

Rule of Law v. Sharp Power

Capacity building and global power competition

by Maj T. Nelson Collier

The Blank Slate Review of U.S. Africa Command has intended to realign efforts on the continent toward global power competition—most notably with China and Russia—in accordance with the 2018 *National Defense Strategy*. Meanwhile, exertions of authoritarian influence by China and Russia in West Africa suggest imperatives. Rule of law is a means against sharp power. Training exercises must be based on rule of law.

The *National Defense Strategy* supports the *National Security Strategy*, and the *National Security Strategy* urges rule of law. Rule of law is also a prominent feature of the U.S. Africa strategy. Blank Slate Review replaced infantry units with military trainers.¹ This makes sense. After all, according to Service doctrine, Marines and Soldiers support rule of law by providing training and support to law enforcement and judicial personnel—a feature of capacity building.

But this solution set presents a problem. For background, Section 333 of *Title 10* authorizes capacity building. However, Section 333 also requires such programs to include “elements that promote ... [o]bservance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.” The problem is that capacity building tends to undervalue these elements. An anecdote provides some context.

From July to August 2019, Marines of the GCE of the Special MAGTF-Crisis Response Africa 19.2 conducted bilateral training exercises with partner forces of Togo and Senegal. Between each culminating field evolution and

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The author, bottom left, in Senegal. (Photo by author.)

end of exercise stood a two-day rule of law seminar. To complete this period of instruction, two joint teams of military lawyers lectured to military men and gendarmes.² Discussions were in English, notwithstanding the mostly French-speaking audiences, with non-lawyer interpreters.

Even if a two-day, foreign language period of instruction can promote observance of and respect for elements of rule of law, there are opportunities for improvement. Although capacity building is worthwhile, conditions in

West Africa suggest there is even more at stake. First, some remarks are in order on instruments of national power.

Correcting the “Category Mistake” of the DIME Discrepancy

Law is a means available to the government in its pursuit of national objectives. Yet, official U.S. doctrine no longer recognizes law as an instrument of national power. This discrepancy reveals a category mistake that must be corrected. Rather than representing a paradigm of exhaustive constructs, the

notion of instruments of national power is better understood as a framework of categories, each comprising subsets of other instruments of national power, with rule of law among them.

The DIME Discrepancy

The DOD Dictionary defines instruments of national power as “[a]ll of the means available to the government in its pursuit of national objectives.” According to the definition, these means “are expressed as diplomatic, economic, informational and military.” In addition, *Joint Doctrine Note 2-19, Strategy*, also refers to these constructs. Therefore, in the United States, instruments of national power are discussed as diplomatic, informational, military, and economic (DIME).

However, *Joint Doctrine Note 1-18* (which *2-19* superseded) said that “there are many more instruments involved in national security policy development and implementation.” Of note, *Joint Doctrine Note 1-18* recognized law as among the many instruments of national power. This recognition was long overdue. Consider the origins.

In the *Twenty Years’ Crisis*, British political scientist E.H. Carr divided national power into three categories, military, economic, and power over opinion. In his original formulation, Carr acknowledged law’s importance: “The peculiar quality of law which makes it a necessity in every political society resides not in its subject-matter, nor in its ethical content, but in its stability. Law gives to society that element of fixity and regularity and continuity without which no coherent life is possible.”

Stability is the key term. In joint doctrine, stability activities’ five functions include rule of law.³ This acknowledges that building rule of law is, at least in part, a military responsibility.

Consider also that law can reflect and project values of democracy and liberty.⁴ This point—from former Marine infantry officer and national security law expert James E. Baker—stands out in sharp relief against the background of conditions in West Africa.

Thus, law is an instrument of national power insofar as it reflects and

projects values of democracy and liberty, insofar as it works for rule of law. However, with *Joint Doctrine Note 2-19* having superseded *1-18*, technically, joint doctrine no longer recognizes law as an instrument of national power. Yet, there can be no doubt that law is a means

DIME constructs—such as financial, law enforcement, law, etc., represented in the more recent acronyms MIDLIFE and MIDFIELD—may be standalone instruments of national power even if not altogether equivalent to the DIME constructs. Such instruments are bet-

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available to the government in its pursuit of national objectives. This presents a discrepancy. One way to resolve this discrepancy is to correct the category mistake of the instruments of national power.

Correcting the Category Mistake

In the *Concept of Mind*, philosopher Gilbert Ryle—who was also an intelligence officer with the United Kingdom’s Welsh Guard during World War II—introduced the concept of a category mistake with several examples. In one such example, Ryle explained:

[A category mistake] would be made by a child witnessing the march-past of a division, who, having had pointed out to him such and such battalions, batteries, squadrons, etc., asked when the division was going to appear. He would be supposing that a division was a counterpart to the units already seen, partly similar to them and partly unlike them. He would be shown his mistake by being told that in watching the battalions, batteries and squadrons marching past he had been watching the division marching past. The march-past was not a parade of battalions, batteries, squadrons and a division; it was a parade of the battalions, batteries and squadrons of a division.

