligence analysis and a post-program onsite assessment should be conducted by individuals other than those who conducted them previously. In addition to these tasks, funders and implementers need to create a lessons learned document and collect transcripts of the program’s COMPSTAT-style ROL meetings. All of the above then need to be put together in one well organized post-program report that can be widely disseminated. Post-program reports will inform future ROL objective setting, intelligence analysis, on-site assessment, and ROL program planning, monitoring, and evaluation.
THE BENEFITS OF THE RULE OF LAW DEVELOPMENT ANALYSIS AND PLANNING PROCESS

Solving the Problem of Knowledge

Recognizing that ROL development, at least in the criminal justice sense, has politico-military, law enforcement and economic and political development dimensions the RDAP process solves the problem of knowledge by drawing on the analysis and planning methods from those fields. During the Strategy Phase, at the start of the RDAP process, national security and development professionals, who are the funders of ROL development programs, articulate foreign policy, national security, or economic or political development objectives. These objectives substitute for ROL development theory. During the Analysis and Assessment Phase, the professionals at ROL development program implementing organizations use foreign and law enforcement intelligence analysis and on-site assessment to define the specific ROL problem to be addressed. During the Planning, Monitoring and Evaluation Phase, the criminal justice professionals at ROL development program implementing organizations, using Problem-Oriented Policing, military planning and development planning methods, to plan projects for legal reform, criminal justice institution building, crime control, and influencing the policy environment to address the ROL problem specified. Lastly, the ROL development program funders and implementers cooperate at periodic meetings to monitor and evaluate programs at various levels. Over the long term the RDAP process improves the state of ROL analysis and planning with each iteration because it creates the knowledge needed to overcome the five obstacles.

Cooperation in Lieu of a Field

The RDAP process cannot make ROL development assistance a field or place the U.S. capabilities for such assistance at one department or agency but it can enable the U.S. ROL interagency process to function as either a hierarchy or a network. The RDAP process enables the U.S. ROL interagency process to act as a hierarchy by allowing funders to state U.S. national interests and objectives while prompting them to refrain from making overly specific program recommendations. The RDAP process does this by having funders empower implementers by providing them the guidance the necessary to act as while respecting that implementers are responsible for the diagnosis of and recommendations concerning, ROL problems. The RDAP process enables the U.S. ROL interagency process to act as a network by limiting the inter-field and interpersonal uncertainty between funders and implementers. At the level of departments and agencies, the RDAP process mitigates bureaucratic fights by building on processes that are legitimate to each of the interested professional fields and encourages those fields to specialize in activities in which they have a comparative advantage. At the working level, the RDAP process reduces interpersonal and inter-field uncertainly by forcing representatives of each of the fields to make their assumptions explicit and to be accountable the representatives of the other fields.
APPENDIX I: INTERNATIONAL CRIMINAL JUSTICE STRATEGIC PRINCIPLES AND CONCEPTS

To achieve the objectives of a new international criminal justice strategy, new principles and concepts are required to inform the use of international criminal justice instruments. Strategic principles can be defined as, “self-evident truths that politico-military scholars have distilled from historical studies” that experienced strategists used “as checklists to help control the quality of theories, policies, doctrines, concepts, and plans.” Strategic concepts can be defined as “theses, which build upon relevant theories, principles, policies, and doctrines, and are formulated to achieve objectives effectively and efficiently despite perceived opposition from opposing military forces.”

International Criminal Justice Strategic Principles

Clear Objectives and Concepts

Decisive, attainable, national objectives, and complementary departmental objectives selected to satisfy valid national interests should form the foundation for U.S. international criminal justice activities and strategic concepts. All objectives should be consistent, clearly articulated, prioritized, and preferably directed against the enemy’s strategic center of gravity. All U.S. international criminal justice activities and the political and material support on which they depend, should be focused and directed towards these objectives. International criminal justice plans and activities at every level should contribute to attainment of these objectives; none should be contradictory. International criminal justice strategic concepts which inform the implementation of international criminal justice plans should be as clear and concise as possible. Strategic concepts expressed lucidly and concisely reduce opportunities for misinterpretations and decrease prospects for confusion during the conduct of U.S. international criminal justice operations.

War-fighting Equivalent(s): Purpose; Simplicity; Peacekeeping Equivalent(s): Objective; and UN Civilian Police (CIVPOL) Equivalent(s): Clear and Achievable Mandate.

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173 Collins, Military Strategy, 60.
174 Collins, Military Strategy, 81.
175 Decisive, attainable, political objectives, and complementary military aims selected to satisfy valid national security interests form the foundation for military missions and strategic concepts. All should be consistent, clearly articulated, prioritized, and preferably directed against the enemy’s strategic center of gravity. Plans and operations at every level should contribute to attainment; none should be contradictory. Collins, Military Strategy, 84.
176 Strategic concepts expressed lucidly and concisely reduce opportunities for misinterpretations and decrease prospects for confusion in the fog of war. Collins, Military Strategy, 84.
178 It is important for explicit and realistic objectives to be stated in the mandate so that the peace operation, and the political and material support on which it depends, can be focused and directed towards generally recognized and agreed ends. United Nations, CIVPOL Principles and Guidelines, 10.
APPENDIX I: INTERNATIONAL CRIMINAL JUSTICE STRATEGIC PRINCIPLES AND CONCEPTS

Unity of Command and Effort

To be effective U.S. criminal justice activities require unity of command and multilateral criminal justice activities require unity of effort. Unity of command of U.S. criminal justice personnel and units assigned to an International Criminal Justice Command is essential because only central sources of authority can easily assign responsibilities, promulgate policies, establish procedures, issue guidance, approve plans, set standards, supervise implementation, and settle disruptive disputes. During the conduct of multinational law enforcement operations and ROL development programs, when unity of command cannot be realized, it is imperative to establish unity of effort so all efforts are guided by a single strategic perspective and focused on achieving common objectives. This is especially true of ROL development programs which are collaborative, multidimensional, and complex enterprises. “Reality reveals a disparate set of individual agencies involved in sometimes contradictory and conflicting activities which, at their worst, undermine each other and the needs of people and society they are destined to serve, and, at best, generate duplication, confusion, and waste.”

War-fighting Equivalent(s): Unity;  
Counterinsurgency Equivalent(s): Organization for Unity of Effort;  
Peacekeeping Equivalent(s): Unity of Effort; and  
UN CIVPOL Equivalent(s): Unity of Effort and Command.

Legitimacy

In order to operate effectively in foreign countries U.S. criminal justice personnel and units must sustain their legitimacy in the eyes of the host country’s governments, their criminal justice institutions, and the citizens those institutions serve. Formal legitimacy is based in the legal and verbal agreements that memorialize a government’s consent to allow U.S. criminal justice personnel to operate in foreign countries. Informal legitimacy is based upon the skill and experience of the U.S. criminal justice personnel, their ability to achieve the tasks assigned to them, their knowledge of the country they are working in and the institutions they are assisting, and their conducting themselves in a professional manner in accordance with the international human rights instruments regarding law enforcement officials.

179 Mani, Conflict Resolution, 3.
180 Most military doctrines… promote Unity of Command because central sources of authority are better able to assign responsibilities, promulgate policies, establish procedures, issue guidance, approve plans, set standards, supervise implementation, and settle disruptive disputes. Collins, Military Strategy, 84.
181 The ideal for this dimension is that all efforts are guided by a single strategic perspective and focused on the ultimate goal of survival, reconciliation of the conflict, and removal of the causes. Edwin G. Corr and Stephen Sloan, Low Intensity Conflict: Old Threats in a New World. (Boulder, CO: Westview, 1992) 12.
182 (In the absence of Unity of Command) Seek unity of effort in every operation. Department of the Army, Peace Operations, 16.
183 UN peacekeeping operations are collaborative, multidimensional, and complex enterprises that require unity of effort and command to be effective. United Nations, CIVPOL Principles and Guidelines, 11.
Cooperation

U.S. criminal justice personnel operating in foreign countries require the active cooperation of the criminal justice personnel in that country. Every effort must be made on the part of U.S. criminal justice personnel to show their foreign counterparts respect and professional courtesy. Regardless of their personal and professional views, no matter how warranted they may be, at no time should U.S. criminal justice personnel show disdain for, or act superior to, their foreign counterparts. A productive working relationship with foreign criminal justice institutions and personnel is essential for the conduct of U.S. international criminal justice activities. In the absence of such a working relationship, especially when their counterparts are not proactive, U.S. criminal justice personnel operating abroad should be prepared to persuade, cajole, and even manipulate them into taking positive action.

