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JOINT FORCES STAFF COLLEGE

JOINT ADVANCED WARFIGHTING SCHOOL



THE RULE OF LAW EFFORT IN AFGHANISTAN: A SUCCESS

STORY IN THE MAKING

by

Kyle W. Bayless

Colonel, United States Army

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A paper submitted to the Faculty of the Joint Advanced Warfighting School in partial satisfaction of the requirements of a Master of Science Degree in Joint Campaign Planning and Strategy. The contents of this thesis reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.

This thesis is entirely my own work except as documented in footnotes. Major Christopher Hodl provided his feedback on this thesis as a former member of United States Forces-Afghanistan National Security Justice Development Directorate. Mrs. Rebecca Bayless assisted by providing editing recommendations. Lieutenant Keven Coyle assisted with page formatting to meet course requirements.

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ABSTRACT

The United States' involvement in foreign countries is tied to U.S. strategic goals, and intertwined with military, political, economic, and diplomatic efforts. In El Salvador and Afghanistan, the governments did not fail, nor were they defeated, yet insurgencies continued and the development of the judicial system and the rule of law within the countries are slow to evolve to meet Western standards. Objectives to establishing law and order after conflict include the rule of law and a provision for oversight and accountability for police and other security forces. Using El Salvador as a prognostic outlook on rule of law development and justice sector reform provides a useful analysis of a future Afghanistan.

Afghanistan is a success story in the making with the necessary rule of law framework in place following 15 years of international security force presence in the country. A long-term commitment by the United States is required to establish security and complete justice sector reforms. Afghanistan is making progress after the fall of the Taliban in 2001 with a democratic republic, laws to enact a justice system, and the personnel to effect a rule of law country-wide. Following security, there are several elements lacking to reform the national security justice system. This includes complete capture and evidence transfer, established criteria for provincial and national jurisdiction, legitimate and transparent investigation and prosecution, secure incarceration, and rehabilitation and reintegration practices to prevent recidivism.

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CHAPTER 1: INTRODUCTION

Nation building takes a long time to achieve the interests of the United States to promote democracy; economic and military aid is a part of the contribution to host nations to develop their government. As part of this development, the rule of law is an essential part of the justice system. The justice system is part of the government and the governed. An examination of this one aspect of the justice system shows how success there can lead to the success of democracy.

The United States' involvement in foreign countries is tied to U.S. strategic goals, and intertwined with military, political, economic, and diplomatic efforts. In El Salvador and Afghanistan, the government did not fail, nor was it defeated, yet insurgencies continued and the development of the judicial system and the rule of law within the country was slow to evolve to meet Western standards. Objectives to establishing law and order after conflict include the rule of law and a provision for oversight and accountability for police and other security forces. Included in this reform are the appropriate number of personnel and facilities within the justice sector and the institutional development of the justice system. The public's perception of the justice system's effectiveness and corruption must accompany the reform or development of the justice system. Trust in the system by the civil society is required for an effective criminal justice system.

The United States' withdrawal from Afghanistan is a topic of much debate. However, when the length of time it took other countries to become functioning democratic societies is examined, even with the assistance of the United States, it is clear that a democratic Afghanistan will take decades. One of the key components in past

success is the implementation of the rule of law. This thesis analyzes the rule of law in Afghanistan to assess the likelihood of similar success there.

Research Endstate

The establishment of the rule of law in Afghanistan is tied to future United States economic investment as well as military aid to ensure order and security. This creates an environment where justice sector reforms may take root and the civil populace can accept the reforms as a way of life. There are ethnic and tribal relationships to consider as part of this environment in Afghanistan, which by western standards, detracts from achieving a sustainable rule of law. This thesis shows how the United States' economic involvement in El Salvador contributed to its recovery, while the economic and military investment in Afghanistan paves the way for a successful campaign and road to justice sector reforms within the country. The focus is on the rule of law system and the necessary reforms to produce a viable justice system. The concept of a national security justice system contributes to justice sector reform, which leads to order and security in the country. To complete the justice sector reform requires the development of a comprehensive system which provides complete capture and evidence transfer, an established criteria for provincial and national jurisdiction, legitimate and transparent investigation and prosecution, secure incarceration, and rehabilitation and reintegration practices to prevent recidivism.

Research Approach

To successfully achieve the interests of the United States and promote democracy, a commitment of decades is required in foreign countries. Following an examination of the aid the United States provided to El Salvador to assist in justice sector reforms, it is evident

that a similar approach by the United States in Afghanistan will yield positive results. The United States' aid to El Salvador following 12 years of internal civil war, continuing for the next 35 years, demonstrates success in developing the rule of law, and wider justice sector reform. In the case of El Salvador, the results are far from perfect, but demonstrate a long-term commitment of the United States as a nation. In Afghanistan, the United States continues its involvement following Soviet intervention in the late 1970's and the defeat of the Taliban-led regime in 2001. A comparison of the two countries demonstrates the potential for success in Afghanistan to establish the rule of law and wider justice sector reform; however, this will take more time, and more investment on the part of the United States. The concept of a National Security Justice Center in Afghanistan, which was introduced in 2013, is the right approach to continue improving the rule of law in Afghanistan.¹ It is important to recognize, in the conduct of future joint operations in a complex world, the full extent of time and resources involved to develop justice sector reform in countries experiencing conflict and civil war.

The United States contributes economic and military aid to develop governance in a multitude of nations. Comparing the rule of law in Afghanistan to El Salvador provides the closest parallel from a historical perspective. El Salvador and Afghanistan are democratic republics, formed after civil war and communist influence during the Cold War. El Salvador provides an opportunity to assess the development of the rule of law after a 35 year period of the United States' involvement in the country and compare it to current

¹ The concept of a National Security Justice Center was introduced by Combined Joint Interagency Task Force 435 under United States Forces-Afghanistan. This concept was believed to be the long-term requirement to implement justice sector reform in Afghanistan. The United States Forces-Afghanistan National Security Justice Development Directorate added the establishment of an Afghan National Security Justice system as part of their campaign plan in September of 2015.

efforts in place in Afghanistan. Other cases for comparison where United States involvement led to gains in the rule of law include: Columbia, Nicaragua, the Philippines, and most recently in Iraq. El Salvador is the best case for comparison because of the similarities between the two countries as developing democratic republics following civil war.

