



Conviction-Focused Targeting: Targeting Violent Extremists While Developing Rule of Law Capacity

by Steve D. Berlin

Stability operations present unique, simultaneous challenges to traditional intelligence-driven operations and rule of law (ROL) development.¹ As units expand from purely offensive operations into increasing stability operations, host nation entities must concomitantly become increasingly responsible to suppress violent extremist networks (VEN) and other criminals within their borders. However, even though the host nation authorities are to assume more responsibility for VENs and other criminal activities as stability operations evolve, the conundrum is that these extremists often remain the primary focus of U.S. Forces (USF) because they pose the largest threats to host nation, and hence regional, stability.² In order to be effective, intelligence-driven targeting within stability operations must operate in conjunction with the host nation legal systems. During the shift to increasing stability operations, commanders must also shift their targeting philosophy to combat violent extremism by means of the host nation criminal justice institutions. The host nation systems in turn become stronger; thus, USF will target VENs while simultaneously strengthening the host nation ROL systems.

Perhaps the greatest impediment that many commanders face in combating violent extremists during full spectrum operations is that they operate solely on intelligence-based targeting.³ They rely on intelligence to find, fix, and capture violent extremists. These violent extremists then become security or criminal detainees and some commanders then hope that they will one day be punished for their actions.⁴ To ensure these violent extremists are properly punished for their crimes, commanders should instead leverage the host nation legal system. In order to use the host nation criminal legal system, commanders should not look at facts they gather only as intelligence, but also as evidence. Intelligence, in turn, becomes evidence for use in host nation criminal prosecution and this evidence, in turn, also feeds into intelligence.

As USF conduct stability operations; or, more importantly, shift from offense focused operations to increasing stability operations, units must find practical methods to simultaneously

¹ See generally U.S. DEP'T OF ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS, paras. 1-40 to 1-43 (Oct 2008) (discussing ROL in stability operations.)

² See LIANA SUN WYLER, CONG. RESEARCH SERV. REPORT, WEAK AND FAILING STATES: EVOLVING SECURITY THREATS AND U.S. POLICY, RL 34253, at CRS 9-13 (2008) (discussing the effects of failing states and the instability that can arise; specifically, regional instability).

³ I use the term intelligence broadly to include any fact, however derived, that cannot be readily delivered to host nation legal systems.

⁴ See Gia Chon, *U.S. to End Iraqi Detainee Operations by August 2010*, WALL STREET JOURNAL, Sep. 18, 2009 (available at <http://online.wsj.com/article/SB125319775557819733.html>) (last visited XXX) (detailing that the U.S. still had over 8,000 detainees in U.S. detention facilities and that only 1,360 detainees had been transferred to Iraqi authorities pursuant to a warrant, detention order, or conviction.)

support ROL development while targeting violent extremists. This article posits a model when USF and the host nation conduct stability operations by working as true partners. While this article is Iraq-centric, its methodology applies to any host nation legal system. Commanders should work alongside host nation legal systems however they are aligned. Thus, when units then plan to target violent extremists, they should do so using a law enforcement partnership model that focuses on convictions rather than stopping at the warrant threshold. Doing so moves us past a catch-and-release program while simultaneously strengthening host nation institutions and removing violent extremists from the operating environment.

Commanders should therefore create prosecution support teams. These teams pull together a brigade combat team's organic Soldiers, Department of State personnel, and contractors to team with host nation security forces. The combined forces then create a task force that targets VENs. The USF will deliver evidence and evidentiary leads to their host nation partners. Together they will develop criminal cases to eliminate the VENs using the local judicial system. The ultimate goal of the organization is not simply kill or capture, but for the local courts to convict the violent extremists and for them to face punishment. This method not only targets VENs and eliminates them from the community, but also simultaneously builds rule of law institutions. Thus, the U.S. will leave the host nation more capable of controlling its own security.