UN CIVPOL Equivalent(s): Consent and Cooperation

Adaptability and Initiative

The criminal justice personnel and units of the ICJ command at all levels must have a high level adaptability so they are able to continuously evaluate and respond to the changing situation in their area of operations in order to gain and retain the initiative. As no one can consistently forecast the time place, scope, tenor, intensity, and course of events, great uncertainty is an inherent during the conduct of international criminal justice activities. To offset this uncertainty requires a high level of adaptability with regard to plans, operational concepts, and the organization, employment and deployment of human, material, and financial resources, on the part of U.S. international criminal justice personnel and units. This adaptability will enable U.S. international criminal justice personnel to gain and retain the initiative, meaning the ability to be proactive and create and exploit opportunities to control the course of events and force others to be reactive.

184 The single most important dimension is legitimacy, the moral right to govern. Corr and Sloan, Low Intensity Conflict, 12.
185 Sustain the willing acceptance by the people of the right of the government to govern or a group or agency to make and carry out decisions. Department of the Army, Peace Operations, 18.
186 The legitimacy of the CIVPOL component is enhanced by a wide geographic distribution of its personnel. It is also based upon the skill and experience of the CIVPOL personnel, their ability to achieve the tasks mandated to them, and their conducting themselves in a professional manner in accordance with the international human rights instruments regarding law enforcement officials. United Nations, CIVPOL Principles and Guidelines, 11.
187 Peace operations (including UN CIVPOL operations) typically require the active consent and cooperation of the parties to the conflict at all levels. United Nations, CIVPOL Principles and Guidelines, 9.
APPENDIX I: INTERNATIONAL CRIMINAL JUSTICE STRATEGIC PRINCIPLES AND CONCEPTS

War-fighting Equivalent(s): Maneuver,\(^{188}\) Initiative,\(^{189}\) Flexibility,\(^{190}\) and UN CIVPOL Equivalent(s): Mobility and Adaptability.\(^{191}\)

Sufficient and Consistent Efforts and Resources

International criminal justice efforts and the provision of resources that support them, must be sufficient and consistent over the long term. Abilities to concentrate overwhelming strength against the vital weakness of transnational threat organizations, transnational criminal enterprises, and ROL problems expedite the attainment of objectives. Regional Criminal Justice Directors should establish directives and guidelines that allot human, material, and financial resources to international criminal justice activities in order of priority. U.S. international criminal justice activities require continuous and active support of the President and department and agency heads.

War-fighting Equivalent(s): Concentration,\(^{192}\) Economy,\(^{193}\) Counterinsurgency Equivalent(s): Type and consistency of external support for targeted government,\(^{194}\) Peacekeeping Equivalent(s): Perseverance,\(^{195}\) and UN CIVPOL Equivalent(s): Continuous and Active Support of the Security Council and Contributing Countries.\(^{196}\)

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\(^{188}\) Maneuverability, which amalgamates mobility with agility, makes it possible to shift fluidly from one strategic mode to another and readily re-deploy armed forces. Collins, Military Strategy, 83.

\(^{189}\) Offensive operations, which enable wielders to act rather than react at times and places of their choosing, are the best way to gain and retain initiative while depriving adversaries of equal advantage. Successes result in freedom of action, which inspires friends, demoralizes foes, opens opportunities to exploit enemy vulnerabilities, and thereby controls the course of events. Collins, Military Strategy, 82.

\(^{190}\) Armed forces,… cherish flexibility. Planning for certitude in fact may be the most grievous of all military mistakes, because no one can consistently forecast the time place, scope, tenor, intensity, and course of events. Purposes, policies, and procedures may change unexpectedly on one or both sides. Preferred concepts and capabilities may prove fallible. Players with only one plan thus run serious risks, for they have no fallback position if rivals nullify their only scheme. Collins, Military Strategy, 82.

\(^{191}\) To fulfill its mandate, the CIVPOL component must have unhindered freedom of movement within the mission area. The CIVPOL component must continuously evaluate and respond to the changing situation in the mission area. The CIVPOL component must continuously evaluate and respond to the changing situation in the mission area. United Nations, CIVPOL Principles and Guidelines, 12.

\(^{192}\) Abilities to concentrate overwhelming strength against vital enemy weakness expedite the attainment of decisive results, whether the strategic center of gravity be hostile armed forces, national will, industrial capacity, a capital city, the hearts and minds of common people, undergrounds that support guerrilla operations, or a charismatic leader. Collins, Military Strategy, 82.

\(^{193}\) Even superpowers have finite resources, so concentration at decisive times and places commonly requires of force elsewhere. Politico-military strategists establish priorities that allot minimum essential efforts and resources to secondary endeavors. Collins, Military Strategy, 82.

\(^{194}\) Type and consistency of external support for targeted government – Long-term consistent support during and after low-intensity conflict is critical to success. Corr and Sloan, Low Intensity Conflict, 13.

\(^{195}\) Prepare for the measured, sustained application of military capability in support of strategic aims. Department of the Army, Peace Operations, 17.

\(^{196}\) Where the root causes of conflict often remain unsettled in post-conflict environments patience, determination, and persistence are required to achieve the mandated objectives of the peacekeeping operations. United Nations, CIVPOL Principles and Guidelines, 10.
APPENDIX I: INTERNATIONAL CRIMINAL
JUSTICE STRATEGIC PRINCIPLES AND CONCEPTS

Intelligence and Psychological Dominance

During the conduct of their operations, U.S. international criminal justice personnel and units should develop an effective criminal justice intelligence apparatus. U.S. international criminal justice personnel and units should develop sources and methods for collecting and analyzing information about, and sharing information with, their foreign counterparts. U.S. international criminal justice personnel and units should develop sources and methods for collecting and analyzing information which will enable them to understand the capabilities, intentions, and activities of common criminals, transnational threat and transnational criminal organizations, corrupt officials, and their leaders. When conducting or helping foreign governments conduct law enforcement operations U.S. international criminal justice personnel and units should ensure that those operations exhibit secrecy, speed, deception, disinformation, originality, and audacity. The purpose of this is to deny the criminal elements targeted by those law enforcement operations any hope of gaining situational awareness or an understanding of the capabilities and intentions of the law enforcement agencies working against them. Similarly, during the conduct of rule of law development programs, program implementers must control information up to the point that the program’s legitimacy or working relationships with foreign counterparts suffer. The reason for this is that some of those who will lose power and influence if the rule of law is developed will use information to undermine the program.

U.S. international criminal justice personnel and units must create and employ public affairs methods to enhance the legitimacy of criminal justice institutions and operations as well as potent psychological instruments in order to discredit criminal acts and those that perpetrate them. U.S. international criminal justice personnel and units must conduct public affairs activities and public information campaigns in order to build trust, credibility, and legitimacy between the foreign criminal justice agencies they cooperate with and the citizenry those agencies serve. All legal and legitimate psychological instruments or activities must be taken to prevent the “Robin Hood” phenomena, that of having criminals become lionized and gain legitimacy in the eyes of the citizenry because of a few well-publicized charitable acts or through the use of propaganda.

War-fighting Equivalent(s): Security;197 Surprise;198
Counterinsurgency Equivalent(s): Intelligence;199 and
Peacekeeping Equivalent(s): Security.200

197 Security, the flip side of surprise, preserves power and reduces probabilities that foreign and domestic enemies might jeopardize strategic plans, programs, or operations. Collins, Military Strategy, 83-84.
198 Surprise ...vastly improves prospects (for success) …(because) secrecy, speed, deception, disinformation, originality, and audacity can produce results that far exceed efforts expended and thereby alter balances of power to great advantage. Collins, Military Strategy, 83.
199 If the appropriate intelligence apparatus and psychological instruments are not in place to find, eliminate, and discredit subversive actions, organizations, and revolutionary leaders, experience shows that the conflict will continue in one form or another indefinitely. Corr and Sloan, Low Intensity Conflict, 13.
200 Never permit hostile factions to acquire an unexpected advantage. Department of the Army, Peace Operations, 16.
APPENDIX I: INTERNATIONAL CRIMINAL JUSTICE STRATEGIC PRINCIPLES AND CONCEPTS

Reduction of Criminal Support

U.S. international criminal justice personnel and units as well as the criminal justice agencies they cooperate with and/or provide assistance to, should cut all support to and from transnational threat and transnational criminal organizations, corrupt officials, and their leaders. The types of support that should disrupted, interdicted, and seized includes but are not limited to internal and external sources of human, material, financial, and moral support. Reducing these various types of support will limit the means transnational threat and transnational criminal organizations have at their disposal to conduct their activities.