Limitations

Bribes and corruption are both prevalent in the two compared countries. Corruption exists with a fledgling government composed of parties who are at odds. In El Salvador this is the former insurgent Farabundo Marti National Liberation Front (FMLN) party at odds with political leaders who are current and former members of the Salvadoran Army. In Afghanistan, the government consists of members of various tribal affiliations who have been warring with each other for centuries. Corruption is an area worthy of future study, however, it is not a major point of emphasis in this thesis. Corruption within the government has a correlation to the implementation of the rule of law, but it does not have a direct impact with the establishment of order and security and the implementation of an effective criminal justice program.

This thesis does not focus on the police or military units and the tactical objectives to accompany the establishment of the rule of law. Rather, the focus is on the national security justice system, and what must be accomplished to further the rule of law in Afghanistan.

CHAPTER 2: DEFINING THE RULE OF LAW

President Barack Obama defined the rule of law in 2010, saying:

“The rule of law—and our capacity to enforce it—advances our national security and strengthens our leadership. At home, fidelity to our laws and support for our law enforcement community safeguards American citizens and interests, while protecting and advancing our values. Around the globe, it allows us to hold actors accountable, while supporting both international security and the stability of the global economy. America’s commitment to the rule of law is fundamental to our efforts to build an international order that is capable of confronting the emerging challenges of the 21st century.”¹

The United States is a global leader, involved in security, trade, investment, and the promotion of democratic ideals. The strategic interests of the United States shape the extent of political, diplomatic, economic and military involvement globally. The United States’ interaction in other countries contributes to their development and prosperity, as well as serving its own interests. The United States uses economic and military aid to maintain security, stability, democracy, and free trade. For over 35 years in El Salvador, and after 15 years in Afghanistan, the United States contributed economic and military aid to assist these countries in their development, while continuing to serve its interests.

The rule of law is a “Western” concept; this does not imply that only western democracies can implement the rule of law. The justice sector in democratic republics can conform to the rule of law and incorporate historic tribal and cultural traditions into the system. It may not be exactly the same as the systems in place in the United States and other democratic states, but will work as long as it is accepted by the government and the governed.

¹ Barack Obama, *National Security Strategy* (Washington DC: Government Printing Office, January 2015), 37.

Justice sector development in Afghanistan allows the host nation to investigate, prosecute, and incarcerate criminals for insurgent-related crimes. A strong criminal justice system contributes to order and security and allows the furtherance of other developmental programs required in fledgling democracies. The economic and military aid to rule of law development must be a coordinated effort between the military, civilian government, international organizations and nongovernmental organizations (NGOs). A coordinated effort to synchronize rule of law activities must occur to legitimize the host nation government and earn the support of the governed population, while minimizing the cost.

Definitions

There is no universal definition of the rule of law. It is used in Western, pro-democracy literature to describe the institutions of a government, particularly the judicial and legislative branches of government.² Rule of law also describes the conditions in society that equate to civil order. Rachel Kleinfeld suggests that definitions of the rule of law fall into two categories: Those that emphasize the ends that the rule of law is intended to serve within society, such as upholding law and order, or providing predictable and efficient judgments; and, those that highlight the institutional attributes believed necessary to actuate the rule of law, such as comprehensive laws, well-functioning courts, and trained law enforcement agencies.³

² American Bar Association, Division for Public Education, "Part I: What is the Rule of Law," American Bar Association, <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part1DialogueROL.authcheckdam.pdf> (accessed March 25, 2016).

³ Kleinfeld, Rachel, "Competing Definitions of the Rule of Law: Implications for Practitioners," *Carnegie Endowment for International Peace*, No. 55 (January 2005): 3.

This thesis favors the second definition to describe the required programs for successful justice sector reform in El Salvador and Afghanistan.

The Rule of Law in the International Community

For the United Nations, the rule of law refers to:

A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁴

The World Justice Project (WJP) Rule of Law Index provides original, impartial data on how the rule of law is experienced by the general public in 102 countries around the globe. The WJP's definition of the rule of law is a system in which the following four universal principles are upheld:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law;
2. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property;
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient; and

⁴ United Nations and the Rule of Law, "What is the Rule of Law?" United Nations, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law> (accessed December 19, 2015).

4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.⁵

The Rule of Law must emanate from a centralized government system with the institutions and laws to foster it and agencies capable of enforcing it. Confidence in the government for the redress of grievances and accountability for criminal acts must accompany reforms. In Afghanistan, local traditions and customs must be recognized and incorporated into an accountable rule of law system imposed by a central government. The rule of law enables gains in security to stabilize the government and its legitimacy. The ultimate objective is to establish a state of order where the acts of the governed and the government conform to the law. For this to happen, there must be order and security with the ability to enforce the law under an established and effective justice system.

Comparing this to Kleinfeld's definition of the rule of law, where the rule of law is the institutional attributes believed necessary to actuate the rule of law, which includes, laws, courts, and agencies capable of enforcement, Afghanistan is a success story in the making due to the ratification of its Criminal Procedure Code and the establishment of a national court to effectively detain, investigate, and prosecute national security threats. Afghanistan is capable of accountability under the law, and the process by which the laws are enacted, administered, and enforced is in place. Additionally, a justice system is now in place for the timely delivery of justice. The essential components to support the rule of law

⁵ World Justice Project, *Rule of Law Index 2015*, by Juan Carlos Botero and Alejandro Ponce, Open file report, World Justice Project (Washington DC, 2015).

according to the WJP Rule of Law Index in Afghanistan are in place. The government and its officials and agents, as well as individuals and private entities, are accountable under the law. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve. Continued economic and military aid contributes to order and security, which leads to continued justice sector reform.

CHAPTER 3: EL SALVADOR CASE STUDY

El Salvador is a case study where long-term economic and military aid from the United States, over a period of 35 years, increased security and built an effective criminal justice system. El Salvador emerged after 12 years of civil war as a democratic republic. It took more than three decades to implement order and security and put in place an effective criminal justice system.

A case study of El Salvador demonstrates how contributions from the United States assisted in the establishment of the rule of law. This process continues today, especially with recent losses in an effective criminal justice system due to gang violence. El Salvador established a multi-party constitutional republic following the 1992 conclusion of the 12-year Salvadoran Civil War. The Farabundo Marti National Liberation Front (FMLN) was established during the Salvadoran Civil War. A pro-soviet and pro-Cuban guerilla movement, the group's first offensive, on 10 January 1981, aimed at taking power from the government prior to the inauguration of United States President Ronald Reagan. The FMLN's action generated a considerable amount of attention by policymakers in Washington, DC.¹ The Reagan administration viewed El Salvador as a barrier against communist expansion in Central America. Nicaraguan, Cuban, and Soviet support for the FMLN resulted in the increase of United States military and economic aid to El Salvador.² Congress voted in January 1982 to require certification by the executive branch, every six months, of Salvadoran progress in such areas as the curbing of abuses

¹ Library of Congress, Federal Research Division, *El Salvador: A Country Study*, Edited by Richard A. Haggerty (Washington, DC: Government Printing Office, 1990), 41.

