

Smart Power For Hard Problems:
The Role of Special Operations Forces
Strengthening the Rule of Law and Human Rights in Africa

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ABSTRACT

This article will assess the roles and responsibilities of Special Operations Forces (SOF) within the newly-created U.S. Africa Command (AFRICOM), as an active proponent of a so-called “smart power” national security strategy. In particular, it will outline the economic, political, and military challenges faced in Africa, and specifically how and why Special Operations Command Africa (SOCAFRICA) is the U.S. force of choice for promoting human rights and rule of law in Africa. With the goals of the U.S. military in mind, questions will necessarily arise as to “what success looks like” for both the U.S. and African nations, and the roles of each in joint (multiservice) and combined (multinational) civil-military initiatives, so concluding comments reflect on how these forces must model “what right looks like,” and provide specific modeling failures, and the consequences when that modeling did not take place.

- I. Special Operations Command - Africa (SOCAFRICA) and “Smart Power”

The U.S.’ AFRICOM just celebrated its fifth anniversary in October 2012 of “standing up,” operations, and has progressed well beyond “initial operating capability”² to act as the U.S. Department of Defense’s (“DoD’s”) newest regional unified combatant command³ in a region of

¹ © Kevin H. Govern 2012. Under rights reserved by the author to use all or part of this writing in collective works Security, And Development Policies Advanced Through U.S. Africa Command Initiatives, 26 CONN. J. INT’L L. 281 (2011). Any errors or omissions are solely the responsibility of the author.

² U.S. AFRICOM PUB. AFF. OFF., *U.S. Africa Command Reaches Initial Operating Capability*, U.S. AFR. COMMAND (Oct. 1, 2007), <http://www.africom.mil/getArticle.asp?art=1462>.

³ At the time of this chapter’s writing there were 10 Unified Combatant Commands (UCCs) within the U.S. Department of Defense; four were organized as functional commands with specific capabilities like Special Operations, as in the case of USSOCOM, and six geographical commands with regional responsibilities like U.S. Africa Command (USAFRICOM). See U.S. DEP’T. OF DEF., U.S. JOINT PUBLICATION NO.1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS (2001), at 324: (“unified combatant command — See unified command. (JP 1); unified command — A command with a broad

tremendous potential as well as turmoil. AFRICOM was conceived to work closely with the African Union (“AU”),⁴ other regional African institutions, and individual nations, in order to “provide unique ‘value-added’ capabilities to enhance already existing U.S. and international programs.”⁵ As “the military’s first ‘smart power’ command ... [AFRICOM has] no assigned troops and no headquarters in Africa itself, and one of its two top deputies [as] a seasoned American diplomat.”⁶ This requires AFRICOM to continue to develop integrated strategies (civil-military), resource bases (economic, political, and military) and tool kits (military and diplomatic capabilities) to achieve American objectives with an “approach that underscores the necessity of a strong military, but also invests heavily in alliances, partnerships and institutions at all levels to expand American influence and establish the legitimacy of American actions.

Driven by strategic necessity, and policy considerations of retaining a minimal “footprint” on the African continent, the U.S. military has quietly adapted its procedures to primarily employ Special Operations Forces (SOF) with great effectiveness, in conjunction with selected conventional forces, to advance AFRICOM initiatives.⁷ At the time of this article’s writing, AFRICOM’s only permanent base in Africa was Camp Lemonnier in Djibouti, with numerous ongoing unclassified and classified missions including; rotating troops and task forces of some 3,200 troops, including 300 Special Operations personnel working on organizing raids and strategizing the drone strikes of eight or more Predator drones “flown” by pilots from thousands of miles away, and eight F-15E fighter-bombers for other strike operations.⁸ Lemonnier has been described as part of a “constellation” of hush-hush US drone, commando or intelligence facilities in East Africa, including Ethiopia, Kenya, Somalia and the island nation of

continuing mission under a single commander and composed of significant assigned components of two or more Military Departments that is established and so designated by the President, through the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff. Also called unified combatant command. See also combatant command; subordinate unified command. (JP 1).”)

⁴ Jim Lobe, *Africa to Get Its Own U.S. Military Command*, INTER PRESS SERVICE (Jan. 31, 2007), <http://www.antiwar.com/lobe/?articleid=10443>.

⁵ U.S. AFR. COMMAND; *supra* note 2, (quoting General William E. “Kip” Ward, former Commander, AFRICOM).

⁶ Eric Schmitt, *Libya Crisis Thrusts U.S. Africa Command Into Leadership Role*, N.Y. TIMES, (Mar. 22, 2011), http://www.nytimes.com/2011/03/23/world/africa/23command.html?_r=1&pagewanted=print.

⁷ Govern, *supra* note 1, at 294.

⁸ Craig Whitlock, *Remote U.S. base at core of secret operations*, WASHINGTON POST, Oct. 25, 2012, at C4, http://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html?wpisrc=nl_headlines.

For details of the U.S. Government’s “acknowledged,” unclassified site locations in Africa, see LAUREN PLOCH, CONG. RESEARCH SERV., RL 34003, AFRICA COMMAND: U.S. STRATEGIC INTERESTS AND THE ROLE OF THE U.S. MILITARY IN AFRICA 9-10 (2010). Ploch identified that “AFRICOM’s other Forward Operating Site is on the United Kingdom’s Ascension Island in the south Atlantic. U.S. military facilities in Rota, Spain; Sigonella, Italy; Aruba, Lesser Antilles; Souda Bay, Greece; and Ramstein, Germany, serve as logistic support facilities. The U.S. military also has access to a number of foreign air bases and ports in Africa and has established “bare-bones” facilities maintained by local troops in several locations. The U.S. military used facilities in Kenya in the 1990s to support its intervention in Somalia and continues to use them today to support counterterrorism activities. DOD refers to these facilities as “lily pads,” or Cooperative Security Locations (CSLs), and has access to locations in Algeria, Botswana, Gabon, Ghana, Kenya, Mali, Namibia, Sao Tome and Principe, Sierra Leone, Tunisia, Uganda, and Zambia.”