Counterinsurgency Equivalent(s): Ability to reduce outside aid to the insurgents

Impartiality and Objectivity

U.S. international criminal justice personnel must maintain a high level of impartiality and objectivity when conducting activities overseas. No matter how well traveled individuals are, they will experience some level of culture shock when living in a new country. Overtime, individuals living overseas come to empathize with the people of the country they are living in because of the influence of such things as social situations and media sources. Both these phenomena are natural but they must not be allowed to affect how U.S. criminal justice personnel conduct themselves or work overseas. U.S. criminal justice personnel must continually examine their basic assumptions about the country they are operating in and the people they are coming into contact with. These assumptions must continually be vetted to actively guard against such things as cultural chauvinism or idealizing foreign peoples. This important because individuals will seek to play on the prejudices and sympathies of U.S. personnel.

UN CIVPOL Equivalent(s): Impartiality and Objectivity.

Disciplined Use of Force and Subtle Use of Influence

U.S. criminal justice personnel must be disciplined in their use of force and subtle in their use of influence when operating overseas to be able to conduct aggressive operations without alienating their foreign counterparts or the country’s citizenry. Following either formal or informal agreements that that allow U.S. criminal justice personnel to carry firearms on foreign soil, U.S. criminal justice personnel must show the restraint they would wish armed foreign law enforcement to demonstrate on U.S. soil. U.S. criminal justice personnel must also use their influence on their counterparts subtly

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201 The fourth dimension of the paradigm shows the need of the besieged government to separate the insurgents from their network of internal and external sanctuaries and from their external support. Corr and Sloan, Low Intensity Conflict, 13.
202 CIVPOL personnel must discharge their tasks professionally, firmly, and objectively without fear of favor. No party to the conflict should gain unfair advantage as a result of the activities of the CIVPOL component. United Nations, CIVPOL Principles and Guidelines, 9.
because overtly imposing one’s will on a foreign counterpart will erode the legitimacy of U.S. activities and personnel.

Counterinsurgency Equivalent(s): Discipline and capability of a government armed forces.203
Peacekeeping Equivalent(s): Restraint;204 and
UN CIVPOL Equivalent(s): Minimum Use of Force.205

International Criminal Justice Strategic Concepts

The following six concepts were drawn from the works of J.F. Holden-Rhodes and Moisés Naim. The first two concepts are drawn from J.F. Holden-Rhodes’ book entitled Sharing the Secrets: Open Source Intelligence and the War on Drugs. The final four are drawn from Moisés Naim’s article in Foreign Policy magazine entitled “Five Wars We’re Losing. Why governments can’t stop the illegal trade in drugs, arms, ideas, people, and money.”

Coordinating Supply Side and Demand Side Programs

Effective programs which seek to limit the production of illegal goods and the provision of illegal services and interdiction operations should be followed by programs that suppress the demand for those goods and services. To Holden-Rhodes, “the purpose of supply side programs is to buy time so that demand reduction programs can drive the use of drugs to an “acceptable” level.”206 This concept can be applied to the illegal arms trade and human trafficking. Once the production/provision and the distribution of these illegal goods and services have been disrupted, demand suppression programs should be implemented and hopefully completed before the production/provision and distribution cycle begins again.

Counter Threats as They Travel From Point of Departure to Point of Arrival

The long logistics train needed to transport illegal goods and members of criminal or terrorist organizations to the U.S. or areas important to the U.S. is a vulnerability that should be exploited. Holden-Rhodes suggests the U.S. government “monitor drug production and provide early warning in the production zone so as to inflict real losses on the narcotraficantes in the transit zone, along our border, and within our borders, and ultimately at the state and local level…”207 This concept should be applied to combating the illegal trade in drugs, arms, ideas, and people, as well as to counter the threat of

203 - …Troops who can decisively engage the enemy without alienating the citizenry. A primary goal of the insurgents is to provoke government forces into indiscriminate warfare, atrocities, and human rights abuses in order to destroy the government’s legitimacy. Corr and Sloan, Low Intensity Conflict, 14.
204 Apply appropriate military capability prudently. Department of the Army, Peace Operations, 17.
205 The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials emphasizes that force may be used only when absolutely necessary and only to the extent required for the performance of legitimate law enforcement functions. United Nations, CIVPOL Principles and Guidelines, 9-10.
206 Holden-Rhodes, Sharing the Secrets, 173.
207 Holden-Rhodes, Sharing the Secrets, 174.
terrorism. U.S. law enforcement agencies should “inflict real losses” on the criminal and terrorist organizations as they or their illegal goods travel from their point of departure (drug production areas, wholesale illegal arms caches, source countries for alien smuggling, human trafficking, counterfeit goods, terrorist training areas, etc.) to each transit point to their arrival in the U.S. or in an area of interest to the U.S.

**Develop More Flexible Notions of Sovereignty**

As the sovereignty of governments, including that of the U.S., is comprised daily by stateless networks that break laws and cross borders, governments need to develop more flexible notions of sovereignty. According to Naím “without new forms of codifying and “managing” sovereignty, governments will continue to face a large disadvantage while fighting the five wars,” countering the illegal trade in drugs, arms, intellectual property, people, and money.\(^{208}\) Naím’s statement is clearly applies to countering terrorism as well. The example of the arrest Mir Aimal Kansi, who shot several CIA employees outside of CIA headquarters, illustrates the point. If certain Pakistani officials had not allowed the FBI agents who arrested Kansi to operate within their country, he would not have been arrested.\(^{209}\)

**Cooperate Multilaterally and Strengthen Existing Multilateral Institutions**

The global nature of these wars means requires that U.S. law enforcement agencies cooperate effectively with law enforcement agencies from other countries. Naím asserts that “progress will only be made (in the five wars) if the world’s governments unite behind stronger, more effective multilateral organizations.”\(^{210}\) Here again, Naím’s statement is applicable to efforts to counter terrorism. Cooperation between different jurisdictions is nothing new. For example, in the U.S., neighboring jurisdictions conduct joint patrols of their common borders. When U.S. interests are at stake, the U.S. law enforcement community should cooperate multilaterally by participating in ad hoc task forces, like the Southeast European Cooperative Initiative (SECI) Regional Center’s Operation Mirage which targeted human trafficking in Southeastern Europe.\(^{211}\) As a general rule, the U.S. should strengthen existing multilateral institutions such as Interpol.

**Devise New Mechanisms**

To adapt to new realities organizations need to re-examine their roles and develop new ways to cooperate with each other. “These five wars stretch and even render obsolete many of the existing institutions, legal frameworks, military doctrines, weapons systems, and law enforcement techniques on which governments have relied for years.”\(^{212}\) To fight

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\(^{208}\) Moisés Naím, “Five Wars We’re Losing. Why governments can’t stop the illegal trade in drugs, arms, ideas, people, and money,” *Foreign Policy*, 28 (January/February 2003): 36.

\(^{209}\) www.cbsnews.com/stories/2001/10/10/6011/main314283.shtml

\(^{210}\) Naím, *Five Wars*, 36.

\(^{211}\) www.secicenter.org/html/operationmirage/operationmirageframeset.htm

\(^{212}\) Naím, *Five Wars*, 36.
Move from Repression to Regulation

Policymakers must focus on opportunities where market regulation can ameliorate problems that have defied approaches based on prohibition and armed interdiction of international trade. The reason for this is, that in the “five wars,” the profits that motivate criminal networks can be traced to some form of government intervention that creates a major imbalance between demand and supply. Naím rightfully suggests that the use of regulation should only be applied to intellectual property rights violations and money laundering.