Targeting in Stability Operations

USF traditionally focuses on intelligence to select and target violent extremists during offensive operations.⁵ During initial offensive operations, USF operate in an environment where a host nation legal system is likely not functioning.⁶ For example, early in Operation Iraqi Freedom USF combated violent extremists by gathering intelligence on suspected extremists. Commanders then sought to capture them in raids and cordon-and-search operations. Under this type of intelligence-driven operation, violent extremists remain detained by USF until they are returned to host nation control via either criminal prosecution or release.⁷ The problem with this type of operation is that the underlying reasons USF continue to hold the violent extremists is usually classified intelligence, which usually limits its use in host nation

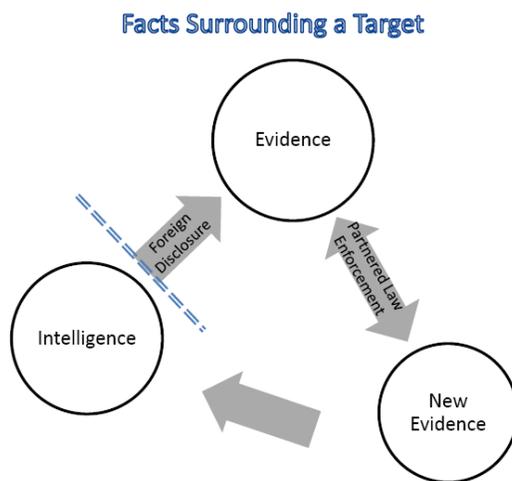


Figure One. Graphical depiction of relationship between intelligence and evidence

⁵ See LTC David N. Propes, *Targeting 101: Emerging Targeting Doctrine*, FIRES, 15 (Mar.-Apr. 2009).

⁶ See David C. Morzenti, *Judicial-Police Interaction in Al Anbar Province*, in *RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES* 286, 286-288 (2008).

⁷ Agreement Between the United States and the Republic of Iraq On the Withdrawal of the United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, U.S.-Iraq, Nov. 17, 2008 [hereinafter Security Agreement]. art. 22, para. 4; See generally Chon *supra* n.XX (describing the detainee release process in Iraq).

criminal prosecution. Major W. James Annexstad, a former detainee operations attorney, echoes this sentiment stating,

the [Judge Advocates] evaluating [detainee] cases routinely encounter the reality that the evidence on a particular individual is classified because it was derived through intelligence sources as opposed to investigative sources. As most of the information derived from the intelligence community is classified, it cannot be presented to the judge during the [investigative hearing]. Without any additional evidence, [Judge Advocates] are left with no other option than to send the file to the [combined review and release board] for review. The intelligence community is not concerned with building a criminal case, but is more concerned with finding terrorists and getting bad guys off the street. Without a change in procedure, this problem will continue to hamper the building of criminal cases against these individuals.⁸

To bring evidence to the host nation legal system in these cases, USF must go through an intensive foreign disclosure process to disclose some of this intelligence to host nation criminal investigators and courts.⁹ Leads dry up as time progresses, further mitigating the value of the information USF are willing to transfer to host nation authorities. Exacerbating the situation is the relative inexperience of Soldiers dealing with basic evidence gathering.¹⁰ Soldiers are not law enforcement agents and are prone to not collect evidence necessary to facilitate prosecution when they detain violent extremists.¹¹ Thus, there is often little, if any, evidence that host nation legal systems can use to prosecute and convict them upon transfer.

Commanders should look beyond intelligence-driven operations and instead employ the host nation criminal justice system to arrest and prosecute violent extremists. This requires a significant cultural shift to the method that commanders view facts and operations. In the wake of the U.S. and Iraq entering in the bilateral security agreement,¹² commanders recognized that they must have a warrant issued by an Iraqi court to target or detain anyone in Iraq.¹³ However, commanders in this environment are inclined to adapt their targeting process by selecting a target

⁸ W. James Annexstad, *The Detention and Prosecution of Insurgents and Other Non-Traditional Combatants—A Look at the Task Force 134 Process and the Future of Detainee Prosecutions*, THE ARMY LAWYER, 72, 80 (July 2008).

⁹ See generally AR 380-10 (describing the foreign disclosure process. In general, an organization must go to the original classification authority to disclose classified information. Para 2-8).

¹⁰ See Army Tapes Review Motive In Iraqi Prisoner Killing (detailing an incident where Soldiers murdered Iraqi prisoners. One of the defense attorneys, Frank Spinner, argued “soldiers are not trained to be police officers who collect evidence. As it was, they had to take off their soldier helmet, put on their cop hat, take them to a civilian sort of police station and show evidence that these were people that were shooting at them and if there wasn't enough evidence then they were gonna be released on the street ... But soldiers aren't trained to be cops, and they're not trained to collect evidence and they're not trained in the ways of civilian criminal prosecutions.”) (last visited 9 May 2010) (on file with author).