the Seychelles.⁹ The DOD will neither confirm nor deny those other locations, but Niger's Ambassador to the US, Maman Sidikou, told the media in early 2013 that his government has agreed to let US drones operate from its territory, a largely desert nation on the eastern border of Mali.¹⁰ According to U.S. Special Operations Command (USSOCOM) Commander Admiral (ADM) McRaven, Special Operators will be partnering with the State Department and other federal agencies, as well as friendly foreign militaries, on “nonkinetic”¹¹ programs to prevent extremists from capitalizing on political discontent, ethnic rivalries and economic frustration to fuel their strategy of terror and violence in places like Yemen, the Horn of Africa and countries bordering the Sahara Desert.¹²

Inheriting the range of Special Operations missions from Special Operations Command Europe (SOCEUR),¹³ and complimenting AFRICOM's conventional force capability, AFRICOM “stood up” a “theater Special Operations Command for Africa,” (“SOCAFRICA”) to support the Theater Security Cooperation Program,¹⁴ with deliberate planning, and response to real world contingencies in 53 countries and more than 13 million square miles¹⁵. Also on 1 October 2008, SOCAFRICA assumed responsibility for the Special Operations Command and Control Element – Horn of Africa,¹⁶ and on May 15, 2009, SOCAFRICA assumed responsibility

⁹ *Id.*, citing with authority Craig Whitlock and Greg Miller, *U.S. assembling secret drone bases in Africa, Arabian Peninsula, officials say*, WASHINGTON POST, Sep. 20, 2011, http://www.washingtonpost.com/world/national-security/us-building-secret-drone-bases-in-africa-arabian-peninsula-officials-say/2011/09/20/gIQAJ8rOjK_story.html.

¹⁰ Jamie Crawford and Chris Lawrence, *U.S. to base surveillance drones in Niger, ambassador says*, CNN, Feb. 7, 2013, <http://www.cnn.com/2013/01/29/us/niger>.

¹¹ See, e.g., Donald P. Wright and Timothy R. Reese, ON POINT II, TRANSITION TO THE NEW CAMPAIGN: THE UNITED STATES ARMY IN OPERATION IRAQI FREEDOM MAY 2003 –JANUARY 2005 (Combat Studies Institute Press, 2008), available at <http://permanent.access.gpo.gov/lps96027/OnPointII.pdf>: “[F]rom the very beginning of the full spectrum campaign [in Iraq], US forces also mounted broader efforts to build popular support for the new Iraqi Government and the Coalition project in Iraq. These operations, sometimes called ‘nonkinetic’ operations, concentrated on the reconstruction of the Iraqi infrastructure, the establishment of representative government, the training of ISF, and general efforts to improve the quality of life for the population.” *Id.* at 87. In a footnote parenthetical to that segment, the authors noted the doctrinal shift in 2008 to the terms “lethal” and “nonlethal” instead of “kinetic” and “nonkinetic.” *Id.* at 87.

¹² John M. Doyle, *Special Operations Forces Face Growing Problems in a Shrinking World*, INST. FOR DEF. AND GOV'T ADVANCEMENT (Nov. 12, 2012), http://www.idga.org/unconventional-warfare/articles/special-operations-forces-face-growing-problemsin/&mac=idga_oi_featured_2011&utm_source=idga.org&utm_medium=email&utm_campaign=idgaoptin&utm_content=11/13/12, Posture Statement of Admiral William H. McRaven, USN Commander, United States Special Operations Command Before The 112th Congress Senate Armed Services Committee March 6, 2012, http://www.senate.gov/~armed_services/statemnt/2012/03%20March/McRaven%2003-06-12.pdf. the Mar. 5, 2013 USSOCOM Posture Statement is available at <http://www.seal-nswfamilyfoundation.org/2013/03/posture-statement-of-admiral-william-h-mcraven-usn-commander-united-states-special-operations-command-2/>.

¹³ See, e.g., SPEC. OPERATIONS COMMAND EUR., <http://www.soceur.eucom.mil/default.asp>.

¹⁴ Marina Malenic, *Pentagon Begins Constituting Special Operations Command to Support AFRICOM Efforts*, DEF. DAILY (Oct. 9, 2008), <http://www.defensedaily.com/publications/dd/4271.html>.

¹⁵ Bryan Purtell, *Haas Assumes Command of Special Operations Command Africa*, SPECIAL OPS. COMMAND AFRICA PUB. AFFAIRS (Aug 25, 2009), <http://www.africom.mil/NEWSROOM/Article/6829/haas-assumes-command-of-special-operations-command>.

¹⁶ Max Blumenfeld, *Training in Trans-Sahara Africa*, JSOTF-TS PUB. AFFAIRS (DEC. 13, 2010), <http://www.africom.mil/Newsroom/Article/7896/training-in-trans-sahara-africa>.

for Joint Special Operations Task Force Trans – Sahara (JSOTFTS) – the SOF component of Operation Enduring Freedom – Trans–Sahara.¹⁷

The primary focus of the command is on SOF missions that develop African partner capacity, provide assistance and support theater security cooperation objectives.¹⁸ For SOCAFRICA, however, as with the remainder of AFRICOM assets, the challenge is and will remain that its forces must pursue not a unilateral military presence or bilateral military-to-military cooperation, but “a whole of government” approach which presents a tension between the importance of representing U.S. activities in Africa as peaceful and respectful of African national sovereignty.”¹⁹ Collectively and individually, African nations will continue to raise many challenges surrounding the balance between military power, civil society, and the rule of law.²⁰ With the goals of the U.S. military in mind, questions will necessarily arise as to “what success looks like” for both the U.S. and African nations, and the roles of each in joint and combined civil-military initiatives.²¹

II. The Economic, Political, and Military Challenges Faced in Africa

The 2004 U.S. Nat’l Military Strategy significantly described Africa as lying in “an ‘arc of instability’ stretching from the Western Hemisphere, through Africa and the Middle East and extending to Asia.”²² Additionally, and similarly troubling, is the observation that “[t]here are areas in this arc that serve as breeding grounds for threats to [U.S.] interests.”²³ Indicative of that regional instability, the U.S. had become “increasingly involved in Africa since the end of the Cold War,” with over “20 U.S. military operations in Africa between 1990 and 2000 and another 10 [plus] since 2000.”²⁴ As ADM McRaven identified to Congress, the U.S. continues to

¹⁷ *Id.*

¹⁸ See *supra* note 15.