213 Naím, Five Wars, 36.
### APPENDIX II: NATIONAL SECURITY AND DEPARTMENTAL STRATEGIES

<table>
<thead>
<tr>
<th>Type</th>
<th>NATIONAL SECURITY STRATEGIES</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>National Security Strategy</td>
</tr>
<tr>
<td></td>
<td>National Strategy for Combating Terrorism</td>
</tr>
<tr>
<td>Objectives</td>
<td>• Champion aspirations for human dignity</td>
</tr>
<tr>
<td></td>
<td>• Strengthen alliances to defeat global terrorism and work to prevent attacks against us and our friends</td>
</tr>
<tr>
<td></td>
<td>• Work with others to defuse regional conflicts</td>
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<tr>
<td></td>
<td>• Prevent our enemies from threatening us, our allies, and our friends, with weapons of mass destruction</td>
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<tr>
<td></td>
<td>• Ignite a new era of global economic growth through free markets and free trade</td>
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<td></td>
<td>• Expand the circle of development by opening societies and building the infrastructure of democracy</td>
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<td></td>
<td>• Develop agendas for cooperative action with other main centers of global power</td>
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<tr>
<td></td>
<td>• Transform America’s national security institutions to meet the challenges and opportunities to the twenty-first century</td>
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<tr>
<td></td>
<td>• Defeat terrorist and their organizations</td>
</tr>
<tr>
<td></td>
<td>• Deny further sponsorship, support, and sanctuary to terrorists</td>
</tr>
<tr>
<td></td>
<td>• Diminish the underlying conditions that terrorist seek to exploit</td>
</tr>
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<td></td>
<td>• Defend the U.S. citizens and interests at home and abroad</td>
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### NATIONAL SECURITY STRATEGIES

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<thead>
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<th>Type</th>
<th>NATIONAL SECURITY STRATEGIES</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>National Strategy to Combat Weapons of Mass Destruction</td>
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<td></td>
<td>National Strategy for Homeland Security</td>
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<tr>
<td>Objectives</td>
<td>• Counterproliferation to combat WMD use</td>
</tr>
<tr>
<td></td>
<td>• Strengthened nonproliferation to combat WMD proliferation</td>
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<tr>
<td></td>
<td>• Consequence management to respond to WMD use</td>
</tr>
<tr>
<td></td>
<td>• Prevent terrorist attacks within the United States</td>
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<td></td>
<td>• Reduce America’s vulnerability to terrorism</td>
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<td></td>
<td>• Minimize the damage and recover from attacks that do occur</td>
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### NATIONAL SECURITY STRATEGIES

<table>
<thead>
<tr>
<th>Type</th>
<th>National Strategy for Physical Protection of Critical Infrastructure and Key Assets</th>
<th>National Strategy to Secure Cyberspace</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>Objectives</td>
<td>Objectives</td>
</tr>
</tbody>
</table>
| National Strategy for Physical Protection of Critical Infrastructure and Key Assets | • Identifying and assuring the protection of those infrastructures and assets that we deem most critical in terms of national-level public health and safety, governance, economic and national security, and public confidence consequences  
• Providing timely warning and assuring the protection of those infrastructures and assets that face a specific, imminent threat  
• Assuring the protection of other infrastructures and assets that may become terrorist targets overtime by pursuing specific initiatives and enabling a collaborative environment in which federal, state, and local governments and the private sector can better protect the infrastructures and assets they control | • Prevent cyber attacks against America’s critical infrastructure  
• Reduce national vulnerability to cyber attacks  
• Minimize damage and recovery time from cyber attacks that do occur |

<table>
<thead>
<tr>
<th>Type</th>
<th>National Drug Control Strategy</th>
<th>The International Crime Control Strategy[^214]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy</td>
<td>Objectives</td>
<td>Objectives</td>
</tr>
</tbody>
</table>
| National Drug Control Strategy | • Stopping drug use before it starts  
• Healing America’s drug users  
• Disrupting the market | • Extend the first line of defense beyond U.S. borders  
• Protect U.S. borders by attacking smuggling and smuggling-related crimes  
• Deny safe haven to international criminals  
• Counter international financial crime  
• Prevent criminal exploitation of international trade  
• Respond to emerging international crime threats  
• Foster international cooperation and the Rule of Law  
• Optimize the full range of U.S. efforts |

[^214]: The International Crime Control Strategy was promulgated by the Clinton Administration.
## APPENDIX II: NATIONAL SECURITY AND DEPARTMENTAL STRATEGIES

<table>
<thead>
<tr>
<th>Type</th>
<th>INTER-DEPARTMENTAL STRATEGY</th>
<th>DEPARTMENTAL STRATEGY</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>National Money Laundering Strategy (Treasury/Justice)</td>
<td>Department of Justice Strategic Plan (Justice)</td>
</tr>
<tr>
<td>Objectives</td>
<td>• Measure the effects of anti-money laundering efforts</td>
<td>• Protect America Against the Threat of Terrorism</td>
</tr>
<tr>
<td></td>
<td>• Focus law enforcement and regulatory resources on identifying, disrupting, and dismantling</td>
<td>• Enforce Federal Criminal Laws</td>
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<td></td>
<td>terrorist financing networks</td>
<td>• Prevent and Reduce Crime and Violence by Assisting State, Tribal, Local and Community-Based Programs</td>
</tr>
<tr>
<td></td>
<td>• Increase the investigation and prosecution of major money laundering organizations and</td>
<td>• Protect the Rights and Interests of the American People By Legal Representation, Enforcement of Federal Laws and Defense of U.S. Interests</td>
</tr>
<tr>
<td></td>
<td>systems</td>
<td>• Fairly and Effectively Administer the Immigration and Naturalization Laws of the United States</td>
</tr>
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<td></td>
<td>• Prevent money laundering through cooperative public-private efforts and necessary</td>
<td>• Protect American Society by Providing for the Safe, Humane and Secure Confinement of Persons in Federal Custody</td>
</tr>
<tr>
<td></td>
<td>regulatory measures</td>
<td>• Protect the Federal Judiciary and Provide Critical Support to the Federal Justice System to Ensure it Operates Effectively</td>
</tr>
<tr>
<td></td>
<td>• Coordinate law enforcement efforts with state and local governments to fight money</td>
<td>• Ensure Professionalism, Excellence, Accountability and Integrity in the Management and Conduct of Department of Justice Programs</td>
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<tr>
<td></td>
<td>laundering throughout the United States</td>
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<tr>
<td></td>
<td>• Strengthen international anti-money laundering regimes</td>
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<thead>
<tr>
<th>Type</th>
<th>DEPARTMENTAL STRATEGIES</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>Foreign Aid in the National Interest (USAID)</td>
</tr>
<tr>
<td>Objectives</td>
<td>• Promoting democratic governance</td>
</tr>
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<td></td>
<td>• Driving economic growth</td>
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<td>• Improving people’s health</td>
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<td>• Mitigating conflict</td>
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<tr>
<td></td>
<td>• Providing humanitarian aid;</td>
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<td></td>
<td>• Accounting for private foreign aid</td>
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## APPENDIX II: NATIONAL SECURITY AND DEPARTMENTAL STRATEGIES