² United States Department of State, Bureau of Public Affairs, *Special Report No. 80, Communist Interference in El Salvador*, Open file report, United States Department of State (Washington DC, 1981).

by the armed forces, the implementation of economic and political reforms, particularly agrarian reform, and the demonstration of a commitment to hold free elections with the participation of all political factions.³

The military stalemate between the Salvadoran government and the FMLN, coupled with the gradual disengagement of the United States and the collapsed Soviet Union, was the foundation for the peace agreement and inclusion of the FMLN in the government. The United Nations brokered the deal in 1989 to include the FMLN in the democratic process as a political party. The government created a civilian police to establish security and initiate justice sector reform. This contributed to order and security within El Salvador and was the baseline for rule of law improvements in the country.

The United States became involved in El Salvador to prevent the spread of communism and provided weapons, ammunition, and other equipment, economic aid, intelligence support, strategic counsel, and tactical training to the Salvadoran government. The United States saved the government of El Salvador from defeat, yet did not defeat the FMLN insurgency. The United States' intervention in El Salvador led to a stalemate. The collapse of the Soviet Union ultimately resolved the United States' involvement. Three points are highlighted in the RAND Corporation case study of El Salvador.⁴ First, the billions of dollars in economic and military assistance and the presence of advisors helped prevent defeat, but it was inadequate to turn El Salvador's military into a competent counterinsurgency force. Additionally, the Salvadorans did not implement reforms sufficient to render their military forces capable of operations to defeat the insurgency.

³ Library of Congress, Federal Research Division, *El Salvador: A Country Study*, Edited by Richard A. Haggerty (Washington, DC: Government Printing Office, 1990), 43.

⁴ The RAND Corporation, *Establishing Law and Order After Conflict*, by Seth Jones, Jeremy Wilson, and Andrew Rathmell (Santa Monica, California, 2005), 7-9.

Second, the military stalemate secured the United States' strategic aims. It prevented the Salvadoran government from falling to a communist insurgency. Had the Soviet Union not collapsed, however, it is not at all clear that the United States could have sustained its support. Third, as with other insurgencies, it was a shift in the political and diplomatic contours of the conflict, rather than a change in the military balance of forces, which ultimately brought an end to the fighting.⁵

The United States continued to invest economic and military aid in El Salvador following the collapse of the Soviet Union. The fledgling Salvadoran democracy required assistance to maintain security and develop justice sector reforms. The aid from the United States continued for the next 35 years.

Aid to El Salvador

The United States provided over \$5.2 billion in grants and loans to El Salvador from 1962-2013.⁶ Post-civil war, USAID provided the Government of El Salvador significant assistance to strengthen justice sector institutions, modernize the country's criminal procedure code, and the creation of 26 judicial centers for mediation nationwide. This is a significant investment in economic aid and time and demonstrates the long-term commitment required for democracies to promote the rule of law following conflict. USAID continues to work closely with the Salvadoran government to strengthen the criminal justice system, ensure government accountability, and reduce community crime and violence.⁷

⁵ Ibid, 7-9.

⁶ United States Agency for International Development, "El Salvador." USAID, <https://usaid.gov/el-salvador/history> (accessed January 5, 2016).

⁷ Central Intelligence Agency, *CIA World Fact Book: El Salvador*, Central Intelligence Agency, open source report, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (accessed January 6, 2016).

The United States administration did not achieve its goals during the civil war in El Salvador. The first goal, to combat, deter and/or defeat the FMLN was not achieved. The intervention of the United States resulted in a military stalemate without a decisive defeat of the FMLN. The second goal, to strengthen the democratic principles and civil society in El Salvador was not fully achieved. The Salvadoran armed forces continued to exert considerable power behind the scenes. The United States' intervention did not ensure victory, but it did prevent defeat of the Salvadoran government. The third goal of achieving broad-based socioeconomic development was not achieved prior to the fall of the Soviet Union. Efforts to meet this third goal continued for the next three decades, hampered by crime, gang violence, and natural disasters.

Today, El Salvador has one of the highest levels of non-political violence in the world and one of the highest homicide rates in the Americas.⁸ The high rate of crime affects the legitimacy of government which, in turn, can decrease the confidence of the civil populace and undermine good governance. This indicates that El Salvador is by no means the perfect example of how economic and military aid guarantees order and security and justice sector reforms. It does reinforce the need for continued support from the United States and other international agencies to continue advances in the enforcement of the rule of law. Without the assistance of the United States, the situation in El Salvador with respect to the Rule of Law and an effective justice system creates the potential for a failed state.

⁸ United States Agency for International Development, "El Salvador." USAID, <https://usaid.gov/el-salvador/democracy-and-governance> (accessed January 5, 2016).

Rule of Law Reform

At the conclusion of the Salvadoran civil war, the Salvadoran Constitution established the traditional division of powers between the executive, legislative, and judicial branches of government. The judicial branch exercises its role through four court levels, with the Supreme Court at the top. Court jurisdictions were established and provided criteria to exercise jurisdiction over constitutional, administrative, labor, mercantile, traffic, juveniles, tax, agrarian, and landlord-tenants. While some of the courts specialize in one of these branches, the majority of courts have jurisdiction over all types of cases which may arise in their territory.⁹

The United States established the International Law Enforcement Academy in El Salvador in 2005 to train law enforcement officers, prosecutors, defense attorneys, judges and court administrators and provides for the legitimate and transparent investigation and prosecution.¹⁰ The Salvadoran government addressed secure incarceration in September, 2004 with the creation of separate prisons for rival gangs. The designated MS 13 gang prisons were Ciudad Barrios and Quezaltepeque. The designated Barrio 18 gang prisons were Cojutepeque and Chalatenango.¹¹ The separation of rival gangs in incarceration reduced violence; however, no controls or rehabilitation programs were emplaced, essentially allowing gang leaders to rule the prison in an environment where the prison

⁹ Center for the Administration of Justice, Florida International University, “El Salvador Justice Sector Assessment,” San Jose, Costa Rica, <http://caj.fiu.edu/publications/executive-summaries/es-justice-sector-assessment.pdf> (accessed February 12, 2016).