¹⁹ John Tierney, Chairman, Subcomm. on Nat’l Sec. and Foreign Affairs, Keynote Address at AFRICOM: An Independent Review for the New Administration (Oct. 28, 2009), available at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=4626&Itemid=55.

²⁰ Govern, *supra* note 1, at 294.

²¹ *Id.*

²² JOINT CHIEFS OF STAFF, THE NATIONAL MILITARY STRATEGY OF THE UNITED STATES OF AMERICA: A STRATEGY FOR TODAY; A VISION FOR TOMORROW 5 (2004), available at <http://www.defense.gov/news/mar2005/d20050318nms.pdf>. The 2011 NMS less pessimistically addressed Africa’s “critical states where the threat of terrorism could pose a threat to our homeland and interests, “violent extremism in the Horn of Africa, particularly Somalia and the Trans-Sahel,” “the security threat to innocent civilians, and the need to “identify and encourage states and regional organizations that have demonstrated a leadership role to continue to contribute to Africa’s security. We will help facilitate the African Union’s and the Regional Economic Communities’ development of their military capacity, including the African Stand-by Force, to address the continent’s many security challenges.” JOINT CHIEFS OF STAFF, THE NATIONAL MILITARY STRATEGY OF THE UNITED STATES OF AMERICA: REDEFINING AMERICA’S MILITARY LEADERSHIP 12 (2011), available at http://www.jcs.mil//content/files/2011-02/020811084800_2011_NMS_-_08_FEB_2011.pdf.

²³ *Id.*

²⁴ See, e.g., Denine Walters, *AFRICOM: Newsworthiness and Current Operations*, CONSULTANCY AFR. INTELLIGENCE (Dec. 1, 2009), http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=300&Itemid=202. See also Brett D. Schaefer & Mackenzie Eaglen, & *WebMemo No. 1644: Clarifying the Future of AFRICOM*, J. HERITAGE FOUND. n.3 (Sep. 27, 2007),

confront a number of challenges from “insurgents, transnational terrorists, criminal organizations, nation states and their proxies,” that these opponents will try to exploit gaps in U.S. foreign and defense policies that were developed in a more predictable world, with their use of cyberspace as a battlefield making them more adaptable as they seek new ways to recruit, train, finance and operate.²⁵ In Africa and elsewhere, “[i]n short, the strategic environment is changing – quickly and constantly.”²⁶ At greatest risk in Africa are “weakly governed spaces [that] provide favorable operating environments for violent extremism, piracy, and trafficking of humans, weapons, and drugs.”²⁷ Similarly, numerous other nations where duly constituted governments employ cronyism and favoritism to manipulate the organs of law enforcement and judicial systems, or flaunt international efforts to advance and promote justice. Rule of law and human rights challenges include, but are not limited to the following in some 21st Century African nations, governmental entities, organizations, and cultures:

- undeveloped economies, with limited resource bases and insufficient employment/income opportunities for large segments of the population resulting in wide-spread poverty;
- high population growth rates further straining the natural environment and local resources, while intensifying competition for resources;
- ethnic diversity and/or regional factionalism promoting local/particularistic identifications, while hindering the development of a national identification;
- ethnic and/or class politics involving competition among leaders of different language, cultural, or regional populations for state positions of political and economic power with the spoils of victory going to supporters;
- lack of regime legitimacy as those large segments of the population not culturally and/or politically affiliated with the ruling elite and not sharing in the spoils refuse to recognize the regime as legitimate;
- resort to military/police force to maintain power by suppressing political opponents and disgruntled civilians;
- violation of economic, civil, and political rights by the regime on the pretext of "national security;"²⁸ and;
- openly mocking human rights and democracy, aside from corruption and complicity in criminal and terroristic movements.²⁹

<http://www.heritage.org/Research/Africa/wm1644.cfm> (citing Otto Sieber, *Africa Command: Forecast For The Future*, STRATEGIC INSIGHTS (Jan. 2007), <http://www.ccc.nps.navy.mil/si/2007/Jan/sieberJan07.asp>).

²⁵ Posture Statement, *supra* note 12.

²⁶ *Id.*

²⁷ U.S. AFR. COMMAND, 2010 POSTURE STATEMENT (2010), <http://www.africom.mil/getArticle.asp?art=7665&lang=0>. In his March 9, 2010 testimony before Congress, the then-commander of AFRICOM provided an overview of the strategic environment in Africa, explained AFRICOM's strategic approach, and showed how security cooperation efforts promote stability in support of U.S. foreign policy and national security objectives. It is noteworthy that these Annual Posture Statements seldom, if ever, include “metrics” related to “measures of success,” identifying instead, anecdotal instances of mission successes and efficacy.

²⁸ Paul J. Magnarella, "Preventing Interethnic Conflict and Promoting Human Rights through More Effective Legal, Political, and Aid Structures: Focus on Africa," *Georgia Journal of International and Comparative Law*, vol. 23, pp. 327-45 (1993), *cited with authority in* Paul J. Magnarella, "Achieving Human Rights in Africa." 4(2): 2. <http://web.africa.ufl.edu/asq/v4/v4i2a2.htm>.