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<tr>
<th>Type</th>
<th>DEPARTMENTAL STRATEGIES</th>
<th>ROL Translation of Current Strategies</th>
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<tbody>
<tr>
<td>Strategy</td>
<td>International Affairs Strategic Plan (State) continued</td>
<td>• Strengthen international criminal justice regimes</td>
</tr>
<tr>
<td>Objectives</td>
<td>• Increase global economic growth and stability</td>
<td>• Develop agendas and enhance capacity for, rule of law development cooperation</td>
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<tr>
<td></td>
<td>• Promote broad-based growth in developing and transitional economies to raise standards of living and lessen disparities of wealth within and among countries</td>
<td>• Assist in the strengthening of foreign criminal justice and regulatory systems so they can share information and conduct multinational operations</td>
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<td></td>
<td>• Protect the safety and security of American citizens who travel and live abroad</td>
<td>• Champion aspirations for human dignity and promote democratic governance by developing foreign criminal justice systems to protect their citizens’ rights and be fair, impartial, effective, and efficient</td>
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<tr>
<td></td>
<td>• Manage fairly and effectively the entry of immigrants and foreign visitors into the United States</td>
<td>• Support economic growth by providing assistance to foreign criminal justice systems so they can deal with corruption, black and gray markets, and the negative effects of uneven economic development</td>
</tr>
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<td></td>
<td>• Minimize the impact of international crime on the United States and its citizens</td>
<td>• Prevent, defuse, and mitigate conflicts by developing criminal justice systems to counter the criminal threats that fuel them</td>
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<tr>
<td></td>
<td>• Reduce the entry of illegal drugs into the United States</td>
<td>• Develop the capacity of foreign criminal justice systems to counter transnational threats and transnational crime organization by attacking their sanctuaries, leadership, command, control, and communications, support; and financing network</td>
</tr>
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<td></td>
<td>• Reduce the number and impact of international terrorist attacks, especially on the United States and its citizens</td>
<td>• Develop the capabilities of foreign criminal justice systems so they can help protect U.S. overseas interests from terrorism, the use of weapons of mass destruction (WMD), and cyber attacks</td>
</tr>
<tr>
<td></td>
<td>• Open political systems and societies to democratic practices, the rule of law, good governance, and respect of human rights</td>
<td>• Develop the capabilities of foreign criminal justice systems so they can providing timely warning of, prevent, and minimize the damage and recover time from terrorist, WMD, and cyber attacks on U.S. interests</td>
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<td></td>
<td>• Provide humanitarian assistance to victims of crisis and disaster</td>
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<td></td>
<td>• Secure a sustainable global environment, and protect the United States and its citizens from the effects of international environmental degradation</td>
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</tr>
<tr>
<td></td>
<td>• Achieve sustainable world population</td>
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<td></td>
<td>• Protect human health and reduce the spread of infectious diseases</td>
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Regional Criminal Justice Director Functions

General Functions

The purpose of the Regional Criminal Justice Director (RCJD) having operational control over all the U.S. criminal justice personnel in their region is so the RCJD can have authority over them but with command authority comes general command responsibilities. The Department of Defense defines command as the following:

“The authority that a commander in the military services lawfully exercises over subordinates by virtue of rank or assignment. Command includes the authority or responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. It also includes responsibility for the health, welfare, morale, and discipline of assigned personnel.”

Commanders require a depth and breadth of knowledge because they are at times strategists, masters of operations, and tacticians, as well as experts on the equipment their subordinates use and logisticians. Command involves planning, organizing, coordinating, directing, and controlling resources and training and influencing subordinates to accomplish assigned missions. The main tasks of a commander include the following:

- Giving the organization direction and priorities – a vision of what the organization and its mission should look like;
- Defining relationships among subordinate elements, by answering questions such as: Who has directive power? Coordinating power? Responsibility to monitor? How much authority is delegated? Who provides liaison to whom?
- Establish the organization’s culture, that is, the pattern of values that guide the actions of personnel assigned to his command; and
- Establish effective information systems, each of which must get information from the right source, interpret it, process it into form suitable for use by leaders of each echelon, distribute it at the right time, and store it for future use.

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215 The Department of Defense’s Dictionary of Military and Associated Terms defines operational control as “the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission.”


217 Nye, Land Forces Encyclopedia, 229.

218 Nye, Land Forces Encyclopedia, 231.

APPENDIX III: REGIONAL CRIMINAL JUSTICE DIRECTOR AND INTERNATIONAL CRIMINAL JUSTICE COMMAND CENTER FUNCTIONS

Specific Functions

The specific function of the RCJDs would be to perform the missions assigned them by the President or by the a joint committee of the Attorney General and the Secretaries of Homeland Security and Treasury (Joint Criminal Justice Committee). To accomplish such missions, unless otherwise directed by the President or the Joint Criminal Justice Committee, the authority, direction, and control of a RCJD of a International Criminal Justice Command (ICJC) should include the command functions of:

- Giving authoritative direction to subordinate organizations and personnel necessary to carry out missions assigned to the ICJC, including authoritative direction over all aspects of U.S. criminal justice operations, joint training, and logistics;
- Prescribing the chain of command to the subordinate organizations within the ICJC;
- Organizing the ICJC’s subordinate organizations to carry out missions assigned to the command;
- Employing the ICJC’s subordinate organizations to carry out missions assigned to the command;
- Assigning command functions to subordinate commanders;
- Coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command; and
- Exercising the authority with respect to selecting subordinate commanders, selecting personnel to serve as staff to RCJD, suspending subordinates, and convening investigations and disciplinary actions regarding breaches of professional responsibility.

The RCJD should also have the authority to make budget proposals that includes funding for the following:

- Individual and unit training;
- Contingencies;
- Selected criminal justice operations;
- Command and control;
- Joint exercises (including activities of participating foreign countries);
- Personnel expenses of U.S. criminal justice personnel for bilateral or regional cooperation programs; and
- Security measures to ensure the safety of the U.S. criminal justice personnel assigned to the ICJC.
APPENDIX III: REGIONAL CRIMINAL JUSTICE DIRECTOR AND INTERNATIONAL CRIMINAL JUSTICE COMMAND CENTER FUNCTIONS

International Criminal Justice Command Center Functions

To support the RCJDs and the organizations and personnel subordinate to them, each ICJC should have a command center that performs the following functions:

Command and Control

- Provide a full suite of decision support systems to the RCJD and the RCJD’s Staff
- Maintain constant situation displays of U.S. criminal justice personnel, transnational threats, and transnational crimes in the region
- Provide crisis center and crisis management capabilities in the event that a criminal justice activity has to be implemented on a short notice, or a crisis occurs in an ongoing criminal justice activity
- Formulate operational and program objectives that will achieve national and departmental objectives and thereby serve to secure U.S. national interests

Communications

- Provide the RCJD and the RCJD’s staff with cable, fax, voice, and video telecommunications systems
- Maintain uninterrupted communications with all U.S. criminal justice personnel in the region and be able to communicate with the other regional criminal justice commands, department and agency heads, and the Whitehouse
- Host liaison personnel from the Departments of State and Defense and the U.S. Agency for International Development
- Maintain conference facilities and related support services
- Engage in public affairs activities
- Serve as the single point of contact with foreign criminal justice agencies and private, and international research institutions
- Facilitate the participation of the command’s U.S. criminal justice personnel in conferences, symposiums, and interagency exercises

Intelligence

Alert Center

- Provide continuous event monitoring and alert the RCJD to fast-breaking events
- Write reports of significant activity, both in summary and short, timely notes, for dissemination to U.S. criminal justice personnel at the center and in the region
- Monitor geopolitical, political, economic, demographic, technological, legal, internal security, and developmental factors that have an impact on the capabilities, intentions, and responsibilities of the criminal justice systems in the region to discern patterns, turning points, and opportunities for U.S. criminal justice involvement
APPENDIX III: REGIONAL CRIMINAL JUSTICE DIRECTOR AND INTERNATIONAL CRIMINAL JUSTICE COMMAND CENTER FUNCTIONS

Analysis

- Provide daily briefings to the RCJD and spontaneous briefings to others as directed
- Provide timely, objective all-source intelligence reports and products to RCJD and the U.S. criminal justice personnel in the region in support of U.S. and multinational law enforcement operations and rule of law development efforts
- Provide all-source analysis of the intentions, plans, and capabilities of foreign criminal justice systems
- Monitor transnational threats, transnational crime, and the links between them.
- Analyze, interpret, reports, and disseminate country crime data to the RCJD, the RCJD’s staff, U.S. criminal justice personnel in the region
- Disseminate both raw information and finished intelligence products to the U.S. intelligence and law enforcement community
- Produce lessons-learned and oral history documents designed to improve institutional memory

Support to Law Enforcement Operations and Rule of Law Development Programs

- Provide staff to participate in the development, implementation and the assessment of the U.S. law enforcement operations and ROL development programs in the region
- Produce reports that inform ROL development program planners of the status of the criminal justice system and crime patterns in the country targeted for assistance, as well as the foreign policy context within which program implementers would operate
- Support the efforts of ROL development program planners by collecting current criminal justice information and research in order to update training courses and conduct research into new areas of training and technical assistance.
- Offer research assistance to the RCJD and the RCJD’s staff
- Train U.S. criminal justice personnel in the region in law enforcement and ROL intelligence procedures
- Provide staff and technical support to the intelligence activities of law enforcement operations and rule of law development efforts in the region
- Provide technical advice and support to U.S. criminal justice personnel in the region dealing with statistical analysis and analytical computer techniques
APPENDIX III: REGIONAL CRIMINAL JUSTICE DIRECTOR AND INTERNATIONAL CRIMINAL JUSTICE COMMAND CENTER FUNCTIONS

