

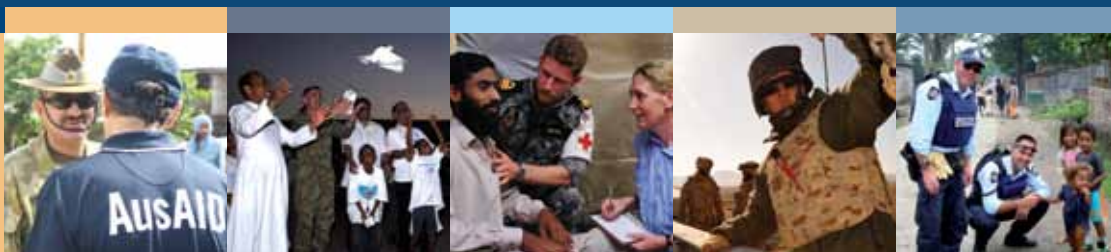


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## COUNTERINSURGENCY AND CERTAIN LEGAL ASPECTS: A SNAPSHOT OF AFGHANISTAN

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# ABSTRACT

**Key Words:** Afghanistan, counterinsurgency, rule of law field force, Afghan Local Police, ISAF detention

**Abstract:** This paper provides a snapshot of certain legal aspects of the civilian-military counterinsurgency campaign being conducted in Afghanistan by Coalition Forces in partnership with Afghan National Security Forces, together with civilian representatives of bodies such as the Government of the Islamic Republic of Afghanistan, contributing government and regional organizations, and non-government and international organizations. The snapshot is taken in May 2011. These legal aspects relate to the Rule of Law Field Force-Afghanistan, the Afghan Local Police program, and the ISAF detention.

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# COUNTERINSURGENCY AND CERTAIN LEGAL ASPECTS: A SNAPSHOT OF AFGHANISTAN

*The decisive terrain is the human terrain. The people are the center of gravity. Only by providing them security and earning their trust and confidence can the Afghan government and the International Assistance Forces (ISAF) prevail.*

General David H. Petraeus | August 2010

This paper provides a snapshot of certain legal aspects of the civilian-military counterinsurgency campaign being conducted in Afghanistan by Coalition Forces (CF) in partnership with Afghan National Security Forces (ANSF),<sup>1</sup> together with civilian representatives of bodies such as the Government of the Islamic Republic of Afghanistan (GIROA), contributing government and regional organisations, and non-government and international organisations. The snapshot is taken in May 2011.<sup>2</sup> These legal aspects relate to the Rule of Law Field Force-Afghanistan, the Afghan Local Police program, and the ISAF detention. The character of these programs, operations and organisations has been determined in part by the particular doctrinal framework that spawned them and which they serve, namely, counterinsurgency and stabilization operations (McChrystal 2009). Part I of this paper will therefore examine that framework, with Part II examining the specific legal aspects mentioned above.

# PART I — THE DOCTRINAL FRAMEWORK

## Military Strategic Background

In a speech to cadets at the West Point Military Academy on 1 December 2009, President Obama announced that it was in the US's "vital interest" to deploy an additional 30,000 US troops to Afghanistan. He stated that US national interests would be met in three ways:

First, we will pursue a military strategy that will break the Taliban's momentum and increase Afghanistan's capacity over the next 18 months... Second, we will work with our partners, the UN, and the Afghan people to pursue a more effective civilian strategy, so that the government can take advantage of improved security... Third, we will act with the full recognition that our success in Afghanistan is inextricably linked to our partnership with Pakistan (Obama 2009).

The 30,000 additional troops would allow for the targeting of the "insurgency" and the securing of key population centres. Further the troops would:

...increase our ability to train competent Afghan Security Forces, and to partner with them so that more Afghans can get into the fight. And they will help create the conditions for the United States to transfer responsibility to the Afghans (Obama 2009).

Although President Obama did not explicitly embrace counterinsurgency doctrine in his West Point speech it was subsequently interpreted as having had that effect.<sup>3</sup>

The combined civilian and military character of the response to the Afghanistan insurgency was reinforced by a White House Press Release of 1 December 2009 titled "The Way Forward in Afghanistan". It gave prominence to a new Civilian-Military Campaign Plan published by Ambassador Eikenberry and General McChrystal. Consequently, General Petraeus as Commander ISAF and Commander US Forces-Afghanistan, identified that, in order for Afghanistan to secure itself and remove all transnational extremists, there was a need for a "comprehensive civil-military counter-insurgency campaign" (Clemens 2011).

## The Contemporary Re-Emergence of Counterinsurgency Doctrine

Traditionally, counterinsurgency doctrine has been “preached and practiced by a relatively small group of soldiers, historians and social scientists” (Cohen 2009). This group includes practitioners such as the “British guerrilla adventurer T.E. Lawrence”, “legendary Vietnam adviser John Paul Vann through to Gen. David Petraeus” and theorists including “British veterans of Malaya such as Robert Thompson, French participants in the Algerian war such as David Galula and more recently American veterans of Vietnam such as Bing West” (Cohen 2009). To this list can be added Charles Callwell, who wrote *Ideas for Successful Counterinsurgency* based on British imperial experiences such as the Boer War. Notwithstanding this history, however, Cohen (2009) reports that in the US after “Vietnam...counterinsurgency dropped from the curricula of war colleges and all but niche specialties within the armed services, such as U.S. Army Special Forces”.

Counterinsurgency doctrine was revived during the 2003 Iraq conflict after, according to Thomas E. Ricks (2009, p. 8), the “United States came close to losing the war”. For David Kilcullen (2010, p. 19), who was General Petraeus’s senior counterinsurgency adviser in Iraq in 2007, the focus of the US command structure in 2004 was on “‘conventional’ (i.e. state-on-state, force-on-force) warfare against the Soviets” with some “extremely valuable experience in peace operations in Somalia, the Balkans, East Timor, Liberia, Sierra Leone during the 1990s”. Kilcullen (2010, p. 19), relying on the work of Dr. Janine Davidson, states that these experiences were applied to the new environment in Afghanistan and Iraq “with excellent effect in some cases” but these were “ad hoc adaptations” unsupported by existing institutions or senior officials.