What should success look like for SOCAFRICA and conventional force engagement of African forces and governments? According to the House of Representatives' yearly assessment of AFRICOM, national security is a stable environment, "where education and public health efforts, improvements in the rule of law, and the reduction of corruption can significantly increase a government's ability to combat these new threats." In summation, AFRICOM's "foremost mission is to help Africans achieve their own security, and to support African leadership efforts,"³⁰ but they "will welcome help in building strong, effective and professional forces."³¹

III. Surveying SOCAFRICA Efforts To Promote Human Rights and Rule of Law

Part of the SOF "smart power" approach to Africa will involve a mix of direct and indirect approaches to promote stability and security, advancing human rights and the rule of law. In advancing rule of law principles in Africa, we might look to what the U.S. Department of State (DoS) has attempted to define for Congress as notions of rule of law the U.S. encourages and promotes:

While there is no commonly agreed upon definition for the rule of law, we take it to mean a broad spectrum of activities including a constitution, legislation, a court system and courthouses, a judiciary, police, lawyers and legal assistance, due process procedures, prisons, a commercial code, and anticorruption activities. To successfully implement an emerging rule of law, these activities must proceed somewhat sequentially and not randomly.³²

According to ADM McRaven, the direct approach will remain a hallmark capability for SOF in order to provide the necessary means to disrupt this threat, while it ultimately only buys time and space for the indirect approach and broader governmental elements to take effect.³³ Less well known but decisive in importance, the indirect approach includes "empowering host nation forces, providing appropriate assistance to humanitarian agencies, and engaging key populations, such that "[t]hese long-term efforts increase partner capabilities to generate sufficient security and rule of law, address local needs, and advance ideas that discredit and defeat the appeal of

²⁹ See, e.g., Afr. Action and Foreign Policy in Focus, *Africa Policy Outlook 2010*, FPIF (Jan. 22, 2010), http://www.fpif.org/articles/africa_policy_outlook_2010.

³⁰ Int'l Affairs Programs, *Africom*, USINFO.STATE.GOV, <http://web.archive.org/web/20080513064853/http://usinfo.state.gov.af/africa/africom.html> (last updated Jan. 18, 2008).

³¹ Judith Snyderman, *AFRICOM Helps African Nations Build Their Own Secure Future*, NAVY.MIL (Apr. 10, 2008, 11:35 AM), http://www.navy.mil/search/display.asp?story_id=52478.

³² Howard J. Krongard, *Testimony of Howard J. Krongard Inspector General U.S. Department of State and Broadcasting Board of Governors*, Oig.State.Gov (Oct. 18, 2005), <http://oig.state.gov/documents/organization/55371.pdf>. Note: the context of this testimony before Congress was ongoing rule of law initiatives in Afghanistan and Iraq. Domestically, as well as internationally, it is far from settled how to define "rule of law," let alone how to bring it about. See, e.g., Kevin Govern, *Rethinking Rule of Law Efforts in Iraq*, JURIST FORUM (Feb. 26, 2007), <http://jurist.law.pitt.edu/forumy/2007/02/rethinking-rule-of-law-efforts-in-iraq.php>.

³³ Posture Statement, *supra* note 12.

violent extremism.”³⁴

As an effort to advance U.S.-African cooperation and the rule of law in African states, the first Africa Military Legal Conference hosted by AFRICOM concluded on May 21, 2010 at the Kofi Annan International Peacekeeping Training Center in Accra, Ghana. This conference brought together legal experts from fifteen African nations to discuss common challenges, including military justice and maritime law and counter-narcotics authorities.³⁵ Major Joy Primoli of 17th Air Force (Air Forces Africa) and Lieutenant Colonel Timothy Tuckey, U.S. Army Africa, led a discussion about the U.S. military justice system and discussed challenges that common law countries face in applying military disciplinary rules to maintain good order and discipline while ensuring that unlawful command influence does not corrupt the system.³⁶ Countries using civilian justice systems for military offenses discussed challenges in case processing, including the lack of resources to dispense timely justice.³⁷

SOF and conventional forces have been involved in promoting as well as conducting in Africa and elsewhere the International Military Education and Training (IMET) program that provides funds for international personnel to attend U.S. military professional training programs.³⁸ The IMET program “specifically targets current and future military and civilian leadership in African nations” and “exposes foreign students to U.S. professional military organizations and procedures and the manner in which military organizations function under civilian control.”³⁹ AFRICOM highlights that its IMET programs introduce students to “elements of U.S. democracy such as the U.S. judicial system, legislative oversight, free speech, equality issues, and U.S. commitment to human rights,” and promotes force interoperability through “IMET’s mandatory English-language proficiency requirement.”⁴⁰ Of no small significance “IMET training graduates fill key leadership positions in military of many African nations.”⁴¹ There is also irony in this observation given that Malian coup leader Capt. Amadou Haya Sanogo, received extensive IMET training in the United States between 2004 and 2010 before leading a military coup of his nation in 2012.⁴² Funding for U.S. Africa Command IMET recipient countries in Fiscal Year (FY) 13 was \$13.2M, with \$4M carried over from FY 2012, compared to the FY 11 level of \$21.6M,⁴³ and projected funding for FY12 at \$20.4M.⁴⁴ In

³⁴ *Id.*

³⁵ Kathleen A. Duignan, *Successful Completion of First Africa Military Legal Conference*, U.S. AFR. COMMAND (June. 4, 2010), <http://www.africom.mil/getArticle.asp?art=4520&lang=0>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ U.S. AFRICOM Pub. Affairs Office, Newsroom Documents March 2012, U.S. AFR. COMMAND, *Fact Sheet: International Military Education and Training* (Jan. 2012), http://www.google.com/url?sa=t&rct=j&q=international%20military%20education%20and%20training%20africom&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.africom.mil%2FNewsroom%2FDocument%2F8841%2Ffact-sheet-international-military-education-and-tr&ei=-_JRUc-VMrO50QH4-YH4Aw&usg=AFQjCNFKjonTqomHHGZe6wM00Boz6ydKIQ.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Adam Nossiter, *Leaders of Mali’s Military Coup Seem to have Uncertain Grasp on Power*, N.Y. TIMES, Mar. 23, 2012, at A8.