Technical and Forensic Support

- Provide information and assistance to help the foreign criminal justice systems in the region determine the most appropriate and cost-effective technology to solve administrative and operational problems
- Provide assistance to the foreign criminal justice systems in the region in the areas of unique evidence analysis (e.g. audio, video, computers, trace, and explosives), systems engineering, and communications and information systems (e.g. interoperability, propagation studies, and vulnerability assessments)
- Facilitate the foreign criminal justice systems in the region to take advantage of the surplus property of the U.S. and its allies
- Create and oversee a standards-based testing program for the criminal justice equipment used and produced in the region
- Disseminates information to the foreign criminal justice systems in the region through educational bulletins, equipment performance reports, guides, consumer product lists, news summaries, meeting/conference reports, video, and CD-ROMs
- Participate in the creation of scientific and technical intelligence reports concerning the equipment used by the criminal justice agencies in the region
- Participate in the creation of simulation and modeling to help forecast crime, criminal justice, and rule of law trends in the region
- Participate in the creation of simulation, modeling, and exercises to help the U.S. criminal justice personnel assigned to the ICJC train for their assigned missions

Management

- Provides assistance to other units within the Department in the formulation and implementation of new programs and initiatives.
- Audit all the policy and procedures of International Criminal Justice Command Center and the U.S. criminal justice personnel in the region and formulate recommendations for their improvement
- Monitors the finances of the commands’ criminal justice operations and ROL development programs
- Monitor the performance and effectiveness of law enforcement operations and ROL development programs
- Conducts resource analyses aimed at improving the effectiveness and efficiency of present and future resource allocations and personnel deployments.
- Conduct management and resource analysis aimed at supporting efforts to increase the effectiveness and efficiency of U.S. law enforcement operations and ROL development programs

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The concept for the technical and forensic support section of the ICJC’s command center would be a section that encompassed the functions of the National Law Enforcement and Corrections Technology Centers (NLECTCs), the FBI’s forensic laboratory, and the FBI’s Behavioral Science Unit.
APPENDIX III: REGIONAL CRIMINAL JUSTICE DIRECTOR AND INTERNATIONAL CRIMINAL JUSTICE COMMAND CENTER FUNCTIONS

- Provide briefing materials for the RCJD, the RCJD’s staff, and on a wide range of issues and concerns, e.g. policy, legislative, procedural and budgetary
- Assists in the preparation of speeches and presentations as requested by the RCJD and the RCJD’s staff
- Prepare supplementary briefing materials regarding financial, budgetary, and personnel issues for ROL development program funders
APPENDIX IV: PROBLEM AND NEED STATEMENTS FOR STRATEGIC, OPERATIONAL, AND TACTICAL RULE OF LAW INTELLIGENCE

**Strategic Level\(^{221}\)**

The Strategic Rule of Law Intelligence Problem

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transnational networks &amp; transnational criminal enterprises</td>
<td>Could pose a threat to U.S. national interests</td>
<td>Near Future</td>
<td>Country X</td>
<td>Growing in intensity</td>
<td>Being a source and/or transit country for transnational threats &amp; transnational crime</td>
</tr>
<tr>
<td>Country X’s criminal justice system</td>
<td>Changes in how country X’s criminal justice systems operates</td>
<td>Now</td>
<td>Country X</td>
<td>Geopolitical, political, security, economic, &amp; social developments</td>
<td>Changes in criminal justice policy</td>
</tr>
</tbody>
</table>

The Strategic Rule of Law Intelligence Need

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule of Law Program Funders</td>
<td>Wants to Know About Country X’s Criminal Justice System &amp; Crime Problems</td>
<td>Now &amp; Update</td>
<td>Headquarters of the Departments of State &amp; the U.S. Agency for International Development</td>
<td>Determine intentions &amp; capabilities of foreign criminal justice systems</td>
<td>All-Source collection &amp; analysis</td>
</tr>
</tbody>
</table>

### Operational (Program) Level

#### The Operational Rule of Law Intelligence Problem

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country X’s criminal justice system</td>
<td>Performing ineffectively, inefficiently, unethically, &amp; undemocratically</td>
<td>Now</td>
<td>Country X</td>
<td>Unknown; Possibly poor planning, management, lack of training or resources, undemocratic regime</td>
<td>Not providing direction for agency; not holding personnel accountable; engaging in corrupt practices; criminal justice malpractice &amp; misconduct</td>
</tr>
<tr>
<td>Policy Environment</td>
<td>Changing</td>
<td>Now</td>
<td>Country X</td>
<td>Unknown; Possibly domestic political forces or increased threats to law &amp; order, public order, &amp; internal security</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

#### The Operational Rule of Law Intelligence Need

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule of law program implementation organizations, Regional Criminal Justice Directors, &amp; Rule of Law program managers</td>
<td>Wants to know about Country X’s government, prominent officials, criminal justice system and crime problems, organizational charts, standing orders, policies &amp; procedures, Etc.</td>
<td>Prior to on-site assessment &amp; update</td>
<td>Rule of Law implementing organization headquarters</td>
<td>Diagnose rule of law problems &amp; determine appropriate assistance activities</td>
<td>Analysis of open source &amp; sensitive information</td>
</tr>
</tbody>
</table>
**Tactical (Project) Level**

**The Tactical Rule of Law Intelligence Problem**

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country X’s criminal justice personnel</td>
<td>Require training &amp; technical assistance</td>
<td>Near term</td>
<td>Country X</td>
<td>Performing ineffectively, inefficiently, unethically, &amp; undemocratically</td>
<td>Tailored to their level of education, professional experience, &amp; cultural norms</td>
</tr>
</tbody>
</table>

**The Tactical Rule of Law Intelligence Need**

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
<th>When</th>
<th>Where</th>
<th>Why</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructor/Technical Advisor</td>
<td>Wants basic information on country X, criminal justice system, crime problems, negotiation style, local culture, business etiquette, &amp; tourist information</td>
<td>Before leaving the U.S.</td>
<td>Rule of Law program implementation organization headquarters</td>
<td>Tailor training &amp; technical assistance to local conditions</td>
<td>Collection of open source information</td>
</tr>
</tbody>
</table>
## APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Anthropology</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>The tools (including ideas, social devices, and inventions, etc.), and meanings developed by a country’s inhabitants; local languages</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Field Observations, Interviews, and Surveys; Dictionaries</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Fact sheet on ethic groups, tribes, clans, etc.  
Explanatory: Social Network Analysis; Group Specific Histories; Ethnographies  
Estimative: Forecast of how a group will respond to different criminal justice policy decisions and operations |
| **Why it Matters** | A group’s cultural identity and narrative inform how they view authority, including informal social control mechanisms and a government’s criminal justice system. How a country’s inhabitants uses language may affect how they crafts laws. |

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Biography</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Major Political, Criminal Justice, and Crime Figures</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Education and Occupation History; Individual Accomplishments; Idiosyncrasies and Habits; Position, Influence, and Potential; Attitudes and Hobbies</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Biographic Fact Sheet  
Explanatory and Estimative: Psychological Profile (Criminal Profile if a crime boss is the subject) |
| **Why it Matters** | Individuals have an affect on the capabilities, intentions, and actions of groups regardless of whether those groups are law enforcement agencies or criminal organizations. |

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223 There are different levels of intelligence analysis: “At the very least, analysis should fully describe the phenomenon under study, accounting for as many relevant variables as possible. At the next higher level of, a thorough explanation of the phenomenon is obtained, through interpreting the significance and effects of its effects of its elements on the whole. Ideally, analysis can reach successfully beyond the descriptive and explanatory levels to synthesis and effective persuasion, often referred to as estimation.” Estimation more often than not involves forecasts of future events. Krizan, Intelligence Essentials, 29.
<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Violent, Property, Organized, and Transnational Crime; Civil Disorder; Internal Security Threats</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Times and Locations of Criminal Acts; Area of Operation, Equipment, Finances, Ideology, Membership, Modus Operandi, Etc. of Criminal Organizations</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Statistical Analysis of Crime Rates; Estimated Numerical Strength of Criminal Organizations  
Explanatory: Crime Maps; Criminal Network Analysis; Competitive Intelligence Analysis of Criminal Enterprises  
Estimative: Geographic Profiling; Criminal Organization Threat Assessment |
| **Why it Matters** | Developing an awareness of the criminal activity in a given country is essential to understanding what that country’s law enforcement institutions face. |

