



SPECIAL REPORT

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ABOUT THE REPORT

This report examines the requirements for the U.S. government to develop a civilian capacity to deploy police, judges, and corrections officials to peace and stability operations. It is the result of interviews conducted with over twenty U.S. government agencies that would be likely contributors to the development of such a “rule of law” capability.

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The views expressed in this report do not necessarily reflect views of the United States Institute of Peace, which does not not advocate specific policy positions.

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Building Civilian Capacity for U.S. Stability Operations The Rule of Law Component

Summary

- Establishing public order in the aftermath of an international military intervention is “job one.” The success of all other activities hinges on getting this job done.
- Military combat units, however, are neither trained nor equipped for riot control and law enforcement functions.
- No rapidly deployable U.S. civilian capacity exists to provide the full spectrum of rule of law functions—from intelligence to incarceration—needed to support military forces engaged in peace and stability operations.
- The optimal way to remedy this critical deficiency would be to establish a **Rule of Law Reserves** (RLR) and a single federal **Office for Rule of Law Operations** (ORLO) that would have the permanent authority to recruit, deploy, and manage constabulary police units and individual police, judges, attorneys, court staff, and corrections officers in peace and stability operations.
- Locating ORLO in the Office of the Secretary of State would give it the access to senior policymakers that its mission requires.
- ORLO should be placed within a larger construct, perhaps a new agency or organization for stability operations that unites under one umbrella other crucial civilian functions such as war crimes prosecution, humanitarian assistance, governance, media development, reconstruction, and reconciliation activities.
- By preventing a public security gap, the process of providing relief and reconstruction assistance will be greatly facilitated and the transition to stable governance accelerated.

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Introduction

From Panama to Iraq and once again in Haiti, U.S. military forces have confronted the chaos and disorder associated with failed and collapsed states or states in the aftermath of combat operations. Intervening military forces are typically confronted with a public security vacuum

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because indigenous public security organizations have either been part of the problem, have collapsed with the old regime, or have been destroyed. Military combat units, however, are neither trained nor equipped for riot control and law enforcement functions. As a result, a “public security gap” is created that can be exploited by looters, organized criminals, extremist elements, paramilitary forces, and terrorists.

One reason for this gap is the total absence of any U.S. civilian capacity to deploy organized units of police with specialized equipment necessary to perform crucial public order functions such as crowd control and the curbing of rampant lawlessness. Also contributing to this gap is the protracted delay involved in mobilizing individual police and other personnel to perform the full spectrum of functions, from intelligence to incarceration, required to foster the rule of law. Standard international responses to this public security gap—essentially mobilizing individual civil police (CIVPOL) and other law enforcement and judicial personnel—suffer from protracted delays and missing capabilities. Efforts to reconstitute local capacity are likely to take years.

The Institute conducted an assessment of U.S. government capacity for the provision of civilian constabulary units and individual police, judges, attorneys, and corrections personnel to restore public order and foster the rule of law in post-combat situations. The intent was to identify the most promising concepts for creating an operational civilian counterpart across the entire rule of law spectrum to work with military combat forces at the earliest possible stage of an intervention. Operational civilian capabilities are defined as the deployment of civilian personnel to stability operations to perform their professional duties in the mission area. Thus, it was beyond the scope of this study to assess capabilities to train, monitor, or assist indigenous rule of law actors. It was also beyond the scope of this study to consider any military rule of law functions or capabilities that might be required or to address the lack of an integrative structure that encompasses the full array of civilian functions related to stability operations.

To identify capacities to establish a civilian capability, the Institute held discussions with: the Bureau of Customs and Border Protection at the Department of Homeland Security; the U.S. Marshals Service; the National Institute of Corrections; the International Criminal Investigative Training and Assistance Program; the Office of Overseas Prosecutorial Development, Assistance, and Training and the Federal Bureau of Investigation at the Department of Justice; the U.S. Judicial Conference; the Administrative Office of the U.S. Courts and its Public Defenders Division, the National Center for State Courts; the Bureau of International Narcotics and Law Enforcement, the Ambassador at Large for War Crimes; and the Agency for International Development at the Department of State; and the Office of Reconstruction and Humanitarian Assistance for Iraq, the Joint Chiefs of Staff, the Office of Stability Operations and the Office of Reserve Affairs at the Department of Defense. In addition, the Institute consulted with the Office of Civil Crisis Management at the European Union and the Civilian Police Division at UN Department of Peacekeeping Operations.

Closing the security gap requires a spectrum of public order and rule of law capabilities, including:

• **Constabulary (Formed Units)**

Constabulary are recruited, trained, and deployed as formed units and are composed of personnel who have received both military and police training. They are equipped with armored personnel carriers, armed with automatic and crew-served weapons, and can fight as light infantry, if required. They are also equipped with non-lethal weapons and are specially trained to deal with civil disorder, crowd control, and general lawlessness. As police, they can engage in law enforcement and are especially useful in conducting high-risk arrests and in dealing with situations that do not require conventional military forces, but are beyond the capacity of regular police. Creating this type of unit would allow the United States to respond to the security gap between the military and police that has plagued past and current stability operations. It would also greatly enhance U.S. interoperability with European constabularies such as the French National Gendarmerie and the Italian Carabinieri in international missions.

- **Police (Patrol Officers and Criminal Investigators)**

Police are recruited as individuals. Police conduct street patrols, direct traffic, perform criminal investigations, assess and gather intelligence, apprehend common criminals, and deal with gray and black market activities and organized crime. In addition to engaging in law enforcement, a rapidly deployable cadre of police would accelerate the process of vetting, reconstituting, and supervising the local police.

- **Judges, Attorneys, and Court Staff**

U.S. judges, prosecutors, defense attorneys, and court staff would provide the intervention force with the ability to conduct detention hearings and court cases, particularly politically volatile cases dealing with former officials, spoilers, organized crime figures, and violent extremists that are beyond the capacity of the local justice system. They would be available to conduct assessments of the capacity of the local system of justice, to advise and assist military and civilian authorities in filling voids in an emergency justice system, to help reconstitute the local system by participating in the vetting and appointing of local counterparts, and to monitor the performance of the local system.