¹¹ *Id.* To ameliorate the lack of basic criminal evidence skills, Soldiers must learn basic crime scene exploitation skills, such as questioning witnesses, photographing a crime scene, and preserving physical evidence in order to document crimes so the evidence may be later used in host nation courts. The Soldiers may also export these skills to training their host nation partners.

¹² Security Agreement *supra* n.xx, art. 22.

¹³ See Presentation by LTC Matt McDermitt, Warrant Based Targeting (describing the Security Agreement's impact on planned targeting) (on file with author).

using intelligence-driven operations and then attempting to secure a warrant from host nation courts.¹⁴ The desire for a warrant then would drive the system.¹⁵ Unfortunately, USF often does not release the intelligence or find methods to properly convert the intelligence into evidence for the host nation criminal justice system.¹⁶ Arrested extremists are then frequently released from custody.¹⁷ To remedy this problem, units should leverage their Judge Advocates and law enforcement professionals to convert intelligence into evidence.¹⁸ Then commanders should partner with host nation law enforcement to prosecute violent extremists using the host nation criminal justice system. Not only will this remove violent extremists from the environment, but will also have a lasting effect to deter other criminals as they see the extremists punished.

Rule of Law Development

While USF work to eliminate violent extremism, they concurrently work with interagency partners to enhance ROL capacity during full spectrum operations.¹⁹ As military operations involve more stability vice offensive operations, ROL capacity building should focus heavily on developing host nation legal institutions throughout the host nation's various agencies.²⁰ Legal institutions are fundamental to maintain basic order and function in society. Comparative law scholar Dan Stigall stresses the importance of legal institutions stating that they are vital to "resolve disputes, punish the criminal and uphold the rule of law."²¹ He further explains the U.S. Government's need to focus on ROL, because "[s]uch judicial reconstruction benefits local populations by sparing them from the victimization and instability that accompanies anarchy."²² Accordingly, the U.S. Government must help create a strong legal infrastructure to allow the host nation government operating within the rule of law to maintain order within its own borders.²³

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ There are some organizations and individuals that are proponents of similar targeting methodologies. In Iraq, these include the Law and Order Task Force and the Combined Joint Special Operations Task Force. In Afghanistan there are many more proponents of this methodology throughout all levels of command, including CJTF-82, JTF-435, Task Force Rakkasans, and the Asymmetric Warfare Group. From conversations with members of these organizations while writing this paper, it appears that there are many proponents of seeking synergy between targeting VENs and developing ROL capacity.

¹⁷ See Annexstad, *supra* note XX at 81 (citing Michael Moss, *Iraq's Legal System Staggers Beneath the Weight of War*, N.Y. TIMES, Dec. 17, 2006, at A1) (stating that as of 2007 the USF in Iraq "detained roughly 61,000 individuals" and that "roughly 3000 have been charged and tried in Iraqi courts" with nearly 43,000 having been released).

¹⁸ The Army's Law Enforcement Professionals (LEP) are contractors with extensive law enforcement experience that join units in the field to strengthen their ability. Statement of Work for Law Enforcement Professional Contract (Nov 9, 2009) (on file with author).

¹⁹ U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS, para. 3-2 (Feb 2008) [hereinafter FM 3-0], para 3-73.

²⁰ See Dan E. Stigall, *Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction*, 29 LOY. L.A. INT'L & COMPL L. REV. 1-6 (describing the importance of legal institutions during post-conflict reconstruction); see also F.M. 3-0, para. 3-2 (discussing the various mission foci throughout the range of army operations).

²¹ Stigall, *supra* n. xx at 5.

²² *Id.*

²³ Thus, Rule of law development is a vital portion of early stability operations.

