

CONSOLIDATING GAINS: CIVIL CONTROL, MILITARY GOVERNANCE AND RULE
OF LAW OPERATIONS IN A LARGE-SCALE COMBAT ENVIRONMENT

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Strategic Studies

by

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ABSTRACT

CONSOLIDATING GAINS: CIVIL CONTROL, MILITARY GOVERNANCE AND RULE OF LAW OPERATIONS IN A LARGE-SCALE COMBAT ENVIRONMENT, by Jonathan M. Holliday, 96 pages.

The initial success of combat operations in Iraq and Afghanistan resulted in stalemate and instability that continues to the present day. The United States military needs to have the capabilities to consolidate combat gains to prevent stalemate and instability. The U.S. military is the only agency with the potential to restore order to areas during and after major combat operations. To do this, the joint force relies on the Army. While the Army has developed some capability to consolidate gains, it continues to conduct operations following large scale combat that are ineffective and counterproductive. The United States Army must develop and expand its capabilities to consolidate gains, or it will be difficult or impossible to transition foreign occupied areas back to the civil authorities and stable governments. This thesis examines the organization, training, leadership and education dimensions of the Joint Capabilities Integration and Development System (JCIDS) model applied to rule of law operation to identify how the Army can effectively conduct civil control during and immediately following large scale combat operations. If the U.S. Army invests in capabilities to conduct rule of law operations, it will be capable of rapidly and decisively restoring order and meeting national strategic objectives.

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ACRONYMS

ADP	Army Doctrine Publication
ADRP	Army Doctrine Reference Publication
AR	Army Regulation
ATP	Army Techniques Publication
BCT	Brigade Combat Team
CA	Civil Affairs
CID	Criminal Investigations Division
DoD	Department of Defense
DOTMLPF-P	Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel, Facility and Policy
FM	Field Manual
FOUO	For Official Use Only
JAG	Judge Advocate General
JCIDS	Joint Capabilities Integration and Development System
JP	Joint Publication
MEB	Maneuver Enhancement Brigade
MP	Military Police
MPI	Military Police Investigations
MTOE	Modified Table of Organization and Equipment
ROE	Rules of Engagement
SFAB	Security Force Assistance Brigade
UN	United Nations

CHAPTER 1

INTRODUCTION

The merit of an action lies in finishing it to the end.

— Genghis Khan, quoted in Headquarters, Department of the Army, Field Manual 3-0, *Operations*

Purpose of the Research

The purpose of this research is to examine the Joint Force's ability to consolidate gains during and immediately following a large-scale conflict by identifying if the U.S. Army has the capabilities to establish control of a civilian population consistent with the laws of land warfare and doctrine. To examine the Joint Force's capabilities, it is important to understand the Joint Force's role in establishing control of a civilian population, its role in military governance, and the key role rule of law operations plays.

Research Question

The primary research question this thesis seeks to answer is, "Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?"

The thesis will explore three secondary questions:

1. Does Army organization, training, leadership and education provide the capabilities to the joint force to conduct effective judicial operations in a large-scale combat environment to consolidate gains?

2. Does Army organization, training, leadership and education provide the capabilities to the joint force to conduct effective law enforcement operations in a large-scale combat environment to consolidate gains?
3. Does Army organization, training, leadership and education provide the capabilities to the joint force to conduct effective detention operations in a large-scale combat environment to consolidate gains?

This thesis is directly related and applicable to Army Warfighting Challenge #13, Conduct Wide Area Security. One question asked by the Army Capabilities Integration Center under this Army Warfighting Challenge is, “What Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel, Facility and Policy (DOTMLPF-P) capabilities enable Army forces to consolidate gains, including the relocation of displaced civilians, reestablishment of law and order, performance of humanitarian assistance, and restoration of key infrastructure?”¹

Background and Context

Consolidation of gains are activities that make temporal operational success permanent and enduring. These activities are fundamental to winning armed conflict. Consolidation of gains can occur in any phase of an operation in any of the joint phases, and consolidation activities are not exclusive to the stability phase of the joint phases. Consolidation of gains is not a stability operation, but stability operations can be used to consolidate gains throughout the joint phases of an operation. Consolidation of gains

¹ U.S. Army Capabilities Integration Center (ARCIC), “Army Warfighting Challenges,” U.S. Army, accessed October 1, 2007, <http://www.arcic.army.mil/Initiatives/ArmyWarfightingChallenges>.

occurs in portions of areas of operations where large-scale combat operations have ceased. Consolidation activities in those areas may include combat operations against bypassed enemy forces and remnants of defeated forces and large-scale combat operations may be ongoing in other portions of the area of operations.² Consolidation of gains activities are not focused on transition of operations between phases, but they enable transitions in operations to occur, and without consolidation of gains activities, transitions in operations may be difficult and costly or not possible at all. Consolidation of gains is a capability the Army provides as the principle land force of the joint force.

It is important to understand how a large-scale combat operation is defined throughout this thesis. A large-scale combat environment is characterized by decisive action against an enemy force that involves levels of scale, complexity, lethality, ambiguity and speed to military operations not common in other operations.³ The large-scale combat environment is characterized as non-permissive although portions of the environment may be semi-permissive. Large-scale combat operations require the joint force to operate across multiple domains of battle including the land, air, maritime, cyber, information, space, and human domains.

The United States Army is the principle land force of the Joint Force. It is expected to operate as part of a joint, interagency, and multinational force to accomplish national strategic objectives through a comprehensive effort with other United States Government Agencies and various other international partners. For its role in the joint

² Headquarters, Department of the Army (HQDA), Field Manual (FM) 3-0, *Operations* (Washington, DC: Government Printing Office, 6 December 2017), 8-1.

³ Ibid., 5-3.

force, the Army is principally responsible for establishing and maintaining the capabilities to win in the land domain. To win in the land domain, the Army must be capable of executing its core competencies. One of the U.S. Army's core competencies, wide area security, is defined partially as the ability to control and secure a population. The Army acknowledges that controlling a population can be both a coercive and cooperative endeavor.⁴ Joint and Army doctrine define how the joint force is expected to effect civilian populations, and Joint and Army doctrine use similar, but different terminology and operational concepts. The Army stability tasks of establishing control and securing a civilian population are closely associated with the Joint Stability functions of the Rule of Law and Security, respectively. Regardless of whether the joint functions are used or the Army primary stability tasks, the end state conditions are identical, a safe and secure environment and an established rule of law.

The rule of law is the synchronization and integration of the institutions that, “include the legislature that enacts laws, a police system to enforce laws, a functioning corrections system, and an independent judiciary to interpret the laws and provide redress of grievances.”⁵ If one of the institutions in the rule of law system is critically deficient than the system will fail to establish law and order and the environment will not be safe and secure for civilians and military forces.

⁴ Headquarters, Department of the Army (HQDA), Army Doctrine Publication (ADP) 1, *The Army* (Washington, DC: Government Printing Office, 17 September 2012), 3-4.

⁵ Jack D. Kem, “Establishing the Rule of Law in Afghanistan: Developing a Just Society,” *Global Virtue Ethics Review* 6, no. 4 (2014): 32.

To establish the rule of law and create a safe and secure environment, the military will execute functions that are usually performed by civilian governments. A since reissued 2005 Department of Defense Directive (DoDD), DoDD 3000.05, *Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations*, stated that, “U.S. military forces are required to perform all tasks necessary to establish or maintain order when civilians cannot do so.”⁶ In the absence of a legitimate civil authority, the Army will fill many of the necessary roles of a civilian government. One of those roles is establishing or maintaining the rule of law. The rule of law is a function of governance.⁷ Historically, one of the primary ways the Joint Force establishes control of a civilian population is through a military government using the rule of law. This is often referred to as martial law. Additionally, one of the functions of the U.S. Army enumerated in strategic guidance is to establish a military government, and strategic guidance further directs the U.S. Marine Corps to support the establishment of a military government.⁸

The U.S. Army has conducted many civil government functions over its history, including establishing effective military governments both within and outside the United States and its territories in a variety of operational environments. The history of the U.S.

⁶ U.S. Department of Defense (DoD), Department of Defense Directive (DoDD) 3000.05, *Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations* (Washington, DC: Government Printing Office, 28 November 2005), 2.

⁷ U.S. Department of Defense (DoD), Joint Publication (JP) 3-07, *Stability* (Washington, DC: Government Printing Office, 03 August 2016), III-44.

⁸ U.S. Department of Defense (DoD), Department of Defense Directive (DoDD) 5100.1, *Functions of the Department of Defense and Its Major Components* (Washington, DC: Government Printing Office, 21 December 2010), 30.

Army is largely not a history of large scale conflict. The Army has only fought eleven wars considered conventional, and many of these wars ended in the Army executing what is now identified as military governance or associated stability tasks. Despite the scale of future conflict, successful civil control using the rule of law is likely to be necessary or critical to accomplish national strategic objectives.⁹

Military governance is different than traditional military force. Using traditional military force against a civilian population can become counterproductive, enabling enemy support and enemy success in achieving military and political objectives through the exploitation of a civilian population.¹⁰ Regardless, it is essential to understand that civilians in territories occupied by military forces have the duty to carry out ordinary peaceful pursuits and behave in a peaceful manner, and military forces have the right to protect themselves and maintain law and order.¹¹ To enforce the peace among civilian populations, protect military forces and maintain law and order, the joint force must be capable of executing rule of law operations.

An essential element of any government, including a military government, is the rule of law. Defining the rule of law can be both difficult and controversial. The rule of

⁹ Headquarters, Department of the Army (HQDA), Army Doctrine Reference Publication (ADRP) 3-07, *Stability* (Washington, DC: Government Printing Office, 31 August 2012), 1-1.

¹⁰ Dominic D. Albino, Katriel Freidman, Yaneer Bar- Yam, and William G. Glenney IV, "Military Strategy in a Complex World," New England Complex Systems Institute, accessed 3 April 2018, <http://www.necsi.edu/guide/study.html>.

¹¹ Headquarters, Department of the Army (HQDA), Field Manual (FM) 27-10, *The Law of Land Warfare* (Washington, DC: Government Printing Office, 18 July 1956), 158.

law could be defined as a philosophy of government, or it could be defined in terms of a desired effect in an area. For the purposes of this thesis, the rule of law will be defined as the ability to effectively execute the three necessary functions of a rule of law system. The three necessary components of a rule of law system are a judicial component, law enforcement, and corrections. Joint doctrine defines these components as three of the nine structural rule of law activities.¹² These three components are generally understood to be the components of a criminal justice system. Joint doctrine states that establishing an interim criminal justice system is a prerequisite when governance must be restored. It acknowledges that the joint force must be prepared to establish an interim criminal justice system and fill the roles of the actors of the system to restore order and protect civilians in uncertain and hostile operational environments.¹³

A criminal justice system is the ways and means democratic governments and their institutions, including the military, are expected to use force and coercion with respect to noncombatants. The monopoly of force and coercion exercised by an established and just government is often used to measure the safety and security of a civilian population, especially after a large-scale conflict, and this monopoly is ensured by the rule of law.¹⁴ The way a state legitimately uses force or coercion against citizens in civilized societies is through the criminal justice system.

¹² DoD, JP 3-07, III-46.

¹³ Ibid., 49.

¹⁴ Ibid., III-45.

Absent from this analysis of the rule of law, and critical to the application of the rule of law is an examination of the legal framework in which these three systems will operate. Joint doctrine answers the necessity by establishing that “measures under the law of war” will be used as a legal framework from which the judicial, law enforcement and corrections system will operate.¹⁵ Essentially, the military will have to construct a more nuanced legal code or model using the requirements set forth in international law to construct an operational framework that allows these three systems the guidance and direction necessary to operate effectively in a specific operational environment if the enemy nation’s laws are inadequate. The Geneva and Hague conventions, the UN Declaration of Human Rights, customary international law, various other international treaties, agreements and laws, occupied territory penal laws, and the Joint Force’s interpretations of all of them are and will continue to be the framework for this rule of law system.

Assumptions

Conflicts and wars will persist around the world in various forms. Elements that have defined the post-cold war global environment in relation to military operations will continue to be prominent. Humanitarian cause and rationale, difficult to categorize state and nonstate actors, international coalition participation, the involvement of intergovernmental and nongovernmental organizations and persistent media coverage

¹⁵ DoD, JP 3-07, III-45.

will continue.¹⁶ Changes to these elements and the relationships these elements have to each other will continually evolve. The rule of law will continue to be imperative to address these elements.

Interagency support will continue to be important in a post large scale conflict environment, but the past indicates that many interagency partners are not prepared to conduct rule of law operations in the aftermath of a large-scale conflict. Both Iraq and Afghanistan have demonstrated that although the State Department participated in pre-war planning, they “did not have the capacity to take responsibility for the immediate post-conflict administration.”¹⁷ Interagency capabilities will continue to be critically limited in areas of conflict.

Joint and Army doctrine will be ubiquitous throughout this thesis. Joint and Army doctrine is generally comprehensive, and it will be considered an authoritative source for joint force requirements. Despite this, doctrine is subject to contradictions and errors because it is written by humans with limited knowledge regarding complex environments subject to never ending change. Contradictory or erroneous doctrine will be identified, but the reader has the responsibility to analyze the completeness and accuracy of doctrinal recommendations and contradictions identified in this thesis. Doctrine will generally be regarded as accurate in this thesis although some recommendations for changes to doctrine may be a result of this research.