- **Corrections Officials**

An immediate need to house and care for large numbers of criminal detainees exists in every post-combat environment. Intervention forces have a compelling security requirement to get violent criminal offenders off the streets, yet the lack of detention facilities often translates into their release after only a few days. Corrections officials could rapidly stand up and manage detention facilities in accordance with international standards. They could handle prisoner intake, detention, prison facility rehabilitation, and the training of indigenous corrections personnel.

Existing Capacity

U.S. Operational Civilian Capacity

- **Bureau of International Narcotics and Law Enforcement Affairs (INL), Civilian Police (CIVPOL) Office, Department of State**

INL has the only program in the U.S. government that provides operational capacity for stability operations. This capacity has been limited primarily to providing police for international police missions through a private contractor. Various other agencies have identified U.S. personnel on an *ad hoc* basis for service in peace and stability operations in rule of law functions.

Functions: Responsibility for U.S. participation in international police missions rests with the CIVPOL Office within INL. The State Department utilizes commercial contractors to recruit, train, and provide administrative and logistic support to U.S. CIVPOL contingents serving abroad. Police officers participating in the U.S. CIVPOL program are independent sub-contractors who receive a fee for service. The U.S. is the only country to use contractors of a commercial firm, as opposed to police officers in national service, for UN and other missions.

As of March 2004, there were over 500 U.S. police serving in UN CIVPOL operations in Kosovo, Liberia, East Timor, and Sierra Leone. American CIVPOL also served in Haiti, Bosnia, and Croatia. These personnel are supported by the INL CIVPOL Office that has a staff of 5 to 7 members. INL provides policy guidance and supervises the work of a commercial contractor, currently DynCorp, which employs approximately 150 administrative personnel in the U.S. and abroad to recruit and support U.S. CIVPOL personnel at a cost of \$80–100 million per year. This does not include the multi-billion dollar contracts let to DynCorp and other commercial firms for Iraq. Contracted U.S. police serving in peace operations receive salaries and benefits from DynCorp that can amount to more

than \$85,000 a year, plus a substantial bonus upon completion of their contract. DynCorp's workers arrange travel; provide uniforms, weapons, and equipment; conduct orientations and training programs; handle salaries and benefits; and provide medical and administrative support in the field. INL also engages in various activities to inform U.S. police departments about the CIVPOL program and to encourage U.S. police officers to volunteer. INL pays for the police advisor at the U.S. Mission at the UN and has seconded a police liaison officer to the Organization for Security and Cooperation in Europe (OSCE). INL has funded the creation of a 'ready roster' at DynCorp containing the names of several hundred police and other experts to support training and assistance programs conducted by OSCE.

Training: Immediately prior to departure for international duty, prospective U.S. CIVPOL candidates must complete a nine-day "Police Assessment Selection and Training Process" conducted by DynCorp. The process combines selection screening, administrative briefings, skills training, and orientation. It includes a battery of psychological and medical tests; refresher courses in police skills and firearms; and briefings on UN, peacekeeping, human rights, foreign living, and the country of assignment. Officers learn whether they have been selected to go abroad at the end of the program.

Issues: The provision of uniformed, armed police with executive powers and the authority to use deadly force is an inherent function of government. American CIVPOL wear U.S. uniforms, carry weapons provided by the U.S. government, may have authority to shoot to kill but are made available for international service as subcontractors of a commercial firm. The U.S. is the only country to use contractors, as opposed to police officers in national service, for UN and other international missions. U.S. police come from state and local agencies of widely varied size and character and from unique regional law enforcement subcultures that often do not prepare them for the unique challenges in stability operations. There have also been incidents of serious misconduct. Since U.S. police are legally independent subcontractors of a commercial firm, the State Department's ability to exercise close supervision is severely limited. The Justice Department has ruled that U.S. CIVPOL serving abroad are beyond the reach of U.S. law, so punishment for cases of gross misconduct has been limited to repatriation.

Responding to recurring international requirements for law enforcement personnel is one of the nation's chronic, unmet national security challenges. The objective should be to ensure that only qualified personnel are sent abroad, that strict accountability and discipline are maintained, that a timely response to contingencies is available, and that learning is institutionalized. Resorting to contractors to fill this demand is an inadequate, *ad hoc* response that is only warranted when no reasonable alternative exists. Meeting this challenge properly requires the development of a dedicated, professional reserve of law enforcement officers who are trained and available for international service.

Responding to recurring international requirements for law enforcement personnel is one of the nation's chronic, unmet national security challenges.

International Operational Civilian Capacity

The UN and European Union (EU) are the only international organizations that have established mechanisms that could be used to mobilize and deploy a significant operational civilian capability.

- **United Nations**

Functions: International CIVPOL forces have become an essential element in peace and stability operations. The authorized number of UN CIVPOL reached a high point of 8,696 in 1999, which reflected an increase of nearly 300 percent in one year. As of January 2004, there were 4,633 CIVPOL serving in ten missions. The majority were in Kosovo (3,691), East Timor (319) and Liberia (312). These missions also included Special Police Units (constabulary units). In addition, the UN employs approximately 15 international judges and 15 international prosecutors in Kosovo (UNMIK) and a smaller number of both in East Timor (UNMISET). There also are UN police missions in the Democratic Republic of Congo (134), Sierra Leone (130), Cyprus (47), and Guatemala (1).

The UN maintains a roster of police from member states who are prepared to serve in peace operations. Part of the “UN Standby Arrangements System,” the roster is of limited utility since it only contains names without identifying the individual’s job skills. The CIVPOL Division has modified the Standby Arrangements, however, to maintain the capability to mobilize 100 personnel for a rapidly deployable police mission headquarters. The UN has drafted job descriptions for the specialists required, and Sweden and Denmark have committed to fill specified posts. Argentina, Gambia, India, and Zambia have provided the names of 420 personnel; however, no training has been conducted. The United States is unable to participate because we can only recruit personnel by engaging a contractor when an actual mission arises and Congress makes funding available.