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Criminal Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Legal Tradition; Constitution; Statutes Concerning Criminal Justice Agencies; Criminal Code; Criminal Procedure Code; Law Enforcement Agencies; Prosecutorial and Defense Attorney Offices; Courts; Corrections</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Equipment, Finances, Jurisdiction, Membership, Operational Philosophy, Policy and Procedures, Public Relations, Etc. of Criminal Justice Organizations; Performance Indicators</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Statistical Analysis of Performance Indicators  
Explanatory: Comparative Legal Analysis; Legal Analysis; Comparative Justice Administration; Deployment Maps; Tables of Organization and Equipment; Management Study; System Analysis/Operations Research; Social Network Analysis; A Flow Chart in the Sequence of Events in the Criminal Justice System  
Estimative: Analysis of Pending Criminal Legislation |
| **Why it Matters** | Knowledge of how a criminal justice system is performing allows for the creation of baseline measurements which can later be compared post-program/project measurements. |
### APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Subject(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Economics</strong></td>
<td>Sources of Economic Capability; Manufacturing Capabilities; Economic Vulnerabilities; Natural Resources; Banking and Finance; Major Business Sectors</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Stock Prices; Money Supply Figures; Unemployment Rate; Consumer Price Index; Gross National Product; Government Budgets; Census Data; Business Statistics</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Economic Fact Sheet  
Explanatory: Econometric Analysis; Diagram of Capital Flows; Legal Analysis of Finance and Banking Laws; Competitive Intelligence  
Estimative: Economic Forecast; Competitive Intelligence |
| **Why it Matters** | Since 1833 social scientists have examined the relationship between crime and such things as the business cycle and economic inequality. Neo-classical economic techniques have also been used to evaluate the effectiveness of particular forms of social control as well as try to measure their costs and benefits. |

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Subject(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Geography</strong></td>
<td>Physical and Cultural Geography</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Location, Size, Shape, Land Forms, Drainage, Geology, Soils, Vegetation, Sea Water, Sea Ice, Tides and Currents, Waves and Surf, Littorals, Weather, Climate, Light Data; Population Patterns, Races, Ethnic Groups, Tribes and Clans, Religions, Public Health, Cities, Towns, Criminal Justice Buildings</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Geographic Measurements  
Explanatory: Maps  
Estimative: Forecast of how geographic changes affect the delivery of illicit goods and criminal justice services. |
| **Why it Matters** | Physical and cultural geography affect the location of production sites for, and the transportation of, illicit goods. Physical and cultural geography also affects the ability of criminal justice agencies to serve their citizens. |

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Subject(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>History</strong></td>
<td>Country; Criminal Justice Institutions; Crime; Criminal Enterprises</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Interviews, Surveys, Participant Observations, Statistics</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Timelines of Major Events  
Explanatory: Historical Analysis  
Estimative: N/A |
| **Why it Matters** | In order to assist a country’s criminal justice institutions or counter a country’s criminal organizations, it is necessary to understand how those organizations development over time. |

APPENDIX V 3
## APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Infrastructure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject(s)</td>
<td>Transportation, Communications, and Utilities</td>
</tr>
<tr>
<td>Data</td>
<td>Roadways, Inland Waterways, Pipelines, Air and Sea Ports; Radio, Television, Telephone, Telegraph, Internet, Submarine Cable; Power Grids, Dykes and Levees; Sewage and Waste Disposal</td>
</tr>
<tr>
<td>Possible Analytic Products</td>
<td>Descriptive: Infrastructure Statistics</td>
</tr>
<tr>
<td></td>
<td>Explanatory: Maps</td>
</tr>
<tr>
<td></td>
<td>Estimative: Analysis of the Impact of Pending Investments in Infrastructure</td>
</tr>
<tr>
<td>Why it Matters</td>
<td>Both criminal justice agencies and criminal organizations need to utilize their country’s infrastructure to conduct their operations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>International Relations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject(s)</td>
<td>The government’s relations with other states</td>
</tr>
<tr>
<td>Data</td>
<td>Alliances; Diplomatic Ties; Foreign Policies; Treaties</td>
</tr>
<tr>
<td>Possible Analytic Products</td>
<td>Descriptive: International Relations Fact Sheet</td>
</tr>
<tr>
<td></td>
<td>Explanatory: Realist Analysis; Liberal Analysis; Constructivist Analysis; Radical Analysis</td>
</tr>
<tr>
<td></td>
<td>Estimative: Forecast of the Impact of Changes in Crime and Criminal Justice on a State’s International Relations</td>
</tr>
<tr>
<td>Why it Matters</td>
<td>A country’s international relations determines their national security concerns which may in turn impact the responsibilities of that country’s criminal justice system. Additionally a country’s international relations determines the source, type, and amount of foreign assistance that country receives.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Military</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject(s)</td>
<td>Military Capabilities and Intentions</td>
</tr>
<tr>
<td>Data</td>
<td>National Military Strategy, Tactics, Size or Potential Size and Composition of Military Forces; Equipment; Logistics; Organization; Administration; Bases</td>
</tr>
<tr>
<td>Possible Analytic Products</td>
<td>Descriptive: Military Statistics</td>
</tr>
<tr>
<td></td>
<td>Explanatory: Table of Organization and Equipment; Summary of Doctrine and Tactics</td>
</tr>
<tr>
<td></td>
<td>Estimative: Forecast of Military Courses of Action</td>
</tr>
<tr>
<td>Why it Matters</td>
<td>The disposition of military forces affect the gray market and black market trade routes.</td>
</tr>
</tbody>
</table>
## APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Intelligence Community</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Foreign and Domestic Intelligence Services</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Administration; Equipment; Organization; Powers Size or Potential Size and Composition of Intelligence Services</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Statistics concerning the intelligence services  
Explanatory: Table of Organization and Equipment; Summary of Sources and Methods  
Estimative: Forecast of Intelligence Courses of Action |
| **Why it Matters** | The post-communist and developing countries typically have internal security threats which require the cooperation of law enforcement agencies and the intelligence community. |

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Political Science</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Domestic Politics</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Government Structure at National, Provincial, and Local Levels; Type and Basic Principles of Government; National Policies, Both Foreign and Domestic; Electoral Policies; Political Organizations and Parties; Pressure Groups; Subversion/Corruption; Human Rights; Propaganda</td>
</tr>
</tbody>
</table>
| **Possible Analytic Products** | Descriptive: Statistics Concerning Subjects  
Explanatory: Table of Organization; Social Network Analysis; Summary of What Political Organizations, Parties, and Pressure Groups Believe Concerning Criminal Justice Issues and What Policies They Support  
Estimative: Forecast of Changes in Criminal Justice Policy and the Reaction to Them |
| **Why it Matters** | A country’s domestic politics informs the influence of criminal justice institutions relative to other government agencies and institutions. |
# APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Psychology</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Criminal Justice Agencies, Criminal Organizations, Citizenry</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Interviews, Surveys, Participant Observations, Statistics</td>
</tr>
<tr>
<td><strong>Possible Analytic Products</strong></td>
<td></td>
</tr>
<tr>
<td>Descriptive: N/A</td>
<td></td>
</tr>
<tr>
<td>Explanatory:</td>
<td>A study of the influence of psychological processes on criminal justice institutions and criminal organizations.</td>
</tr>
<tr>
<td>Explanatory:</td>
<td>A study of the influence of a criminal justice institutions and criminal organizations on the thought, feelings, and motives of their members and the country’s citizenry.</td>
</tr>
<tr>
<td>Explanatory:</td>
<td>A study of the influence of psychological processes on how criminal justice institutions and their members absorb information.</td>
</tr>
<tr>
<td>Estimative:</td>
<td>A forecast of the impact of psychological processes of criminal justice personnel, criminal organizations, and the citizenry on changes in criminal justice institutions and policies.</td>
</tr>
<tr>
<td>Estimative:</td>
<td>A forecast of the impact of changes in criminal justice institutions and policies on the psychological processes of criminal justice personnel, criminal organizations, and the citizenry.</td>
</tr>
<tr>
<td><strong>Why it Matters</strong></td>
<td>Without knowing the impact of psychological processes on criminal justice institutions and criminal organizations, and vice versa, there is no way of knowing how to influence those institutions and organizations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Religion and Philosophy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>The Belief Systems of Criminal Justice Agency Personnel, Political Leadership, Political Parties, Pressure Groups, Citizens, Criminal Organizations, and Religious and Philosophical Leaders</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Religions, Schisms, Sects, Philosophical Movements</td>
</tr>
<tr>
<td><strong>Possible Analytic Products</strong></td>
<td></td>
</tr>
<tr>
<td>Descriptive:</td>
<td>Membership Statistics by Administrative Division/Jurisdiction, if Applicable</td>
</tr>
<tr>
<td>Explanatory:</td>
<td>Summary of the Religious and Philosophical Beliefs Regarding Authority, the Acts and Rights of Individuals, and Concepts such as Equality, Impartiality, Justice, Etc.</td>
</tr>
<tr>
<td>Estimative:</td>
<td>Religious Views Concerning Proposed Criminal Justice Policies or Actions and the Acts of Criminals</td>
</tr>
<tr>
<td><strong>Why it Matters</strong></td>
<td>A people’s religious and philosophical beliefs shapes their world view and serve as forces of social control.</td>
</tr>
</tbody>
</table>
### APPENDIX V: INFORMATION RELEVANT TO THE RULE OF LAW AND ASSOCIATED ANALYTIC METHODS