¹⁶ Roger Z. George and Harvey Rishikof, eds., *The National Security Enterprise: Navigating the Labyrinth*, 2nd ed. (Washington, DC: Georgetown University Press, 2017), 23.

¹⁷ *Ibid.*, 90.

Additionally, other elements of the DOTMLPF-P framework will be affected by recommendations and observations in this thesis. Changes and modifications to any of the DOTMLPF-P elements often results in additional changes and modifications to other elements.

Scope and Limitations

This thesis is limited by time, thesis length, and geographic reach of the researcher. Joint and Army doctrine will be used to identify what the U.S. military has determined are necessary to accomplish consolidation of gains during and following large-scale combat operations related to civil control and security. Other sources will be used to clarify doctrine and to examine the current state of military readiness and capabilities to accomplish consolidation of gains. The history of the United States military related to and applicable in the examination of its ability to consolidate gains is vast. No author or historian could present every detail or concept necessary to be successful in consolidating gains in a short thesis or even in one book. For example, providing essential services may be a necessary component of consolidating gains, but it will not be examined in this thesis. Select historical and current examples will be used to illustrate the joint forces capabilities and capability gaps. Relevant recommendations for further study will be included in the conclusion.

Due to the desire to have a concise thesis and to limited time to complete this thesis, Only the Organization, Training, and Leadership and education components of the DOTMLPF-P analysis framework will be used.

Just as important, consolidation of gains can take place during any phase of an operation. This thesis will focus on phase III of the joint phasing model with implications

in phase IV of that model. This is not about transitioning of phases or the stability phase of operations.

Delimitations

This thesis will only examine unclassified, non-for official use only (FOUO) sources. It will focus, although not exclusively, on Army Military Police (MP) forces and their capabilities to consolidate gains by conducting civil control through rule of law operations.

The Organization, Training, and Leadership and education components will be the components of the DOTMLPF-P framework this research is focused on analyzing. The Doctrine component is assumed to have been already produced with a level of analysis to allow it to be useful in understanding what the Army and Joint force have determined are required for success. Doctrine was also used to avoid controversy in requirements as doctrine is what the Army and Joint force have identified, not the researcher. The Materiel component is challenging and unique enough to warrant its own analysis in the force development and force management processes, so non-materiel components were chosen for analysis. The Personnel and Facilities components are largely driven by the other components, and the Policy component of the DOTMLPF-P framework also warrants its own focused study.

Chapter Conclusion

The next chapter, Chapter 2, will present the Literature Review in order to answer the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by

establishing law and order through rule of law operations to consolidate gains in a combat area of operations?”

CHAPTER 2

LITERATURE REVIEW

Make a display of a mass of troops proportioned to the obstacles and resistance likely to be encountered, calm the popular passions in every possible way, exhaust them by time and patience, display courtesy, gentleness, and severity united, and (particularly) deal justly.

—Antoine Jomini, *The Art of War*

Chapter Introduction

The literature review for this thesis will be focused on relevant doctrine and literary sources to answer the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?”

The United States Army is a large, diverse organization with an exceptional array of capabilities. These capabilities either directly or indirectly support the Army in its core purpose. To understand what capabilities the Army is expected to bring to the joint force to control and secure civilian populations to consolidate gains, it is important to trace the origins of the requirement back to the highest strategic levels to understand what is expected of the Army as an organization. This chapter will begin with an examination of strategic guidance and other relevant sources related to providing security to populations and areas. It will continue with an examination of doctrine at the Joint and Army operational levels and other relevant sources that address operational level issues. This chapter will conclude with a review of key tactical requirements as indicated in Army operational and tactical level doctrine and other relevant sources.

Strategic Guidance and Direction

The requirements for the U.S. Army to conduct operations to establish a military government and conduct civil control and security to consolidate gains originates in Title 10 United States Code Section 3062(a). In this section, Congress mandates through legislation for the Army to be capable of working as a part of the joint force to “preserve peace and security” in “areas occupied by the United States”.¹⁸ This mandate by the United States Congress is the highest form of strategic guidance. The legislation creates U.S. Army strategic, operational, and tactical requirements in areas occupied by the military during and after a combat operation. The origin of this legislation and its requirements to preserve peace and security in occupied areas could certainly be a study unto itself. It is likely associated with the United States agreements under the Geneva Conventions, but the United States military has conducted occupation operations consistent with this requirement since at least the westward expansion.¹⁹

In addition to the legal and strategic guidance set forth in U.S. law, international law provides strategic guidance and direction to Army operations in foreign territories. The most prominent legal document regarding military operations are the Geneva Conventions. The Geneva Conventions are treaties that have many requirements applicable to a wide range of actors under a wide range of conditions. Specifically, The

¹⁸ U.S. Government, *10 United States Code Section 3062*, United States House of Representatives Office of Law Revision Counsel, accessed 7 May 2018, <http://uscode.house.gov/view.xhtml?path=/prelim@title10/subtitleB&edition=prelim>.

¹⁹ Nadia Schadlow, *War and the Art of Governance: Consolidating Combat Success into Political Victory* (Washington, DC: Georgetown University Press, 2017), 50.

Geneva conventions place operational and tactical requirements on signatories as it relates to occupation of territory and people in occupied territory.

Requirements in the Geneva Convention must be met with the capabilities to fulfill those requirements. The Fourth Geneva Convention Relative to the Protection of Persons in Times of War is the most prominent of the conventions when examining the Joint Force capabilities pursuant to requirements, although other conventions are also important.

Section three of the Fourth Geneva Convention specifies obligations of military forces occupying territory of other nations because of war. Key to these obligations are the requirement that the occupying military ensure the administration of justice.²⁰ To ensure the administration of justice, the occupying military is expected to enforce the existing laws of an occupied nation, or it must alter those laws through a reasonable process. Any processes by which the occupying force changes the existing laws of an occupied territory have legal and moral restrictions placed on them under the convention. Changes to processes and laws are expected to protect the individual rights of civilians. The individual rights of civilians in occupied territories include the right to a fair trial in a timely manner, the right to defense and access to representation against charges, and a right to appeal among others.²¹

²⁰ United Nations, *Fourth Geneva Convention*, 12 August 1949, accessed 11 March 2018, http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf, 190.

²¹ Ibid., 191-194.

It is preferred under the Geneva convention that the existing governments of occupied territories administer justice, but historically, war has created conditions which facilitate the need of occupying armies to administer justice, often for many years following cessation of hostilities. The requirement to administer justice in accordance with the convention drives capability development, and these requirements must be met with capabilities commensurate with the requirement. To meet these requirements and define capabilities, strategic, operational and tactical doctrine and guidance has been published.

Through other published strategic guidance, the Department of Defense explicitly recognizes the importance of developing and maintaining the ability of the Joint Force to conduct and support military governance, particularly through land components. The Department of Defense has explicitly stated roles in military governance for the Army and Marine Corps. DoDD 5100.1, *Functions of the Department of Defense and Its Major Components*, identifies that one of the functions of the Army is to establish a military government pending transfer to other authority, and the Marine Corps is required to support military governance.²²

A mandate also exists in Department of Defense Instruction (DoDI) 3000.05, *Stability Operations*. DoDI 3000.05 requires the military to maintain the capacity and capability to conduct stability operations to establish civil security and civil control.²³

²² DoD, DoDD 5100.1, 29-31.

²³ U.S. Department of Defense (DoD), Department of Defense Instruction (DoDI) 3000.05, *Stability Operations* (Washington, DC: Government Printing Office, 16 September 2009), 2.

DoDI 3000.05 was a reissuance of DODD 3000.05, *Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations*. DoDD 3000.05 required the Department of Defense to “be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so.”²⁴ It is apparent through these directives and instructions that the Department of Defense recognizes that to meet national strategic objectives, the military will be required to conduct operations that include military governance, stability operations, civil security and civil control related operations during and following large scale combat operations.

Operational Doctrine and Literature

Army Doctrine Publication (ADP) 1-0, *The Army*, is one of two Army capstone doctrinal publications. It defines the Army, what the Army is expected to do, how the Army is expected to perform, and the direction the Army is moving toward.²⁵ It defines the land domain and its distinguishing characteristic, the presence of humans. It acknowledges the influence the Army has both before and after large scale combat operations. It sets the expectation that the Army should have the ability to establish and maintain order over land, resources and people to set conditions for political and economic development.²⁶ ADP 1-0 identifies one of the Army’s core competencies as

²⁴ DoD, DoDD 3000.05, 2.

²⁵ HQDA, ADP 1, iii.

²⁶ Ibid., 1-4.

wide area security, which is partially defined by the army's ability to secure and control populations through a mix of cooperation and coercion.²⁷

Army Doctrine Publication (ADP) 3-0, *Operations*, is the other Army capstone doctrine publication.²⁸ ADP 3-0 defines how the Army approaches operations and bridges the gap between strategic guidance and operational execution. It defines how the Army approaches large scale combat operations and all other operations. It defines how the Army conducts unified land operations through decisive action. ADP 3-0 acknowledges the presence of civilians during operations and the impact Army operations has on them. It directs the Army to conduct minimum essential stability tasks to mitigate the effects on civilians in combat areas of operations, and it states that these stability tasks are critical to land combat success.²⁹

ADP 3-0 also addresses the importance of training to the success of the Army to prepare for and conduct operations. Training is the cornerstone of combat readiness. Training must be realistic, and it must include the practice of necessary skills. ADP 3-0 stresses the requirement that Soldiers must follow the Laws of War when conducting operations.³⁰

²⁷ HQDA, ADP 1, 3-4.

²⁸ Headquarters, Department of the Army (HQDA), Army Doctrine Publication (ADP) 3-0, *Operations* (Washington, DC: Government Printing Office, 6 October 2017), iii.

²⁹ Ibid., 4.

³⁰ Ibid., 5.

ADRP 3-0, *Operations*, expands on concepts found in ADP 3-0. It introduces consolidation of gains to Army operations. It defines consolidation of gains as an “Army strategic role” and a capability the Army provides to the Joint Force. Consolidation of gains, it states, is executed through force consolidation, area security operations, stability tasks, information operations, and operations against external threats. It is an integral part of operational success. Consolidation of gains is not a mission, but its execution enables a transition from Army occupation of territory to territorial control of another authority. Lastly, it states that consolidation of gains occurs through all the phases of a specific operation.³¹

ADRP 3-0 defines the three ways to organize combat power, force tailoring, task organization and mutual support. It acknowledges that force tailoring is critical to ensure that the joint force has the capabilities necessary to accomplish consolidation of gains.³²

ADRP 3-0, *Operations*, doctrinally introduces stability tasks into Army operations. It states that stability tasks support governance by host nation, interim government or military government. Stability tasks are how the Army meets its mission to “maintain or reestablish a safe and secure environment and provide essential government services”. Notably, it states that “commanders are legally required to conduct minimum essential stability tasks” when their area of operation controls areas populated by civilians. ADRP 3-0 states that stability tasks support governance, including military

³¹ HQDA, ADRP 3-0, 3-7.

³² Ibid., 4-6.

governance.³³ ADRP 3-0 introduces stability mechanisms to the Army's operational approach to stability tasks. Stability mechanisms have application in stability tasks, security and consolidating gains. The four stability mechanisms are compel, control, influence and support.³⁴

The four stability mechanisms are methods that are expected to produce complementary and reinforcing effects. The compel stability mechanism involves the use or threat of deadly force. Notably absent from the compel stability mechanism is the mention of non-lethal or less lethal force. This is not addressed in the control stability mechanism as well. The control stability mechanism is simply stated as imposing civil order. No further explanation is provided. The influence stability mechanism involves themes, messages, presence and actions. The support stability mechanism is related to enabling the instruments of national power.³⁵ ADRP 3-0 leaves many gaps in understanding of how the Army uses its capabilities through stability mechanisms to affect civilians to establish, restore or maintain civil control and civil security.

ADRP 3-0 also defines the six primary stability tasks. They include establishing civil security, establishing civil control, restoring essential services, supporting governance, supporting economic and infrastructure development and conducting security cooperation. The Army is expected to act as part of a unified government effort in coordination with host nation government authorities to conduct the six primary

³³ HQDA, ADRP 3-0, 3-4.

³⁴ Ibid., 2-4.

³⁵ Ibid.

stability tasks when possible or necessary³⁶. Stability tasks are expounded on in ADRP 3-07, *Stability*.

Army Doctrine Reference Publication (ADRP) 3-07, *Stability*, is a key publication for developing subordinate doctrine, training, and education curricula related to stability tasks, including military governance and the operations necessary to establish the rule of law.³⁷ Stability operations are how the military interacts with civilian populations. The Army will conduct governance through stability operations. ADRP 3-07, *Stability*, defines governance as “the process, systems, institutions, and actors that enable a state to function.” ADRP 3-07 directs that in “extreme cases” the Army is required to establish governance absent a civilian authority. The Army calls this form of governance transitional military authority.³⁸ ADRP 3-07 makes that contention that transitional military authority is needed in extreme incidents.

The contention in that the need of transitional military authority is extreme is not supported by the history of the Army. The Army has a long history of executing transitional military authority. Also, while the doctrinal aspect of military governance will not be part of the analysis for this thesis, it is interesting to note that ADRP 3-07 appears to be contradictory in what type of governance the military should aspire to support and facilitate to form. ADRP 3-07 appears to convey that democratization is not necessarily the desired outcome, but it also states that the conditions of transparency,

³⁶ HQDA, ADRP 3-0, 2-4.