The only international judges and prosecutors available for immediate deployment in the event of a new peace operation are those currently serving in existing missions or on the staff of UN organizations. The UN Department of Peacekeeping Operations (DPKO) has established a mechanism that would allow UN Rule of Law “advisors” to be transferred from UN staff or on-going field missions to a new mission within a matter of weeks, but the duration of deployment can be no longer than 90 days. They must then return to their original assignments. To staff a new mission with new judicial personnel, the UN must use its standard hiring process.

As a result of recommendations by the UN Experts Panel on UN Peacekeeping (the Brahimi Commission), the UN CIVPOL Unit was upgraded to a Division, affording it equal status with the military in DPKO, and its staffing was increased from 7 to 23 officers. The CIVPOL Division now has one attorney covering judicial reform and one penal management expert, but no judges or prosecutors. The Division must still rely upon other offices in DPKO for logistics, training and administrative support. Its responsibilities for pre-deployment testing of potential CIVPOL personnel mean that a significant number of staff is often absent from New York.

Issues: United Nations police missions are composed of individual civil police officers and formed police units contributed by member states. The UN does not have standing forces or the ability to recruit forces without Security Council authorization and the cooperation of donor countries. Deployment of UN CIVPOL in significant numbers can take 6–9 months from the time the Security Council authorizes a mission. This leaves a critical gap at the beginning of a stability operation. This deployment gap can only be shortened if member states themselves develop a surge capacity to deploy qualified police, which only a few have attempted to do. Quality of personnel is also a chronic problem. Despite recent efforts, over 70 percent of the police proposed by donor countries failed UN administered tests of their English language and driving skills. Those selected, particularly from developing countries, often display gaps in training and experience that substantially limit their effectiveness.

- **European Union**

Functions: In 2001, the European Union created a Police Unit with a staff of eight as part of its broader effort to develop a crisis response capability. The Police Unit has now exceeded its “headline goal” to have available for international service 5,000 civilian police (including a 1,400-member rapid reaction force on 30-day notice) and 200 judges, lawyers, and corrections officers (60 of whom are on 30-day notice). Most of the rapid reaction forces are constabulary units provided by police organizations such as the Italian Carabinieri.

Some 2,800 EU police are serving in EU missions or as UN CIVPOL. This leaves roughly 2,200 police available for other international duties. The number of judges, lawyers, and corrections officials actually pledged is 280, exceeding the headline goal. None are currently deployed. Personnel not deployed remain in their home countries.

The EU Police Unit has established job descriptions, doctrine, and procedures to guide its crisis response capability. It has also developed training courses and exercise programs for the police and is developing them for judges, lawyers, and corrections officials. It is an integral component of the EU pre-mission assessment and planning process.

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In January 2003, the EUPM replaced the UN International Police Task Force that had trained and monitored the Bosnian police. The European Union Peace Mission is composed of 500 senior police executives who advise and mentor their Bosnian counterparts on police management, operations, and administration. The EU also has 25 police advisors in Albania. Currently under consideration are possible deployments of some 200 police officers to Macedonia and some 50–70 police trainers to the Democratic Republic of the Congo.

Proposed Operational Capacity

Capacities exist within U.S. government agencies that could be mobilized to fill the security gap in stability operations.

Capacities exist within U.S. government agencies that could be mobilized to fill the security gap in stability operations. These skill sets include a) the ability to recruit qualified police, judicial, legal, and corrections personnel; b) the ability to conduct training and exercises; c) the ability to engage in operations associated with constabulary forces; and d) the ability to collect and assess intelligence, conduct investigations, and combat terrorism and organized crime. While many critical skill sets exist, they are scattered among agencies, at different levels and in different branches of government. The United States has no civilian constabulary forces, however.

The optimal way to develop an operational civilian counterpart to work with military combat forces across the entire rule of law spectrum would be to establish a single federal **Office for Rule of Law Operations (ORLO)**. This office would have the permanent authority to recruit, deploy and manage constabulary units and individual police, judges, attorneys, court staff, and corrections officers in peace and stability operations. Funding and program implementation should be combined in a single organization. The operational personnel mobilized by this office should be maintained as **Rule of Law Reserves (RLR)** rather than as a permanent, standing unit. Incorporating ORLO into an agency or organization for stability operations that addresses the full range of civilian post-war reconstruction and stabilization activities would be essential for integrated and effective planning and implementation of stability operations. This report, however, focuses specifically on the development of a rule of law capacity for the U.S. government and does not address the wider problem of the lack of an adequate structure to integrate all elements of stability operations.

Office for Rule of Law Operations

A civilian Office for Rule of Law Operations (ORLO) would oversee a U.S. capability to deploy stability police units, individual police, judges, attorneys, court staff, and corrections officers.

Functions: A civilian Office for Rule of Law Operations (ORLO) would oversee a U.S. capability to deploy stability police units, individual police, judges, attorneys, court staff, and corrections officers. The office would screen and provide advance preparation for these personnel so they would be able to deploy as soon as conditions warranted to assist military combat units with public order and law enforcement functions involved in peace and stability operations.