One vital element of ROL development is to focus on the criminal justice system because it enhances host nation security.²⁴ Just as the United States has various components involved within law enforcement, the host nations that it supports through stability operations also often have various departments as part of their criminal justice system.²⁵ As these host nation institutions mature, USF should partner with these agencies to develop ROL and host nation capacity. This allows both host nation entities and the U.S. Government to achieve synergistic effects as each brings different capabilities to the partnership, while allowing the U.S. Government to mentor and guide host nation counterparts.²⁶

While maneuver commanders targeting violent extremist networks must shift from intelligence-based operations towards using the host nation justice system, entities focused on developing ROL must likewise shift their energy focus. During Operation Iraqi Freedom, USF began building capacity by rebuilding the physical criminal justice structures. Then, Department of State (DoS) Provincial Reconstruction Team (PRT) ROL Specialists, Judge Advocates, and Police Transition Teams (PTT) focused on developing their counterparts' ability to function whether it involved training, automation, physical security, or other tasks.²⁷ As the capacity continues to build, the need for USF presence in lower levels of government diminishes. Now, the individual agencies are functioning and the U.S. Government should focus its energy on enhancing the host nation's ability to handle cases as they move between agencies; that is, prosecute criminals from crime through convictions.

Meanwhile, the operating environment changes as the security situation improves. As the environment tends to be safer and the host nation institutions become more independent, USF loses access to courts and law enforcement agencies. The reasoning is two-fold. First, during drawdown operations there are less USF to conduct the mission. Maneuver brigades often operate in environments previously held by divisions.²⁸ As a result, there are fewer Judge Advocates, PTTs and Department of State ROL Specialists among others to serve as interlocutors to their host nation counterparts. Second, USF should have a diminished presence in maturing host nation agencies. While USF presence may help individual agencies, USF presence sends a message to the populace that host nation agencies may not operate without USF help. Furthermore, as the agencies gain increased capabilities, they should be coming

²⁴ These were initially called the three C's: Cops, Courts, and Corrections. Advanced ROL activities go beyond these three.

²⁵ E.g. police forces and the judiciary.

²⁶ I use USG to include the totality of U.S. Government assets, in particular the Department of State (DoS); USF focuses solely on the military.

²⁷ See MAJ Robert A. Broadbent, Rule of Law Development in Counter-Insurgency Operations: An Afghanistan Case Study, Rule of Law Handbook 2008, (discussing implementing a ROL program during counter-insurgency operations in Afghanistan. Now-LTC Broadbent's methodology is critical in setting conditions to perform conviction focused targeting).

²⁸ See THE MODULAR BRIGADE AUGMENTED FOR SECURITY FORCE ASSISTANCE HANDBOOK, para. 1-22 (1 Jun 2009) [hereinafter Security Force Assistance Handbook] (discussing the need for more Judge Advocates to serve in advanced stability operations as opposed to offensive operations. The need arises for non-lethal capacity building in stability operations and that units operate in large operating environments. For example, 1/82 AAB's operating environment was previously supported by a Marine Expeditionary Force and three Regimental and Brigade Combat Teams. At Transfer of Authority, 1/82 AAB's two organic Judge Advocates replaced seven regimental and battalion Marine Corps Judge Advocates. This forced the Rule of law team out of having recurring judicial engagements at the district level.)

increasingly assertive and independent, which would likely lead to diverging goals between USF and the host nation agencies.

Conviction Focused Targeting

The changing operating environment requires USF to plan their ROL activities differently. This article proposes a targeting methodology that focuses on combined partnership operations and empowers maneuver forces to leverage enablers, like Judge Advocates, in their mission execution. Maneuver force commanders should work side-by-side with their host nation partners to conduct targeting with conviction focused effects. To do so, commanders must pull together all major entities and enablers and work as equals with their host nation counterparts to eliminate violent extremism with each agency bringing a different capability to the table.

A basic requirement is to create a combined task force in order to investigate complex criminal cases. The number of task forces within a theater of operations is dependent on the operating environment and should align with host nation security leaders.²⁹ The task force should focus on rendering VENs unable to function.³⁰ This task force should resemble an organized crime or anti-gang task force. These require entities from various agencies that can pool their resources and share information across their jurisdictions. Host nation members should include members of the various law enforcement agencies. For example, in Iraq this would include members of the Iraqi Police (IP), Counterterrorism Units, and IP Criminal Investigative Division, along with specialized law enforcement agencies held at the federal and provincial levels. Judicial investigators and representatives from the public prosecutor's office would also participate. On the other side, USF should bring interagency partners such as police trainers, international police advisors, maneuver commanders, DoS Rule of Law Specialists, Judge Advocates, military intelligence personnel, and law enforcement professionals. To make this work, senior U.S. leaders must create a focused engagement strategy to ensure the appropriate level host nation leaders support the combined strategy.