³⁷ HQDA, ADRP 3-07, iii.

³⁸ *Ibid.*, 2-17.

accountability, public participation, and universal suffrage define effective, legitimate governance. The ADRP also defines these conditions as the “broad intent of developing host-nation governance”.³⁹

One type of operation that is critical to rule of law operations is information operations. Joint Publication 3-13, *Information Operations*, defines information operations, the information environment, and information related capabilities. The purpose of information operations is to influence a specific audience, referred to as a target audience.⁴⁰ Information operations include actions, not just messages and themes. Action and inaction effect the content and flow of information.⁴¹ Information related capabilities (IRCs) are expected to provide a powerful means to influence civilian populations through military information support operations. JP 3-13 states that a skilled information operations planner can link specific, local tactical actions to operational objectives that define plan and campaign progress and strategic objectives that define theater and national success.⁴² Commander’s use information related capabilities such as military information support to operations, public affairs, and key leader engagements in stability operations to influence civilian populations.⁴³

³⁹ HQDA, ADRP 3-07, 2-17.

⁴⁰ U.S. Department of Defense (DoD), Joint Publication (JP) 3-13, *Information Operations* (Washington, DC: Government Printing Office, 20 November 2014), I-5.

⁴¹ Ibid., I-3.

⁴² Ibid., VI-13.

⁴³ Ibid., II-9.

In his monograph, “Learning from Iraq: Counterinsurgency in American Strategy”, Steven Metz examined the operational and tactical issues that affected the U.S. ability to execute stability operations supporting counterinsurgency efforts in Iraq starting in 2003. Metz observed that as soon as the Iraqi Army was defeated, Iraq collapsed into looting and crime. He further observed that security forces dissolved, and the anarchy created public anger that increased over a period of weeks as American military forces failed to address the anarchy. Metz argues that the failure to address the anarchy was a failure to perceive it as well as a failure to have the capability to address it. Although much of this failure is credited to preconceived notions of how Iraqi citizens would react to their liberation, the desire to avoid stability type operations also was a significant cause of the failure.⁴⁴

Metz recognized the American public’s and the military’s desires to avoid stability operations.⁴⁵ From the experience in Vietnam, the U.S. military was shaped into a force to take-down regimes, but it lacked the ability to stabilize and transform nations after the removal of a regime.⁴⁶ This combined with the inability of U.S. Forces to identify the looming insurgency. Metz identified that the initial chaos and disorder was not targeted at U.S. forces because they were a much riskier target for those competing for influence and power. Instead, insurgents and criminals began to target infrastructure, detainee facilities and international organizations supporting the United States efforts in a

⁴⁴ Steven Metz, *Learning from Iraq: Counterinsurgency in American Strategy* (Carlisle, PA: Strategic Studies Institute, January 2007), 1-2.

⁴⁵ Ibid., 8.

⁴⁶ Ibid., 16.

competition for support and recognition. Metz recognized that insurgencies needed time and space to metastasize. Metz also recognized that the lack of an expeditionary national or local police understanding and capability in the United States military contributed to its inability to address the budding insurgency.⁴⁷

In addition to the high level operational challenges the U.S. faced following successful combat operations in Iraq, Metz identified many other lower level operational and tactical challenges U.S. forces faced following initial success. First, units did not receive adequate training in stability operations. Second, there were too few forces for the U.S. military to have presence in all the areas of Iraq necessary to address the chaos. Also, U.S. forces were significantly strained from pre-combat training and combat operations. The military also did not perceive that it had any mandate to begin reconstruction and stability operations. Eventually, more military police were sent to Iraq, and some infantry units were assigned police duties, but some U.S. officers in Iraq warned that combat troops were not trained, organized, or equipped for operations to pacify Iraqi civilians.⁴⁸ This lack of training and experience manifested itself into antagonizing and destructive arrest tactics and high rates of mistaken detentions.⁴⁹ Some military intelligence officers reported to the ICRC that an estimated 70%-90% of arrests were erroneous.⁵⁰

⁴⁷ Metz, 19.

⁴⁸ Ibid., 24-26.

⁴⁹ Ibid., 29.

⁵⁰ Ibid., 35.

Metz also identified issues applicable to today's model of stability, specifically, relying on coalition partners and host nation capacity building. Metz stated that it takes up to two years to form a host nation division, and desertion plagues this effort even after they are formed. These forces, including police and police candidates, were also relentlessly targeted by insurgent attacks.⁵¹ Iraqi security forces remained under resourced, refused to operate in certain areas, and were often infiltrated by hostile actors.⁵²

The reliance on coalitions to provide support and expertise is just as risky. Of the several dozen coalition partners, few considered large deployments, a phenomenon that was a repeat of Operation Desert Storm. Many coalition partners participated only marginally. They were operating from the strategic perspective that U.S. challenges in Iraq checked U.S. regional power.⁵³ Clearly, reliance on unknown future coalition partners and their capabilities presents significant risks to consolidating gains that have been manifested in the past.

Tactical Doctrine and Other Relevant Sources

In a large-scale combat environment, the U.S. Army will execute decisive action to consolidate gains. Decisive action to consolidate gains will include simultaneous execution of offense, defense, and stability tasks.⁵⁴ The Army must defeat enemy forces

⁵¹ Metz, 38.

⁵² Ibid., 57.

⁵³ Ibid., 33.

⁵⁴ HQDA, ADRP 3-0, 3-2.

and simultaneously shape civil conditions while conducting operations amid non-combatant populations. As large-scale combat operations cease in areas, stability tasks will be the primary tasks associated with consolidating gains. The U.S. Military shapes civil conditions to consolidate gains through execution of stability tasks. One of the primary stability tasks used to consolidate gains is establishing civil control.

Establishing civil control is done through establishing the rule of law, and “civil control centers on the rule of law”. Civil control has five necessary conditions. These five necessary conditions include a just legal framework, public order, accountability to the law, access to justice, and a culture of lawfulness.⁵⁵

In addition to the five necessary conditions for civil control, civil control has associated subtasks. Two of the civil control subtasks that require the military to directly utilize rule of law capabilities include establishing public order and safety and establishing an interim criminal justice system. Establishing public order and safety requires the pursuit, arrest and detention of criminal elements, among other things.⁵⁶ In the first phase of establishing public order and safety, the initial response phase, Army units perform civil police functions. Army units use variables identified in military police doctrine to assess the policing environment that include police and prison structures, organized criminal elements, legal systems, investigations and interviews, crime conducive conditions and enforcement gaps and mechanisms. Army Techniques

⁵⁵ Headquarters, Department of the Army (HQDA), Army Techniques Publication (ATP) 3-07.5, *Stability Techniques* (Washington, DC: Government Printing Office, 31 August 2012), 3-1.

⁵⁶ *Ibid.*, 3-3.

Publication (ATP) 3-07.5, *Stability Techniques*, states that effective enforcement requires close cooperation between law enforcement, judicial personnel, corrections, and host nation partners and leaders.⁵⁷ According to the United Nations, the three components of the rule of law identified are government functions vital to the restoration of peace and security after a major combat operation.⁵⁸

The rule of law is a generally a function of civil government. As such, the rule of law can only be established by either a transitional military authority or interim civil authority unless a host nation has a functioning or semi-functioning government. One of the most important functions that a military government will engage in will be to establish or maintain the rule of law. The rule of law is established through proper and just application of the law against and between citizens. According to JP 3-07, *Stability*, “The rule of law is the key to legitimate governance”.⁵⁹ The rule of law is how the military establishes law and order. The importance of the rule of law in stability operations illustrates the necessity of the military to execute effective military governance. The importance of executing effective military governance is a strategic necessity.

Military governance is executed through transitional military authority. The use of the term transitional military authority implies a temporary authority. In addition to the understanding that military governance is a temporary condition, Field Manual (FM) 3-0,

⁵⁷ HQDA, ATP 3-07.5, 3-5.

⁵⁸ United Nations, *Rule of Law and Peace and Security*, accessed November 19, 2017, <https://www.un.org/ruleoflaw/rule-of-law-and-peace-and-security/>.

⁵⁹ DoD, JP 3-07, III-4.

Operations, acknowledges that the opportunity to consolidate gains in an area has a potentially narrow window of opportunity.⁶⁰ Military forces must quickly fill power vacuums before undesirable actors and enemy forces become organized enough to capitalize on any lack of order. Conversely, incorrect application of military force can motivate populations to respond with extraordinary means against military forces.⁶¹ Civilian populations can be used to gain advantage and initiative in military operations. Specifically, relationships with civilian populations can strengthen military capabilities and degrade enemy force's capabilities.⁶² This means U.S. military forces must be capable of rapidly and consistently executing transitional military authority and its key component of rule of law as a matter of readiness.

This does not mean that Transitional military authority is quick and easy. Transitional military authority will be challenged by enemy forces, enemy allies, and other's vying for power and influence within civilian populations through an iterative, evolving process of action and counteraction with adversaries with no apparent guarantee of success. This complex environment can be counterintuitive and misleading, influencing military forces to make strategic, operational and tactical actions that are counterproductive.⁶³ Also, despite what the name implies, transitional military authority could continue for years in some form or another. In this complex environment,

⁶⁰ HQDA, FM 3-0, 8-3.

⁶¹ Albino et al., 9.

⁶² Ibid., 10.

⁶³ HQDA, FM 3-0, 8-3.

transitional military authority will be how the military establishes credibility and legitimacy with a civilian population. FM 3-0 acknowledges that, “Forces establish credibility and legitimacy through the way they conduct operations”. In addition to the operational need to influence civilian populations, FM 3-0 also acknowledges both a moral and legal responsibility to secure a population following large scale combat operations, and specifically, it addresses the need for public order in consolidating gains.⁶⁴

The ability to conduct operations that establish or maintain law and order have other significance. The degree of a commander’s responsibility to non-combatants increases as operations progress and their forces become more capable of addressing the needs of non-combatant populations. Commander’s responsibilities transition from civilian casualty mitigation to one of providing for the basic necessities to protection of human rights, and finally to ensuring political, economic, and social conditions of the inhabitants of the commander’s assigned area.⁶⁵ To enable military forces to meet their responsibilities to non-combatants, a transition to consolidating gains should occur in the portions of an area of operations after major combat operations have ceased. Commander’s that are assigned areas of operations are responsible for both implied and specified stability tasks. It is important to note that depending on the operation, consolidating gains may not be primarily about meeting the needs of non-combatants.

⁶⁴ HQDA, FM 3-0, 8-3.

⁶⁵ Headquarters, Department of the Army (HQDA), Army Techniques Publication (ATP) 3-07.6, *Protection of Civilians* (Washington, DC: Government Printing Office, 29 October 2015), 1-2.

Transitional military authority is more than a matter of readiness, it is a command responsibility.⁶⁶ U.S. Army Field Manual (FM) 3-07, *Stability*, defines transitional military authority as, “a temporary military government exercising the functions of civil administration in the absence of a legitimate civil authority”. There are two forms of transitional military authority; operational and territorial. The territorial form of transitional military authority is characterized by a separate chain of command that is responsible for the functions of civil government. The territorial form of transitional military authority is more efficient, but it may be difficult to institute in dynamic, high tempo environments. Under the operational form of transitional military authority, commanders of maneuver forces administer civil government functions in their areas of operations. In dynamic, high tempo environments, both enemy and civil situations are likely rapidly changing and difficult or impossible to manage simultaneously. Adding to the complexity, assigned areas of operations may not align with political boundaries, but the operational form of transitional military authority gives the commander the ability to synchronize and integrate activities throughout the area of operations they are assigned.⁶⁷

FM 3-24, *Insurgencies and Countering Insurgencies*, acknowledges that to succeed, at least in counterinsurgencies, legal and conflict resolution systems must be

⁶⁶ Headquarters, Department of the Army (HQDA), Field Manual (FM) 3-07, *Stability* (Washington, DC: Government Printing Office, 2 June 2014), 2-8.

⁶⁷ *Ibid.*, 2-10.

established. It specifically states that police, judicial systems, and penal facilities are required for legal and conflict resolution.⁶⁸

FM 3-24.2, *Tactics in Counterinsurgency*, brings further direction and clarity to Army counterinsurgency operations. Establishing the rule of law affects many operations related to controlling a civilian population and providing for its security. An interim criminal justice system is a prerequisite in the establishment of counterinsurgency operations, and military forces will likely have to establish and administer interim legal codes and procedures.

Judicial operations are an essential component of the rule of law. Without a judicial system, police will be forced to either punish perceived criminal and disorderly individuals extra judiciously or let them go.⁶⁹ To maintain order and an effective police force, it is imperative that criminal suspects are appropriately tried and retained for trial. Protecting individuals' human and due process rights are a requirement under the Geneva Convention.

The Law of Armed Conflict Deskbook is a reference publication produced for judge advocate officer graduate and basic courses and other departmental legal courses by the International and Operational Law Department at the United States Army Judge Advocate General's Legal Center and School. This publication clarifies military authorities and responsibilities under the Geneva Conventions, other international laws,

⁶⁸ Headquarters, Department of the Army (HQDA), Field Manual (FM) 3-24, *Insurgencies and Counterinsurgencies* (Washington, DC: Government Printing Office, 13 May 2014), 1-20.