⁴³ Fact Sheet: Int’l Military Educ. and Training, *supra* note 38, and see Kenneth W. Martin, FISCAL YEAR 2012

FY11, 1,292 students from 47 partner nations throughout Africa participated in IMET-funded training and educational opportunities.⁴⁵ With IMET, as with other development and assistance programs, if it is the sense of Congress that if a country does “not cooperate with the United States on terrorism or narcotics enforcement, is a gross violator of the human rights of its citizens, or is engaged in conflict or spends excessively on its military,” then they will be ineligible to participate in U.S. funded programs.⁴⁶

Other examples of the indirect approach are SOF’s contributions supporting interagency diplomacy and development efforts. Currently, Military Information Support Teams (MISTs) and Regional Information Support Teams (RISTs) support the Department of State by augmenting and broadening their public diplomacy efforts.⁴⁷ MIST elements are requested by U.S. Chiefs of Mission and work under their direction to blend the embassy’s Mission Strategic Plan and the Geographic Combatant Commander’s (AFRICOM’s) Theater Campaign Plan, as in the case of the U.S.-led Operation Odyssey Dawn and the NATO Combined Joint Task Force (CJTF) Operation Unified Protector operations in Libya in 2011.⁴⁸

SOF elements in AFRICOM and elsewhere also support interagency development efforts by deploying civil-military support elements (CMSEs) to address refugees, displaced persons, populations at risk, and humanitarian or disaster assistance.⁴⁹ In addition to their work in the Trans-Sahel, “CMSEs are engaged in 17 countries and are forecasted to expand to 20 countries in FY 2013 and 30+ countries by FY 2017” to “support population-focused indirect approaches to combat violent extremism.”⁵⁰

The U.S. Dep’t of State, Africa Bureau has administered various peacekeeping capacity-building assistance programs since the mid-1990s: the 1996 African Crisis Response Initiative (ACRI) program from 1996 through 2004 evolved into the African Contingency Operations Training and Assistance program (ACOTA) in 2004, then the Global Peace Operations Initiative

SECURITY COOPERATION LEGISLATION, Defense Institute of Security Assistance Management (2013), at 2, 3, 7 and 12, http://www.disam.dsca.mil/documents/pubs/other/sc_legislation_fy2012.pdf.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., Sense Of The Congress Regarding Comprehensive Debt Relief For The World’s Poorest Countries, 19 U.S.C. § 3731 (2000).

⁴⁷ John Boehnert and Jamie Nasi, *Military Information Support Operations In The Tran-Sahel*, , SPECIAL WARFARE, Vol. 26, Issue 1, Jan.-Mar. 2013, at 10, <http://www.soc.mil/swcs/SWmag/archive/SW2601/SW2601MISOInTheTransahel.html>.

⁴⁸ *Id.* See also: Geoffrey Childs, *Military Information Support to Contingency Operations In Libya*, SPECIAL WARFARE, Vol. 26, Issue 1, Jan.-Mar. 2013, at 14, <http://www.soc.mil/swcs/SWmag/archive/SW2601/SW2601MISOInLibya.html>.

⁴⁹ See *Operation Enduring Freedom-Trans-Sahara (OEF –TS)*, GLOBAL SECURITY, <http://www.globalsecurity.org/military/ops/oef-ts.htm>, (last modified Jan. 24, 2013).

⁵⁰ *National Defense Authorization Act for Fiscal Year 2013 and Oversight of Previously Authorized Programs: Hearing Before the H. Comm. on Armed Serv.*, 112th Cong. 86 (2012) (statement of Admiral William H. McRaven, USN Commander, United States Special Operations Command).

(GPOI) in 2005.⁵¹ The ACRI was designed, according to the U.S. Naval Postgraduate School, “[t]o enhance the capacity of African partner nations to effectively participate in multinational peace support operations,” or in other words, to improve the training and effectiveness of African military forces.⁵² The goal of these programs has been “to increase the capabilities of these militaries in areas such as human rights, interaction with civil society, international law, military staff skills, and small unit operations,” with the ultimate goal to shift from direct training to building the capacity of foreign nations to develop their own peacekeeping infrastructure and capabilities.⁵³ According to Deputy Assistant Secretary of Defense Vicki Huddleston, “[b]y training professional military units that respect civilian control, these militaries become important contributors to stability and respect for the rule of law,” while AFRICOM’s exercises “provide opportunities to African partners to continue perfecting their professional abilities.”⁵⁴ Huddleston said such training includes international standards on human rights, including respect for the rule of law, tolerance and women’s rights.⁵⁵

SOF pursuing ACOTA/GPOI and other missions must be conscious of unique and intensifying politico-military “turf issues” and legal human rights concerns in Africa, since “already, U.S. military resources and projects are crossing ministerial lines across the

⁵¹ See *Africa Crisis Response Initiative*, Global Security, <http://www.globalsecurity.org/military/ops/acri.htm> (last visited Jan. 31, 2013). NINA SERAFINO, CONG. RESEARCH SERV., RL 32773, THE GLOBAL PEACE OPERATIONS INITIATIVE: BACKGROUND AND ISSUES FOR CONGRESS 3 (2009). Serafino notes on this transmogrification of ACRI to ACOTA that “Before mid-2004, the United States provided peacekeeping capacity-building assistance to foreign militaries primarily under two programs, the African Contingency Operations Training and Assistance program (ACOTA) and its predecessor program, and the Enhanced International Peacekeeping Capabilities program (EIPC). Both ACOTA and EIPC have been subsumed under the GPOI budget line. ACOTA is still the term used to refer to the Africa component of GPOI, however, and is implemented by the State Department’s Africa Bureau. Overall responsibility for GPOI rests with the State Department Bureau of Political-Military Affairs’ Office of Plans, Policy, and Analysis (PM/PPA). (Information about GPOI is available at <http://www.state.gov/t/pm/ppa/gpoi>.) PM/PPA works closely with DOD offices to plan and carry out the program.”