¹⁰ Michael Allison, “Justice Deferred: Rule of Law in Central America,” *World Politics Review*, November 11, 2014, under “Rule of Law El Salvador,” <http://www.worldpoliticsreview.com/articles/14415/justice-deferred-rule-of-law-in-central-america> (accessed February 14, 2016).

¹¹ Roberto Valencia, “How El Salvador Handed its Prisons to the Mara Street Gangs,” *Insight Crime, Organized Crime in the Americas*, (September 2014) <http://www.insightcrime.org/news-analysis/how-el-salvador-handed-its-prisons-to-the-gangs> (accessed February 14, 2016).

administrators and guards keep them inside the prison, but exercise no more control over the incarcerated population.

USAID continues to work with the Salvadoran justice sector to improve criminal procedures and investigation, strengthen the Government Ethics Tribunal to regulate and promote ethical conduct in the public sector, and expand crime prevention efforts at the community level by involving local governments and the private sector.¹² The Government Ethics Tribunal is similar to national level reforms currently underway in Afghanistan with the National Security Justice Center and the systems they are working to emplace. This reinforces the concept that successful reform of the justice system requires a holistic, comprehensive strategy applied across multiple institutions, involving multiple agencies. The essential components to support the rule of law are in place. However, there is a reoccurring need to professionalize and reform police, prosecutors, judges, and security personnel. This shows the rule of law is not perfect, but it is functional.

USAID's \$21.4 million Justice Sector Strengthening Project helps reduce impunity through support for criminal justice reform, promotion of judicial transparency, and enhancement of citizen participation in judicial reform efforts.¹³ Strengthening the capacity, efficiency and accountability of the judicial system supports USAID efforts in the area of security. The program includes provisions to improve public confidence in the police to reduce crime. This is a key similarity with Afghanistan, in that the reform of the

¹² United States Agency for International Development, "El Salvador." USAID, <https://usaaid.gov/el-salvador/democracy-and-governance> (accessed January 5, 2016).

¹³ Ibid.

justice sector is not possible in rural and tribal areas without the understanding and acceptance of the local populace.

A study of El Salvador shows it took more than three decades of assistance from the United States following civil war and the establishment of a democratic republic to achieve order and security and an effective criminal justice system. The contributions of the United States in military and economic aid was a contributing factor for Salvadoran success. This demonstrates a long-term commitment is required to achieve objectives related to the rule of law.

CHAPTER 4: AFGHANISTAN CASE STUDY

Pashtun tribes unified and founded Afghanistan in 1747 to serve as a buffer between the British and Russian Empires. A 54-year run of democratic rule ended in 1973, following a coup and 1978 communist counter-coup.¹ Soviet forces invaded Afghanistan in 1979 under the premise of restoring stability, during which time governance under communist rule did not extend beyond the major cities. The United States provided economic and military aid to mujahedin rebels until the Soviet Union withdrew in 1989.

The United States ended its aid to Afghanistan following the Russian withdrawal, and a series of subsequent civil wars ended with the fall of Kabul to the Taliban in 1996. The Taliban is a predominantly Pashtun, Islamic fundamentalist group that ruled Afghanistan from 1996 until 2001, when a United States led invasion toppled the regime for providing refuge to al-Qaeda and Osama bin Laden.² This resulted in the defeat of the Taliban in Afghanistan, who then regrouped across the border in Pakistan and mounted an insurgency against the Western-backed government in Kabul.

Following the defeat of the Taliban, the United Nations (UN) established a process for political reconstruction which included the adoption of a new constitution and a 2004 presidential election, followed by 2005 National Assembly elections. Insurgent activity and provincial instability hampered gains toward building a stable central government. The president of Afghanistan during this period, Hamid Karzai, struggled with the inability

¹ Central Intelligence Agency, *CIA World Fact Book: Afghanistan*, Central Intelligence Agency, open source report, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (accessed January 6, 2016).

² Zachary Laub, "The Taliban in Afghanistan," *Council on Foreign Relations*, (July 2014), <http://www.cfr.org/afghanistan/taliban-afghanistan/p10551> (accessed February 15, 2016).

to effectively build up Afghan institutions, provide basic services, and deal with a resurgence of the Taliban. His popularity decreased, and allegations of government corruption increased. As a result, pointed criticism, even from the United States, began to emerge.³

Afghanistan was a democracy from 1919 to 1973, so there is a history within the 20th century of democratic rule. However, the tribal rule of Afghanistan, coupled with civil war, Soviet occupation, and Taliban rule reset the basic conditions for democracy. Even with the conditions mentioned above, the older generation of Afghans experienced democratic rule as young men. The new Afghan government established after the defeat of the Taliban started to build its executive, legislative, and judicial branches. This included the establishment of the armed forces, the police, the courts, and the correctional system. After ratifying a constitution, an updated criminal procedure code was implemented to promote the rule of law.

Rule of Law Reform

As the Afghan government started to build its executive, judicial and legislative branches of government, it also had to develop the resources to instill civil order to achieve rule according to law.⁴ These included establishing the armed forces, the police, the correctional system, the courts and the laws and regulations that form the basis of the legal system. The police must build the trust and confidence of the people by interacting with and protecting them in accordance with the nation's laws. The United States' involvement in Afghanistan was to prevent the spread of terrorism throughout the world by removing

³ *Encyclopedia Britannica*, s.v. "Hamid Karzai," February 13, 2016.

⁴ NATO Training Mission Afghanistan, Combined Security Transition Command-Afghanistan, *Rule of Law: Due Diligence and the Balance of Power*, by Dr. Jack Kem and Lieutenant Colonel Frank Smith, provided by the author (Camp Eggers, Afghanistan, 2011), 9.

the Taliban leadership signaling to its allies, partners, and other nations worldwide that terrorist organizations harbored in other countries would be susceptible to United States action.

During the initial stages of UN force deployment to Afghanistan, Italy volunteered as the lead nation for a rule of law program. The Afghan legal system was historically a mix of civil, customary, and Islamic law. In 2006, at the London Conference, the Afghanistan Compact was signed with the goal of achieving security as the central theme.⁵ The delegation recognized that “Security cannot be provided by military means alone. It requires good governance, justice and the rule of law, reinforced by reconstruction and development.”⁶ The United States’ support to Afghanistan, in the form of economic and military aid, thus continued to promote order and security which leads to justice sector reform and an improvement in the rule of law. The 2006 Afghanistan Compact established 2010 as the benchmark to implement programs to achieve the three objectives of: security; governance, rule of law, and Human Rights; and economic and social development.