⁶⁹ James Dobbins, Seth G. Jones, Keith Crane, and Beth Cole Degrasse, *A Beginners Guide to Nation Building* (Santa Monica, CA: RAND Corporation, 2007), 16.

and other military doctrine. It states that commander's in occupied territories may suspend local courts when judicial personnel are not performing their duties, when the courts are corrupted or unfair, when they have ceased to function, or when they do not comply with fundamental principles of human rights. Commander's may also establish military courts or provost courts if they are properly staffed and located in occupied territory, and they are used to try violations of occupied military provisions or regulations placed on people in occupied territory. The reference also identifies that an occupation military can suspend, repeal or alter existing laws or create new laws for military necessity, to maintain order or for the welfare of the occupied population. Specific to protecting the military force, the reference identifies examples where a military commander may suspend or repeal local laws related to the right to bear arms, the right to assemble or protest, the right to move freely as well as the right to freedom from discrimination.⁷⁰

While the commander of an area of operations is the primary officer with the authority to establish and execute judicial operations related to civilians, the primary organization responsible for coordinating and facilitating operational judicial operations in the U.S. Military is the Judge Advocate General (JAG) Corps. The U.S. Army Judge Advocate General Corps consists of active, reserve, and national guard units and Soldiers. Judge Advocate Officers operate across many different levels in a variety of

⁷⁰ Ryan B. Dowdy, David W. Laballe, Jason S. Deson, Patrick M. Walsh, Sarah E. Wolf, Michael E. Schauss, Rachel S. Mangas, Kirk W. Otto, and Richard J. Slesman, *Law of Armed Conflict Deskbook*, 16th ed., eds. Rachel S. Mangas, Mathew Fests, and Laura O'Donnell (Charlottesville, VA: The United States Army Judge Advocate Generals Legal Center and School, 2016), 126.

organizations. The U.S. Army Reserve Legal Command is a significant portion of the JAG Corps, and it is the JAG organization that provides mission command to reserve legal units when they are not deployed. Units requiring augmentation to control an area of operations are directed by FM 1-04, *Legal Support to the Operational Army*, to request augmentation from the U.S. Army Reserve Legal Command to provide them with operational law teams that include rule of law specialist.⁷¹

FM 1-04, *Legal Support to the Operational Army*, is the manual for operational legal support to the Army.⁷² It contains chapters that address issues that are relevant to the understanding of the Army's role in consolidation of gains including specific chapters on rules of engagement, detainee operations, stability operations, rule of law activities, and civil affairs. It defines the operational roles of staff judge advocates at various levels of command and in various organizations. Judge Advocates at every level are expected to prepare, plan, and execute rule of law activities in semi and non-permissive environments.⁷³ Operational legal support was a paradigm shift that began in 1964, shifting from a sole military justice focus to an additional task of providing operational law support, and it has matured since that time. As a result of this shift, staff judge advocates have been assigned at various levels of command.⁷⁴ Where necessary, judge

⁷¹ Headquarters, Department of the Army (HQDA), Field Manual (FM) 1-04, *Legal Support to the Operational Army* (Washington, DC: Government Printing Office, 18 March 2013), 10-5.

⁷² *Ibid.*, iv.

⁷³ *Ibid.*, 10-1.

⁷⁴ *Ibid.*, 1-1.

advocates can augment, and they are expected to provide a broad range of legal advice to commander's and staffs in operational law, administrative law, fiscal law, civil law, criminal law, international law, and any other area of law as required.⁷⁵ They are also responsible for implementing the Department of Defense Law of War Program. This program includes law of war training, advice on application of the law of war to military operations, determination of enemy prisoner of war status, and supervision of war crime investigations and trials.⁷⁶

FM 1-04 acknowledges the Rules of Engagement's (ROE) direct contribution to mission accomplishment.⁷⁷ It also acknowledges a special relationship between ROE and the rule of law.⁷⁸ ROE is driven by policy, legal and operational considerations. Baseline ROE is established in CJCSI 3121.01B, but ROE is flexible and, it can be modified during different phases of an operation to support mission accomplishment. FM 1-04 also directs that training and rehearsal be done on ROE, and it expresses the belief that Soldiers will use ROE correctly when trained on it. This training is expected to enable a balance between initiative and constraint.⁷⁹

Civil Affairs (CA) brigades and commands are supported by brigade and command judge advocates. These Judge Advocates can be both organic to the CA

⁷⁵ HQDA, FM 1-04, 4-4.

⁷⁶ Ibid., 5-3.

⁷⁷ Ibid., 7-6.

⁷⁸ Ibid., 10-2.

⁷⁹ Ibid., 7-6.

brigade, and they can also be billeted positions. One such billeted position is the rule of law team. Each CA brigade has a command judge advocate and a rule of law judge advocate that operate at the operational level while the rule of law team operates at the strategic level. These rule of law teams are expected to coordinate with interagency partners, such as the state department, at the strategic level, and at the operational level, they are expected to support commanders in developing rule of law operations in the commander's area of operations. Rule of law is one of the six core competencies of civil affairs.⁸⁰ The ability to apply the rule of law in a variety of operational environments is the key to success in administering a criminal justice system.

Law Enforcement is a core competency of the Military Police Corps that is unique to Military Police. In addition, "Military police are uniquely equipped to engage in operations to establish civil order."⁸¹ These unique competencies and their related capabilities are developed through training, education, and experience.⁸² The purpose of law enforcement is to enforce laws, investigate crimes, and apprehend persons for "adjudication within the appropriate judicial system."⁸³ Law enforcement operations depend on the existence of a judicial authority and system. Under Army doctrine,

⁸⁰ HQDA, FM 1-04, 11-1.

⁸¹ Headquarters, Department of the Army (HQDA), Field Manual (FM) 3-39, *Military Police Operations* (Washington, DC: Government Printing Office, 28 August 2013), 3-6.

⁸² *Ibid.*, 1-1.

⁸³ Headquarters, Department of the Army (HQDA), Army Techniques Publication (ATP) 3-39.10, *Police Operations* (Washington, DC: Government Printing Office, 26 January 2015), 1-2.

policing and law enforcement are often described as two different functions of police operations or subordinate to one another. Army Techniques Publication (ATP) 3-07.5, *Stability Techniques*, adds to the idea that policing and law enforcement are two different operations by stating that policing does not require a “legal structure and enforcement of specific laws or punitive regulations.”⁸⁴ It further states that Army forces continuously maintain internal order within its communities and formations through policing, but the statement ignores that this order is maintained by the vast and intricate regulations enforced through the punitive structure of the Uniform Code of Military Justice. In addition, ATP 3-07 states that Policing is the use of “control measures within an area of operations to maintain law and order”.⁸⁵ The idea of maintaining law and order without law is nonsensical. FM 3-39, *Military Police Operations*, states “Police operations encompass the associated law enforcement activities to control and protect populations and resources to facilitate the existence of a lawful and orderly environment.”⁸⁶ American civilian police maintain public order through enforcing various laws against disorderly conduct, rioting, trespassing, various forms of threatening behavior and communication as well as through order and public safety activities such as patrols and traffic enforcement. Under Army doctrine, law enforcement from the military police perspective is primarily focused on the Army itself.⁸⁷ This focus has limited the development of

⁸⁴ HQDA, ATP 3-07.5, 3-1.

⁸⁵ HQDA, ATP 3-39.10, 1-2.

⁸⁶ HQDA, FM 3-39, 3-3.

⁸⁷ *Ibid.*, 3-4.

capabilities within military police organizations for conducting law enforcement in a civilian population. Many criminal matters that are resolved by a civilian criminal justice system are resolved by commanders as a matter of internal discipline under the Uniform Code of Military Justice. This has removed interactions and influence military police have exercised and experienced.

In contrast to other military occupational specialties and branches, military police are “trained to exercise judgment and resolve issues using the lowest level of force possible according to the use-of-force continuum”.⁸⁸ The use of force continuum is defined in Army Regulation (AR) 190-14, *Carrying of Firearms and Use of Force for Law Enforcement and Security Duties*. AR 190-14 is the regulation military police use to train and execute military police operations, and it is the regulation the Army uses to direct how Soldiers and civilians employed by the Army are required to respond in a security or law enforcement context.

Many units and operations have adopted law enforcement techniques in their execution of stability tasks or operations. For example, some counterinsurgency tactics recently developed and used by other types of Army forces mirror tactics, techniques and procedures used by law enforcement in the investigation and prosecution of crimes. For example, site exploitation is how many non-MP forces collect and analyze material of an

⁸⁸ HQDA, ATP 3-39.10, 1-10.

evidentiary nature. Site exploitation is a tool used to prosecute insurgents, and it is used to provide evidence to courts when it is properly conducted.⁸⁹

Without some type of corrections system, an important component of a comprehensive integrated system would not be available. “Police cannot perform effectively without courts in which to try criminals and prisons in which to keep them.”⁹⁰ When a criminal justice system lacks the capability to incarcerate suspected criminals before trial and hold convicted criminals, the system is ineffective.⁹¹ Post conflict prison systems and infrastructure are likely to be damaged or insufficient to meet international standards and capacity requirements.⁹²

Corrections is another core competency of the Military Police Corps.⁹³ Detaining Enemy Prisoners of War (EPWs) is a task many non-MP Soldiers are expected to be capable of performing, but detaining EPWs and criminals can be very different. The RAND Corporation published a study for the Office of the Secretary of Defense in 2011 of U.S. Detention operations from World War II to Operation Iraqi Freedom. This study identified that as in previous conflicts, during Operation Iraqi Freedom civilian and

⁸⁹ Headquarters, Department of the Army (HQDA), Field Manual (FM) 3-24.2, *Tactics in Counterinsurgency* (Washington, DC: Government Printing Office, 21 April 2009), 7-6.

⁹⁰ Dobbins et al., 16.

⁹¹ U.S. Department of Defense (DoD), *Handbook for Military Support to Rule of Law and Security Sector Reform* (Washington, DC: Government Printing Office, June 13, 2011, D-19.

⁹² Dobbins et al., 87.

⁹³ HQDA, FM 3-39, 1-1.

military leaders failed to appreciate the importance and magnitude of detention operations.⁹⁴ It asserted that sufficiently trained personnel were not available for detention operations, and detention operations were under resourced causing a delay in addressing fluctuations in detainee populations.⁹⁵ It also identified that detainee operations in Iraq involved special populations including juveniles, women, criminal convicts and political refugees. The study reported that the Army was unprepared for detention operations involving these special populations, but was forced to address detention of special populations due to their involvement in deadly insurgent activities.⁹⁶ The study notes that these failures in addressing detention operations properly results in missed opportunities to understand both enemy motivations and civilian conditions and perceptions.⁹⁷ The study also mentions parole as a way to reduce the burden associated with housing enemy prisoners of war but it provided no further information on its use by the U.S. military.⁹⁸

Military forces other than Military Police detain persons in combat areas of operations. The reason for detention is dependent on the situation, and ideally, detained personnel are classified upon retention in categories dependent upon their actions. Their

⁹⁴ Cheryl Benard, Edward O’Connell, Cathryn Quantic Thurston, Andres Vallimizar, Elvira N. Loreda, Thomas Sullivan, and Jeremiah Goulka, *The Battle Behind the Wire: U.S. Prisoner and Detention Operations from World War II to Iraq* (Santa Monica, CA: RAND Corporation, 2011), 49.

⁹⁵ Ibid., 54.

⁹⁶ Ibid., 76.

⁹⁷ Ibid., 79.

⁹⁸ Ibid., 1.

detention requires leaders and Soldiers to decide on further actions to be taken in relation to the detention. During detention, Soldiers collect evidence or intelligence and may question detained persons before and after detention. Soldiers are required to follow the laws of land warfare when detaining individuals on the battlefield, and they must follow a variety of other rules to safeguard the detained person and to provide for further processing and to allow for adjudication of the detained persons legal status. Soldiers are expected to complete evidence and property forms as part of the detention, and detainees are required to be evacuated from combat zones as quickly as possible.⁹⁹

The Center for Law and Military Operations published a report on lessons learned in operations conducted by Judge Advocates in both Iraq and Afghanistan. The report titled, *Legal Lessons Learned from Afghanistan and Iraq: Volume II: Full Spectrum Operations (2 May 2003-30 June 2004)*, identifies issues Judge Advocates faced throughout the ad hoc interim criminal justice system they established. Specific issues related to detention operations were addressed in a section of the report. The report noted that adjudicating the status of detainees was a particular challenge. This was especially challenging because many detainees arrived at detention facilities with little to no documentation wearing civilian clothes. The report states that detainees rarely came to the theater detention facility at Camp Bucca with information on the detainee.¹⁰⁰ Judge

⁹⁹ Headquarters, Department of the Army (HQDA), Army Regulation (AR) 190-8, *Enemy Prisoners of War, Retained Personnel, Retained Persons, and Other Detainees* (Washington, DC: Government Printing Office, 1 October 1997), 4.