Given that counterinsurgency had become the prevailing doctrine in Iraq by 2007, at what point had it fully re-emerged? Kilcullen (2010, p. 23) reports that there were counterinsurgency initiatives being taken in Iraq in 2006 by then US Commander, General Casey, and his counterinsurgency adviser, Kalev Sepp. They included the establishment of “a counterinsurgency campaign plan”, the creation of a counterinsurgency academy outside Baghdad, and the reorienting of the coalition force in Iraq to the new counterinsurgency approach. For Ricks (2009, p. 9) though, it was not until late 2006 that a comprehensive transformation was to be initiated

when “a few insiders” led by retired General Jack Keane “managed to persuade President Bush to adopt a new, more effective strategy built around protecting the people”. The doctrinal underpinning of the emerging counterinsurgency commitment by the US was provided by a revised US manual, FM (Field Manual) 3–24 Counterinsurgency (2006). FM 3–24 was formally released in December 2006 under the co-signatures of then Lieutenant General David H. Petraeus in his capacity as Commander US Army Combined Arms Center and US Marine Corps James F. Amos, Deputy Commandant, Combat Development and Integration. The new strategy was to be implemented by General David H. Petraeus from 2007 as the Commander of US forces in Iraq (Ricks 2009, p. 9).<sup>4</sup>

Regarding Afghanistan, Kilcullen (2010, p. 23) assesses that the counterinsurgency awakening was being hampered by factors including “a profusion of multinational command systems, lack of higher level attention, and reluctance on the part of some troop-contribution nations to grasp that the conflict had evolved from a reconstruction mission into a full-blown counterinsurgency”. However, it had certainly taken root in 2009 as evidenced by the publication of *Counterinsurgency Guidance* by General Stanley A. McChrystal (2009), then Commander US Forces – Afghanistan and Commander International Security Assistance Force, Afghanistan.

## Layers of Doctrine

Doctrine has played a significant role in counterinsurgency operations in Iraq and Afghanistan, particularly the doctrine contained in FM 3–24 (Ricks 2009, p. 240).<sup>5</sup> Why is this the case? For Kilcullen (2010, p. 20), speaking generally about the role of field manuals, “the body of institutional knowledge captured in military field manuals” is an “institutional rudder that help turns the enormous bureaucracies it informs”. More specifically in counterinsurgency:

Success depends on adaptability in the face of a rapidly evolving insurgent threat and a changing environment. Armies that successfully ‘read’ this environment and adapt – using tools like field manuals – are more apt to succeed (Kilcullen 2010, p. 20).

However, there are several 'layers' of doctrine required by those who practice counterinsurgency. Higher-level field manuals benefit from further interpretation for application at the tactical level. Kilcullen (2010, pp. 18–19) refers to a conversation with a Marine Corps Captain experienced in the “realities of counterinsurgency warfare” who visited him “to express the general frustration shared by a lot of his peers”. The frustration centred on the need for greater fidelity of counterinsurgency doctrine for application at the tactical level. The Marine officer stated:

The Field Manual tells us what to achieve, but not what to do. It lays out the theory, but we need practical advice at company level (Kilcullen, 2010, p. 18).

Kilcullen (2010, p. 29) indicates these comments “struck a cord” with him – how does the theory and the principles contained in counterinsurgency sources such as David Galula, T.E. Lawrence and Robert Thompson “translate into action” at the company level? His response was to produce his “Twenty Eight Articles”<sup>6</sup> aimed at providing “a concise description of what company grade commanders needed to understand and do in counterinsurgency” (Kilcullen 2010, p 24). These articles appear as an Appendix to the April 2009 publication, FM 3–24.2, *Tactics in Counterinsurgency* (Appendix C, C-1). FM 3–24.2 itself is aimed at supporting FM 3–24 by providing for tactical counterinsurgency operations at the company, battalion and brigade levels.

Within the Afghanistan area of operations (AO), one source of tactical level counterinsurgency fidelity is the Counterinsurgency Training Center (CTC-A) located at Camp Julien on the outskirts of Kabul. The CTC-A mission,<sup>7</sup> based on Commander ISAF guidance, is to enhance ANSF, CF and other GIRoA agencies capabilities –

to reduce insurgent influence through the delivery of regionally focused, timely and relevant “best practice” counterinsurgency (COIN) training and education that fosters greater unity of effort among all stakeholders IOT [in order to] facilitate the development of a secure and stable Afghanistan (CTC-A 2011).

The CTC-A's training modules include a five-day Counterinsurgency Leaders' Course (CLC). The CLC has both ANSF and CF participants. The course is designed for tactical and operational leaders and staff (company, battalion and brigade), partners and advisors. The CLC "provides commanders, staff, trainers, and advisors with the mindset and application tools to conduct full-spectrum COIN" (CTC-A 2011). The CTC-A also conducts a three-day District Stability Framework (DSF) course, which focuses on a program management and planning framework developed jointly by USAID, the Kabul Stabilization Unit and CTC-A. The DSF course –

...allows users to identify root causes of instability at the local level, design activities that specifically address instability, and measures of effectiveness of these activities in relation to overall stability. The DSF supports unity of effort among U.S. Government (USG) Civilians, CF, GIRoA officials, ANSF, International Organisations, and Non-Government Organisations (NGOs) by providing a common methodology for assessing sources of instability and designing activities that promote stability (CTC-A 2011).

The need to constantly monitor and revise, where necessary, counterinsurgency doctrine and guidance was reinforced by General Petraeus in his 1 August 2009 Counterinsurgency Guidance issued as Commander, International Security Assistance Force/United States Forces-Afghanistan. In that Guidance he states:

Team, here is my guidance for the conduct of counterinsurgency operations in Afghanistan. In keeping with the admonition in this guidance to "learn and adapt," I will update this document periodically in the months ahead. Indeed, this edition is my first update, as I received useful feedback on the initial draft from Afghan partners and also received advice from elders and Special Forces teams in Herat Province's Zericho Valley (Petraeus 2010).

## Counterinsurgency and Stabilisation

In US doctrine, counterinsurgency is defined as “military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency” (FM 3–24 2006, p. 1–1). Counterinsurgency operations are full spectrum operations so include “offensive, defensive, and stability operations that commanders combine to achieve the desired end state” with the exact mix varying on the situation and the mission (FM 3–24 2006, pp. 1–19).<sup>8</sup>

US military doctrine defines stability operations as follows:

[Stability operations encompass] various military missions tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief (FM 3–07 2008, p. viii in Stephens 2010, p. 458).

Stability operations “leverage the coercive and constructive capabilities of the military force” (FM 3–24.2 2009, p. 7–1). They target sources of instability (and protect and reinforce sources of stability):

...effective stability operations require an ability to identify and prioritize local sources of instability and stability. They also require the prioritization of interventions based on their importance in diminishing those sources of instability or building on sources of stability. For example, if village elders want more water, but water is not fostering instability (because fighting between farmers and pastoralists over land is the cause), then digging a well will not stabilize the area (FM 3–07 2008, p. D–9).

During an insurgency “stability operations are executed simultaneously with offensive and defensive operations”, with stability operations complementing and reinforcing offensive and defensive operations as “they begin to address the root causes that lead to insurgency” (FM 3–24.2 2009, p. 7–1). There is consequently a strong relationship between counterinsurgency and stability operations, particularly where the stability operations involve military tasks.<sup>9</sup>

Notwithstanding their close linkage, particularly in operational environments such as Afghanistan, stabilization and counterinsurgency can still be distinguished. The term 'stabilization' itself is defined as "the process by which underlying tensions that might lead to resurgence in violence or a breakdown in law and order are managed and reduced" (FM 3–07 2008, p. G–I). This definition envisages violence broadly, not only violence associated with an insurgency. An insurgency is one source of instability. This notion is captured in the UK Joint Doctrine Publication 3–40 (2009, p. xv): Security and Stabilization: The Military Contribution.