⁵² *U.S. Government Donates Utility Vehicles to the Nigerian Army*, U.S. DIPLOMATIC MISSION TO NIGERIA (Oct. 24, 2008).

⁵³ Press Release, U.S. Dep’t of State, Africa Crisis Response Initiative (ACRI) (Taken Question) (July 3, 2003), available at <http://20012009.state.gov/r/pa/prs/ps/2003/22237.htm>. Serafino, *supra* note 51, at 1: “Established to train 75,000 international peacekeepers by 2010, GPOI was the George W. Bush Administration’s signature initiative to build international peacekeeping capacity. (State Department officials express confidence that the goal of 75,000 peacekeepers-trained will be achieved by early 2010.) The Administration launched the five-year \$660 million (in FY2005- FY2009 funds) initiative in mid-2004 as a means to alleviate the perceived shortage worldwide of trained peacekeepers and “gendarmes,” as well as to increase available resources to transport and sustain them (“Gendarmes,” also known as constabulary police or stability police, are police with a combination of policing and military skills considered vital to the semi-stable environments of peace operations, where the potential for outbreaks of rioting and other violence creates a need for specially-trained police forces.). While the United States has provided considerable support to implement several peace processes and to support peacekeepers in the field from a variety of budget accounts for well over a decade, until GPOI it had provided relatively little funding to build up foreign military capabilities to perform peacekeeping operations. In plans for GPOI after 2010, State Department officials state that the program’s emphasis would shift from direct training to building the capacity of foreign nations to develop their own peacekeeping infrastructure and capabilities.”

⁵⁴ Stephen Kaufman, *AFRICOM Empowering African Development as Well as Security*, IIP DIGITAL (Jul. 26, 2011), <http://iipdigital.usembassy.gov/st/english/article/2011/07/20110726172840nehpets0.4103968.html#ixzz25F1tTgFY>

⁵⁵ *Id.*

continent.”⁵⁶ Retired Foreign Service Officer Robert Gribben points to the theoretical “key local client for AFRICOM” as being the host Ministry of Defense, yet the additional realities are that “U.S. military resources already go to projects in ministries of water development, women’s affairs, health, interior [and] aviation.”⁵⁷ This means it is not enough for SOF to “vet” military compliance with human rights considerations and promote military capabilities; they must also do so for civilian ministries.

SOCAFRICA and other component commands and AFRICOM assets must integrate their efforts with the AU, a key partner, despite the fact that the AU faces a crisis of legitimacy such that “[t]he AU is being judged on whether it can and will respond effectively to situations of armed conflict [under the provisions of the AU Constitutive Act].”⁵⁸ The AU Constitutive Act states that the Union has the right to intervene “in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.”⁵⁹ They must support AU’s initiatives to build legitimacy and the rule of law, including the “alphabet soup” of allied coalitions, including but not limited to: GPOI described previously;⁶⁰ the Antiterrorism Assistance Program (ATAP);⁶¹ Trans-Sahara Counterterrorism Partnership (TSCTP);⁶² East Africa Counter Terrorism Initiative (EACTI);⁶³ Expanded-International Military Education and Training (E-IMET);⁶⁴ the African Coastal/Border Security (ACBS) Program;⁶⁵ Foreign Military Financing (FMF);⁶⁶ the AU Standby Force;⁶⁷ the Kofi Annan International Peacekeeping Training Center;⁶⁸ the Military Personnel Exchange Program;⁶⁹ the Regional Defense CT Fellowship Program (CTFP);⁷⁰ and the National Guard Bureau State Partnership Program.⁷¹ Just as the AU is “being judged on whether the presence of

⁵⁶ Robert E. Gribbin, *Implementing AFRICOM: Tread Carefully*, FOREIGN SERVICE J., May 2008, at 25; Theresa Whelan, *Transcript: Pentagon Africa Policy Chief Whelan Describes U.S. Objectives For Africa Command*, AFRICOM (Feb. 18, 2008), <http://www.africom.mil/getArticle.asp?art=1663> (“There are a number of pieces of legislation -- one of them for example is the Leahy Amendment, which requires human rights vetting of every single individual we train. Even if we’re training a large unit, every individual in that unit has to be vetted as best we can with the information that we have for human rights violations to anyone that there is even the smallest bit of suspicion about is removed from the training program.”); *See also*. Pub. L. No. 104-208, 110 Stat. 3009-133 (1996) (discussing certain human rights abuses by host nations may trigger restrictions on U.S. funding under the aforementioned Leahy Amendment).

⁵⁷ *See* Gribbin, *id.*, at 25.

⁵⁸ James J.F. Forest, *Legitimacy And Peace: Linking U.S. Strategic Objectives With The African Union And Darfur*, TEACHING TERROR (Apr. 19, 2007), http://www.teachingterror.net/lectures/Forest_IDC2007.ppt.

⁵⁹ *Id.*

⁶⁰ Serafino, *supra* note 51.

⁶¹ Antiterrorism Assistance Program,, USINFO.STATE.GOV, (2013), <http://www.state.gov/m/ds/terrorism/c8583.htm>.

⁶² Trans-Sahara Counterterrorism Partnership (TSCTP) U.S. Foreign Assistance Performance Publication Fiscal Year 2009, USINFO.STATE.GOV, (Fiscal Year 2009). <http://www.state.gov/documents/organization/159220.pdf>.

⁶³ Ploch, *supra* note 8, at 23.

⁶⁴ *Id.*, at 23, 38 and 62.

⁶⁵ *Id.*, at 26.