Once created, the parties must find a method to synchronize their efforts. The forces must have a secure location where both USF and host nation forces can interact freely without bringing excessive attention to their combined efforts. This location should be collocated with a combined operations center and include briefing facilities. USF should have a secure facility within the complex to store and synthesize information and to help convert intelligence into actionable evidence.

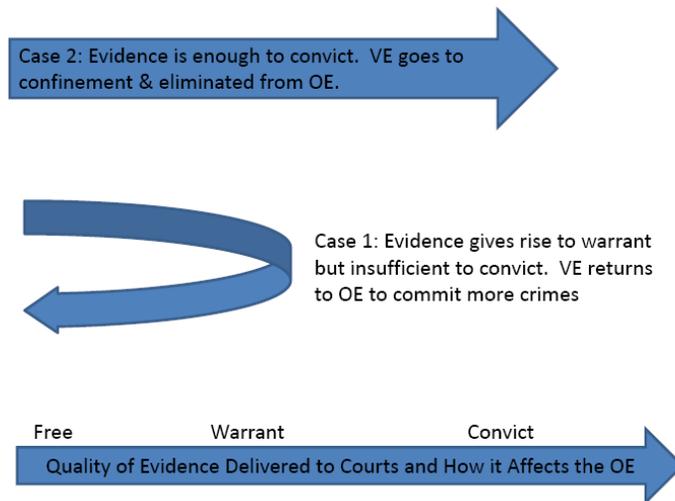
Converting intelligence into evidence is a vital philosophical shift to seek conviction-focused effects. Commanders and staff directorates tend to take all factual information that they gather or create and see it as intelligence. They classify these facts, thus severely limiting the ability to use this information in host nation courts. For example, a unit on patrol may encounter a local national civilian. This civilian would complain about criminal activity and ask the unit to arrest the criminal. The patrol would then receive a written statement and immediately classify the document. Unless the command goes through the foreign disclosure process, USF would not be able to deliver the civilian's statement to a host nation police officer.³¹ The culture of seeing

²⁹ For example, a brigade arrayed across a three province footprint would likely have three task forces depending on the array of host nation security leadership.

³⁰ Some call this "attacking the network." The task force must go further than simply eliminating the leader of the organization. In that case, a rising leader will simply take the place of the fallen leader.

³¹ See generally AR 380-10 (describing the foreign disclosure process).

facts as intelligence becomes a self-imposed obstacle in the commander's ability to pursue illicit activity.



The bilateral security agreement between the United States and Iraq began to force commanders to adapt their targeting methods.³² Under the security agreement, USF had to comply with Iraqi law before making a planned detention.³³ This concept was quickly named “warrant-based targeting.”³⁴ Even in so called warrant-based targeting, commanders focus on securing a warrant and then actioning a target. Conceptually, warrant-based targeting is a name designed to use intelligence-

driven targeting in conjunction with host nation criminal justice systems. Unfortunately, one culture that could arise is that a mission is considered a “success” once the target is apprehended. Such a culture ignores the more long-term effects of only collecting enough evidence to secure an arrest warrant, as compared to the extra effort required to secure a conviction. Missions in an arrest focused culture become a catch-and-release operation where the host nation courts release the targeted extremists after a short holding period for lack of prosecutable evidence. Meanwhile, the local populace begins to question why criminals are being released, thus damaging ROL activities by decreasing credibility in the host nation criminal justice system and also damaging the security environment. USF must instead focus on converting as much intelligence into evidence through foreign disclosure early in the target formulation process.

USF and host nation forces should work side-by-side to develop conviction-focused targeting packets. While USF brings many technological capabilities and financial resources to the combined task force, host nation forces bring a local dynamic and knowledge of the operating environment that visiting forces will never be able to achieve. Therefore, the parties should develop target priorities based upon the evidence that both bring together. Judge Advocates and law enforcement professionals should be integrated into the process early because they both have an understanding of the criminal justice system and have an eye for evidence.³⁵ Commanders should leverage Judge Advocates in particular to help the maneuver forces develop

³² Security Agreement, art 22.