¹⁰⁰ U.S. Army Center for Law and Military Operations (CLAMO), *Legal Lessons Learned from Afghanistan and Iraq: Volume II: Full Spectrum Operations (2 May 2003-30 June 2004)* (Washington, DC: Government Printing Office) 71.

advocates at V Corps created a standard operating procedure (SOP) to address the issues related to detention, and their SOP included an apprehension form they created.¹⁰¹ The report also noted that forces other than military police were used to hold and guard detainees, and these forces needed additional training in detention operations from Judge Advocates.¹⁰² In addition to the lack of training for Soldiers conducting detainee operations, the report also noted that commanders were unsure of their requirements related to the treatment of detainees, and it further stated that commanders and Soldiers continuously needed guidance and clarification from Staff Judge Advocates although it blamed this lack of understanding on inadequate doctrinal guidance.¹⁰³ The report concluded that detention operations were conducted so poorly that the U.S. Congress addressed the issue in the 2005 National Defense Authorization Act.¹⁰⁴

In addition to the role Civil Affairs brigades and commands play in judicial operations, Civil Affairs Soldiers play an important role in detention operations. Civil Affairs Soldiers and leaders make recommendations to enhance cooperation between U.S. forces and detainee populations. They assist U.S. forces with control of detainees during emergencies, and they coordinate between detainees and other military, humanitarian, and international organizations when necessary.

¹⁰¹ CLAMO, *Legal Lessons Learned from Afghanistan and Iraq: Volume II: Full Spectrum Operations (2 May 2003-30 June 2004)*, 73.

¹⁰² *Ibid.*, 84.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, 85.

Civil Affairs plays the important role of providing access and information to the civilian population for services provided by rule of law operations. Access to justice is an important component to a justice system.¹⁰⁵ CA Forces do not have the legal, law enforcement or corrections experience or training to conduct rule of law operations without augmentation, but they are a key player in rule of law operations. Civil Affairs forces are organized into active component and reserve component units. Reserve civil affairs forces receive only 4 weeks of training compared to several months of training the active CA forces receive, although many have significant legal experience in the U.S. legal system at various levels in various capacities.¹⁰⁶

The capability that reserve force civilian experience brings to the joint force has never been identified, but the joint force often relies on this unseen, unmeasured capability when planning. Reserve civil affairs forces are not organized under special operations like their active duty counterparts. They will be available to conventional forces for support if they are deployed in the correct time frame but without significant training, it is unlikely they will have the capabilities upon deployment.

Active component Civil Affairs units and Soldiers are well trained, but they are relatively small in number. There is currently only one Civil Affairs Brigade in the active component. Active component Civil Affairs are a special operations force and resource and would likely be used at the strategic level of engagement. In 2009, an additional

¹⁰⁵ HQDA, ATP 3-07.5, 3-1.

¹⁰⁶ Thomas R. Greisner, "Civil Affairs History and Doctrine: From Military Government to Interagency Partner" (Master's thesis, U.S. Army Command and General Staff College, Fort Leavenworth, KS, 2016), 49.

active component civil affairs brigade was activated due to the requirements at the time but it was deactivated in 2017.¹⁰⁷ The Navy and the Marine Corps both have civil affairs forces that could augment Army requirements, but the activation and deactivation of an additional civil affairs brigade indicates that neither were capable of filling the Army's capability gap, even for a short period of time.

Another critical force for civil control are military police. Colonel Ted Spain chronicled his experience as the brigade commander of the 18th Military Police Brigade during the first year of Operation Iraqi Freedom in his book, *Breaking Iraq: The Ten Mistakes that Broke Iraq*. In this book, co-written with Terry Turchie, a retired Deputy Assistant Director of the Federal Bureau of Investigations (FBI) Spain relayed the many challenges military police face in conducting civil control operations in a large-scale combat environment. Spain identifies the challenges of military police at a variety of levels of war.

At the strategic level, Spain identified that neither civilian nor military senior leaders understood the importance of law enforcement and how it is properly executed by democratic military police forces. This was readily evident in the willingness of military leaders to assume risk knowing they would not have enough military police to accomplish large-scale combat operations or enough military police to address the resulting conditions of these operations.¹⁰⁸ The answer to their military police shortfall

¹⁰⁷ Todd Pruden, "85th Civil Affairs Brigade inactivated," *Fort Hood Sentinel*, 8 February 2018, accessed 2 June 2018, www.forthoodsentinel.com/news/th-civil-affairs-brigade-inactivated/article_da81d98a-0c26-11e8-9a9f-fbabcc4e8d6a.html.

¹⁰⁸ Ted Spain and Terry Turchie, *Breaking Iraq: The Ten Mistakes that Broke Iraq* (Palisades, NY: History Publishing Company, 2013), Kindle 464.

was too hastily retrain combat units to perform military police missions.¹⁰⁹ This was necessary because there were not enough military police in the Army force structure to meet the demands even into the second year of the conflict.¹¹⁰ This failure to understand how military police operations are effectively executed along with critical shortfall of military police led to additional operational challenges.

At the operational level, Spain expressed his frustration with the delay of deploying military police into a theater of war and their limitations once they arrived. First, due to a large requirement for military police around the world and in the United States as a result of the September 11, 2001 attack on the World Trade Center, an insufficient number of military police were deployed to Iraq during the initial months. Spain stated that of the fifty military police companies that had been identified as required in prewar planning, he initially received only twenty.¹¹¹ Second, military police units that did deploy were intentionally prioritized behind combat units and their equipment. Even when military police units could deploy they were forced to wait for equipment or they had to perform missions without adequate equipment. Third, military police units were largely busy with detention operations leaving them with little capability to address civil control. Colonel Spain lamented that detention operations took “one hundred percent of our assets with no flexibility or capability to do any other

¹⁰⁹ Spain and Turchie, 2212.

¹¹⁰ Ibid., 2200.

¹¹¹ Ibid., 410.

mission.”¹¹² Lastly, military police began to be assigned under combat units with leaders that had a different outlook than military police leaders. This outlook was a result of their differing purposes, training, and experience. These combat arms leaders did not understand the capabilities and importance of military police operations in a post combat environment.¹¹³

This lack of understanding of military police operations led to tactical challenges. Military police were not used effectively to help the people of Iraq, insure their safety, or protect their rights sufficiently. Instead of combat units supporting military police missions to restore order, military police supported combat units with “countless poorly conceived ideas about policing operations.”¹¹⁴ For example, military leaders were not interested in detaining and holding criminals, an issue that was more relevant to the fears of Iraqi civilians.¹¹⁵ Military police were not just subordinated to combat arms units, the issues that resulted from the Abu Ghraib prisoner abuse scandal were partially due to the control military and civilian intelligence agencies and units exerted over military police run prisons, including Abu Ghraib.

The results of the issues identified by Colonel Spain can be viewed readily in a PBS Frontline video on the initial invasion of Iraq. The video shows an armor unit in Iraq conducting civil control. In the video the Soldiers of the unit first shoot a suspected

¹¹² Spain and Turchie, 647.

¹¹³ Ibid., 1004.

¹¹⁴ Ibid., 1158.

¹¹⁵ Ibid., 1458.

thief's car with their pistol, and then they crush the car by running the car over with a tank. The narrator expressed that the suspected thief was a taxi driver, and that the Soldiers had taken his livelihood. The Soldiers finish by saying that this was a consequence of the theft.¹¹⁶

Chapter Conclusion

The next chapter, Chapter 3, will present the methodology used to answer the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?”

¹¹⁶ PBS, *Truth, War, and Consequences*, PBS Frontline, 9 October 2003, news documentary video, 7:44, <https://www.youtube.com/watch?v=crDmfAjKqrE>.

CHAPTER 3

RESEARCH METHODOLOGY

Chapter Introduction

The research methodology for this thesis will be a qualitative analysis research design methodology in order to answer the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?”

Methodology

A comparative analysis of current requirements and capabilities using historical and doctrinal identified needs will be used. The required capabilities identified through the literature review will be compared to the current capabilities and capabilities the U.S. military has demonstrated after the end of the cold war. Current capabilities will be identified using doctrinal and historical references and personal accounts and observations of relevant actors communicated through various writings, primarily books.

The Doctrine, Organization, Training, Materiel, Leadership and education, Personnel, Facilities and Policy (DOTMLPF-P) framework of analysis will be used, but it will focus on Organization, Training, and Leadership and education of DOTMLPF-P categories. The DOTMLPF-P framework of analysis is integrated, changing one elements generally results in some effects on the other elements. Other elements of the DOTMLPF-P have relevance in this discussion. Tertiary findings related to other elements of the DOTMLPF-P framework may be identified and discussed but they will

not be the focus of this research. Additionally, the topic will focus on the area of transitional military governance commonly referred to as the criminal justice system which includes the judicial processes, law enforcement, and corrections. Research for the thesis will not involve dealing with human research subjects.

Step-Wise Approach

This research will follow a ‘step-wise’ approach to answer the primary research question, answer the secondary questions, and to identify conclusions and recommendations as a result of the research.

Step 1. A literature review will be conducted to provide the context for the research. The literature review is presented in Chapter 2.

Step 2. DOTMLPF-P. This DOTMLPF-P analysis will be limited to the components of Organization, Training, Leadership and education of the DOTMLPF-P framework of detailed analysis in chapter 4. In section 2a, the limited DOTMLPF-P analysis will focus on judicial operations. In Section 2b, law enforcement operations capabilities will be analyzed. Finally, in section 2c, detention operations will be examined using the limited DOTMLPF-P framework of analysis.

Step 3: In this step, the answers to the secondary research questions will be definitively answered.

Step 4: In this step, the primary research question will be explicitly answered based on the limited DOTMLPF-P analysis conducted in step 2 and the answers to the secondary questions in step 3.

Step 5: Conclusions and recommendations will be presented in chapter 5.

Threats to Validity

The author of this thesis has been a professional law enforcement officer and served in the military at multiple ranks in multiple positions. The author acknowledges that these experiences may incline the author to present information and analysis based on these experiences that threaten the validity of this research.

Chapter Conclusion

The next chapter, Chapter 4, will present the analysis used to answer the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?”

CHAPTER 4

DATA PRESENTATION AND ANALYSIS

In the aftermath of what at first appeared to be successful and relatively painless “regime changes,” the unanticipated demands of stabilizing Iraq and Afghanistan in the aftermath of major combat operations, as well as the strategic consequences of possible post-conflict failure, have become painfully evident.

—H. Allen Irish, A “Peace Corps with Guns”:
Can the Military Be a Tool of Development?

Chapter Introduction

This chapter will use concepts and information presented in the literature review using portions of the DOTMLPF-P analysis framework identified in Chapter 3 to answer the primary and secondary research questions utilizing the step-wise method of analysis. This analytical framework will be applied to each of the three components of an interim criminal justice system previously identified as vital components of rule of law operations.

Step 1: Summary of the Literature Review

In the literature review, strategic, operational, and tactical doctrine was examined to determine the requirements the joint force places on the Army to consolidate gains after or during large scale combat operations. Additional sources were used to examine how the Army has operated in the past during large scale conflict, focusing on Operation Iraqi Freedom.

The Geneva Convention is the definitive source of the minimum requirements the U.S. military must be capable of fulfilling toward a civilian population, and as such, provides for a framework for the rule of law and an analysis of the U.S. Military

capabilities related to civil control and security. The United States military must, as a matter of fulfilling its legal and humanitarian obligations, meet the requirements set forth in the Geneva Convention as it pertains to civilians, their security and their property.

In addition to the requirements set forth in the Geneva Convention, as a general principle, the Army must be capable of conducting the operations it has set forth in doctrine. There will certainly be capability gaps that are not apparent or are operationally unique, and the military will certainly struggle to put doctrinal guidance into the operational context it faces in a combat area of operations. The fact that some requirements are operation specific should not be leveraged as a means to ignore requirements identified in the Geneva Convention and military doctrine. Additionally, the military has domestic and self-imposed limits on its behavior in combat areas of operations. As a matter of strategic necessity, the military must be capable of meeting the operational and strategic needs of the United States Government.

Despite the length of the current war in Afghanistan and the war in Iraq, defense institutions have not significantly changed since the Goldwater-Nichols Act in 1986.¹¹⁷ Conventionally configured forces and the application of military force have resulted in some military success but have not solved the strategic problems military force was intended to resolve.

Since 2003, the military was forced to recognize that it lacked skills, training, equipment, and capabilities to address wars among civilian populations. Since that time, the Army has made incremental improvements and continually tried to improve its

¹¹⁷ George and Rishikof, 156.

performance in stability operations with some hard-won successes and costly failures. Despite these incremental changes, underlying conditions remain that undercut the effectiveness of the military to conduct rule of law operations.

The Army's ability to conduct judicial operations is likely adequate. The shift to operational law during the Vietnam War era has only continued and gained strength through U.S. military operations since that time.¹¹⁸ Unlike the main actors in the other rule of law operations, judge advocate generals and their subordinates are likely to have a wide range of relevant expertise. The reliance on Reserve and National Guard forces is appropriate given the professional requirements of civilian attorneys.

Despite its past challenges, the Army is likely capable of performing detention operations that are adequate as well. Ironically, the Army's ability to conduct detention operations will likely have a significant negative impact on the Army's already inadequate ability to conduct law enforcement operations when necessary. It is very unlikely that the Army will be capable of performing law enforcement operations adequately for a variety of reasons.