What Ryle presents is a framework of categories and subsets. Similarly, correcting the category mistake of the instruments of national power requires an appropriate framework of categories and subsets. What follows is this. Instruments of national power other than the

ter understood as subsets of the DIME categories. For example, in some cases, law may be better seen as a means of diplomatic power.

Rule-of-Law Means: Countering Sharp Power

Sharp power refers to the practices of authoritarian states to project influence to undermine democracy abroad, a hallmark of the strategies of China and Russia.⁵ Rule of law is a means—perhaps *the* means—to counter it.⁶

Sharp Power

The United States’ Africa strategy emphasizes that, in Africa, “Russia advances its political and economic relationships with little regard for the rule of law or accountable and transparent governance.” In particular,

[Russia] continues to sell arms and energy in exchange for votes at the United Nations—votes that keep strongmen in power, undermine peace and security, and run counter to the best interests of the African people.

Thus, far from merely disregarding it, Russia’s efforts in West Africa seek to actively undermine rule of law.

China, for its part, “uses bribes, opaque agreements, and the strategic use of debt to hold states in Africa captive to Beijing’s wishes and demands.” Each strategy comprises efforts to distort the political environment within democracies, efforts anathema to rule of law.

Rule of Law

A 2004 report of the United Nations Secretary General defined rule



Bilateral exercises provide opportunities for building partner capacity and potential emphasis on Rule of Law. (Photo by Sgt Tatum Vayavananda.)

of law as “a principle of governance in which all persons, institutions, and entities (public and private, including the State) are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and are consistent with international human rights norms and standards.”⁷ This is the same definition found in United States interagency guidance and Army and Marine Corps doctrine.⁸

The author of the United Nations’ report, Secretary General Kofi Annan, himself a national of Ghana, has also stressed that “the transformation of African democracies requires good governance that builds the rule of law, not the rule of force or the rule of one man.”⁹

In addition, the African Charter (on Human and Peoples’ Rights) says, “[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.” These sources reveal two key features of rule of law in West Africa: legitimacy in the state’s use of force and freedom of participation in government.

The definitions of sharp power and rule of law pit one against the other. Developments in Africa show in fact what the definitions in theory suggest, and recent events in Guinea present a profound example.

Rule of Law is Losing, Russia Winning: Guinea

On 22 March 2020—as reported in *Foreign Policy*—Guinea held a nationwide referendum on a proposed constitutional amendment to undo the president’s term limit.¹⁰ This referendum is reminiscent of similar measures in Togo and Russia, a correlation that is more than mere coincidence.¹¹

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What makes matters worse is that, according to a poll from 2017, over 80 percent of Guineans favored a two-term limit for the presidency.¹² Yet, concerns of voter intimidation have undermined the legitimacy of the electoral process. Indeed, on 28 February 2020, Guinea’s president announced the postponement of the referendum, citing concerns of the integrity of the electoral rolls. With votes now cast, it remains to be seen what will come of republican democracy in Guinea. (Guinea’s president is now serving his third term.)

Meanwhile, the security forces’ human rights abuses complicate the is-

sues.¹³ This is not to mention that terrorism activity in the region continues to worsen.¹⁴

Elsewhere, on 28 February, the same day that Guinea’s president announced postponement of the term-limit referendum, U.S. Africa Command closed out Flintlock 2020, its “annual, African-led, integrated military and law enforcement exercise.”¹⁵ These and other similar training exercises, such as AFRICAN LION, align with the Blank Slate Review. More than that, training based in rule of law can be a means of diplomatic power.

The Way

The United States can continue to achieve influence in West Africa by undertaking capacity-building efforts in the region premised on rule of law as a means of projecting democratic values in pursuit of national objectives. Yet, training exercises tend to undervalue elements of rule of law. An anecdote at the outset put the problem into proper context. Another anecdote exemplifies the way:

During an assessment visit in March of 2002, [the Defense Institute of International Legal Studies] helped the U.S. Embassy formulate an action plan, which included two legal training evolutions in Sierra Leone during 2003. The first evolution was designed as a seminar focusing on joint training for [partner forces] and civilian leaders on the role of the military in a democracy.¹⁶

In the second evolution, “under simulated field conditions ... [the team] utilized military mission briefing techniques ... in an effort to incorporate [law of war] training into everyday training.”

Recommendation: Flintlock, African Lion, and other training exercises must be based on rule of law. In this way, rule of law can constitute a means of diplomatic power.

Marines must lead the way. U.S. Marine Corps Forces Africa should assign a judge advocate from the Law of War Training Section to each rotation of the Special MAGTF-Crisis Response Africa.¹⁷ That judge advocate would work with the GCE—remotely or in person—to incorporate elements of rule of law into the training program.

The End

Training based on rule of law supports a mode of security assistance that presents to the United States a win-win method of engagement with partner states in its pursuit of national objectives. There is an opportunity for Washington—in good faith—to achieve pervasive influence throughout West Africa, strengthen alliances with West African states, and guard against competitors' authoritarian influence and deliberate undermining of democratic values. Above all, more than being part of federal law and in alignment with national strategy in West Africa, rule of law can serve as a means of diplomatic power.