³³ See generally Presentation by LTC Matt McDermitt, Warrant Based Targeting (describing the Security Agreement's impact on planned targeting) (on file with author).

³⁴ See *Id.* at n.3 (describing the various names surround warrant-based targeting).

³⁵ The current Army manning authorizations only allows for two Judge Advocates per brigade combat team during full spectrum operations. The Army should adopt the recommendations of the Security Force Assistance manual and augment AABs with Judge Advocates to work on prosecution support teams.

a better understanding of the requirements of the host nation criminal justice system and the host nation criminal code.³⁶

Targeting now becomes a partnered effort with the ultimate goal of convicting dangerous criminals. These criminals include violent extremists that USF would have previously targeted through intelligence-driven raids to capture violent extremists and detain them in U.S. detention pursuant to detention authority.³⁷ Now, in stability operations, USF must have a paradigm shift to advising and assisting.³⁸ The Army created Advise and Assist Brigades (AAB) to develop security forces while continuing responsibility as a brigade combat team.³⁹ While an AAB looks different based upon mission set, one school considers AAB as a verb, based on its partner focused goals.⁴⁰ This mentality is to focus on capacity building. USF should not meet this with an observer/controller mentality or one that completes missions by USF doing the mission with local forces accompanying to overcome security agreement requirements. Instead, USF must stand shoulder-to-shoulder with their counterparts and both bring something to the fight through robust partnership. In the partnership, each party brings something to the table and work together to enhance their combined effects.

Prosecution Support Team Examples⁴¹

The creation of prosecution support teams would both increase a commander's ability to target violent extremists while simultaneously building host nation ROL capacity. This concept is based upon lessons learned by the 1st Advise and Assist Brigade, 82nd Airborne Division (1/82 AAB) in Anbar Province, Iraq. 1/82 AAB created two task forces, each with a different mission. One task force (TF CLEAT) focused on current operations with heavy focus on Iraqi law enforcement organizations with Iraqi law enforcement agents in the lead. The other was a prosecution task force (TF SPIRE) comprised solely of USF that focused on creating evidence packets to transfer to Iraqi security forces. Each task force had success in their respective areas, the proposed task force builds upon their strengths.

The first task force 1/82 AAB employed was Task Force Combined Law Enforcement Against Terrorism (TF CLEAT), which heavily partnered with Iraqi Police. The brigade formed this task force to provide specialized investigative services to reduce and eradicate terrorism. It

³⁶ Judge Advocates should easily fill the role as an advisor to commanders on prosecuting violent extremists in host nation courts because it is similar to how they advise commanders on Soldiers who commit crimes under the military judicial system.

³⁷ See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 5, Aug. 12, 1949 (outlining an occupying power's authority to hold security detainees).

³⁸ The advise and assist mission requires brigade combat teams augmented with subject matter experts. Security Force Assistance Handbook, para 1-5. These brigades are known as advise and assist brigades. AABs first deployed to Iraq and Afghanistan in 2009.

³⁹ Security Force Assistance Handbook, paras 1-40–1-41.

⁴⁰ COL Mark R. Stammer, Commander, 1st Advise and Assist Brigade (AAB), 82nd Airborne Division, in a discussion about the AAB referring to his partnered-focused vision.

⁴¹ The genesis of this particular idea was the rule of law team at the Anbar Embedded Provincial Team (ePRT) Three. The team members were attorney Mr. Charles Weiss and civilian law enforcement expert Mr. Mark Humphries. Together, these gentlemen built relationships and had the vision to develop host nation capacity in Cops, Courts, and Corrections. I combine the concept with other ideas offered by MPRI Law Enforcement Professional (LEP) John Myers.

partnered the brigade's law enforcement professionals and international police advisors with representatives from the leading Iraqi law enforcement agencies. They worked side-by-side to bring violent extremists to justice, which, in turn increases the security climate and posture. The U.S. law enforcement experts brought years of experience working on major counter-terrorism and counter-drug task forces along with the ability to tap into U.S. capabilities. The Iraqi investigators brought a variety of knowledge and institutional contacts from each of their respective agencies and therefore had ability to accomplish many tasks that USF would struggle to complete. They quickly proved their ability to work the most complex cases, such as improvised explosive device and drug networks. They solved crimes by sharing evidence and resources. They would also exploit physical evidence and question witnesses. They were so successful that the provincial chief of police and courts praised them for their superior product within the first weeks of their existence.