Security is the foundation on which stability is built... However, defeating an insurgency is merely treating the symptom. For real, long-term success, you must address the root causes of instability, and that requires an approach that combines economic, governance, and security measures; a comprehensive approach.

## Stabilisation

To achieve the stabilisation objective – a stable and lasting peace – stability operations "capitalize on the coordination, cooperation, integration, and synchronization among military and non-military organisations" the aim of this civil-military effort being to strengthen legitimate governance, restore or maintain rule of law, support economic and infrastructure development, and foster a sense of national unity (FM 3–07 2008, pp. 1–16).

Within this broad framework the primary tasks or lines of effort for stability operations are as follows (FM 3–07 2008, para. 2–20 and figure 2–2):

- Establish civil security
- Establish civil control
- Restore essential services
- Support governance
- Support economic and infrastructure development

These tasks are "fundamental to full spectrum operations and are conducted across the spectrum of conflict, from stable peace to general war" (FM 3–07 2008, p. 2–9). As well, they may be executed before, during, or after conflict (FM 3–07

2008, p. 2–9). FM 3–24.2 (2009, p. 7–1) implies there is an interrelationship between these stability tasks and counterinsurgency lines of effort but it is “not sequential in nature”. FM 3–24.2 (2009, p. 7–1) also indicates that military stability tasks decline when the host nation, United Nations or US government agencies assume these responsibilities.

A number of the tasks or lines of effort for stability operations listed above are relevant to legal aspects of the programs, operations and organisations dealt with in Part II of this paper. Consequently, doctrinal aspects of those tasks or lines of effort will be highlighted below.

### Establish Civil Security

The desired outcome here is a legitimate civil government which can assume responsibility for the security sector. Until then intervening military forces may perform the necessary tasks while helping to develop host-nation security and police forces (FM 3–07 2008, p. 2–9). Specific tasks that may be required by the intervening military force include: conduct disarmament, demobilization and reintegration; support identification; and protection of key personnel and facilities (FM 3–07 2008, pp. 3–2 to 3–5).

### Establish Civil Control

This task is focussed on establishing “justice reform and the rule of law, supported by efforts to rebuild the host-nation judiciary, police, and corrections systems” (FM 3–07 2008, p. 2–10). It therefore addresses “the key institutions necessary for a functioning justice system, including police, investigative services, prosecutorial arm, and public defense” (FM 3–07 2008, p. 2–10). Specific tasks can include: establishing public order and safety; supporting law enforcement and police reform; supporting judicial reform; supporting property dispute resolution processes; supporting justice system reform; and supporting corrections reform (FM 3–07 2008, p. 3–9).

### Support Governance

The legitimacy of a government is tied to its ability to perform basic civil functions (FM 3–07 2008, p. 3–13). This task or line of effort includes supporting the development of local governance and supporting anti-corruption initiatives (FM 3–07 2008, p. 3–13).

## Counterinsurgency

Insurgency and counterinsurgency are described as “complex subsets of warfare” (FM 3–24 2006, p. 1–1). Doctrinally the goal of counterinsurgency is as follows:

...a legitimate Host Nation government that can provide effective governance. This includes providing for their populace, eliminating the root causes of the insurgency and preventing those root causes from returning (FM 3–24.2 2009, p. 3–1).

Kilcullen (2010, pp. 29–30) describes counterinsurgency in terms of a “competition with the insurgent” for “the right and the ability to win the hearts, minds, and acquiescence of the population”. Consequently the “injudicious” use of firepower can perpetuate the insurgency with the “most beneficial actions” often being local politics, civil action, and beat-cop behaviours” (Kilcullen 2010, pp. 29–30). This population-centric approach goes to the heart of counterinsurgency doctrine. FM 3–24 (2006, p. 1–1) provides that “[l]ong-term success in COIN depends on the people taking charge of their own affairs and consenting to the government’s rule”.

Counterinsurgency marks a clear shift from the notion of “rapid decisive operations” prevalent in US military (and political) circles around the 2003 period (Ricks 2009, p. 160). That shift is best highlighted by a number of counterinsurgency paradoxes described in FM 3–24. The “more prominent and legally relevant paradoxes” (Stephens 2010, p. 465) include the following:

- ‘Sometimes, the more you protect your force, the less secure you may be.’
- ‘Some of the best weapons for counterinsurgents do not shoot.’
- ‘Sometimes, the more force is used, the less effective it is.’
- ‘The more successful the counterinsurgency is, the less force can be used and the more risk must be accepted.’ (FM 3–24 2006, pp.1 – 26–28)

For Stephens (2010, p. 466) the “paradoxes mark a decisive change from the usual legal prescriptions”. They also represent a decisive divergence from prevailing views as to Western liberal tolerance for own-force casualty loss”.

These paradoxes have practical operational implications. They include a modified approach to targeting. Stephens (2010, pp. 466–467) points out that under

counterinsurgency doctrine, rather than target otherwise targetable persons, doctrine introduces the concept of 'reconcilability':

Hence, a decision-maker must further assess the prospect of reconcilability before taking action. If a person is considered reconcilable, then targeting should not occur or should cease, and a law enforcement arrest procedure should be considered (FM 3–24 2006, pp. 7–32).

Also, the proportionality principle is modified by Stephens (2010, p. 467):

Similarly, with respect to the principle of proportionality, the counterinsurgency doctrine sets out a self-conscious variation on the manner in which the formula is to be applied, in accordance with its stated paradoxes. Thus the manual specifies:

In conventional operations, proportionality is usually calculated in simple utilitarian terms: civilian lives and property lost versus enemy destroyed and military advantage gained. In COIN operations, [military] advantage is best calculated not in terms of how many insurgents are killed or detained, but rather which enemies are killed or detained ... In COIN environments, the number of civilian lives lost and property destroyed needs to be measured against how much harm the targeted insurgent could do if allowed to escape (FM 3–24 2006, cited in Stephens 2010, p. 467).

Thus counterinsurgency doctrine “expressly requires assessment of military advantage in terms of the risk of social or political alienation” (Stephens 2010, p. 467).

Another practical operational shift involves troop disposition – a move from living in large Forward Operating Bases and “commuting to work” to living amongst the population (Ricks 2009, pp. 194–195). Another relates to detention. Although FM 3–24 only addressed detention in a limited way, in Iraq Major General Stone, the commander of US detention operations from April 2007, introduced the concept of “COIN inside the wire” to parallel General Petraeus's larger counterinsurgency effort. This campaign emphasized population protection, the exemplary treatment of detainees and improved employment opportunities for detainees through educational and vocational activities (Stephens 2010, p. 468).

From a legal perspective, the above outlined approach to counterinsurgency has led, according to Stephens, to “a revised approach to legal interpretation”. He says that when “legitimacy and validity go hand in hand, it augers well for a restrained and constructive role for military forces” (Stephens 2010, p. 468).