ORLO would be responsible for formulating operational policy and directing U.S. participation in the rule of law aspects of peace and stability operations. It also would be responsible for creating and managing the civilian Rule of Law Reserves. Overall, ORLO would have the following functions:

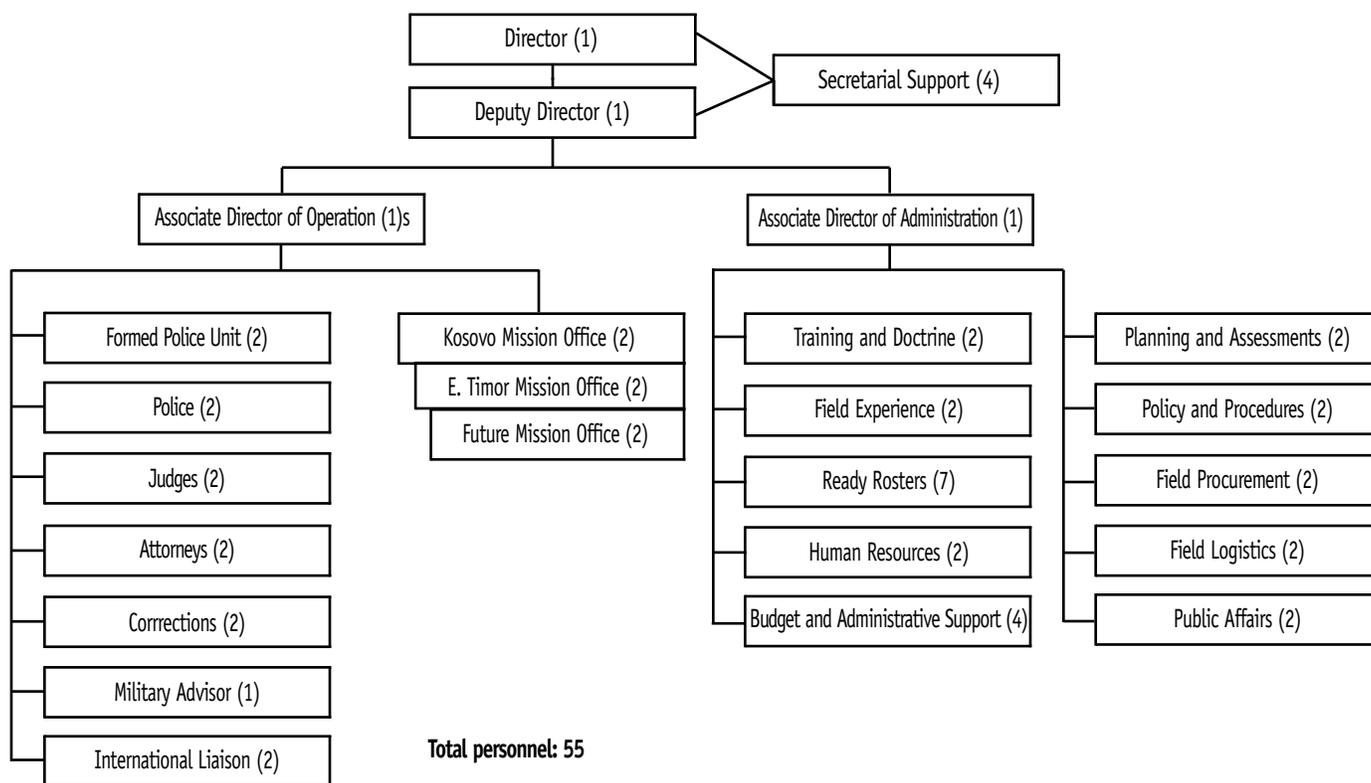
ORLO should have a permanent staff, including experts in all the relevant areas of operational expertise, plus strategic planners and administrative specialists.

1. Formulate policy and perform strategic planning for stability operations;
2. Develop joint doctrine for use with the military and international forces to ensure maximum interoperability;
3. Conduct field assessments and mission planning;
4. Recruit personnel for the reserve roster and keep it current;
5. Engage in liaison with DOD and federal, state, and local civilian authorities;
6. Provide training and organize exercises for personnel on the reserve roster;

7. Procure and maintain vehicles, communications gear, and other necessary equipment;
8. Manage field operations;
9. Participate in the interagency process;
10. Coordinate with the United Nations, regional organizations, and governments to insure maximum interoperability;
11. Administer the program, including personnel management and logistical support.

Staff: ORLO should have a permanent staff, including experts in all the relevant areas of operational expertise, plus strategic planners and administrative specialists. The head of the office should be a member of the Senior Executive Service (or equivalent) with relevant expertise and broad experience in stability operations. A staff of officials hired for their international rule of law experience should be assembled. The initial personnel complement for ORLO would be between 55 and 60 personnel organized as follows:

ORLO Organization Chart



Budget

A total budget for the Office of Rule of Law Operations would include separate categories of expenditures for headquarter operations and for the Rule of Law Reserves (RLR). For the purposes of this report, a budget has been estimated solely for ORLO headquarters operations. Any budget for the Rule of Law Reserves would depend upon the choices made in the type of “reserve” model or combination of models chosen.

Allowing for start-up costs and a higher number of senior level personnel than is the case for the International Criminal Investigative Training Assistance Program (ICITAP) and Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), the estimated budget for ORLO’s headquarters operations would be between \$15 and \$30 million. If ORLO

were to assume the responsibilities associated with current U.S. CIVPOL missions in the field (excluding Iraq), an additional \$100 million would be needed for administrative and logistics support at the current level of expenditures. That figure may change as ORLO chooses the most cost-effective and efficient means of supporting personnel in the field.

Cost Estimates for Rule of Law Reserves

The following approximations are based on current, advertised salaries for recruitment of U.S. personnel for Iraq: senior police advisors and section chiefs, \$155,000; judicial officers, \$105,000; police (salary and per diem), \$85,000; and all other positions, \$75,000 (e.g. corrections). The figure for police is based on previously advertised salaries for U.S. CIVPOL. Training and outfitting expenses at \$7,500 per police officer are based on the current nine-day pre-deployment screening and training program.

Location

Two considerations are dominant in evaluating the bureaucratic location for the Office of Rule of Law Operations. One is the ability to integrate the full spectrum of rule of law related disciplines. This is a challenge since the skills required are not only dispersed across different branches of the federal government, but they must also be derived from disparate levels of government, including state and local authorities. The second dominant consideration is the capacity to deploy and manage these personnel internationally. No existing entity of the federal government maximizes both of these criteria.