The Army's ability to conduct law enforcement operations is critically inadequate. The underlying conditions that have created this condition have not changed since the beginning of Operation Iraqi Freedom. Army military police force structure is low comparable to the tasks which military police are expected to perform by doctrine. It is likely that those military police forces that deploy will not arrive in a timely manner, and they may even arrive without the proper equipment if they do arrive in a timely

¹¹⁸ HQDA, FM 1-04, 1-1.

manner. Military police forces will be under-resourced and will be assigned to combat arms units that lack understanding and appreciation for the capabilities of military police units and the necessity of conducting military police operations that support the rule of law. Military police forces not assigned to combat units will be totally committed to detainee operations. Those MP forces not committed will be expected to work with and train local and national police forces that are broken or nonexistent, and this will translate to military police not performing law enforcement functions to execute civil control. Even those military police forces that do execute civil control missions will be inadequately trained, and they will not have the resources to investigate crime and assist in the prosecution of criminals.

Even taking into account the experience gained since the beginning of Operation Iraqi Freedom, the past and current conditions indicate that it is unlikely that a joint expeditionary force in a combat environment will have the necessary capabilities to conduct rule of law operations. The Army's ability to conduct portions of rule of law operations are adequate, but criminal justice systems requires all three rule of law operations to be effective.

Step 2a: DOTMLPF-P Analysis for Judicial Operations

We tolerate this lethal body within our society because it is under control of our elected leaders and so operates within the law.

—General Rupert Smith, *The Utility of Force*

It is likely that the Joint force is capable of effectively executing judicial operations with a reasonable chance of success.

Organization

For the U.S. military to execute rule of law operations successfully, it must be capable of successfully executing judicial operations. The U.S. Military must be organized in a manner to be capable of executing judicial operations, and units must be capable of executing their assigned functions as a part of the larger organization.

There are numerous units that are organized and responsible for supporting and executing judicial operations. These include civil affairs units and personnel, judge advocate units and personnel, and units and commanders at every level.

Factors that indicate the Army is organized sufficiently to effectively execute judicial operations include a sufficient sized force, dispersion of personnel at a variety of levels of command with relevant expertise, a diverse set of specialists, a high level of professional expectation, experience in the Uniform Code of Military Justice, and potential experience held in the National Guard and Reserve components.

Factors that negatively affect the assessment the Army is organized sufficiently to execute judicial operations include the dominance of combat arms officers at the strategic level with little to no experience in effective rule of law operations, the reliance on interagency capabilities that do not exist, and an aversion held by civilian and military leadership to using the military to conduct rule of law operations.

Military police or Soldiers conducting law enforcement also serve a vital role in judicial operations. Military police or Soldiers doing law enforcement patrols must be capable of conducting process serving functions. The serving of warrants and summons are the functions of the judicial component of rule of law. These vital functions are a critical coordination piece between the rule of law components. Biometrics have been

used by the U.S. military in operations in Iraq and Afghanistan to successfully identify insurgents. The success of biometrics and further development of biometric technologies and capabilities could be potentially significant in identifying criminal civilians and combatants and could be used to ensure the integrity of the process serving functions.

Biometrics have created the capability to identify and track otherwise unidentifiable individuals. While the military may have an initial challenge in identifying civilians on the battlefield, biometrics capabilities could potentially rapidly and decisively make up for the initial challenge. Unlike civilian police forces, minimal restrictions apply to military forces on the registration of civilians for identification purposes. For example, the Geneva Convention allows for occupying forces to place identification requirements on occupied civilians for freedom of movement in and through areas. Requiring civilians to carry identification is a more intrusive and inaccurate method of identification than recording an individual's unique biometric characteristics, and although there may be some international disdain at some point, it is perfectly within the bounds of the Geneva convention to require civilians to register in a biometrics system. There are other systems that need to be established to make a warrant and summons system operable, but it has been done without the assistants of computers for centuries.

Commander's responsibilities, lack of expertise and experience in certain aspects of criminal justice, and the Army leadership preference for combat arms senior level leadership has negative effects on the capabilities of the Army to conduct judicial operations as well as all rule of law operations.

Probation and parole are alternatives to incarceration for criminal offenders that are not deemed to be a threat to public order and safety. Probation is generally given in the place of incarceration and parole is granted following a reduced incarceration term. Both have stipulation placed on the offender. The use of probation and parole and a system to administer these vital functions was absent in the literature regarding judicial operations and detention operations. Probation and parole provide a military government another outlet to address disorder in a manner consistent with a fair and an equitable judicial system. The U.S. government and state and local governments afford probation and parole as an option in their judicial systems. Probation and parole systems can ease the burden on the rule of law system, enhance civilian perceptions of the fairness of a criminal justice system, and they can ensure low level offenders are not exposed to high level offenders and their ideologies.

Training

Decisive action requires versatile, adaptive units and leaders with sound judgement. Training is the primary method used to develop individuals and units for challenging operational environments.¹¹⁹ Training is how the Army accomplishes readiness, the number one priority of the Army.¹²⁰ Judge Advocate officers are highly trained, and their normal duties are highly applicable in the conduct of judicial operations.

¹¹⁹ HQDA, ADRP 3-0, 3-3.

¹²⁰ Ibid., 1-12.

Commanders require training to understand their legal obligations as a result of combat operations. They need training to know what is expected of their Soldiers when they conduct certain operations, such as detention operations.

Leadership and Education

While the Judge Advocate General Corps has a significant role in executing military justice, commanders at every level execute a form of judicial authority under the uniform code of military justice. With the assistance of the Judge Advocate General Corps, commanders at every level administer forms of non-judicial punishment. Although non-judicial punishment is a form of civil proceeding, the punishments can include restrictions and correctional custody.¹²¹ The education and experience of commanders in the execution of the uniform code of military justice can be substantial, but it is not uniform. Experience in nonjudicial punishment contributes to the commander's knowledge and experience in executing the judicial operations of the rule of law.

The benefit commander's gain in their experience in executing the uniform code of military justice is balanced by Commanders' other responsibilities within their areas of operations, their lack of expertise and experience in law enforcement, and the Army leadership preference for combat arms senior level leadership which leads to a consequence of their specialization.

¹²¹ U.S. Government, *Title 10 US Code Section 815 Article 15* Government Publishing Office, accessed 7 May 2018, <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title10/pdf/USCODE-2016-title10-subtitleA-partII-chap47-subchapIII-sec815.pdf>.

Cultural understanding is necessary for leaders to administer a criminal justice system. This should not be confused with blanket acceptance of unacceptable civilian behavior, but it should also not be discounted.

Step 2b: DOTMLPF-P Analysis for Law Enforcement Operations

Our methods of trying to bring the rule of law to Iraq and establish law and order through trust and respect were shoved aside by military and civilian leaders who simply didn't understand the role of law enforcement in a democracy.

—Colonel Ted Spain, *Breaking Iraq: The Ten Mistakes that Broke Iraq*

It is highly likely that the Joint force will continue to rely on interagency and multinational capabilities that do not exist or are unreliable. It is also likely that the Army will not be capable of effectively conducting law enforcement operations during and immediately following large-scale combat operations.

Law enforcement operations conducted by a military government will be the primary way in which the military will be viewed and engage with a population during the execution of military governance to consolidate gains. The U.S. Military has acted as a constabulary force in the past, and it is expected to be able to execute these types of functions in the future.¹²² Civilian and military leaders today do not appear to value the military necessity of occupation operations. Military leaders have adopted the traditional idea that defeating a military force leads to an acceptance of defeat by civilian populations and the civilian population's voluntary subjugation results from this defeat. These expectations were demonstrated in the operations that deposed Saddam Hussein in

¹²² DoD, JP 3-07, III-3.

Iraq in 2003 and the resulting insurgency that followed.¹²³ Despite this, Joint doctrine recognizes that “Joint Force Commanders must be prepared to perform critical law enforcement functions as quickly as possible, possibly even while combat is ongoing”.¹²⁴

Organization

Military Police bring a specific skill set that commanders need, and there are not enough MPs in the Joint Force to conduct all the missions required of the MP on the battlefield. Criminal evidence processing and investigation capabilities rest in a small group of Soldiers and civilians assigned to Criminal Investigations Division (CID) units. Military Police Investigation (MPI) trained Soldiers augment CID and provide some additional capabilities to military police units. In wartime, Department of the Army civilian police provide a steady presence as military police personnel deploy, and this would theoretically increase the number of MP units not required for domestic protection.

Combat operations will shape military police forces. As operations progress, consolidation areas will grow larger and more extended. This results in extending ground lines of communication and likely will result in more support necessary to process and transport enemy prisoners of war. Protection of ground lines of communication will likely result in military police being assigned to assure mobility along main and alternate supply routes. As well, military police will be required to protect friendly command posts, logistics areas and key infrastructure. They may also be required to secure captured enemy supply points or sites of mass atrocities. Simply put, as operations progress, other

¹²³ Albino et al., 16.

¹²⁴ DoD, JP 3-07, III-50.

operational missions will quickly deplete military police resources in a theater that are necessary to conduct critical stability tasks in a timely manner. This condition will be a result of inadequate force structure and a lack of priority in deploying military police units and their equipment. MP forces will not be the priority for deployment, and the invasion of Iraq demonstrated that the Army had not learned from the past.

Military police forces will face other competing operational requirements. The mission of training host nation police will lead to the inability to effectively conduct necessary law enforcement operations. This was especially evident in Iraq as military police began to immediately partner with Iraqi Police who had no experience in democratic police philosophy, tactics and methods. The civilian police force in an occupied area may also have been a tool of oppression, and in that case, the civilian population would view host nation police with a reasonable fear and suspicion. Police Forces used to oppress civilian populations in the past may need to be disbanded and reformed. At a minimum, they would require significant retraining and reorganization.

It is highly unlikely that the United States will engage in combat operations against a nation with democratic police forces. The idea that local and national police in areas where the United States has conducted large scale combat operations will be any better than those in Iraq in 2003 is wishful thinking. The strain of the police training mission will put serious constraints on civil control capabilities. Other military units do not have the training or experience to train police, and as it relates to law enforcement training, they will not be effective.

The need for the reliance on the civilian skills of reservists indicates that the military police have undefined capability gaps that must be filled to be effective in

establishing and executing the rule of law. Unlike JAG officers, military police officers do not have uniform, rigorous experience and extensive training in democratic policing or criminal justice compared to their civilian counterparts. Specifically, the MP Corps lacks skills and experience in investigations to meet the scale needed following major combat operations.¹²⁵ Like the reliance on Civil Affairs and JAG Soldiers, the capabilities resulting from civilian experience of Military Police Reserve and National Guard Soldiers is unidentified and has not been measured.

There is a ubiquitous nature of the law enforcement requirement across the ground force. Under FM 3-0, the Brigade Combat Team (BCT) is responsible for consolidating gains, but it lacks any organic MP Forces.¹²⁶ The answer is to attach MP Forces as necessary. FM 3-0 states that an MP Brigade should be attached to a division where MP requirements exceed task organized Maneuver Enhancement Brigades MP battalion's abilities assigned to a division. Assigning MP units to combat arms brigades was done in Iraq, and it is not ideal. Previously, an MP platoon was organic to a BCT, but there are currently no organic MP forces assigned to a BCT. Even when they were assigned to a BCT, an MP Platoon was not sufficient to support a BCT in a consolidation area in a large-scale combat area of operations. The fact that the Army removed all MP capabilities from a BCT and doctrinally assigns it a consolidation area indicates that the Army has not learned from operations in Iraq regarding the necessity of military police units and capabilities in a large-scale combat environment.

¹²⁵ Spain and Turchie, 1087.

¹²⁶ HQDA, FM 3-0, 2-14.

The security force assistance brigade (SFAB) was first organized to relieve the brigade combat teams of the burden of the security assistance missions that were a result of operations that occurred after September 11, 2001. The security force assistance brigade has higher standards of acceptance and receives additional training. It is organized along the lines of a hollowed-out brigade combat team. Security Force Assistance Brigades provide little to no additional capabilities that are not already inherent in a Brigade Combat Team. While the additional language training is an important component to being capable of communicating with civilians in occupied territories, this is just one capability. The experience gained from the security force assistance brigade concept may have long term impacts on Army training and operations. SFABs are not trained, manned, or equipped to conduct law enforcement operations. It is unlikely that a security force assistance brigade will be deployed within the critical time necessary to establish rule of law during a transitional military authority without being augmented and deployed as a BCT. Ideally, a combat formation sufficient enough to destroy enemy forces, forces sufficient to conduct transitional military authority, and a force with the capabilities to train host nation security forces would deploy into an area of operations nearly simultaneously.

Training

The Army and Marine Corps need Organizations that can accomplish tasks associated with military governance. These organizations need resources and training to accomplish effective military governance.

The most vital capability that law enforcement organizations have is the ability to conduct investigations of crime and criminal activity. Military police Soldiers not

assigned to MPI sections or CID do not have the professional expectations and capabilities of their civilian counterparts. Military Police only investigate relatively minor crimes, except possibly MPI Soldiers and CID. Even relatively minor criminal investigations will be assigned to a small number of trained military police investigators and detectives. These investigators and detectives undergo a relatively short investigative course. MP Soldiers have significant restrictions placed on the types of cases they investigate and rely heavily on CID expertise and authority to conduct investigations at the misdemeanor and felony level. The use of Department of the Army civilian police to conduct law enforcement on installations also reduces the law enforcement experience available to military police Soldiers. The reliance on civilian police to patrol military installations also indicates that the Army does not have enough MPs to conduct MP operations, even though the war in Iraq ended years ago.