The other task force was called the Special Prosecution and Review Element (TF SPIRE). The purpose of this task force was to enable the brigade's Iraqi partners to prosecute criminal detainees held in the Iraq theater internment facilities.⁴² USF stored the evidence of these detainees' actions on classified computer servers.⁴³ TF SPIRE consisted mostly of military police Soldiers that reviewed intelligence files and then sought to convert the intelligence into evidence that would lead to a successful prosecution in Iraqi courts. TF SPIRE developed its methods by working cases involving former detainees and then transporting those lessons learned to current targeting. The Soldiers scrubbed through volumes of files to find leads they could deliver to Iraqi law enforcement officers. The Soldiers created a file on each detainee plus a summary of the evidence that would give an Iraqi investigator additional leads. When possible, these packets would include victim and witness names, along with offense dates, times, and locations. Then, after a foreign disclosure officer would perform the necessary reviews and redactions, a linguist would create an Arabic file. TF SPIRE would then conduct a leader engagement with an Iraqi investigative agency and develop an investigative plan to conduct an investigation and secure detention orders. TF SPIRE's success was much in part because it empowered the host nation law enforcement agents to purge criminals from their own backyards.

Each of these task forces was successful in its own rite: one in partnership, the other in evidence sharing. Combining the two concepts into a prosecution support team would reap the benefits of each. The lead of the prosecution support team is the maneuver commander because the maneuver commander holds the ultimate responsibility to ensure success of all operations. The commander therefore serves as the U.S. lead to coordinate targeting efforts with their host nation security counterpart. The U.S. and host nation commanders, law enforcement and civic leaders work together to promote an effective criminal justice system that punishes and deters violent extremists. In addition to engaging and partnering with host nation leaders, the maneuver commander oversees the prosecution support teams.

⁴² See generally Annexstad, *supra* note XX at 75-76 (describing the United States' authority to hold and prosecute Iraqi criminals); see also COALITION PROVISIONAL AUTHORITY AMENDED ORDER NUMBER 13 (REVISED) (AMENDED), THE CENTRAL CRIMINAL COURT OF IRAQ (22 Apr. 2004) (providing the authority to hold criminal detainees in Iraq).

⁴³ Annexstad, *supra* note XX at 80.

The law enforcement (cops) component of the support team includes USF trainers and advisers like International Police Advisors (IPAs),⁴⁴ Law Enforcement Professionals (LEPs), and other USF trainers such as military police and PTTs.⁴⁵ These individuals focus on case development with host nation security forces. They would transfer evidence and work on case lead development. If the combined law enforcement teams developed needs for further leads, then depending on the requirements either host nation or USF would take the lead to gather future information.

The judicial component (courts) of the support team includes a DoS ROL Specialist and a Judge Advocate advising the command on the host nation criminal justice system. These would focus on case review and judicial development. The Judge Advocate and a host nation attorney counterpart attends targeting meetings and focuses on ensuring the proposed cases meet the evidentiary thresholds required to sustain a conviction. The ROL Specialist is the primary interlocutor to engage host nation judiciary. They develop host nation judicial capacity and engage the judiciary if there are conflicts between the police and judiciary. Furthermore, the ROL Specialists are in the lead to bring judges together to meet and work with host nation police.⁴⁶ USF can use information operations to publish success stories to increase public confidence in the ROL institutions, which would then increase the willingness of others to bring evidence against other VENs.

One other vital enabler is a foreign disclosure officer (FDO).⁴⁷ The FDO should conduct predeployment training to help commanders to understand appropriate classification levels to avoid over-classification. During deployments, FDOs are the key to ensuring smooth translation of intelligence into evidence. Without such translation the USF would never meet their host nation counterparts as true partners.