While both the Department of State (DOS) and the Department of Justice (DOJ) have the size, resources, capabilities, and experience to manage ORLO, the most suitable location would be the Department of State, for the following reasons:

- **The Department of State**

Housing ORLO at State would combine policy formulation, funding, and implementation in a single department. It would benefit from the State Department's experience and competence in operating abroad. The international operations "150" account is the most likely vehicle for funds. Congressional appropriators normally would not provide funds to the Justice Department for international activities.

Within the State Department, the most suitable location would be within the Office of the Secretary of State. This is the model used for the Office on Counter Terrorism and the Coordinator of U.S. Activities to Combat HIV/AIDS Globally, which were established to deal with new challenges facing the U.S. This location would give ORLO the high bureaucratic profile and direct access to senior department officials and the secretary of state that its mission requires. It would also enable ORLO to operate effectively in the interagency process.

Placing ORLO at State would separate it from the 'training' offices for local police and prosecutors, the International Criminal Investigative Training Assistance Program (ICITAP) and Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) that are located at Justice. This might reduce ORLO's effectiveness, as the training and development of indigenous forces is essential to a lasting peace. It reinforces the need to create an effective interagency planning process to integrate the programs at Justice with an office such as ORLO. Consideration has been given in both the current and previous administration to bringing the training of local police under the Department of State.

- **The Department of Justice**

The Department of Justice is the nation's 'law firm' and the home of its primary federal law enforcement agencies. Justice could provide some of the required personnel from its various law enforcement agencies. DOJ also includes ICITAP and OPDAT, which are

Housing ORLO at State would combine policy formulation, funding, and implementation in a single department.

responsible for training local law enforcement and judicial personnel. On the downside, DOJ lacks an international division (bureau), so the agency's international activities are spread throughout the organization. Justice regards itself as a domestic agency. Its core mission is domestic criminal prosecution. DOJ could house the new organization, but would need to create a new international division under an assistant attorney general. This bureaucratic entity could include both ORLO and ICITAP and OPDAT, combining the operations and training capacity for rule of law activities. Creating a new division might take time and could delay organization of the new office. Finally, DOJ's congressional oversight and funding are entirely separate from the international affairs "150 account," which would likely fund this program.

Thus, situating ORLO at State would avoid serious disadvantages associated with the Department of Justice for this purpose, and would benefit from the State Department's clear advantages, which include:

- The administrative ability to support international activities in austere and culturally diverse locations;
- Ease of coordination with multilateral institutions;
- Routine participation in the national security policy making process; and,
- The ability to establish the office promptly and make it operational.

Rule of Law Reserves

A permanent, standing force would not be warranted primarily because of the episodic and widely fluctuating nature of the demand. The U.S. National Guard and U.S. Army Reserve offer a more appropriate model for the structuring of rule of law capabilities.

Police, judges, attorneys, court staff, and corrections officials selected for participation in future missions must receive adequate preparation, involving generic and mission specific training. In particular, training should include courses in cultural sensitivity, foreign legal systems, and international law. There should be recurrent opportunities for participants to test their skills by participating in realistic field exercises, involving foreign nationals and locations. There should also be opportunities to train with U.S. and, if possible, foreign military units. This will be particularly essential for members of the stability police units since they must be prepared to function in a mutually supportive and integrated manner with intervening military forces in the immediate aftermath of combat operations. Training programs could be conducted at existing U.S. training centers for law enforcement, corrections and judicial personnel, and at military training centers.

For "sizing" each of the rosters below, the major factor to consider is the current level of international demand for U.S. personnel in each category. To sustain this commitment over time, and to provide a "surge" capability for future contingencies, the number on the roster should be double or perhaps triple the current demand. Each major category maintained on the reserve roster ought to have a minimum of 50 personnel to ensure immediate availability of adequate numbers in a crisis. It would be incumbent on ORLO to adjust these totals on the basis of experience.

Concept of Operations

In developing a capability to conduct rule of law operations, the U.S. should ensure the flexibility to employ the Rule of Law Reserves across the entire range of potential circumstances. This would include employing the RLR unilaterally with U.S. combat units, bilaterally with coalition partners, and multilaterally with international organizations such as the UN or the EU.

One basic consideration for the public order mission is the immediate need for constabulary or formed units to deal with rampant lawlessness and civil disorder. After areas of conflict have been sufficiently pacified, individual civil police would be deployed.

A permanent, standing force would not be warranted primarily because of the episodic and widely fluctuating nature of the demand.

At the moment, no U.S. doctrine exists for the use of constabulary units and other civilian rule of law specialties in concert with military units (including standard combat units, Special Forces, and Military Police) in the aftermath of major combat operations. To make prudent and effective use of these assets, the U.S. Army and ORLO will need to develop doctrine and familiarize commanders with it. The EU has articulated a doctrine of “mutually supportive operations” for police and military. To maximize interoperability in coalition and multilateral operations, our doctrine should be compatible with that of our likely partners.

There are a variety of potential command and control arrangements that could be used, depending on the circumstances. Civilian constabulary or formed units could be included either under the military chain of command or under the control of an international police commissioner. Rule of Law Reserves could form a “Rule of Law Pillar” under an international authority and perform the full range of functions when indigenous institutions could not be relied upon. The rapid deployment of international civilian rule of law expertise would accelerate the reconstruction of indigenous institutions. As the local situation improves, the international presence can concentrate on training, monitoring, and mentoring.

Constabulary units would perform a range of mutually supportive, public order functions that fall between the normal missions performed by military units and the police.

- **Constabulary (Formed Units)**

Functions: Constabulary units would perform a range of mutually supportive, public order functions that fall between the normal missions performed by military units and the police. While the U.S. does not have such units performing civilian law enforcement functions, the skill sets necessary to create them are found in the Special Weapons and Tactics Teams in United States law enforcement agencies and Civil Disturbance Units in large police departments, as well as in military police units of the U.S. armed forces. The most crucial functions required of these units include the ability to control widespread lawlessness, manage civil disturbances, gather criminal intelligence, provide point security for critical infrastructure and close protection for senior officials, and conduct activities to counter organized crime and terrorism.