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Sociology</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Country; Criminal Justice Institutions; Criminal Organizations</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Interviews, Surveys, Participant Observations, Demographic Statistics</td>
</tr>
<tr>
<td><strong>Possible Analytic Products</strong></td>
<td><strong>Descriptive</strong>: Demographic Statistics; Fact Sheet of Statistical Indicators</td>
</tr>
<tr>
<td></td>
<td><strong>Explanatory</strong>: Studies of how the state, it’s criminal justice system, and criminal organizations affect society.</td>
</tr>
<tr>
<td></td>
<td><strong>Estimative</strong>: Forecast of the impact of criminal justice reform on society.</td>
</tr>
<tr>
<td><strong>Why it Matters</strong></td>
<td>There is a body of criminological theory that tries to explain why crime rates vary by linking social disorganization to difficulties in establishing close relationships that could restrain misconduct. There is a significant amount of work in sociology devoted to how crime is covered in the media.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Collection Element</th>
<th>Public Health and Welfare</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subject(s)</strong></td>
<td>Military and Civilian Health Care Infrastructure</td>
</tr>
<tr>
<td><strong>Data</strong></td>
<td>Treatment Facilities; Medical Personnel; Treatment Capability; Training; Emergency and Disaster Response; Logistics; Medical Industries, Pharmaceutical and Research and Production Facilities</td>
</tr>
<tr>
<td><strong>Possible Analytic Products</strong></td>
<td><strong>Descriptive</strong>: Medical Indicators (Example: Hospital Beds Per 10,000 Population)</td>
</tr>
<tr>
<td></td>
<td><strong>Explanatory</strong>: Tables of Organization and Equipment, Maps with location of hospitals</td>
</tr>
<tr>
<td></td>
<td><strong>Estimative</strong>: N/A</td>
</tr>
<tr>
<td><strong>Why it Matters</strong></td>
<td>Foreign military and civilian health care systems and infrastructure can serve as the root for a law enforcement community’s forensic capabilities.</td>
</tr>
</tbody>
</table>
APPENDIX VI: RULE OF LAW DEVELOPMENT
PROGRAM PLANNING CONSIDERATIONS

Program Objective

The essential prerequisite to planning rule of law development programs is clear understanding what that program is to accomplish to achieve of U.S. objectives and/or serve U.S. national interests. Program planners need to understand what the intentions of program funders are when those funders specify or imply tasks and set limitations and/or constraints on the accomplishment of those tasks. To understand the intentions of program funders, program planners must also know what specific (national or departmental) objectives program funders are seeking to achieve.

Once program planners have a clear understanding of what the program is to accomplish, meaning what national or departmental objective the program is to help achieve, program planners can create a program mission statement which specifies the program’s objective. The program mission statement should be the rationale for the projects that will make up the program and communicate the “who, what, where, when, and why” of the program to project leaders. A program mission statement should not be considered a pro forma part of a program plan but rather a directive that allows project leaders to focus on what they need to accomplish.

Projects

Following articulating the program objective in the program’s mission statement, planners can begin the considering what types of projects will be required to meet those objectives and formulating a concept which will inform program implementation. Projects that usually make up a rule of law development program include projects for legal reform, criminal justice institution building, crime control, and influencing the policy environment. Planners need to create a concept which integrates the program’s various projects so their effects are mutually reinforcing and puts them in a sequence that maximizes their impact. This concept, the Concept of Implementation (COI) should give an overall picture of the specific U.S. objective or national interests concerned, outlines broad courses of actions to achieve them based on a given ROL diagnosis, and then specifies projects that make up those courses of action and their sequence. When formulating their COI, program planners should take into account the COIs contained in the ROL intelligence product. The courses of action outlined in the program planners COI should be selected based on the final diagnosis of the ROL problem. The program planner’s COI should also take the following into account:

- The proposed responses from the diagnosis working groups;
- Current best practices in the fields of criminal justice and international development; and
- Input from veteran ROL development program onsite field implementers.

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224 Concept of Implementation ≈ Concept of Operations “A graphic, verbal, or written statement in broad outline that gives an overall picture of a commander’s assumptions or intent in regard to an operation of a series of operations; includes at a minimum the scheme of maneuver and fire support plan. It is described in sufficient detail for the staff and subordinate commanders to understand what they are to do and how to fight the battle without further instructions.” Antal, Armor Attacks, 322.
APPENDIX VI: RULE OF LAW DEVELOPMENT
PROGRAM PLANNING CONSIDERATIONS

Resources

Once the program’s projects are specified, planners can begin to estimate the resources needed to implement them. The resources needed to implement the projects will include political capital and the human, financial, and material resources. If the resources required are over and above those that are available then planners need to request that they be given more resources or reconcile the resources needed and those available.

Interested Parties

When planning rule of law development programs, planners need to take into account the actions and positions of interested parties, namely, adversaries, competitors, and friends. Adversaries are all those who will actively attempt to counter rule of law development efforts. Adversaries include but are not limited to, criminals, political “spoilers,” and incompetent or corrupt officials trying to protect their jobs. Competitors are all those who seek to develop the rule of law but whose efforts are at best uncoordinated with U.S. rule of law development efforts and at worst, working at cross-purposes to U.S. rule of law development efforts. Competitors include but are not limited to all other parties or organizations, domestic or international, private or public, that are providing or will soon provide rule of law or rule of law-related assistance. Friends include those who are actively supporting U.S. rule of law development efforts.

Planners must always remember that these groups and individuals have their own agendas and will utilize “strategic thinking” to secure their interests. “Strategic thinking” is defined as “the art or outdoing an adversary, knowing that the adversary is trying to do the same to you.”225 Planners need to exhibit “strategic thinking” to counter efforts that hinder rule of law development. It is important to note the actions of adversaries, competitors, and friends can help or hinder U.S. rule of law development efforts regardless of their intent.

Policy Environment

When planning a rule of law development program, planners must bear in mind that the program will take place within a policy environment that may or may not favor rule of law development. During the planning process, planners must ask themselves the following questions:

- What do the ruling and other parties say about criminal justice issues?
- What do citizens, especially victims of crimes, say about criminal justice issues?
- What are, and who is winning, the policy debates about criminal justice reform?
- Does the program objective and the project targets need to be marketed to ensure support? and

225 “Strategic thinking is the art or outdoing an adversary, knowing that the adversary is trying to do the same to you.” Avinash K. Dixit and Barry J. Nalebuff, Thinking Strategically: The Competitive Edge in Business, Politics, and Everyday Life (New York: Norton, 1991) xi.

APPENDIX VI 2
What are the best ways to garner support for the program if support is needed?

**Time**

The effect of time is an important consideration when planning a rule of law development program. Planners must create a timeline for the program which identifies when planning and preparations must be completed, when implementers need to be deployed, and when the program must begin and end. Planners must also try to forecast how events, such as elections, scheduled appointments of criminal justice officials, and holidays, will affect rule of law development efforts over the life of the program. How resources will erode or be depleted over the life of the program must also be considered during program planning.
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