## Clear-Hold-Build

Within the counterinsurgency construct a number of approaches are available. FM 3–24.2, (2009, pp. 3–23 – 3–27) refers to Clear-Hold-Build (‘oilspot’) Operations; Strike Operations; and Populace and Resource Control Operations. The CTC-A internal publication which underpins the Counterinsurgency Leaders’s Course, *Cutting the Gordian Knot*, provides for five types of operations: Clear-Hold-Build (CHB) Operations; Strike Operations; Remote Operations; Border Operations; and Urban Operations (Ulrich 2010, p. 66). The principle operation being conducted in Afghanistan since May 2001 is that of CBH.

A CBH operation is a full spectrum operation that “combines offense (finding and eliminating the insurgent), defense (protecting the local populace) and stability (rebuilding the infrastructure, increasing the legitimacy of the local government and bringing the rule of law to the area) operations” (FM 3–24.2 2009, p. 3–17). Each phase has offensive, defensive and stability aspects but to varying degrees. According to FM 3–24.2 (2009, p. 3–17), in “the *clear* phase, offensive operations usually dominate; in the *hold* phase, defensive operations are emphasized; and in the *hold (sic)* [build] phase stability operations are preeminent.

Stephens described the CBH approach in the following terms:

The famous ‘clear, hold, build’ strategy initially devised by Colonel McMasters in Tal Afar in Iraq in 2006 graphically demonstrates the attitudinal changes made by soldiers to protect resident populations that follow from such conclusions (Stephens 2010, p. 468 relying on Ricks 2009, pp. 50–51).

In Afghanistan, given the commitment to counter-insurgency and stabilisation doctrine, individual programs, operations and organisations can be understood through that doctrinal prism. The specific programs, operations and organisations that will be examined in Part II of this snapshot are: the ROLFF-A; the Afghan Local Police program which is intrinsically linked with Village Stability Operations (VSO); and, ISAF detention operations.

## PART II — CERTAIN LEGAL ASPECTS OF COUNTERINSURGENCY [AND STABILISATION] IN AFGHANISTAN<sup>10</sup>

### Rule of Law Field Force — Afghanistan<sup>11</sup>

*COIN operations strive to restore order, the rule of law, and civil procedures to the authority of the HN government. All counterinsurgent actions must be those of agents of a legitimate and law-abiding HN [host nation] government. . . . Inconsistent actions furnish insurgents with valuable issues for manipulation in propaganda. (Combined Joint Inter Agency Task Force 435, 2011)*

An important strategy in defeating the insurgency in Afghanistan is to build an effective and efficient rule of law framework which provides the Government of the Islamic Republic of Afghanistan (GIROA) with increased credibility and legitimacy, and disrupts the ability of the insurgents and other malign actors to offer alternate informal means of justice. One program that focuses on developing Rule of Law (ROL) in Afghanistan is conducted by the Combined Joint Interagency Task Force 435 (CJIATF 435) and its subordinate organisation, the Rule of Law Field Force-Afghanistan (ROLFF-A).

CJIATF-435, which was established in September 2010, has a number of roles. These include command, oversight, and responsibility for US detention operations in Afghanistan; undertaking Detainee Review Boards, reintegration and rehabilitation of detainees, education and vocational training for eligible detainees, biometrics, theatre intelligence; and ROL (CJIATF 435 2011). In relation to ROL, CJIATF 435 seeks to “implement strategically important rule of law initiatives in a variety of field tactical settings and to integrate diverse police, investigative, prosecutorial, judicial, and detention disciplines into a more effective whole”. It fulfils this role through the ROLFF-A which undertakes its missions “with an Afghan lead and pursuant to policy guidance from Ambassadors Karl Eikenberry, the U.S. Chief of Diplomatic Mission in Afghanistan, and Hans Klemm, the Coordinating Director for Rule of Law and Law Enforcement” (Martins, 2010).

The Commander of ROLFF-A, Brigadier General Martins, has explained what his command does in the following terms:

ROLFF-A provides essential field capabilities, liaison, and security to partnered Afghan and coalition civil-military rule of law project teams.

ROLFF-A also helps build Afghan criminal justice capacity, increase access to dispute resolution services, fight corruption, and promote the legitimacy of the Afghan government (CJIATF 435 2011).

Examples of specific projects undertaken by the ROLFF-A include establishing the the *Chel Zeena* Rule of Law Center in Kandahar; assisting Afghan prosecutors in putting together evidence packages, particularly where such packages rely on site exploitation or cross matching biometrics; facilitating civilian and military interaction in such matters as counter narcotics and security offences; recommending and overseeing the development of civilian law and order infrastructure; and assisting in training of judges and prosecutors. Recently, the ROLFF-A has also assisted prison authorities in Afghanistan to develop simple rules for guards to deal with prisoners on a day to day basis.

Putting this philosophy into practice has involved at least two important innovations that are worth reflecting on in relation to COIN in Afghanistan and other similar operations that might be undertaken in future. The first innovation is the establishment of a combined and interagency organisation to focus on providing security, capacity and capability to Afghan law and order institutions. This innovation has a number of benefits in Afghanistan. First, it makes ROL a central aspect of providing better governance and by doing so, elevates it from being a subsidiary task at operational and tactical levels. Thus, battlespace commanders can focus on undertaking security, development and other governance tasks without being distracted by ROL matters. Having a ROL organisation also provides battlespace commanders and other agencies involved in governance with a focal point for ROL matters. This focal point in Afghanistan arises from the allocation of ROLFF-A officers to each of the Regional Commands thus providing commanders with focused updates on such matters as the professionalism of judges in their areas of operations, the types of disputes that have been settled and reasons why other disputes have not settled, the effectiveness of the ALP, and the quality of the infrastructure used for law and order matters. The Field Force officers are also able

to look internally and assess the strengths and weaknesses of coalition forces in the area of ROL and, therefore, allocate resources and personnel throughout the AO more effectively. Finally, the combined and interagency nature of the Field Force permits it to call on expertise and resources from international agencies concerned with the ROL, donor countries, locally deployed military units and partnered Afghan forces.

The second innovation is establishing a link between security and ROL efforts. While it is generally accepted that ROL endeavours are difficult to fulfil without security, the ROLFF-A has developed a 'hub and spoke' approach to link security and justice together. This approach, also referred to by Brigadier General Martins (2010) as ROL 'green zones', is a system by which Afghan and coalition partners establish secure justice or rule of law hubs. These green zones provide

security around key governance nodes...in order to protect investigators, witnesses, mediators, clerks, prosecutors, judges, corrections guards, and other participants from attack or intimidation and to economize on scarce security forces assets (Martins 2011a).

Typically, such hubs, like the *Chel Zeena* Rule of Law Center in Kandahar or the *Markase Hakmiate Qanoon Dar Parwan* (Parwan Rule of Law Center) are providing both work spaces and protective accommodation for Afghan law and order officials such as investigators, prosecutors, guards and clerical personnel. Once such centres are established Afghan and coalition partners create corridors to other districts and communities, thus creating 'justice' spokes linking communities with the justice hub. The concept of hub and spokes is similar to the 'ink blot' approach discussed in Part I above.