Afghanistan’s history of tribal rule and adherence to Sharia law contributes to the mixed legal system of civil, customary, and Islamic law. Sharia law is the Islamic canonical law based on the teachings of the Koran, prescribing both religious and secular duties and sometimes retributive penalties for lawbreaking.⁷ As a state with strong Islamic influence, judges in Afghanistan must balance their contemporary legal training with their potential experience in Sharia law. The development of the justice system in the past

⁵ Government of the Islamic Republic of Afghanistan, *The Afghanistan Compact*, London, England: The London Conference between the Government of the Islamic Republic of Afghanistan and the International Community, 2006.

⁶ Ibid.

⁷ *Oxford Dictionaries*, s.v. “Sharia,” January 8, 2016.

decade tips the balance of decision making towards current Afghan law. This is important as the international community recognizes Afghanistan as a sovereign democracy. The WJP Rule of Law Index currently ranks Afghanistan as one of the worst countries implementing the rule of law; it is number 101 of 102 countries listed.⁸ This ranking includes three criteria: the absence of corruption; order and security; and an effective criminal justice system. For Afghanistan, an effective criminal justice system and order and security are paramount to improving its status within the index.

Rule of Law must emanate from a centralized government system with the institutions and laws to foster it and agencies capable of enforcing it. Confidence in the government for the redress of grievances and accountability for criminal acts must accompany reforms. In Afghanistan, local traditions and customs must be recognized and incorporated into an accountable rule of law system imposed by a central government. The rule of law enables gains in security to stabilize the government and its legitimacy. The ultimate objective is to establish a state of order where the acts of the governed and the government conform to the law. For this to happen, there must be order and security with the ability to enforce the law, under an established and effective justice system.

The United States Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) supports the promotion of the Rule of Law in Afghanistan by helping the Afghan government develop a formal justice sector with efficient, capable, and independent legal institutions, and by helping Afghan citizens access justice

⁸ World Justice Project, *Rule of Law Index 2015*, by Juan Carlos Botero and Alejandro Ponce, Open file report, World Justice Project (Washington DC, 2015).

mechanisms and understand their legal rights.⁹ Program components are implemented in close coordination with the Afghan government and support the United States and international justice reform strategies. There are three pillars which include a coherent criminal justice system, a viable judicial system, and a system for long-term incarceration that integrates a rehabilitation and reintegration program to long-term offenders. The centerpiece of this effort is an enduring and robust National Security Justice system capable of pre-trial confinement, investigation, prosecution, and post-trial incarceration of national security threats. National security threats are defined as criminals who were captured and charged with violating Article 14 or 19 of the Afghan Criminal Procedure Code.¹⁰ These articles focus on internal and external security crimes committed against the government of Afghanistan. National security threats are synonymous with the term insurgent and/or terrorist.

Afghanistan's established central government has laws in place to enact a justice system, though the overarching national security justice systems needs additional reform to ensure the system functions from the initial infraction of the law through to the complete adjudication of the case. The conditions of rule under law for the government and the governed are in place, yet there are shortfalls in execution. This is due to a lack of order and security and a lack of a comprehensive national security justice system.

⁹ United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), "Rule of Law Programs in Afghanistan." Fact Sheet: May 2012), <http://www.state.gov/j/inl/regions/afghanistanandpakistan/219257.htm> (accessed December 10, 2015).

¹⁰ Government of the Islamic Republic of Afghanistan, Ministry of Justice, *Criminal Procedures Code*, (Kabul: Ministry of Justice, 2014), 32-40.

Judicial Reform to Support the Rule of Law

Afghanistan updated its criminal procedure code in 2014 to incorporate traditional dispute resolution customs into the code developed with international assistance from 2004-2008.¹¹ The criminal procedure code utilizes an inquisitorial trial system. An inquisitorial system, common in civil law countries, is an alternative model to the adversarial system used in common law countries, including the United States. The inquisitorial system is described as a system that aims to get to the truth of the matter through extensive investigation and examination of all evidence.¹² The adversarial system aims to get to the truth through the open competition between the prosecution and the defense to make the most compelling argument for their case.¹³ In Afghanistan, once the accused is introduced and the indictment is read by the prosecutor, the victim, plaintiff, defendant or their legal representatives may present their claims and the accused person shall be questioned for the charges against them. The witness first shall be questioned by the judge, and afterward the prosecutor, victim, plaintiff, the accused person, and the defendant or their legal representatives may question the witness. This inquisitorial system is intended to blend a central judicial process with traditional dispute resolution customs. After hearing the last speech of the accused person, the judicial panel announces

¹¹ Government of the Islamic Republic of Afghanistan, Ministry of Justice, *Criminal Procedures Code*, (Kabul: Ministry of Justice, 2014), 18-20.

¹² Desaree Roskopf and Megan Rampanen, “The Adversarial and Inquisitorial Trial Systems,” Weebly.com, http://broomerslaw12.weebly.com/uploads/6/2/8/1/6281119/the_adversarial_and_inquisitorial_trial_system1.pdf (accessed March 25, 2016).

¹³ New Zealand Minister of Justice, *Alternative pre-trial and trial processes for child witnesses in New Zealand's criminal justice system, Appendix B: A Comparison of the Inquisitorial and Adversarial Systems*, Ministry of Justice, (New Zealand, 2013).

the conclusion of the judicial session and retires to the deliberation room for decision making and writing the sentence or acquittal of the accused.¹⁴

In concert with the laws against terrorism under the criminal procedure code, the Government of the Islamic Republic of Afghanistan (GIROA) developed a one-of-a-kind national court allowing the prosecution of national security threats from throughout Afghanistan in a highly-secure, corruption-free location. The court complex, labeled the Justice Center in Parwan (JCIP), serves as the model for provincial courts. Co-located at the National Security Justice Center (NSJC) with a modern, well-operated detention facility is the Afghan National Detention Facility in Parwan (ANDF-P), and a highly capable criminal investigations complex; this facility is structured to provide a “one stop shop” for prosecuting national security threats. This complex in Bagram is roughly 50 kilometers from the capital of Kabul and is charged with the detention, investigation, and prosecution of national security threats.