Company-size formations of some 125 personnel need to be organized and equipped with armored vehicles and automatic weapons, as well as side arms and non-lethal crowd-control equipment. This would enable U.S. constabulary units to deploy rapidly with their own weapons, transport, communications, and logistical support and contribute to the restoration of public order in an immediate post-combat situation. They would also be able to perform civilian law enforcement functions, including high-risk arrests in cases involving terrorism and organized crime, and accelerate the process of deploying regular police and reconstituting the local police force.

Sizing: In Kosovo, there are ten UN “Special Police Units” with a total of 1,200 personnel. The European Union’s Rapid Reaction Force can deploy 1,000 personnel in “Integrated Police Units.” The Justice Department’s police assessment mission to Iraq recommended a 2,500-member international civilian constabulary force. These numbers suggest the United States initially should develop a constabulary force of around 2,000 personnel.

- **Police (Patrol Officers and Criminal Investigators)**

Functions: In stability operations, police should be armed and have “executive authority” (i.e. the power to make arrests and use deadly force, if required). Police provide area security, gather and assess criminal intelligence, conduct criminal investigations, and perform a broad range of law enforcement functions and citizen services. These include acting as ‘first responders’ in emergencies. They can also accelerate the process of reconstitution of a local police force by serving as trainers, mentors, and monitors.

Sizing: At its highpoint, the U.S. CIVPOL program had 850 officers deployed in three operations: Kosovo, Bosnia, and East Timor. This was roughly 10 percent of the more than 8,000 UN police officers deployed worldwide. As of March 2004, the U.S. had over 500 CIVPOL serving in UN missions. For Iraq, the United States may deploy at least 1,000 civilian police. The U.S. civil police reserve should be triple currently planned deployments, or about 4,500 police.

- **Judges and Court Staff**

Functions: U.S. judges and court staff would conduct detention hearings and court cases, as required. They could also prepare needs assessments for reconstituting indigenous judicial systems and assist with the reconstitution of the local judiciary. Due to a lack of local capacity, intimidation of local personnel, endemic corruption, and/or absence of public confidence in officials of the former regime, international judges are needed to conduct detention hearings and trials in politically sensitive cases (e.g., war crimes, terrorism, organized crime, and politically motivated or inter-communal violence). They provide a safeguard against misconduct by serving on bodies that vet, appoint, and discipline local judges. International judges have performed effectively in Kosovo and East Timor and have been introduced belatedly in Bosnia.

Court legal officers (attorneys) are needed to assist international judges in managing cases, conducting legal research, preparing opinions, and interfacing with military, police, and penal authorities to arrange witnesses, prisoner transport, and crime scene visits. Court recorders are required to provide transcripts of proceedings in English. Chambers clerks would carry out all administrative tasks for the judges, including handling sensitive information. Court administrators would be responsible for managing the overall operation of deployed international judicial and prosecutorial personnel.

Sizing: In Kosovo, the operational deployment consists of 15 international judges, although a larger number would be optimal. Since actively serving judges would not be rapidly deployable if they were sitting on a case, more than triple the number of judges serving in Kosovo (50) should be recruited for the Reserves. Based on experience in Kosovo, there should be one legal officer and one chambers clerk per judge (i.e. 30–45 legal officers and 30–45 clerks), and one court reporter per two judges (25) to meet minimum requirements. International judges each might require a complement of from four to six close protection personnel. A total of 300 close protection experts should be maintained on the police roster for this purpose.

- **Attorneys**

Functions: International prosecutors may need to be inserted into the local judicial system to handle politically sensitive cases. They would also advise and assist the international police and military in the collection and preservation of evidence. They provide a safeguard against misconduct by serving on bodies that vet, appoint, and discipline local prosecutors. They also help foster the rule of law by participating in skills training, demonstrating skills in trial, and recommending reforms. Legal officers are needed to work with prosecutors to help prepare cases, draft legal briefs, prepare evidence for courtroom use, and prepare witnesses for trial.

U.S. Federal Public Defenders have not previously served internationally, but should be recruited to provide legal defense for defendants who appear before international judges with international prosecutors

Sizing: In Kosovo, the operational deployment consists of 15 international prosecutors. Like judges, an actively serving prosecutor would not be rapidly deployable, if he/she were serving on a case. Thus, more than three times the Kosovo number of prosecutors (50) should be recruited for the Reserves. Based on experience in Kosovo, there should be one legal officer for each prosecutor (30–45), one court reporter per two prosecutors (25 to meet minimum requirements), and one clerk per two prosecutors (25 to meet minimum requirements). International prosecutors might require a complement of from four to six close protection personnel, thus an additional 200 to 300 should be maintained on the police roster, above and beyond those required to protect international judges. Defense attorneys would be needed in smaller numbers, so 35 should be included in the Reserves, along with 35 investigators to assist them.

- **Corrections Officers**

Functions: Corrections officers are needed to stand up detention facilities, handle the intake and classification of prisoners, and manage prisons. The lack of facilities, particularly those

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for high-security detainees, has been a significant obstacle to restoring public order and establishing the rule of law. In a post-war setting there is an immediate need to screen the existing prison population to insure that those held for their political and religious beliefs are released. It is also important to determine whether criminals who already served a reasonable sentence can be safely returned to the community. The corrections element should include specialists with jail/detention backgrounds, those with experience in prison management and community corrections, plus specialists in prison construction. Corrections officers with jail and detention experience are concerned with the intake and screening of detainees. They handle persons who have just been arrested and are trained to identify special security threats and health and mental health needs. Prison officials are trained in the management of inmates who have already been convicted and sentenced. Community corrections officials deal with prisoner release and probation programs. U.S. corrections officers would help establish facilities for detainees and ensure prisoners are treated according to international standards. They would also supervise the refurbishment and reorganization of prison facilities and the training of prison managers and staff.

Sizing: The number of corrections officers required for the Reserves should be large enough to include an adequate number of specialists in all four corrections functions. To meet the minimum requirements, an initial group of 50 individuals should be identified and provided pre-deployment training.