At one level the immediate benefit of the hub and spoke approach is obvious. In situations where security is of paramount importance the benefit of providing a secure location for law and order officials to live provides them with an opportunity to undertake their duties. At another level it offers a focal point where individuals can seek justice without having to risk visiting locations that might be insecure, such as district court houses. Security forces are also able to allocate scarce assets more efficiently and effectively by concentrating their forces around hubs rather than spreading them thinly to protect a number of law and order sites.

The end goal of creating a network of hub and spoke linkages for law and order in Afghanistan is to improve district governance so as to “help displace the Taliban and prevent their return by offering less arbitrary dispute resolution and dispelling fear among the population”.<sup>12</sup>

Clearly the hub and spoke model is an approach intended to function in situations where law and order has broken down; where local law and order officials are concerned about their safety and well being; and where international or local security forces have limited assets to provide security throughout the area of operations. Consequently, the model is appropriate for situations of emergency and should not be envisaged as a long-term solution to law and order problems.

It is important to note that the ROLFF-A does not, nor does it seek to, ‘militarize’ justice or the ROL. Clearly, ROL programs conducted by organisations such as Australian Government Overseas Aid Organisation (AusAID 2011), US Agency for International Development (USAID 2009), or the United Nations Assistance Mission in Afghanistan (UNAMA 2011) are still required. Programs conducted by such organisations assist to ensure that the ROL is developed and implemented to, among other things, promote, monitor and protect human rights; ensure that legal regimes are consistent with international and Afghan standards; install appropriate laws and processes to deal with corruption; and facilitate appropriate and effective monitoring of law and order institutions.

The efforts of the ROLFF-A in combining security with the aim of cooperating and building ROL capacity, with Afghans taking the lead, is entirely consistent with the fundamental COIN tenet of striving to restore order, the rule of law, and civil procedures to the authority of the HN government (FM 3–24 2006 pp. 8–42). Such efforts help lash together both top-down and bottom-up ROL strategies, and therefore, bode well for helping coalition forces to assist GIRoA to develop more effective law and order institutions throughout Afghanistan.

## Afghan Local Police<sup>13</sup>

*Top-down efforts to establish security through the central government are likely to fail unless they include a more-effective bottom-up strategy that leverages local communities, especially in rural areas (Jones and Munoz, 2010).*

It has been recognized for some time that “Afghanistan’s rural villages contain the very population that both the insurgents and counterinsurgents seek to influence, inspire or intimidate” (Petit 2010, p. 25). To counter the Taliban’s influence on rural populations US Special Forces in Afghanistan developed Village Stability Operations. A key aim of these “operations is supporting village leaders and village inhabitants who have the will to resist Taliban hegemony” (Petit 2010, p.26). The goal of such operations is to “improve stability inside lasting social structures and create zones that are inhospitable to insurgent overtures or intimidation” (Petit 2010, p.27). The end state of such operations in Afghanistan is to “link up these villages to their districts and provinces and establish meaningful connections to the national government” (Petit 2010, p.27).

Early in 2010 a key component of VSO in some areas of Afghanistan was the establishment of the Local Defence Initiative (LDI). The LDI consisted of locally recruited men to form a ‘self-defence’ force from the villages in which VSO were being conducted in. The LDI program was viewed as a success by US commanders and consequently, coalition forces decided to seek GIRoA endorsement of the program.<sup>14</sup>

GIRoA endorsement of the program came by way of a Presidential Decree signed by President Karzai in August 2010. That Decree established the Ministry of Interior Afghan Local Police (ALP) program thus endorsing the notion that rural and isolated communities may establish self-defence forces to protect their communities from insurgents and other malign actors. The program is intended to run from two to five years. Currently, there are 5800 ALP members.

The program is run by the Ministry of Interior (MOI) with the support of the US government. The primary areas of support from the US are provision of training and technical assistance in conjunction with the MOI, and financial support to the Ministry. ISAF also supports the program by providing training and resources to ALP members. GIRoA and coalition forces consider the program a key platform by which to bring security, government presence, and development to isolated communities where ANSF have limited reach or influence. During a recent 'validation shura',<sup>15</sup> for example, a senior MOI official argued that the "ALP utilizes the talent and will of our own young people to bring stability and security to their communities".<sup>16</sup> General Petraeus, COMISAF, has stated: "[the] ALP represents the most significant change in our strategy since I have taken command. It represents the mobilization of the village against the Taliban" (CFSOCC-A 2011).

Notwithstanding the endorsement of GIRoA and the confidence of coalition forces that the ALP is a necessary program to develop security, the establishment of the ALP (and its predecessor the LDI) is controversial. Recently United Nations Assistance Mission in Afghanistan (UNAMA) and the Afghanistan Independent Human Rights Commission (AIHRC) (2011), and Oxfam (2011) have raised concerns about recruitment, training and accountability of the ALP. These concerns reflect more general ones that have been raised by the international community in relation to civil defense groups in other parts of the world.<sup>17</sup>

UNAMA and AIHRC (2011, pp. 40–45) concerns about the ALP program relate to command and control, recruitment and vetting, training, powers to arrest and detain, and operations conducted outside an ALP area or responsibility. From a COIN perspective UNAMA and AIHRC (2011, p. 45) also observe the risk of communities being specifically targeted by insurgents because they are seen to support the ALP. Oxfam's criticisms are focused on accountability and the practice of terminating community defence initiatives falling outside the formal structure of the ANP (Oxfam 2011, pp. 16 and 29).

As accountability concerns are common to both UNAMA and AIHRC, and Oxfam they will be focused upon here. A key accountability concern in the UNAMA and AIHRC report is the weak oversight mechanisms between the ANP and the ALP; and between the village/community and elders. More specifically the UNAMA and AIHRC (2011, p. 40) report states:

In theory, the ALP reporting structure through the local ANP to the district chief of police is a positive measure. However, concerns exist about the effectiveness of reporting mechanisms given the ANP's poor reputation in relation to abuses against civilian[s], its lack of discipline and professionalism, and its high levels of corruption.

A further concern is how:

[O]versight mechanisms work in practice, given the remote areas where ALP is and planned. It is also an open question whether the ANP will be able to control ALP activities given recruits' loyalty to local tribal leaders, commanders and powerbrokers rather than local government structures in many districts (UNAMA and AIHRC 2011, p. 45).