As of June 2015, more than 8,500 trials were conducted with a conviction rate of 73%.¹⁵ The conviction rate rises to 98% with a proven biometric match of offenders.¹⁶ The Primary courts adjudicate approximately 40 cases per month, and appellate courts adjudicate approximately 80. Fully staffed facilities at the JCIP have the capacity to adjudicate over 300 cases per month. This secure, reliable national justice option reduces the likelihood of extra judicial killing and gross violations of human rights that stem, in part, from widespread lack of confidence in local justice systems. This system is

¹⁴ Government of the Islamic Republic of Afghanistan, Ministry of Justice, *Criminal Procedures Code*, (Kabul: Ministry of Justice, 2014), 53-58.

¹⁵ This statistic was tracked and published by the United States Forces-Afghanistan National Security Justice Development Directorate who partnered with the tenant organizations of the National Security Justice Center.

¹⁶ National Security Justice Development Directorate, United States Forces-Afghanistan statistic, as of June 2015.

designed to enforce the rule of law and provide a national court, with nation-wide jurisdiction. In the first six months of 2015, more than 1,500 criminals awaiting trial in provinces across Afghanistan were transferred to the NSJC.¹⁷ The desired effect is to promote the rule of law by transferring insurgents captured by Afghan National Security and Defense Forces to a central location for detention, investigation, and prosecution. Following trial, convicted offenders can serve their sentence incarcerated at the ANDF-P for long term confinement. This keeps radical insurgents off the battlefield and discourages the spread of radicalism by centrally holding offenders.

Promoting Order and Security

From 2006 to 2011, Afghanistan struggled with extending governance outside the capital region in Kabul. Lack of security, insufficient corrections and judicial capacity, a developing security force, and a determined insurgency hindered the central government's influence. There was also a lack of connectedness between the local, traditional resolution of grievances and the formal process in place by the central government.¹⁸

From 2010 to 2015, there were three continued efforts to mature the rule of law in Afghanistan. The first, Combined Joint Interagency Task Force 435 (CJIATF 435), to develop a national detention, investigation and prosecution center for Afghanistan. The second, the Rule of Law Field Force-Afghanistan (ROLFF-A) was established under CJIATF 435 in September 2010 to provide Rule of Law (RoL) field support throughout Afghanistan. The commander of ROLFF-A was dual-hatted as the commander of the

¹⁷ This statistic is from the United States Forces-Afghanistan National Security Justice Development Directorate update, June 2015.

¹⁸ Central Intelligence Agency, *CIA World Fact Book: Afghanistan*, Central Intelligence Agency, open source report, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (accessed January 6, 2016).

NATO Rule of Law Field Support Mission (NROLFSM), which was established in June 2011. These two entities were designed to increase the number of provincial trial and defense lawyers, as well as bolster civil support to the rule of law in rural areas.¹⁹ The third effort consisted of the train, advise, and assist mission from NATO forces in Afghanistan to develop sufficient military and police forces to effectively enforce the laws of Afghanistan and support the central government.

A national court is already in place in Afghanistan to hold national security threats accountable under the rule of law. Afghanistan's NSJC consists of the ANDF-P; a National Directorate of Security (NDS) criminal investigation section; and a national security court complex (the Justice Center in Parwan). Within this integrated NSJC, GIRoA demonstrates the ability to conduct pre-trial confinement, law enforcement investigations, criminal prosecutions and post-trial incarceration in accordance with Afghan law and to international standards.

The Military Police Guard Command, the military unit assigned to conduct confinement capabilities, NDS investigative capabilities, and prosecutorial and adjudicatory capabilities serve as the current solution to promote justice sector reform and contributes to order and security. Afghanistan remains committed to the National Security Justice Center concept by promoting it as the premier justice system within the country, and to finding a detentions pathway that is consistent with Afghan law.

During capture, focus must be on integrating local Attorney General Office prosecutors and NDS agents to ensure thorough evidence gathering, which enables

¹⁹ United States Forces-Afghanistan, Combined Joint Interagency Task Force 435, *CJIATF-435 After Action Report*, by Brigadier General Patrick Reinert, Provided by the author (Bagram, Afghanistan 2015), 2.

effective investigation and prosecution. Focus on evidence collection will help mitigate short sentences and acquittals of national security threats by allowing for more complete prosecution. There must be the development of long term rehabilitation and reintegration programs based on Afghan law and occurring as acquitted detainees or convicted prisoners are released. Acquitted detainees should have a reintegration program in concert with the local leaders to mitigate the risk that they will return to the insurgency. Local NDS and Attorney General (AGO) authorities should also be notified so that they understand there may be an increase in threat. Convicted prisoners should have rehabilitation programs in the prison and reintegration programs in the community, along with warning the local NDS and AGO that they have been released so they can check on them.²⁰

Investigations and prosecutions at Parwan are highly legitimate and transparent, following Afghan law and respecting human rights. Thorough and complete evidence collection will enable robust prosecutions and appropriate sentences for the crimes committed.

The foundation for the rule of law is in place in Afghanistan with the laws, judicial system and police necessary but, the Afghan National Security Justice system is not comprehensive and robust in its application of justice fundamentals. The development of a comprehensive system which provides complete capture and evidence transfer, and established criteria for provincial and national jurisdiction, legitimate and transparent investigation and prosecution, secure incarceration, and rehabilitation and

²⁰ This condition was identified by the Afghan Attorney General in March 2015 and reported to the Afghan National Security Council, Chief Executive Officer Abdullah Abdullah, and President Ashraf Ghani for implementation. The Attorney General notified the United States Forces-Afghanistan, National Security Justice Development Directorate via telephone about this information in March 2015.

reintegration practices to prevent recidivism are the five elements currently lacking in the Afghanistan justice system.²¹

²¹ This is the assessment of the United States Forces-Afghanistan National Security Justice Development Directorate in March 2015, as part of the overall campaign plan for Resolute Support mission in Afghanistan.

CHAPTER 5: COMPARISON

According to the United States Department of State, stability and good governance are required to support the Rule of Law.¹ A comparison of the programs invested into the Rule of Law implementation in Afghanistan versus that of El Salvador illustrates similarities for successful programs to build the rule of law. Success is measured by an increase in order and security, as well as any level of increase in an effective criminal justice system. It does not necessarily have to meet the standard of the United States or the International Community.

In a 2012 RAND study of small scale military interventions, two factors accounted for the mixed outcome of cases involving minimalist stabilization: The difficulty of eliminating low-level violence by the military instrument and the availability of only weak tools to address poor governance and stalemate politics.² The development of host-nation militaries are important to reduce the insurgency, but the development of effective policing is critical to eliminating insurgencies due to their relationship with the judicial, legal, and incarceration systems. In El Salvador and Afghanistan, the conflict perpetuated by failing to provide enough resources to eliminate the insurgency or to transform the local police into a force capable of providing order and security. The contribution of the United States and the North Atlantic Treaty Organization (NATO) in Afghanistan provided sufficient resources so that the host nation need not immediately reform itself.