⁶⁶ *Id.*, at 23, 38, 48.

⁶⁷ *Id.*, at 22.

⁶⁸ *Id.*, at 10.

⁶⁹ *Id.*, at 23

⁷⁰ Serafino, *supra* note 51, at 1-2.

⁷¹ Jefferson P. Marquis, et. al, ASSESSING THE VALUE OF U.S. ARMY INTERNATIONAL ACTIVITIES,

AU or regional peacekeeping forces can resolve complex peace support or enforcement operations,”⁷² so too will SOCAFRICA and other AFRICOM assets be judged. The primary thrust of U.S. targeted killings, particularly through drone strikes, has been on al-Qaeda and Taliban leadership networks in Afghanistan and the remote tribal regions of Pakistan.⁷³ However, U.S. operations are continuing to expand in Horn of Africa countries such as Somalia and Yemen.⁷⁴

IV. “Modeling What Right Looks Like” And The Consequences When That Doesn’t Happen

I have previously proposed Measures of Effectiveness (MOE) for AFRICOM,⁷⁵ addressing Congressional concerns about each key aspect of force composition, resourcing, and missions at a time when AFRICOM was still forming such standards and assessing “lessons learned.”⁷⁶ In hindsight, the outgoing first deputy to the commander for military operations, VADM (RET) Robert Moeller, said, “during [the command’s] work in designing AFRICOM and helping guide it through the early years of its existence, a number of lessons have helped inform our decisions and ensure we performed our job responsibly and effectively.”⁷⁷ Those “lessons learned” have equal applicability to SOCAFRICA as AFRICOM’s sub-unified command:

Lesson 1: AFRICOM does not create policy.

Lesson 2: AFRICOM must work hand in hand with the diplomatic corps.

Lesson 3: Keep our footprint in Africa limited.

Lesson 4: AFRICOM is most effective when it listens to the concerns of its African partners.

Lesson 5: Don’t expect instant results.⁷⁸

Each of these aspects contribute to a long-term vision AFRICOM shares with its African partners, building capabilities through sustained security programs which, “over time, help support the conditions for economic development, social development, and improvements in health -- so that people will continue to see progress in their lives and growing prosperity in their communities.”⁷⁹

NATIONAL GUARD BUREAU STATE PARTNERSHIP PROGRAM (2006), at 84. Initiatives to build legitimacy, as outlined by Forest, *supra* note 58, at Slide 10, included each of the organizations identified in footnotes 60-70.

⁷² *Id.*, at Slide 8.

⁷³ Jonathan Masters, *Targeted Killings*, CFR, (Jan. 8, 2013), <http://www.cfr.org/counterterrorism/targeted-killings/p9627>

⁷⁴ See TARGETED KILLINGS: LAW AND MORALITY IN AN ASYMMETRICAL WORLD (Claire Finkelstein et al. eds., 2012).

⁷⁵ Govern, *supra* note 1, at 327.

⁷⁶ Richard L. Armitage et al., CSIS Commission on Smart Power, *CSIS Commission on Smart Power, A Smarter, More Secure America*, CENTER FOR STRATEGIC AND INT’L STUD., 2007, at 7, http://csis.org/files/media/csis/pubs/071106_csissmartpowerreport.pdf.

⁷⁷ Robert Moeller, *The Truth About Africom*, FOREIGN POLICY (Jul. 21, 2010), http://www.foreignpolicy.com/articles/2010/07/21/the_truth_about_africom?page=full.

⁷⁸ *Id.*

⁷⁹ *Id.*

Even when these “lessons learned” are heeded, and best efforts are made to assess and promote adherence to the highest legal and operational standards, some resulting circumstances may fall short where exemplifying and educating “what’s right looks like” does not happen. For instance, Malian Army Captain and coup leader Sanogo “attended an English-language instructor course at the Defense Language Institute, a special school for international military students at Lackland Air Force Base, Tex., from August 2004 to February 2005,” then “[n]early three years later, in December 2007, Captain Sanogo returned to the United States, this time for more English language classes at Lackland before attending the Army’s entry-level course for intelligence officers at Fort Huachuca, Ariz., instruction that he completed in July 2008.”⁸⁰ Did IMET and other training enhance Sanogo’s ability to plot and conduct his coup? Conversely, did instruction in military ethics and the responsibility to adhere to national law and international humanitarian law (IHL) deter him from committing greater human rights violations than he is accused of having committed? Only time and careful consideration will tell, as the “green arc of instability” from the Sahel to the Horn of Africa became less stable by this forcible revolt.⁸¹ It said that more than 270,000 people had been displaced within Mali, while more than 170,000 refugees had fled to neighboring Burkina Faso, Mauritania and Niger, worsening the effects of drought and food shortages in the arid Sahel band stretching east to west across Africa below the Sahara desert.⁸²

SOF must also scrupulously demonstrate the highest legal, ethical, and moral standards in their own personal and professional conduct. What better way to hold the “high ground” and to encourage those being trained and those advised to do likewise? Regrettably, as a negative exemplar, for African forces and nations within the AFRICOM Area of Responsibility (AOR), the Department of Defense Inspector General found that former AFRICOM Commander Lieutenant General (LTG) (formerly General - GEN) Ward “spent thousands of dollars on inappropriate travel expenses,” and engaged in several “inappropriate” activities, including “submitting expense reports with extravagant and unacceptable charges, inappropriate use of military staff, and misuse of government funds,” involving “not an insignificant sum of money.”⁸³ Emphasizing that Defense Department leaders must exemplify both professional

⁸⁰ Nossiter, *supra* note 37. Sanogo ultimately “agreed to step down and allow the re-installation of a civilian government. However, at the time of this writing, he has been a continuing obstacle to efforts by the Economic Community of West African States (ECOWAS).” See Mark P. Fancher, *Beware the Rotten Fruit of AFRICOM Training*, BLACK AGENDA REPORT (May 1, 2012), <http://blackagenda.com/content/beware-rotten-fruit-africom-training>.