Oxfam (2011, p. 16) states that the "lack of accountability is nowhere more pronounced than in the case of the ALP". They are sceptical of elders following up on complaints made about the ALP. They argue that the theory that villagers will complain to elders is flawed:

[T]his theory assumes that community members feel able to raise complaints without fear of retaliation, that elders act in the interests of their community and are not just former warlords using the platform of the ALP to provide legitimacy to their own militia; and that the ALP recruits will accept the discipline measures imposed... Even where the right ingredients are in place – an ALP genuinely selected by a legitimate *shura* with the community's interests at heart – a remaining question is what the *shura* can do with a problem that it is unable to solve. The theory is that *shuras* may refer issues to the district authorities. But the whole premise of the ALP program is that units are stood up where insecurity is such that regular police forces cannot be established. And if district authorities are unable to travel to the villages, it is difficult to see how they will support the *shura* in holding the ALP to account. (Oxfam 2011, p. 16)

In order to address the concerns of UNAMA and AIHRC, and Oxfam it is necessary to first outline both the institutional levels of accountability; and the processes of accountability that are in place in relation to the ALP program. At the institutional level GIRoA clearly has responsibility for recruiting, vetting,

and overseeing ALP development. GIRoA achieves this by harnessing the MOI, provisional and district authorities and village elders and powerbrokers. Supporting these levels of institutional accountability are coalition forces, particularly, Combined Forces Special Operations Component Command – Afghanistan (CFSOCC-A). The primary levels of assistance provided by CFSOCC-A is the allocation of Village Stability Platforms (VSP) teams that are predominantly US Special Forces.<sup>18</sup> These teams have an integral role in assessing which villages and communities are ready for the program, training and mentoring ALP recruits and overseeing their actions. The VSP teams live and operate from the villages in which the ALP operates.

At an institutional level accountability is further reinforced by processes dealing with the selection of communities, the vetting of members, recruiting and training, and oversight. These processes begin with the selection of communities to develop ALP. The process for establishing an ALP program in a community begins with an evaluation as to whether the community is willing to support GIRoA, and defend their families and property. Other factors taken into consideration include the level of violence within the community, local leadership and tribal relationships. A key part of the evaluation is having community elders approve the concept and obtaining agreements from provisional and district authorities. After local 'buy-in' is achieved, approval is also sought from MOI and ISAF. Once there is agreement from both MOI and ISAF a 'validation *shura*' is held in the district responsible for the community. The *shura* brings together representatives from the Ministry of Justice, the Provisional and District centres, and village and other local power brokers to discuss their views of establishing ALP in their community.<sup>19</sup>

ALP recruits must be males between the ages of 18 and 45, nominated by their communities, vetted by MOI and NDS, biometrically enrolled, and must have passed a urine analysis for drugs. They are required to enter into a 12 month contract. Once recruited, ALP members are issued weapons, uniforms, radios, and vehicles. ALP members undertake a 21 day training course in defensive techniques which focuses on, among other things, the rule of law (including the Afghan Constitution, laws of armed conflict and human rights); communications and weapon handling, detection of improvised explosive devices, search and detention, and drug interdiction. Accountability for weapons and equipment is undertaken by both MOI and coalition forces. On completion of their contract qualified members are eligible for integration into the ANSF.

The accountability, specifically oversight, concerns expressed by UNAMA and AIHRC, and Oxfam are mitigated to varying degrees by both the institutional and process frameworks that GIRoA and coalition forces have put in place. Careful selection of sites and the close involvement of individuals at Kabul, on a provisional, district, and village level; and an overlay of VSP and other coalition forces limit the creation of ALP sites that are likely to fail. The vetting process is also an important element to ensure that the selection of recruits is at the highest level possible – in the sense of not recruiting individuals who have been identified biometrically as having been involved in human rights or LOAC violations; or taking narcotics.

The key to oversight in the short and medium term however, must be the VSP. These highly skilled US Special Forces are able to monitor, report and investigate the behaviour of the ALP, village elders and local powerbrokers. Monitoring occurs by virtue of the VSP living within the communities in which the ALP operates, training and mentoring the ALP, and engaging with tribal elders and powerbrokers in the villages. The VSP also plays an important role in reporting and investigating allegations of abuse. The VSP is able to report allegations of abuse to both the district authorities and coalition force battlespace owners. Such reports are then on the 'record' and follow-ups can be carried out. Investigations may be undertaken, depending on the type of allegation, and are conducted by GIRoA authorities or coalition forces.

A limitation for the VSP role in overseeing ALP accountability is that the VSP cannot undertake administrative (such as the termination of the ALP members contract) or disciplinary action against ALP members who have committed abuses against the population. This limitation is entirely appropriate in light of the fact that the responsibility for the behaviour of the ALP rests with the MOI.

The VSP's authority to undertake monitoring, reporting and investigations of alleged abuses could be further bolstered with the addition of Memorandums of Understanding (MOU) between the village or community and the VSP, and the VSP and the district. A MOU between the village or community and the VSP would outline their expectations in relation to village elders and powerbrokers monitoring, reporting, and investigating the behaviour of the ALP, reporting lines for allegations, responsibility for investigations, and liaising with district officials. The MOU between the VSP and the district would lash together the relationship that

the village and communities have with the VSP by acknowledging the role that the VSP should play in monitoring, reporting and investigating the behaviour of ALP members. The MOU between the VSP and the district centre could also deal with the responsibility of district authorities to fully investigate and take necessary steps to deal with allegations of abuse raised by the VSP.

A further option to develop better accountability of the ALP, and at the same time enhance governance is to develop a closer relationship between the VSP and the ROLFF-A. This relationship would ensure that ROLFF officers with legal backgrounds could assist VSPs to monitor, report and investigate allegations of abuse. Such officers could also liaise with district and provisional authorities to ensure that allegations are dealt with effectively and efficiently.

In combining both the institution of the VSP and their role in monitoring, reporting and investigating allegations or suspicions of abuse by the ALP, the accountability concerns of UNAMA and AIHRC, and Oxfam would appear to be mitigated to a considerable degree. Further oversight concerns may also be dealt with by the introduction of MOU between the VSP, village elders and district; and involving ROLFF-A officers in a liaison role between the VSP, and the district and provisional authorities.

## ISAF Detention<sup>20</sup>

### Commanders Intent

*a. Detention is a vital tool in counter-insurgency. Used properly, our ability to capture those who oppose the legitimacy of the Government of the Islamic Republic of Afghanistan (GIROA) by improper means, and ensure that they are subject to an effective and just determination is a key component in our efforts to bring stability to AFGHANISTAN.*

*b. Used without proper care, detention puts our aims at risk: it may alienate the population, and allows insurgents and those who would criticize our efforts to assert that we practice arbitrary detention, and that those we deal with are treated improperly, or at the extreme disappear (COMISAF 2010).*

The applicable detention regime for individuals detained for reasons related to the conflict in Afghanistan is multifaceted and complex. Coalition forces who serve under ISAF command and control are required to comply with the ISAF detention regime as provided for in Standard Operating Procedures (SOP) 362: *Detention of Non-ISAF Personnel* (ISAF 2011). Some military forces serving with ISAF may also have their own national detention policies or standing operating procedures that may be different to SOP 362.<sup>21</sup> In such cases it is usual practice for nations to indicate to the ISAF that their forces will comply with SOP 362 to the extent that it meets their international and domestic legal obligations, and is consistent with their national policies. If a detainee is transferred to the Afghan authorities, then the detainee will be subject to Afghan law. If the detainee is taken and held by US Forces in Afghanistan (USFOR-A) then they are subject to US detention policies.<sup>22</sup> Again, if those detainees are transferred from US facilities to Afghan security or detention authorities they will be subject to Afghan law.