Options for Creating the Rule of Law Reserves

The demand for personnel varies depending on the type of rule of law specialty involved. At the high end, the constabulary units and individual police would require a large number of pre-qualified personnel. A significant organizational structure would be required to maintain the constabulary units and individual police officers in a state of readiness. Judges, court staff, attorneys, and corrections officers would be required in much smaller numbers and could be more easily mobilized.

Federalizing the Rule of Law Reserves would place Americans in peace and stability operations on par with those of other nations. Federalizing the members of the RLR through the use of short Civil Service "term" appointments would ensure that government regulations and standards of conduct for recruiting, training, and operations would apply. It would also give the federal government the control it now lacks over American personnel in peace operations. The use of federal Interim Personnel Appointments (IPA) would enable a federal agency to engage state and local officials for short-term missions without endangering their employment status.

The following options for creating Rule of Law Reserves could be used in combination and are not mutually exclusive:

- **Ready Roster**

The simplest approach would be to create a ready roster with the names of pre-qualified personnel who have volunteered for international service. Before being placed on the roster, volunteers would be expected to undergo a background investigation to demonstrate that they possess the required skills and participate in a thorough screening and preparation program.

This approach would be suitable for judges, court staff, attorneys, and corrections officers. In the case of police, much larger numbers would be required. Given that law enforcement personnel are in high demand nationally, this approach would likely attract retired officers and those desirous of leaving their current assignments. It would not offer career prospects for police since international service would not ensure a follow-on assignment but only a return to placement on the roster.

- **Standing Agreements with Local Jurisdictions**

The model for this would be AID's Office of Foreign Disaster Assistance (OFDA), which has standing agreements with disaster assistance teams in various local jurisdictions to assist in times of international emergencies. These teams are trained and equipped to depart on short notice for deployment anywhere in the world. They are part of

existing local capacity, and since the commitments are of a short duration, personnel are not replaced during their service abroad.

This model could be effective for personnel involved with the courts and corrections systems, since the numbers required are small. Prior arrangements for a leave of absence could be made across a range of federal and state agencies so that the impact on each would be negligible. Problems might arise, however, if personnel were required to remain abroad for a year, the normal length of assignment. Given that there are some 18,000 police agencies in the United States, it might be possible to establish such arrangements with many of them, but the number of police that could be drawn from each would be limited. Even the mobilization of individual police would require a large number of agreements to be reached and maintained over time, and there would be little incentive for state and local police departments to participate.

- **Federally Funded Reserves**

Under this option, the federal government would pay a substantial portion of the salaries of personnel who would serve with a state or local jurisdiction until needed. These individuals would be 'over complement' and would be free to participate in periodic training programs for the Reserves and to be called away for service in a stability operation. When deployed abroad, all their expenses would be born by the federal government.

This approach would be most applicable to the creation of formed units. Individuals and teams serving with police agencies in a state or region would train and deploy together. This would also provide a mechanism for individual police to serve internationally while continuing to progress in their profession. This option would require congressional action, new funding, and a larger federal administrative capacity than simply maintaining a ready roster. It would have the benefit of assisting local communities and would ensure the availability of qualified personnel.

Implementation

Immediate steps could be taken to implement the two recommended actions without requiring additional legislative authority.

1. Establishing ORLO

Establishing an initial cadre of personnel for ORLO could be accomplished by transferring staff with expertise from other federal government departments. Personnel serving with the State and Justice Departments and with the Marshals Service, Border and Customs Protection Bureau (DHS), Administrative Office of the U.S. Courts, National Institute of Corrections, and so on, have relevant skills. ORLO's first responsibility would be to take over the management of existing rule of law field operations, including the provision of annual replacements. This would include the 1,500 American police officers serving in Kosovo and prospectively in Iraq.

2. Developing Ready Rosters

Building on the work of the CIVPOL Office at State to develop a roster of police prepared to serve abroad, ORLO could expand this effort to include judges, prosecutors, defense attorneys, related judicial personnel, and corrections experts, as follows:

- **Close Protection and Witness Protection**

The Marshals Service has a database of retired personnel and an association of retired deputy marshals that could be tapped.

- **Criminal Intelligence and Investigations**

The FBI has lists of retired agents that represent a potential pool of personnel for international duty. About 1,000 retire per year. There is also a professional association: the Society of Former FBI Agents.

- **Judges**

A combination of federal, state, and local judicial personnel could be mobilized to establish and run courts (most likely special courts for highly sensitive and ethnically charged cases). The National Center for State Courts has a database of potential consultants including judges and court administrators. Court administrative officers at the state level could also be tapped for prospective candidates for international service.

The Administrative Office of the U.S. Courts maintains a database of active judges, court administrators, and so on, and of retired judicial personnel because the Office administers the payroll. Their database is used to identify individuals with the qualifications requested through the Committee on International Judicial Relations for international missions. For Iraq, the Administrative Office received a request for three judges and some court clerks to deploy for ninety days. In this case, they located candidates by calling the Chief Judge of every circuit.

- **Prosecutors**

Sources include the National District Attorneys Association (NDAA), and the individual state prosecutor associations (especially the larger states with active associations such as California and Texas). The quickest way to advertise and recruit would be through the state associations. For pre-deployment training, which would be devised by the permanent staff of ORLO, the ideal forum would be the National Advocacy Center, situated on the University of South Carolina campus in Columbia, a joint venture of NDAA and the U.S. Department of Justice, which trains federal, state, and local prosecutors through the National College of District Attorneys, the NDAA's training arm.

- **Federal Public Defenders**

The Defender Services Division of the Administrative Office of the U.S. Courts has recently compiled an inventory of defenders with a variety of skill sets and language capacities. At the moment, however, the Administrative Office will not approve administrative leave beyond three weeks for defenders traveling on international rule of law requests. In addition, the defender must be "detailed" to an agency engaged in an international mission, with salaries and expenses covered by that organization. It is unclear whether the federal defender system could spare personnel for long-term assignments.