CID retains the authority and capability to investigate most crime. CID is comprised of less than 2,000 Soldiers.¹²⁷ CID agents complete a 16 week training course, and they can attend specialized and advanced training in various fields, areas and skills.¹²⁸ Specialized investigative experience is also absent except possibly in CID. Background investigations experience, a staple in civilian law enforcement agencies, is absent from the military police experience, except possibly in CID.

¹²⁷ U.S. Army Criminal Investigation Command, "General Questions," U.S. Army, last updated 22 March 2018, accessed 27 May 2018, <http://www.cid.army.mil/faq.html>.

¹²⁸ U.S. Army Criminal Investigation Command, "CID Special Agent Training," U.S. Army, last updated 1 June 2018, accessed 27 May 2018, <http://www.cid.army.mil/agent-training.html>.

Critical to the ability to conduct investigations is the ability to communicate with the public. Communication is a critical capability in law enforcement. As such, language training is critical for U.S. forces to be capable of interacting successfully with civilian populations. In the future, a materiel language interpretation solution may be available and viable, but there does not appear to be a near term materiel capability. The importance of language training is demonstrated by American police Spanish language training. Spanish language training to interact with a limited domestic population of non-English speaking citizens and noncitizens is a part of many training academies, and American police departments have created other language proficiency programs. U.S. forces conducting law enforcement will find it difficult to conduct law enforcement without the ability to communicate on an individual basis. Without this capability, witnesses cannot be interviewed, written statements cannot be taken, suspects cannot be interrogated, and even minor disputes will be difficult to adjudicate. Interactions between military forces and civilians will be strained and confusion, and mistrust, and potentially deadly consequences will result.

Use of Force is a vital training component in all law enforcement organizations in the United States. The rules for the use of force is understood well by American Police. The variety of Rules of Engagement (ROE) and the flexibility of commanders to change ROE inhibits effective training for the use of force against civilians. All Army forces should train using the Use of Force directives found in AR 190-14. The MP Corps has an escalation of force model that is enduring and proven. Generally, ROE that is theater specific is used as an operational ad hoc escalation of force model. Developing ad hoc operational escalation of force models makes it difficult to train soldiers both in tactical

contexts and with weapons and other equipment. The necessity to understand and train on the rules of engagement are all the more important in operations where a small misunderstanding with civilians can turn deadly because of language, cultural and customs differences, and misinterpretations. Less lethal or Non-lethal training and equipment are available for every type of unit, although Modified Tables of Organization and Equipment (MTOE) vary in equipment distributions among different types of units. MTOEs are classified as FOUO and will not be discussed in this thesis.

All U.S. Soldiers receive a minimum amount of training in the laws of armed conflict. The requirement for Judge Advocates to provide additional training to forces in detention operations indicates that Soldiers are not adequately trained on their obligations under the Geneva Convention. Wanton destruction of civilian property also indicates that Soldiers are not properly trained in their obligations under the Geneva Convention related to basic human rights of civilians during and immediately following large-scale combat operations. Legal and rule of law operations training should be prioritized at a much higher level than the current minimal, ineffective requirement. The DOD Law of War Program needs to be examined and revised to reflect the complex reality Soldiers will face in the future in areas of conflict because it is almost certain civilians will be present.

The laws of armed conflict, specifically the Geneva Convention are vital in interactions with civilians. This understanding is critical in detention operations, from the point of capture forward. There is a general requirement for all Soldiers to detain a variety of people in an area of operations. Detaining prisoners of war is a common Soldier task, meaning that most Soldiers will have some training in detaining enemy prisoners of war. Most Soldiers, however, do not have training in detaining suspected

criminals and seizing property of an evidentiary value. They also do not have training in conducting interviews and interrogations of suspected law violators. Units capturing detainees are only authorized by DoD policy to conduct tactical questioning. Tactical questioning is defined as, “The field-expedient initial questioning for information of immediate tactical value of a captured or detained person at or near the point of capture and before the individual is placed in a detention facility. Tactical questioning is generally performed by members of patrols but can be done by any appropriately trained DoD personnel. Tactical questioning is limited to direct questioning.”¹²⁹ The statements taken by law enforcement personnel during interviews and interrogations is a form of evidence, and without proper training, a significant amount of evidence will not be collected and if it is, it may not be admissible as evidence against suspected criminals.

An additional issue with detention is the fact that not every crime or activity that needs to be addressed through a criminal justice system warrants detention. American police frequently issue citations to individuals for traffic violations, misdemeanor, and felony criminal behavior. Allowing Military Police to issue citations in lieu of arrests have many benefits. It reduces workloads and saves time on minor issues. Having a method to address criminal behavior other than arrest or detention gives MPs discretion in addressing issues in a more publicly acceptable way. Citations improve data collection through increased activity other than arrests and issuing citations instead of detaining members of a community may enhance community relations, officer and public safety,

¹²⁹ U.S. Department of Defense (DoD), Department of Defense Directive (DoDD) 3115.09, *DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning* (Washington, DC: Government Printing Office, 11 October 2012), 32.

and it reduces detention resource burdens. It also lowers burdens on low level criminal offenders and their families. Issuing citations in lieu of detention is a widespread, common practice in the United States and it has been a long-standing law enforcement practice in the United States and it is a frequent practice used by military police in the United States.¹³⁰

Leadership and Education

Military Police Commanders are not at the sufficient rank to provide necessary influence on the decision making of senior leaders in relation to their vital tasks. Lieutenant General David E. Quantock was the first and only Military Police Officer to be promoted to lieutenant general in 2014, but he was promoted to that rank to perform as the Inspector General of the Army.¹³¹ Organizational, cultural, and ideological homogeneity in combat arms officers promoted to the operational and strategic levels of leadership leaves little in the way of diverse thought.

Military Police Commanders are often required to act as both a senior commander and provost marshal.¹³² The requirement divides their attention and efforts. This indicates a possible lack of force structure at the senior level.

¹³⁰ International Association of Chiefs of Police and Laura and John Arnold Foundation, "Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation across the United States," April 2016, 3, accessed May 19, 2018, www.theiacp.org/Portals/0/documents/pdfs/IACP%20Citation%20Final%20Report%202016.pdf.

¹³¹ Beth Bellerby, ed., "Lieutenant General David E. Quantock Retires," *The Dragoon* (Spring 2018): 7.

¹³² Spain and Turchie, 726.

Law enforcement tactics vary significantly from military tactics. Police tactics generally involve highly dispersed small units that use swarm theory responses in rapidly evolving, highly localized scenarios while military tactics are characterized by controlled movements of formations in planned operations with massed forces. Risks associated with conducting law enforcement and the risks associated with effective police tactics are not understood by senior military leaders. The preference to use military tactics that are contrary to effective law enforcement practices limit the effectiveness of law enforcement operations and increases risks to civilians, units and Soldiers. The limited experience senior combat branched leaders have with law enforcement tactics leads to a perceived risk that will self-validate upon losses of Soldiers and equipment.

While the counter insurgency tactics in FM 3-24.2, *Tactics in Counterinsurgency*, have moved closer to police tactics, the shift was not significant enough to meet the requirements to conduct effective law enforcement. Individual Soldier and unit risks will be perceived to be much higher using police tactics instead of traditional military tactics, but unit risks will be much lower in actuality if police tactics are used. The institutional mentality accompanying personnel recovery operations will hinder effective, highly dispersed police tactics due to the perceived risk of personnel recovery events.

Step 2c: DOTMLPF-P Analysis for Detention Operations

It is likely that the Army will be capable of successfully executing detention operations. Operations in Iraq demonstrated the risks associated with poorly executed detention operations. While the majority of the civilian population in a combat area of operations will never be affected directly by military corrections operations, these types

of operations may have the most catastrophic result if performed poorly. It is difficult for military forces to recover from wrongful detentions and inhumane treatment of detainees.

Organization

During successful offensives, military police will be used for detainee operations related to enemy prisoners of war. This will create a shortage of military police forces for conducting law enforcement. Military Police will have “no flexibility or capability to do other MP missions”.¹³³ Detention operations in combat areas have additional complications. For example, in Iraq in 2003, Saddam Hussein armed and released criminals from jails prior to the U.S. invasion.¹³⁴ Military leaders in Iraq were not interested in criminal activity and it showed in the number of detentions.

Detention operations in Iraq did not focus on civil control. In Iraq, the Army conducted detention operations with special populations, including women and juveniles. The relative success in executing detention operations demonstrated a critical capability.

Training

Military police and Soldiers conducting detention operations require training to meet legal and operational requirements. Soldiers need training in taking statements that have evidentiary value if they are expected to conduct detention operations. They must receive training that enables them to be capable of identifying evidence sufficient to warrant detention. Soldiers must be trained on how to collect and preserve evidence, and

¹³³ Spain and Turchie, 647.

¹³⁴ Ibid., 186.

most importantly, they must understand what constitutes inappropriate or unlawful detention practices to remain compliant with the Geneva conventions and to enable civil control.¹³⁵ Soldiers need additional training on the laws of war. They also need additional training on non-lethal weapons and the use of force.¹³⁶ The ability to conduct detention operations relies heavily on training, guidance, and support provided by Judge Advocates.

Leadership and Education

Senior leaders, including military police leadership, lack experience in detention operations. Senior leaders also lack a clear appreciation for the challenges and opportunities of detention operations. Senior leaders also need to understand and prepare for the fluctuation in detainee populations as a result of operations.

Prisoner abuse at Abu Ghraib was a tactical failure that had strategic implications, and though the cost is hard to measure, they were definitely severe. Despite this failure, detention operations were largely successful in Operation Iraqi Freedom. Judge advocates quickly established tactics, techniques and procedures to address the challenges of the unique conditions in Iraq. They were successful in establishing detention operations for special populations, such as juveniles and women. The experience, knowledge, and skills of judge advocates enabled them to recognize and adapt to the challenges of detention operations. Judge advocates were critical but military police Soldiers and other Soldiers

¹³⁵ U.S. Army Center for Law and Military Operations (CLAMO), *Forged in Fire: Legal Lessons Learned During Military Operations (1994-2008)* (Charlottesville, VA: The Judge Advocate General's Legal Center and School, September 2008), 42.

¹³⁶ *Ibid.*, 51.

discipline and training were just as important to the overall success of detention operations in Iraq. Detention operations are challenging even without the fog and chaos of war.

Step 3: Answers to Secondary Questions

The first secondary research question this thesis seeks to answer is; “Does Army organization, training, leadership and education provide the capabilities to the joint force to conduct effective judicial operations in a large-scale combat environment to consolidate gains?” The answer identified in this analysis to this secondary research question is, yes.

The next secondary research question this thesis seeks to answer is; “Does Army organization, training, leadership and education provide the capabilities to the joint force to conduct effective law enforcement operations in a large-scale combat environment to consolidate gains?” The answer to this secondary research question is, no.

The final secondary research question this thesis seeks to answer is; “Does Army organization, training leadership and education provide the capabilities to the joint force to conduct effective detention operations in a large-scale combat environment to consolidate gains?” The answer identified in this analysis to this secondary research question is, yes.

Step 4: Answer to Primary Research Question

The answer to the primary research question, “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate

gains in a combat area of operations?” The answer to the primary research question identified in this analysis is, no.

Chapter Summary

The lack of capability to conduct law enforcement operations creates a condition in which rule of law operations will be ineffective or counterproductive. Rule of law operations require the synchronization and integration of laws, law enforcement, corrections and a judiciary or the rule of law system will fail to administer justice. Individual cases of misjustice are possible in the best rule of law system, but when a critical part of the system is incapable, the system will fail. Because civil control relies on rule of law operations, civil control will not be possible in a rapid manner at a critical point in the conduct of large-scale combat operations.

The next chapter, Chapter 5, will present the conclusions and recommendations based on the findings of this research.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Chapter Introduction

The primary research question for this thesis is “Does Army organization, training, leadership and education provide the joint force the capability to control civilian populations by establishing law and order through rule of law operations to consolidate gains in a combat area of operations?” The answer, as described in the previous chapter, is, no. There are a number of conclusions and recommendations that follow from this answer.

Conclusions

The joint force lacks the readiness to conduct civil control in a large-scale combat area of operations because it relies on the Army to conduct rule of law operations for which it has critical deficiencies in law enforcement operations in the DOTLPP-P categories of organization, training, leadership, and education. The Army continues to make incremental improvement in its capabilities to establish civil control and security. Future battlefields will continue to include noncombatants, and they will likely be crowded in and around large cities, adding to the complexity of the environment. Enemies will employ conventional tactics, terror, criminal activity, and information warfare to further complicate operations.¹³⁷ If history is any indication, there will likely be another decisive large-scale combat operation that requires stability efforts like that of

¹³⁷ HQDA, FM 3-0, 1-4.

Iraq in 2003. These large-scale combat operations will require the Joint force to be capable of executing stability tasks to meet national strategic objectives. The Joint Force must be capable of meeting these requirements. Rule of law operations are the doctrinal and effective method that Army forces use in stability operations to conduct civil control.

The rule of law is not only about civil control. Civil control and civil security are often mentioned together in joint and Army doctrine. Rule of law operations have a substantial impact on civil security. Through rule of law operations, military forces can legally and effectively neutralize subversive elements prejudicial to law and order in an area of operations. Potential subversive elements include insurgents, foreign fighters, unlawful militiamen, terrorist, organized criminals, and other types of criminals that destabilize areas and regions. Traditional military force has proven incapable of establishing control over many of these subversive elements. Additionally, the Geneva Convention and other international laws give rights and protections to civilians the Joint Force is required to protect and ensure, and the requirements on the Joint Force only become more substantial after major offensives have ceased in areas of operations and the military's capacity to address civil needs increases.