What follows is a brief explanation of the following issues relating to the ISAF detention regime: the legal framework for detention; definition of detention and reasons for detention; the process of detention; and the information that a detainee, his family, village elders or local authorities, are entitled to be provided. Without a proper understanding of these issues it is difficult to critically examine the ISAF detention regime.

First however, it is appropriate to outline briefly the sorts of issues dealt with by SOP 362, which has been updated periodically<sup>23</sup> and is supported by other documents such as COMISAF directives.<sup>24</sup> SOP 362 deals with a number of issues including: the definition of detention; the legal basis for detention; command responsibility; processes to be adopted when detaining; reporting and record keeping; conducting investigations in relation to the treatment of detainees; release and handover procedures; and relations with the ICRC (ISAF 2011). The SOP also contains a number of annexes and appendices containing forms and more detailed guidance for dealing with detainees (ISAF 2011). The forms include formats for making initial reports to ISAF, forms that detainees must sign at the time of detention, detention records, and applications for continued detention. Further guidance is provided on matters including movement and transfer of detainees,

detention procedures, independent inspection regimes, and inspection of ISAF Troop Contributing Nation (TCN) detention facilities.

The ISAF detention regime recognizes that its forces are subject to both international and national laws. International laws include the four Geneva Conventions of 1949,<sup>25</sup> Additional Protocol II (1977) to those Conventions, the International Covenant on Civil and Political Rights (1976), and the European Convention on Human Rights (1953). The national laws that are applicable are the laws of Troop Contributing Nations (TCNs) as well as, where relevant, Afghan laws. The TCNs laws include their international legal obligations as well as national laws. Afghan laws are relevant where detainees are transferred into the hands of Afghan authorities. In relation to TCNs applying their own detention policies, the ISAF position is that the SOP creates minimum standards and any deviation from those standards must be notified to the North Atlantic Council. Regardless of discussions of applicable law, the detention regime is premised on application of Common Article 3 to the four Geneva Conventions of 1949, and the requirement for commanders to ensure that detention operations are undertaken in accordance with applicable international laws and human rights standards. All detainees must be treated with respect and dignity at all times.

The term 'detention' as applied to the ISAF regime refers a person who: (1) has been deliberately deprived of their liberty, (2) is in the control of ISAF; and (3) has been or about to be removed from the place where the detainee was originally located. A person is not detained if they are under the temporary control of ISAF for security or force protection purposes and are later released at the place where they were detained. In other words, a person who is stopped for the purposes of questioning or stopped at an ISAF road block and then released is not considered to be in detention. Detentions that are carried out by non-ISAF personnel, such as ANSF, are not considered ISAF detentions pursuant to the detention regime unless ISAF assumes control of the individual and places them into detention. This is the case even if ISAF are supporting ANSF. Detention also has a temporal quality by virtue of the fact that the detention regime is premised on detention only commencing once the detainee has been deprived of their liberty or the detainee is handed to ISAF personnel by non-ISAF personnel. Detention ceases at the time a detainee is released by ISAF or is handed over to the appropriate GIRoA authority.

Justifications for ISAF personnel to detain include the need for: (1) ISAF force protection; (2) self-defence of ISAF or its personnel; or (3) accomplishment of the ISAF mission. The ISAF detention regime does not apply to ISAF personnel, or to prisoner of war or other persons indicted for war crimes pursuant to the powers of a lawfully constituted tribunal.

The process of detention as envisaged by the ISAF regime may be described as having five phases. The first phase is at the point of detention. This phase requires ISAF personnel to determine whether they should continue to hold the detainee, hand the detainee to appropriate GIRoA officials or release the detainee. If the ISAF personnel decide to hold the detainee then phase two requires that the detainee be moved to a temporary detention facility, which is usually run by the ISAF force that carried out the detention.<sup>26</sup> The detainee can be detained for up to 96 hours in such a facility.<sup>27</sup> Phase three occurs if within the 96 hour period the detaining ISAF force decides to release the detainee or hand the detainee over to GIRoA authorities. In some cases nations have reached agreements with the US to hand a detainee to a US authority.<sup>28</sup> Phase four comes into play if detention is required beyond 96 hours. In such cases the ISAF force that is holding the detainee must seek COMISAF or his delegate's approval. Such approval will only be given for two reasons: medical or logistical. Extensions to the 96 hours rule will not be permitted to facilitate questioning the detainee. The 'clock' for the 96 hours detention starts ticking from the moment ISAF personnel have begun the detention, or the moment ISAF personnel have effective control of the detainee. The fifth phase occurs if authority for ongoing detention is not given. In such cases the detainee can no longer be kept in ISAF custody and therefore, must be released, or handed to the appropriate GIRoA authority. Clearly, not all detainees will go through the five phases as the option of release or immediate transfer is always available after the first phase.

The information that a detainee receives depends on the phase of detention. At the point of detention, the detention regime requires that the detainee is told, (in a language he or she understands) that they have been detained by ISAF forces and the reasons for detention. The identity of the force must be disclosed to the detainee. The detainee is given one of three general reasons for being detained: (1) ISAF force protection, (2) self-defence of ISAF or its personnel, (3) or a threat

to the ISAF mission. The detainee must be told if they will be transferred to another location. The detainee is also informed if he or she will be released by ISAF or transferred to ANSF as soon as possible. The detainee is asked if he or she understands what has been said to them and is then able to make a statement regarding his detention. Each of the above points is stated in a form that is given to the detainee in a language the detainee understands: Dari, Pashto or English. The detainee is then required to sign the form. A witness also signs the form. Where it is not possible to give the above information to the detainee, the information is required to be given at the earliest opportunity.

To protect the detainee's interests the detention regime also requires information concerning the detention to be given to the senior family member remaining at the point of detention. The information to be provided by way of a form includes information such as the individual(s) listed on the form have been detained temporarily; that medical care will be provided to the detainee(s) if necessary; and a phone number to call if the person receiving the form (or any other interested person) has not received information concerning the detainee(s) within 5 days of the detention. Further protections are afforded to the detainee's interests by requiring the detaining unit to notify the village elders or local authorities of the whereabouts and condition of the detainee and whether the detainee will be transferred or released. This notification is to happen as soon as the tactical situation permits.

Where the detainee is transferred to GIRoA authorities, the detaining unit is required to inform the village elders or local authorities of the time and place of transfer. This information may not be given if it is decided that providing the information would present an unacceptable risk to security or force protection. Decisions to withhold information must be notified through the chain of command.

Once moved to an ISAF holding facility the detainee is required to be informed again of his or her rights. Detainees are also required to be told of the rules and disciplinary procedures of the holding facility. The detained person must also be informed that they may make a complaint with the detention authority if they wish to bring to the attention of the detention authority any matters relating to their detention or treatment. In situations where a detainee is to be transported by ISAF forces they are to be given a form that tells them the location that they

are being transported to. Again they are asked if they understand and that fact is recorded on the form. The detainee and a witness then sign the form. The forms are in English, Dari and Pashto.