- **Legal Officers**

One source could be the American Bar Association.

- **Court Clerks**

Sources of recruitment include the Federal Court Clerks Association and the Conference of State Court Administrators.

- **Corrections**

The National Institute of Corrections (NIC) has a database of 1,000 or more names, "from jailers to commissioners," of both active and retired personnel. This database was used recently to provide potential candidates for service in Iraq, including a former Commissioner of Corrections for the assessment team.

Once selected for inclusion in the roster, personnel could begin receiving training and participate in periodic exercises with the military and other participating agencies. The roster would be used to fill vacancies in ongoing missions and provide a 'surge' capacity for undertaking new operations.

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Legal Requirements

Most of the actions required to create both the headquarters organization and the Reserves can be taken under existing legal authorities. There are, however, at least four legal issues that require immediate consideration. They include the following:

- **Authorization to Serve Abroad**

This impacts certain federal law enforcement officers and others seconded by “domestic” agencies, although most agency respondents are permitted to serve abroad under a presidential directive or other emergency declaration. Federal judges by statute may not act in a judicial capacity anywhere other than in the domestic court system to which they have been appointed or elected. The Criminal Justice Act, which establishes and funds the federal public defender system, authorizes the adoption of plans by each federal district to ensure that counsel is appointed to represent indigent defendants in federal prosecutions in those districts and in no other locale. In order for a federal defender to provide defense services to clients in an international administration, therefore, it is likely that the Criminal Justice Act would have to be amended. Federal judges and defenders could be “detailed” to a designated international organization to perform assessments or serve as advisors. A number of states have provisions that would permit state judges and public defenders to serve abroad in an operational capacity. To make it possible for federal judges and defenders to do the same would require modification of relevant legal codes.

- **Liability**

Previous efforts by the State Department to federalize CIVPOL have foundered on the problem of government liability for death and injuries both suffered and inflicted by American personnel. A means must be found to provide liability coverage for federal officers serving abroad. Diplomatic Security at the State Department offers blanket protection for armed personnel abroad and this might provide an avenue for Reserve personnel. In the Department of Justice, blanket protection for officers posted abroad is given routinely.

- **Immunity**

The Justice Department has ruled that contracted U.S. CIVPOL officers who commit crimes abroad are beyond the reach of U.S. law. This has been the case for U.S. CIVPOL officers accused of involvement with trafficked women in Bosnia. Federalizing U.S. CIVPOL would correct this situation.

- **Legislative Authority**

Currently, funds are not directly authorized or appropriated for post-intervention rule of law missions, causing delays and the waste of resources. Provision must be made for ORLO to receive funds directly and with the required authority to utilize them for all the activities conducted in support of its mission.

- **Executive Directives**

At present, there is no national security directive that governs interagency planning and coordination for stability operations. In order for this new office to function effectively, some directive would be essential for defining interagency relations. Second, a presidential directive could assist in a rapid start-up of the office by providing authority for the assignment of personnel from the executive branch.

Conclusion

If a gap in public security is allowed to prevail when an international intervention takes place, the vacuum will inexorably be filled by forces hostile to peace and stability. Lawless, war-hardened networks will cement their informal power bases along with their

A means must be found to provide liability coverage for federal officers serving abroad.

For ORLO to work effectively, however, its contribution must be coordinated with the military and with broader U.S. reconciliation, reconstruction, and recovery efforts.

For more information on this topic, see our website (www.usip.org), which has an online edition of this report containing links to related websites, as well as additional information on the subject.

The magnitude of the burden that can be placed on the U.S. military to perform law enforcement functions in stability operations has been dramatically displayed in Iraq.

dominance over an underground, smuggling, and black-market economy. An international military presence can strive to impose stability, but it cannot alone create conditions that will sustain peace. The capacity to restore order and bring perpetrators of politically motivated violence to justice will always be indispensable for an enduring peace to begin to take hold. Securing the environment is dependent, therefore, on a system of justice capable of incarcerating the most ruthless and violent elements in a society struggling to emerge from conflict. To establish a secure environment requires the integrated efforts of military and civilian professionals to complete the entire rule of law spectrum from criminal intelligence to incarceration.

The magnitude of the burden that can be placed on the U.S. military to perform law enforcement functions in stability operations has been dramatically displayed in Iraq. Reliance on a small office, located in a State Department Bureau, working through commercial contractors to procure police and other rule of law personnel to serve abroad, has not been adequate to the task of lifting the burden being borne by the military.

Creation of a Rule of Law Reserves would enable the U.S. to mobilize highly trained, federally formed police units and civil police officers, plus judicial and corrections personnel to serve in a broad range of international interventions. This would provide the means to rapidly establish a system of justice alongside military forces in the initial chaotic environment following the end of formal combat operations. The proposal described in this report is based on the use of skill sets resident in the U.S. government and those that exist on rosters at the federal, state, and local level. It is a realistic, actionable proposal. Federalizing U.S. personnel would enhance accountability and provide direct U.S. government oversight of field operations. An Office of Rule of Law Operations would provide a U.S. government interface with the UN, European Union, and other international organizations and enable the United States to exert professional leadership in developing common doctrine and planning future operations. This is a necessary first step to manage our current involvement in stability operations and to respond to future contingencies.

For ORLO to work effectively, however, its contribution must be coordinated with the military and with broader U.S. reconciliation, reconstruction, and recovery efforts. A permanent interagency process, managed by the National Security Council, is a critical and necessary pre-requisite for civil-military coordination to occur. Ideally, ORLO itself should be placed within a new agency or organization for stability operations that encompasses all crucial civilian functions such as war crimes prosecution, humanitarian assistance, governance, media development, reconstruction, and reconciliation activities. The recurring requirement for the U.S. government to intervene rapidly in unstable environments, demonstrated over the past fifteen years, shows no sign of dissipating. A restructuring of the U.S. government for stability operations must also be seriously and urgently considered to address the challenges involved in forging a secure and stable peace.



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