¹ United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), "Rule of Law Programs in Afghanistan." Fact Sheet: May 2012).

² The RAND Corporation. *The Uses and Limits of Small-Scale Military Interventions*, by Stephen Watts, Caroline Baxter, Molly Dunigan, and Christopher Rizzi. Santa Monica, California, 2012, 50.

Establishing law and order after conflict incorporates the police, military, and justice system.³ Police and military are not part of this thesis, but are an area of future study and research. The justice system which incorporates judicial personnel and resources as well as an assessment of the system's effectiveness, public perception of the system and the system itself within the parameters of the host nation's laws, customs, and traditions likewise, is not part of this thesis, rather one more component of future research.

The rule of law in Afghanistan is congruent with the United States' experience in El Salvador. The United States continues to support the fledgling Afghan democracy with a presence 15 years after the defeat of the Taliban. In El Salvador, the United States assisted the democratic government to develop and improve its justice sector for three and a half decades following conflict resolution. A comparison of the programs invested into the Rule of Law implementation in Afghanistan versus that of El Salvador illustrates similarities in the implementation of rule of law development and reform.

Judicial Process

El Salvador's judicial system is a civil law system with minor common law influence.⁴ During the 19th and 20th century, El Salvador bore political and economic instability characterized by coups, revolts, and a succession of authoritarian rulers. This is

³ The RAND Corporation, *Establishing Law and Order After Conflict*, by Seth Jones, Jeremy Wilson, and Andrew Rathmell (Santa Monica, California, 2005), Table S-2.

⁴ Central Intelligence Agency, *CIA World Fact Book: Afghanistan*, Central Intelligence Agency, open source report, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (accessed January 6, 2016).

important to note because of the similarities with Afghanistan's judicial structure and timeline of instability.

Both the Afghan and Salvadoran judicial trial process are inquisitorial systems. This differs from the western adversarial system where the prosecution must prove guilt beyond a reasonable doubt. Under the inquisitorial system, the evidence of the crime is presented to the judge, who presides over the case and reaches a decision based on the evidence, and the questioning of both the defense, defendant, and prosecutor.

In both countries, counterinsurgencies exist where there was no real winner. In the case of El Salvador, the former insurgent Farabundo Marti National Liberation Front (FMLN) party was at odds with political leaders and the current members of the Salvadoran Army. In Afghanistan, there is no clear winner up to this point. An active insurgency and nascent government continues to develop the country into a democratic republic, capable of self-governance and security. There was no defeat of the government in El Salvador and Afghanistan, due in part to the economic and military aid provided by the United States. In both cases, there was operational success to degrade insurgent capabilities and make it unlikely for the insurgents to assume control of the government. Significant political reforms in the partner governments of El Salvador and Afghanistan continue to develop. Neither country is a leader of justice reform and the rule of law in their respective geographic regions in the eyes of the international community.

Order and Security

The United States' long involvement in El Salvador was pivotal to ensuring the country succeeded following 12 years of civil war. The United States desired to improve

the stability of a fledgling democracy, to promote economic development, and to further the United States' foreign policy.⁵ The model focused on security and stability for the government and the economy. Included in this is the rule of law and a stable justice sector. Providing economic and military aid to a nation to build sustainable programs is of utmost importance. Order and security within the nation promotes justice sector development and reform.

The first WJP report on El Salvador emerged 18 years after the establishment of the republic democracy, and 31 years after the first support the United States offered economically and militarily to the government to reform its justice sector. The WJP report on El Salvador over the past five years shows the Criminal Justice System is most effective when order and security exists, and as one increases, so does the other. If an effective criminal justice system is dependent on increased order and security in the region, it stands to reason that 15 years of the United States' involvement in the new democracy of Afghanistan is not enough time. Continued support to promote order and security is required to improve the ranking. Similarly, as order and security increases, so too should an effective criminal justice system.

Economic and military aid must ensure the creation of the framework within which a political and justice system can operate. The amount of resources contributed correlates to the results. In the cases of El Salvador and Afghanistan, results are linked to

⁵ Raquel Aldana-Pindell, "Peace without Justice: Obstacles to Building the Rule of Law in El Salvador," *Human Rights Quarterly*, February 2003, under "Rule of Law El Salvador," <http://search.proquest.com/docview/204521290?accountid=12686> (accessed December 12, 2015).

the interests of the United States. The measure of success is tied to an improvement in order and security and the implementation of an effective criminal justice system.

In 2002, the Salvadoran justice system was incapable of delivering justice for past and present crimes.⁶ Corruption and ineptitude are contributing factors following a 12-year civil war, economic disparity, and crime in the country. The legal institutions in El Salvador were resistant to reform, coupled with a lack of political will, and programs funded by international donor nations were not fully implemented.⁷

The contributions and limitations of international assistance in efforts to establish accountability and reform the justice system in El Salvador and Afghanistan produced results far below expectations. The civil societies in both countries must accept the justice sector reforms. Attempts to establish accountability and an effective justice system for all is not in place in El Salvador after 35 years of United States involvement in the reform process, and after more than a decade in Afghanistan. Both countries experience limited security and high crime rates. In a post-war society, even with the assistance of the United States, democratic reform is limited in the context of post-war development.

Margaret Popkin concludes that USAID demonstrated an ignorance of El Salvador's legal system, provided little oversight for implementation, and failed to adopt objective, measurable guidelines for achievement.⁸ This is similar to the United States' efforts in Afghanistan, in that it took from 2001 to 2010 to realize the importance of

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

justice sector reforms and committing resources to the problem with the stand-up of CJIATF 435 and the ROLFF.

Judicial reform in El Salvador did not materialize, even though the Salvadoran government pledged to address the issue. Much like Afghanistan, continued military and economic aid were more important than actual reform. In El Salvador, the task of judicial reform was left to the FMLN who had little expertise and commitment to justice reform.⁹ This is similar to Afghanistan's ethnic leaders within the government, seemingly more concerned with continued military and economic contribution rather than a reform of the judicial system.

Time as a Factor

The United States, and the international community at large, can play a role in establishing a justice system, however, there is only a limited role in promoting national programs and reform to establish the rule of law. The involvement of the United States in El Salvador over the past 35 years and in Afghanistan for the past 15 years demonstrates the inherent resolve of the nation to promote democracy. This involvement cannot become a substitute for the process. This requires a long-term commitment to include training, capacity, and criteria for assessing success in the host country.