Notes

1. Jeff Seldin & Carla Babb, "In Africa, US Sees Trainers as 'Better Fit' Than Combat Troops," *Voice of America*, (February 2020), available at <https://www.voanews.com>.
2. In accordance with Section 333's rule of law provision, led by the responsible International Operations Officer from the Defense Institute for International Legal Studies. The author was a member of both teams.
3. *Joint Publication 3-07* describes stability activities as "civil-military efforts [that] aim to strengthen legitimate governance, restore rule of law, support economic and infrastructure development, reform institutions to achieve sustainable peace and security, foster a sense of national unity, and create the conditions that enable the [host nation] government to reassume civic responsibilities." The same definition is found in Army and Marine Corps doctrine.
4. James E. Baker, *In the Common Defense: National Security Law for Perilous Times*, (New York, NY: Cambridge University Press, 2007).
5. Christopher Walker and Jessica Ludwig, "The Meaning of Sharp Power: How Authoritarian States Project Influence," *Foreign Affairs*, (November 2017), available at <https://www.foreignaffairs.com>. As Walker later observed: "Today's authoritarian states—notably including China and Russia—are using 'sharp power' to project their influence internationally, with the objectives of limiting free expression, spreading confusion, and distorting the political environment within democracies." Christopher Walker, "What Is 'Sharp Power'?" *Journal of International Democracy*, (July 2018), available at <https://www.journalofdemocracy.org>. This was in 2018. In 2020, Walker's observations play out most profoundly in West Africa.
6. Others have made a similar argument. For example, Joseph Nye, progenitor of the concept of "soft power," said, "While the rule of law and openness make democracies asymmetrically vulnerable, they are also critical values that we need to defend." Justin Chapman, "Democracies Should Fight Sharp Power with Soft Power," *Pacific Council of International Policy*, (August 2018), available at <https://www.pacificcouncil.org>.
7. United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, (New York, NY: August 2004).
8. U.S. Agency for International Development, U.S. Department of Defense, U.S. Department of State, *Security Sector Reform*, (Washington, DC: 2009).
9. Kofi Annan and Nader Mousavizadeh, *Interventions: A Life in War and Peace*, (New York, NY: Penguin Press, 2012). Of course, the other element in Annan's remark is rule of law against autocracy. However, non-African governments cannot stand to vouchsafe models of support for African societies that even closely resemble overtures toward regime change. African societies will choose their own governments. Instead, the point is, "[a] new generation of autocrats has perfected the art of looking democratic while pursuing authoritarian goals." Tim Horley, Anne Meng, & Mila Versteeg, "The World Is Experiencing a New Form of Autocracy," *The Atlantic*, (March 2020), available at <https://www.theatlantic.com>. The observation alludes to China's Xi Jinping and Russia's Vladimir Putin but is equally applicable to Togo's Faure Gnassingbé and Guinea's Alpha Condé.
10. Aanu Adeoye, "West African Leaders Are Rolling Back Democratic Gains," *Foreign Policy*, (March 2020), available at <https://foreignpolicy.com>. The correlation is no coincidence. Therefore, part of foreign governments' strategies concerning Africa should be to support Africans' right to vote and freely participate in government as reflected in the African Charter. Facts in this subsection refer to this article unless otherwise noted.
11. Reid Standish, "Will Putin Be Russia's President for Life?" *Foreign Policy*, (March 2020), available at <https://foreignpolicy.com>.
12. Aanu Adeoye, "West African Leaders Are Rolling Back Democratic Gains," *Foreign Policy*, (March 2020), available at <https://foreignpolicy.com>. (Referring to, Staff, "Guineans Voice Strong Support for Two-term Limit for President," *Afrobarometer*, (September 2019), available at <http://afrobarometer.org>.)
13. "Since widespread demonstrations against the new constitution began in October 2019, security forces have used tear gas, riot gear, and, at times, firearms against protesters, who have thrown stones and other projectiles at police and gendarmes." Staff, "Guinea: Fear of Further Crackdown as Constitutional Poll Nears," *Human Rights Watch*, (February 2020), available at <https://www.hrw.org>. Most troubling are reports that, since October 2019, security forces have shot dead 36 demonstrators.
14. Staff, "Unprecedented terrorist violence' in West Africa, Sahel region," *United Nations News*, (January 2020), available at <https://news.un.org>.
15. Staff, "Flintlock," U.S. Africa Command, (n.d.) available at <https://www.africom.mil>.
16. Felipe Páez, "The Defense Institute of International Legal Studies Sends a Mobile Education Team to Sierra Leone," *Journal of International Security Assistance Management*, (Washington, DC: DOD, Spring 2003). This anecdote, from 2003, was by then-Capt Felipe Páez, USMC, now Col Páez, USMCR, Branch Head, Law of War Training Section.
17. The Law of War Training Section is a cadre of judge advocate subject matter experts in law of war and human rights selected based on operational experience and knowledge of law of war and applicable human rights law. The unit is in direct support of the Commandant of the Marine Corps.