Putting it all together, local security officials and their U.S. counterparts work together to develop target priorities. The law enforcement team then begins working together as a combined task force to investigate potential extremists. The team develops cases by using each party's capabilities. Concurrently, a Judge Advocate and Law Enforcement Professional review the cases for sufficiency with the lead host nation investigator, judicial investigator, or representative from the public prosecutor's office. The lead host nation investigator then brings the case to the

⁴⁴The purpose of IPAs is to help with civilian police training by "professionalizing civil law enforcement institutions and the Iraqi Police Service to the point they can effectively maintain order in a manner that is consistent with international policing and human rights standards. To this end, we provide International Police Advisors and experts in civilian law enforcement to help advise, train, and mentor the Iraqi Police Service, Ministry of Interior, and Department of Border Enforcement." International Narcotics and Law (INL) Enforcement in Iraq. <http://iraq.usembassy.gov/offices-inl.html> (last visited Jun 9, 2010) (on file with author).

⁴⁵ PTTs "train host nation police in apprehension, inprocessing, investigation, adjudication, and incarceration." RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES 53 (2009).

⁴⁶ One method 1/82 AAB uses to bring the parties together is advanced law enforcement training. In Anbar Province, Iraq, 1/82 AAB hosted a recurring week-long course for senior Iraqi investigators. The senior investigative judge from the particular district serves as the introductory speaker to explain the judicial process and the type of evidence they expect to sustain a conviction. The judge and the police engage in great dialogue and the two parties gain a greater appreciation of each other's jobs and build rapport.

⁴⁷ See Matthew Greig, *Detention Operations in a Counterinsurgency: Pitfalls and Inevitable Transition*, THE ARMY LAWYER, 25, 32 (Dec. 2009) (arguing the need to involve an FDO early into criminal detention operations because of the difficulty of converting intelligence into evidence).

investigative judge for review. If there is a conflict, then the DoS ROL Specialist plans an engagement with the investigative judge or representative from the public prosecutor's office to resolve any conflict between the judiciary and police.

Summary

This proposed model is a method to target VENs while simultaneously strengthening ROL structures. Commanders should use this model wherever they are targeting VENs outside of purely offensive operations. In order to do so, commanders must learn and understand the host nation legal systems. They must understand not only how the systems should function, but also examine where the strengths and weaknesses lay. Then, commanders must partner with host nation law enforcement to develop strong evidence to bring to the host nation judicial system. This evidence must focus beyond a simple arrest warrant threshold, but instead focus on evidence needed to convict criminals.

While this article may focus on lessons learned in Iraq, commanders may apply them in other theaters. JTF-435 and other USF components encourage the same methodology in Afghanistan.⁴⁸ Applying this methodology, USF and host nation prosecutors brought their first terrorism case to trial at Bagram Air Field on June 1, 2010.⁴⁹ This model would likewise work in places like Juarez, Mexico. There, over 2,000 people were murdered in 2009 mostly due to drug violence.⁵⁰ The violence has grown so prevalent that drug traffickers killed a pregnant American consular official and her husband in broad daylight in March 2010.⁵¹ In a stability operation, commanders would apply this prosecution task force to partner with host nation (Mexican) criminal justice systems to target the drug trafficking networks.⁵² The methodology remains the same regardless of the theater of operations. As a good intelligence analyst would remind a commander, however, the commander must adapt to environment. In this case, the environment is not terrain and obstacles, but instead host nation rule of law institutions.

⁴⁸ E-mail from Asymmetric Warfare Group to author (Jun. 2, 2010, 17:27C) (on file with author).

⁴⁹ Associated Press, *First hearing begins for detainees held by US force in Afghanistan*, <http://www.foxnews.com/world/2010/06/01/hearing-begins-detainees-held-forces-afghanistan/> (last visited Jun 9, 2010) (on file with author).

⁵⁰ Marc Lacey and Ginger Thompson, *Two Drug Slayings in Mexico Rock U.S. Consulate*, N.Y. TIMES, Mar 14, 2010 (available at <http://www.nytimes.com/2010/03/15/world/americas/15juarez.html?pagewanted=print>) (last visited June 8, 2010) (on file with author).

⁵¹ *Id.*

⁵² Using Stigall's organic minimalist approach, USF would not try to force U.S., Afghan, or Iraq ideologies into the Mexican courts, but instead work within the Mexican system. Stigall, *supra* note XX.

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