Based on the above descriptions of the detention regime it is appropriate to make two brief comments here. First, the definition of detention is a sound one. It recognizes the international standard that detention commences from the time a person's liberty is deprived; and that the detainee is in the [effective] control of the person carrying out the detention.<sup>29</sup> The fact that detention does not occur in situations where a person has been held temporarily for questioning or at a road block and is not moved from the vicinity of the point of detention is an appropriate caveat recognizing that military forces will often stop, but not detain, a person for security or force protection reasons.

Second, the information provided to detainees recognizes the vulnerability of detainees, their family members and members of their community every time a detention occurs. Creating a positive duty for ISAF personnel to notify the detainee of what is to happen to them, and providing information to the family and community members of the identity of the unit that has carried out the detention and where the individual will be or has been taken is surely the appropriate to allay fears of the detainee 'disappearing'.

## PART III — CONCLUSIONS

In Afghanistan, given the array of national and international participants – governmental and non-governmental, military and civilian – one challenge is to harmonize or unify their efforts and resources. This is necessary not only to avoid efforts cancelling each other but also to avoid creating vulnerabilities that can be exploited by malign actors such as insurgents. The counterinsurgency and stabilisation doctrine outlined in Part I of this paper contributes to better understanding that unity of effort.

In Part II of this paper, the ROLFF-A, the Afghan Local Police program and ISAF detention operations were examined against the doctrinal background outlined in Part I. Collectively, and broadly, these fit within the establish civil society, establish civil control and support governance doctrinal lines of effort.<sup>30</sup>

For purposes of this paper, which is a snapshot in time, the doctrinal framework for operations in Afghanistan helped provide a level of understanding of the character of the programs organisations and operations examined. Beyond the scope of this paper, that framework will eventually also provide the tools to measure the effectiveness of these programs.

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## Endnotes

- 1 'ANSF' is a collective term that includes the Afghan National Police (ANP) and the Afghan National Army (ANA).
- 2 The authors were attached to the Counterinsurgency Training Center-Afghanistan in May 2011. The paper draws on issues identified during CTC-A courses that they attended and discussions during this period.
- 3 For example, see Cohen (2011). He wrote:

Obama set out his objectives for Afghanistan, focused on thwarting al-Qaeda, and enumerated some of the means, chiefly a 30,000-troop, 18-month surge. By supporting Gen. Stanley McChrystal's recommendation to knock the Taliban back and protect the population, by devoting additional resources to development, and by surging civilians as well as soldiers, Obama has made his choice: counterinsurgency warfare, or COIN, as insiders like to call it.
- 4 For a detailed description of the US military's journey in relearning counterinsurgency see Ucko (2009).
- 5 For example, Ricks (2009, p. 240) reports that Lieutenant Jacob Carlisle, a Platoon Commander in Iraq in 2007, stated that General Petraeus' manual changed his thinking: "We had read the COIN while at the IZ [International Zone, or Green Zone], and now it really began to come alive in our minds. We started to treat the people differently".
- 6 Reminiscent of Lawrence's 'Twenty-Seven Articles', 1917 (Kilcullen 2010, p. 24).
- 7 The CTC-A is in the chain of command of the NATO Training Mission – Afghanistan, one of two components under COMD ISAF, the other being the ISAF Joint Command.
- 8 FM 3–07 (2008) provides that in full spectrum operations, the emphasis on the individual elements changes with echelon, time, and location.
- 9 For an examination of the interrelationship between stabilization and counterinsurgency in the area of the use of force see Stephens (2010, p. 458). He states:

There is an interrelationship between stability-operations doctrine and counter-insurgency doctrine, especially in terms of assessing the social cost of the use of force. Stability-operations doctrine expresses an aversion to kinetic operations and is focused more on broader capacity-building; indeed, it expects the application of force to be very judicious and sparing, and draws a direct parallel between the discriminate use of force and legitimacy.
- 10 In each of the sections below the authors acknowledge their gratitude to those who assisted them with those sections. More generally the authors are grateful to BG Scott, COL Lacey and his staff, LCDR Swanson, Federal Agent Hess and Mr Keam (both from the AFP) for their assistance and hospitality.
- 11 The authors gratefully acknowledge the assistance given to them by BG Mark Martins and his staff. Amongst his staff particular gratitude is owed to LCDR O'Brien and CPT Behinia.
- 12 A quote from Brigadier M Martins as reported by J Garmone (2011).
- 13 The authors acknowledge with gratitude the assistance of LTC Whitehead, COL Krawchuk, and LT Darwo (USN) in providing information for this section.
- 14 There are other non-GIRoA militia programs that exist in Afghanistan such as the *arbakai*. This section focuses only on the ALP.

- 15 The term 'validation shura' is used here to refer to a meeting of interested stakeholders that is convened on an ad hoc basis to discuss whether the ALP should be established in their area.
- 16 Notes taken during validation shura held in Qaisar District.
- 17 See for example the concerns raised by United Nations Secretary General (1994).
- 18 The development of local defence groups is a task that US Special Forces have undertaken in other countries. Such developments are a part of developing Foreign Internal Defence in host countries. See US Joint Publication 3–05 (2011).
- 19 Ossie attended a validation shura in Qaisar District in May 2011.
- 20 The authors wish to thank those who spoke or shared information with us about detention matters in Afghanistan. They wish to remain anonymous so the authors have not thanked them by name. Most of the information in this section is gained from conversations with people who were very generous in explaining key aspects of the ISAF policy on detention.
- 21 The authors were not able to get information concerning extant national policies during their discussions with ISAF personnel. These policies are classified and therefore not in the public domain.
- 22 The authority for USFOR-A serving under Operation Enduring Freedom (OEF) to detain is found in the OEF *Rules of Engagement and Guidance* issued by the US Department of Defence and Central Command.
- 23 This SOP has been updated periodically. For example updates were made in July 2007, August 2009 and April 2011.
- 24 One such directive is the COMISAF *Directive* (2010).
- 25 The four Geneva Conventions are: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (1950); *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea* (1950); *Geneva Convention Relative to the Treatment of Prisoners of War* (1950); and *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1950).
- 26 These facilities are referred to as ISAF/NATO detention facilities or holding facilities.
- 27 This is often referred to as the '96 hour' rule.
- 28 It has been reported that Australians are transferring detainees to US authorities for further detention after the 96 hour period expires. See Probyn (2011).
- 29 For a more detailed discussion concerning the definition of 'detention' see B Oswald (2011, pp.14–20). While the discussion in that article focuses on UN peace operations much of the discussion is relevant to the extant circumstances in Afghanistan.
- 30 More specifically regarding the ROLFF-A, its commander, BG Martins (2011b) was able to highlight the consistency between his organization and prevailing doctrine. He stated:

Recent efforts to deliver better governance in western Kandahar City illustrate how an Afghan- and civilian-led rule-of-law campaign is being carried out, and how the Rule of Law Field Force is contributing. The campaign is focused upon holding areas that have been cleared and then building the institutions necessary for security that will last after soldiers are no longer present.