Recommendations

The U.S. military should recognize the folly in allowing civilian agencies authority and responsibility to conduct operations for which they do not have the capability or capacity. While the military lacks some capabilities and capacity to conduct stability operations, other U.S. Government agencies effectively have no capability or capacity to operate in areas effected by large-scale combat operations, and these agencies often bring confusion and distraction to combat areas of operations where the U.S.

Military is trying to restore order in the midst of chaos. The military should not declare a cessation of hostilities until it has gained control adequate for civilian agencies to operate semi autonomously. Allowing civilian agencies to unduly influence military operations can be costly in treasure as well as lives. For example, the Central Intelligence Agency was implicated as one of the agencies that contributed to a loss of accountability and abuse at Abu Ghraib.¹³⁸ Additionally, any aversion to the military controlling civilian functions should be quickly dispelled by an examination of the history of the U.S. Army's role in military governance.

Despite the significance of military governance, it is not the primary mission of the Army. In a large-scale combat environment, three lines of effort exist, and they must be recognized. The first line of effort are large-scale offensive and defensive combat operations. These operations require a particular set of capabilities. The U.S. Military must remain lethal and effective to safeguard the United States and its interests. The second line of effort, immediately follows or occurs simultaneously with the major combat offensive or defensive operation. It is establishing and maintaining order. This line of effort, like winning the offensive, requires specific capabilities that are often directly contrary to and compete with the capabilities necessary for combat operations. The third distinct line of effort, building host nation capabilities and transitioning governance functions, directly competes with the resources and capabilities necessary to maintain order. The ability to build host nation capabilities and transition relies heavily

¹³⁸ CLAMO, *Legal Lessons Learned from Afghanistan and Iraq: Volume II: Full Spectrum Operations (2 May 2003-30 June 2004)*, 103.

on the military's capacity to bring order sufficient to allow for building host nation capabilities.

In addition to being clear on how it will prosecute major combat operations, the Army needs to be clear on the desired end state by being more specific in doctrine on the type of government it aspires to produce in stability operations. Army doctrine states that the key to the rule of law is legitimacy, and that legitimacy relies on democratic principles, such as transparency, accountability, public participation, and universal suffrage. At the same time, the Army states in doctrine that democratization is not necessary and offers an ambiguous representative form of government as a superior option instead.¹³⁹

Forces used to conduct operations should not be used to conduct capacity building and host nation training. The Security Force Assistance Brigade may be key in keeping these two time and resource heavy requirements separate and adequately addressed. Security force assistance is a component of establishing civil security, and these activities should be organized under this stability task instead of establishing civil control.¹⁴⁰ These activities related to security sector reform may be where interagency partners can make the best contributions toward consolidating gains.

Even taking into considerations the challenges of the criminal justice system in America, The U.S. criminal justice system is extremely effective at maintaining order and administering justice. The capabilities that various criminal justice agencies in the United

¹³⁹ HQDA, ADRP 3-07, 2-17.

¹⁴⁰ Ibid., 1-2.

States possess are also required capabilities necessary to meet the requirements set forth in Joint and Army doctrine. American police operations should be studied, and lessons learned should be tested and integrated into military police operations. Military police should transition away from its current model that isolates investigation training and experience in the relatively small number of CID agents. Military police Soldiers should have the same authorities and capabilities current CID agents possess which would bring them closer to being commensurate with their civilian police counterparts.

The ability to communicate with a civilian population is critical. Soldiers should be prepared to interact with a civilian population because, despite the desire to isolate themselves from civilians, they will frequently and significantly interact with a public with a different language, culture, and social customs. Interactions with civilian populations in rule of law operations at every level is a critical information related capability.

A model interim criminal justice system should be developed, and training should be conducted in it for those forces that will participate in rule of law operations. The Army should be capable of forming a military government operating as a military transitional authority in an operational environment where no rule of law exists as a matter of readiness. The lack of a model system creates confusion and inefficiency, and it makes coordination between judge advocate general officers, military police, civil affairs, commanders responsible for areas of operation, and other actors difficult as well.

The DoD should not rely on unmeasured or notional capabilities. The DoD should conduct an ongoing assessment to identify reservists civilian work and education experience to understand capabilities resident in reserve forces that have not been

identified or measured but are frequently cited as beneficial to filling active component capability gaps. A realistic assessment of multinational capabilities in rule of law operations is critical as well.

This thesis is directly related and applicable to Army Warfighting Challenge #13, Conduct Wide Area Security. One question asked by the Army Capabilities Integration Center under this Army Warfighting Challenge is, “What Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel, Facility and Policy (DOTMLPF-P) capabilities enable Army forces to consolidate gains, including the relocation of displaced civilians, reestablishment of law and order, performance of humanitarian assistance, and restoration of key infrastructure?”¹⁴¹ The capability to conduct civil control through rule of law operations will enable Army forces to consolidate gains that will reestablish law and order and enable the relocation of displaced civilians, performance of humanitarian assistance, and restoration of key infrastructure.

Recommendations for Further Research

This thesis focused on only three parts of the DOTMLPF-P framework. Future research should be conducted in each of the other components of the DOTMLPF-P framework. Research in these other components may identify other capability gaps or they may provide solutions to the capability gaps identified in this thesis.

Army doctrine contends that military police are the force with the organic capabilities necessary to conduct law enforcement and civil control, but this thesis

¹⁴¹ ARCIC, “Army Warfighting Challenges.”

demonstrates the lack of capability at a scale associated with large-scale combat operations. This thesis did not examine combat operations at a scale below large-scale or other operations not characterized as combat operations. Further study into the scale and operational capacity of MP forces is necessary. In addition, an FOUO study of military police capabilities would bring further fidelity to the capabilities and capability gaps identified in this thesis.

State department and interagency capabilities to support large-scale combat operations is an additional area in need of further research. Additionally, an identification of the phase or conditions that allow interagency support following combat operations would also be an important topic for further research.

Final Thoughts

The capability of the Army to conduct rule of law operations has strategic importance. Armies of democratic nations have legal, ethical, and political constraints placed on how they conduct operations. Concepts in this thesis are critical components to address complex challenges in the future. Ignoring history is as perilous as failing to recognize and prepare for the future.

And in the absence of order, chaos ensues.

—Colonel Ted Spain, *Breaking Iraq:
The Ten Mistakes that Broke Iraq*

GLOSSARY

Civil Control. A primary Army stability task that supports efforts to institute rule of law and stable, effective governance.¹⁴²

Civil Security. A Primary Army Stability task that Provides for the safety of the host nation and its population, including protection from internal and external threats.¹⁴³

Combat Power. The total means of destructive, constructive, and information capabilities that a military unit or formation can apply at a given time.¹⁴⁴

Consolidating Gains. The activities to make permanent any temporary operational success and set the conditions for a sustainable stable environment allowing for a transition of control to legitimate civil authorities.¹⁴⁵

Detainee. Any person captured, detained, or otherwise under the control of Department of Defense personnel.¹⁴⁶

Detention Operations. A broad term that encompasses the capture, initial detention and screening, transportation, treatment and protection, housing, transfer, and release of the wide range of persons who could be categorized as detainees.¹⁴⁷ Corrections operations or penal operations may be used synonymously with detention operations.

Force Tailoring. The process of determining the right mix of forces and the sequence of their deployment in support of a joint force commander.¹⁴⁸

Information Operations. The integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to

¹⁴² HQDA, ADP 3-07, 12.

¹⁴³ Ibid.

¹⁴⁴ HQDA, ADRP 3-0, 5-1.

¹⁴⁵ HQDA, ADRP 3-07, 3-7.

¹⁴⁶ U.S. Department of Defense (DoD), Joint Publication (JP) 3-63, *Detainee Operations* (Washington, DC: Government Printing Office, 13 November 2014), GL-3.

¹⁴⁷ Ibid.

¹⁴⁸ HQDA, ADRP 3-0, Glossary 4.

- influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own.¹⁴⁹
- Interagency. Of or pertaining to United States Government agencies and departments, including the Department of Defense.¹⁵⁰
- Joint. Connotes activities, operations, organizations, etc., in which elements of two or more Military Departments participate.¹⁵¹
- Judicial Operations. Operations which involve operating a system of courts of law which exercise judicial power within an assigned jurisdiction.
- Landpower. The ability—by threat, force, or occupation—to gain, sustain, and exploit control over land, resources, and people.¹⁵²
- Large Scale Combat Environment. Decisive Action against an enemy force that involves levels of scale, complexity, lethality, ambiguity and speed to military operations not common in other operations.¹⁵³
- Law Enforcement Operations (Law and Order Operations). Encompass policing and the associated law enforcement activities to control and protect populations and resources to facilitate the existence of a lawful and orderly environment.¹⁵⁴

¹⁴⁹ DoD, JP 3-13, GL 3.

¹⁵⁰ U.S. Department of Defense (DoD), Joint Publication (JP) 3-08, *Interorganizational Cooperation* (Washington, DC: Government Printing Office, 18 October 2017), GL-8.

¹⁵¹ U.S. Department of Defense (DoD), *Department of Defense Dictionary of Military and Associated Terms*, April 2018, accessed 4 June 2018, www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf?ver=2018-05-02-174746-340, 122.

¹⁵² HQDA, ADRP 3-0, Glossary-5.

¹⁵³ HQDA, FM 3-0, 5-3.

¹⁵⁴ HQDA, FM 3-39, 3-3.

Leadership and Education. Professional development of the joint leader is the product of a learning continuum that comprises training, experience, education, and self-improvement.¹⁵⁵

Military Government. Synonymous with Transitional Military Authority and Martial Law. The supreme authority the military exercises by force or agreement over the lands, property, and indigenous populations and institutions of domestic, allied, or enemy territory therefore substituting sovereign authority under rule of law for the previously established government.¹⁵⁶

Multinational. Between two or more forces or agencies of two or more nations or coalition partners.¹⁵⁷

Operational Law. All relevant aspects of military law that affect the conduct of operations and is now recognized as a core legal discipline.¹⁵⁸

Organization. A joint unit or element with varied functions enabled by a structure through which individuals cooperate systematically to accomplish a common mission and directly provide or support joint warfighting capabilities.¹⁵⁹

Rule of Law Operations. Operations which synchronize and integrate the institutions that, “include the legislature that enacts laws, a police system to enforce laws, a functioning corrections system, and an independent judiciary to interpret the laws and provide redress of grievances.”¹⁶⁰

Stability Mechanisms. The primary method through which friendly forces affect civilians in order to attain conditions that support establishing a lasting, stable peace.¹⁶¹

¹⁵⁵ U.S. Department of Defense (DoD), *Manual for the Operation of the Joint Capabilities Integration and Development System (JCIDS)* (Washington, DC: Government Printing Office, 12 February 2015), C-4.

¹⁵⁶ DoD, *Department of Defense Dictionary of Military and Associated Terms*, 152.

¹⁵⁷ U.S. Department of Defense (DoD), Joint Publication (JP 5-0), *Joint Planning* (Washington, DC: Government Printing Office, 16 June 2017), GL-12.

¹⁵⁸ HQDA, FM 1-04, 1-1.

¹⁵⁹ DoD, JCIDS, C-4.

¹⁶⁰ Kem, 32.

¹⁶¹ HQDA, ADRP 3-0, Glossary-8.

Stability Tasks. Tasks conducted as part of operations outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment and provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.¹⁶²

Stability Operations. An overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.¹⁶³

Summons. A written notification that a person is served notifying them to appear at a criminal or civil proceeding as a defendant or witness.¹⁶⁴

Tactical Questioning. The field-expedient initial questioning for information of immediate tactical value of a captured or detained person at or near the point of capture and before the individual is placed in a detention facility. Tactical questioning is generally performed by members of patrols but can be done by any appropriately trained Department of Defense personnel. Tactical questioning is limited to direct questioning.¹⁶⁵

Task Organizing. The act of designing a force, support staff, or sustainment package of specific size and composition to meet a unique task or mission.¹⁶⁶

Training. Training, including mission rehearsals, of individuals, units, and staffs using joint doctrine or joint tactics, techniques, and procedures to prepare joint forces or joint staffs to respond to strategic, operational, or tactical requirements considered necessary by the Combatant Commander's to execute their assigned or anticipated missions.¹⁶⁷

¹⁶² HQDA, ADRP 3-07, Glossary-3.

¹⁶³ HQDA, ADRP 1-02, 1-64.

¹⁶⁴ Merriam-Webster, *Merriam-Webster's Dictionary of Law* (Springfield, MA: Merriam-Webster, Incorporated, 2011), Kindle 24625.

¹⁶⁵ DoD, DoDD 3155.09, 32.

¹⁶⁶ HQDA, ADRP 3-0, Glossary-9.

¹⁶⁷ DoD, JCIDS, C-4.

Warrant. A writ issued by a judicial official authorizing a law enforcement official to perform a specific act required for the administration of justice.¹⁶⁸

¹⁶⁸ Merriam-Webster, Kindle 26568. The specified acts in a warrant can include an order to arrest, an order to search people or places or an order to seize property for various purposes.

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