Applying a similar comparison of Afghanistan in the international community, Afghanistan has put into place the principles for accountability. The challenge lies in the equal enforcement as Afghanistan continues to increase security, which will allow the implementation of an effective criminal justice system nationally. Again, continued

⁹ Ibid.

economic and military aid by the United States and the international community is required to allow sufficient time for this to occur.

With the US loss of detention authority at the end of 2014¹⁰, a centralized complex where the most dangerous individuals are detained, investigated, prosecuted, and incarcerated remains the most efficient means by which to track, access, and prosecute individuals captured in partnered or counter-terrorism related operations. Continued United States economic and military aid until there is order and security is essential for preserving and nurturing a robust National Security Justice system.

International economic and military assistance continues in Afghanistan, with the most recent US-Afghan Bilateral Security Agreement and NATO Status of Forces Agreement being signed in 2015. USAID spent over \$1.2 billion on Afghanistan development in 2014, including \$338 million towards governance and \$180 million towards peace and security.¹¹ This does not include the military assistance provided under the International Security Assistance Force (ISAF).

Requirements under Afghan law, specifically articles related to acts of terrorism, were included as criminal offenses. For NSJC to remain viable, it must include the investigative and court functions that the JCIP allows. The success of the NSJC, and in particular the JCIP, led NATO donor nations to continue to fund sustainment of the JCIP via the Afghan National Army NATO Trust Fund through the end of 2017.¹² The

¹⁰ United States Forces-Afghanistan, Combined Joint Interagency Task Force 435, *CJIATF-435 After Action Report*, by Brigadier General Patrick Reinert, Provided by the author (Bagram, Afghanistan 2015), 4.

¹¹ United States Agency for International Development, “Dollars to Results,” USAID, <https://results.usaid.gov/afghanistan#fy2014> (accessed February 15, 2016).

¹² United States Forces-Afghanistan, Combined Joint Interagency Task Force 435, *CJIATF-435 After Action Report*, by Brigadier General Patrick Reinert, Provided by the author (Bagram, Afghanistan 2015), 7.

continued economic aid to this facility promotes an increase in both order and security as well as the justice sector reform. It provides a platform to instill civil order to achieve rule according to law.

CHAPTER 6: RECOMMENDATIONS AND CONCLUSION

An established framework for the Rule of Law is required after the conduct of military operations. A whole of government approach spanning all phases of an operation must be well defined and meticulously implemented to ensure a successful foundation for the establishment of a legal framework.

The rule of law enables gains in security to stabilize the government and its legitimacy. The ultimate objective is to establish a state of order where the acts of the governed and the government conform to the law. In order for this to happen, there must be order and security with the ability to enforce the law under an established, and effective justice system.

Afghanistan is similar to El Salvador in several aspects. A long-term commitment by the United States is required to establish security and justice sector reforms. Afghanistan is making progress towards a democratic republic after the fall of the Taliban in 2001 with laws to enact a justice system, and the personnel to effect a rule of law country-wide. In addition to security, there are several elements lacking to reform the national security justice system. This includes complete capture and evidence transfer, established criteria for provincial and national jurisdiction, legitimate and transparent investigation and prosecution, secure incarceration, and rehabilitation and reintegration practices to prevent recidivism.

Afghanistan demonstrated its commitment to a comprehensive national security justice system with the NSJC in Parwan, allowing for centralized treatment of national security threats without security, corruption, and competency weakness prevalent in the

provinces.¹ This contributes to the establishment of order and security with justice sector reform.

The national security justice system must have a completely functioning “capture-to-release” process that focuses on evidence based operations, to have the greatest chance of legitimate and transparent investigations and prosecutions. Prisoners must serve an appropriate sentence for their offenses, and anyone who is released should have reintegration and rehabilitation to mitigate any recidivism opportunities. All of these items will help to ensure the safety of the Afghan population, balanced with the rights of the accused in accordance with Afghan law.

Consolidation of national security incarceration and national security detention at Parwan will decrease access to insurgent networks through outside communication by isolating them at Parwan and reduce the likelihood of collaboration such as the case with gang members incarcerated in El Salvador.

Rule of Law must emanate from a centralized government system with the institutions and laws to foster it and agencies capable of enforcing it. Confidence in the government for the redress of grievances and accountability for criminal acts must accompany reforms.

The United States’ involvement in foreign countries is tied to U.S. strategic goals, and intertwined with military, political, economic, and diplomatic efforts. In El Salvador and Afghanistan, the government did not fail, nor was it defeated, yet insurgencies continued and the development of the judicial system and the rule of law within the countries is slow to evolve to meet Western standards. Objectives to establishing law and

¹ United States Forces-Afghanistan, Combined Joint Interagency Task Force 435, *CJITF-435 After Action Report*, by Brigadier General Patrick Reinert, Provided by the author (Bagram, Afghanistan 2015), 7.

order after conflict include the rule of law and a provision for oversight and accountability for police and other security forces.

A comparison of the programs invested into the rule of law implementation in Afghanistan versus that of El Salvador illustrates that the United States government should maintain its commitment to the Rule of Law program in Afghanistan to achieve its goals and support its enduring interests in the region. Economic and military aid must continue in Afghanistan for the next two to three decades, to allow sufficient time for the required justice system reforms in Afghanistan to take root. Also, a continual assessment of the program is necessary to ensure the effective use of resources being applied to the program.

As part of nation building, justice sector reform in fledgling democracies takes time. Improvements to order and security and an effective criminal justice system in Afghanistan is a pathway to good governance. The Government of the Islamic Republic of Afghanistan is a success story in the making. After civil war and an insurgency, the government is postured to gain control of the security situation and continue developing justice sector reform.

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Vita

Colonel Bayless was commissioned into the United States Army through the Reserve Officer Training Corps program at New Mexico Military Institute in 1992 and entered active duty service in 1995 as a Military Police Officer. He has served in troop leadership and command positions at the platoon, company and battalion level. He has two combat tours in Iraq and two combat tours in Afghanistan. He has served in staff positions at the 3-star and 4-star headquarters level. His most recent assignment was as the Deputy Director to the National Security Justice Development Directorate, United States Forces-Afghanistan in Bagram, Afghanistan. Colonel Bayless holds a Bachelor's Degree in Criminal Justice from Sam Houston State University and a Master's Degree in Business and Organizational Security Management from Webster University.