⁸¹ *Arc of instability in Africa may turn into battlefield – Moscow’s envoy*, RT (Mar. 27, 2012) <http://rt.com/politics/mali-africa-arab-spring-538/>. Mikhail Margelov, the Kremlin’s special envoy to Africa stressed, “A ‘green arc of instability’ is being formed from the Sahel (the region bordering the Sahara Desert) to the Horn of Africa. Therefore careful monitoring of events in the region is necessary not to allow the transformation of this arc into a battlefield.” *Id.*

⁸² Mali newspaper editor charged with incitement to revolt, REUTERS, Mar. 19, 2013, <http://news.yahoo.com/mali-newspaper-editor-charged-incitement-revolt-123800655.html>

⁸³ Barbara Starr, *Four-star general faces demotion over misspending allegations*, CNN.com (Aug. 15, 2012), <http://security.blogs.cnn.com/2012/08/15/four-star-general-faces-demotion-over-misspending-allegations/>.

According to CNN, “Ward went through a public retirement ceremony from Africa Command in April of last year, but did not retire pending the outcome of the investigation. Since leaving Africa Command, he has worked in an Army staff job out of the limelight, serving as a two-star general. Under Army guidelines, a four-star who is not

excellence and sound judgment, Defense Secretary Leon E. Panetta has determined that Ward would be demoted to the grade of lieutenant general for retirement and repay about \$82,000 in improper expense payments.⁸⁴

V. Conclusion

SOCAFRICA has even greater challenges than compared to conventional forces in the AFRICOM AOR regarding physical and political risk, operational techniques, modes of employment, and dependence on detailed operational intelligence and indigenous assets, given operational and training element sizes, locations, defensive postures, and close engagement with local populaces, African government personnel, and host nation military forces.⁸⁵ SOF furtherance of human rights and the rule of law, in every instance can and must be considered in light of VADM (RET) Moeller's "lessons learned," but also measured against and meet the Five SOF Mission Criteria:

It must be an appropriate mission or activity for SOF.

The mission or activities should support the Joint Force Commander's (JFC's) campaign or operation plan, or special activities.

Mission or tasks must be operationally feasible, approved, and fully coordinated.

Required resources must be available to execute and support the SOF mission.

*The expected outcome of the mission must justify the risks.*⁸⁶

As I have previously written, the effective use of SOF will likely mean fewer *in extremis* requirements for direct action/targeted killing of terrorists and other persons threatening U.S. National security like bin Laden.⁸⁷ SOCAFRICA will play an indispensable role in aiding African nations with "foreign internal defense" missions; that is, "participation by civilian and military agencies of a government in any of the action programs taken by another government or other designated organization to free and protect its society from subversion, lawlessness, insurgency, terrorism, and other threats to its security."⁸⁸ As challenges in Africa arise and continue, so too will AFRICOM's need for SOF increase, utilizing these highly trained, culturally astute,⁸⁹ superbly disciplined uniformed service members to promote and maintain a

...serving at that rank for 60 days is automatically demoted until the case is resolved." The redacted 99 page report itself is available at http://www.dodig.mil/fo/Foia/PDFs/WardROI_Redacted.pdf.

⁸⁴ Donna Miles, *Panetta: Ward Ruling Recognizes High Standard for Leaders*, ARMED FORCES PRESS SERVICE (NOV. 14, 2012), <http://www.defense.gov/news/newsarticle.aspx?id=118538>.

⁸⁵ Dep't of Def., *Joint Publication 3-05 Special Operations*, DTIC, ix (Apr. 18, 2011), http://www.dtic.mil/doctrine/new_pubs/jp3_05.pdf.

⁸⁶ *Id.*, at x.

⁸⁷ Kevin Govern, *Operation Neptune Spear: Was Killing Bin Laden A Legitimate Military Objective?* in TARGETED KILLINGS: LAW AND MORALITY IN AN ASYMMETRICAL WORLD, *supra* note 54, at 373. "In-extremis" refers to a situation of such exceptional urgency that immediate action must be taken to minimize imminent loss of life or catastrophic degradation of the political or military situation." *Id.* at n.148.

⁸⁸ *Army Doctrine Publication (ADP) 3-05 Special Operations*, ARMYPUBS.ARMY.MIL, 9 (Aug. 31, 2012), http://armypubs.army.mil/doctrine/DR_pubs/DR_a/pdf/adp3_05.pdf

⁸⁹ Harry R. Yarger, Ed., *SHORT OF GENERAL WAR: PERSPECTIVES ON THE USE OF MILITARY POWER IN THE 21ST CENTURY* (Apr. 2010), 247, http://www02.us.archive.org/stream/ShortOfGeneralWarPerspectivesOnTheUseOfMilitaryPowerInThe21st/13-Short_djvu.txt.

vigilant and active peace.⁹⁰ In this manner, rather than targeting the symptomatic expressions of terror, the United States will instead prescriptively promote the rule of law abroad as one of many measures to eliminate the root causes of terrorism, while maintaining the capability to deliberately and carefully tailor uses of authorized, licit force around the world.

Operating in joint, combined, and interagency operations, SOCAFRICA can and will promote “democracy, opportunity, health, and the peaceful resolution of conflict”⁹¹ as SOF “diplomat-warriors” coordinate and synchronize U.S. military activities with U.S. diplomatic and economic objectives in Africa.⁹²

⁹⁰ Govern, *supra* note 87, at 373.

⁹¹ Speeches & Remarks, President Barack Obama, Remarks by the President to the Ghanaian Parliament, WHITEHOUSE.GOV (Jul. 11, 2009), http://www.whitehouse.gov/the-press-office/remarks-president-ghanaiianparliament?utm_source=wh.gov&utm_medium=shorturl&utm_campaign=shorturl.

⁹² Govern, *supra* note 1, at 285.