



CENTRE FOR INTERNATIONAL GOVERNANCE AND JUSTICE

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Wednesday, 4 April 2007

The Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade
Suite S1.57, Parliament House
Canberra, ACT 2600
Email: fadt.sen@aph.gov.au

Dear Members of the Standing Committee,

I write to convey a submission for consideration as part of the Standing Committee's inquiry into Australia's involvement in peacekeeping. The submission addresses sections (b) and (c) of the inquiry's terms of reference, concerning the training and preparedness of Australians likely to participate in a peacekeeping operation and the coordination of Australia's contribution to a peacekeeping operation.

The submission argues that there is a need to focus greater strategic attention upon enhancing Australia's contribution to civilian components of peacekeeping. It explores how Australia might enhance its efforts to prepare Australian and regional nationals for civilian deployment in peacekeeping operations. Also attached is an issues paper on a subject pertinent to the inquiry, entitled 'UN peacekeeping and the rule of law'. The paper explores how the UN's approach to strengthening the rule of law through peacekeeping might be improved.

For your information, the ANU Centre for International Governance and Justice has recently begun two Australian Research Council funded research projects addressing peacekeeping and peacebuilding. The first, entitled 'Building Democracy and Justice after Conflict', is being led by Professor Hilary Charlesworth. The second, 'Peacebuilding and Responsive Governance', is being led by Professor John Braithwaite.

Yours sincerely,



Dr. Jeremy Farrall
Research Fellow

Enhancing Australia's civilian contribution to peacekeeping operations

Submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade
by the ANU Centre for International Governance and Justice

1. This submission addresses sections (b) and (c) of the inquiry's terms of reference, concerning the training and preparedness of Australians likely to participate in a peacekeeping operation and the coordination of Australia's contribution to a peacekeeping operation.
2. Australia has played a prominent role in supporting peacekeeping operations through military and police force deployment. It is important that the Committee considers how to improve and enhance Australia's participation in such military and policing activities. However, there is also a critical need to focus greater strategic attention upon enhancing Australia's contribution to civilian components of peacekeeping.
3. The evolution of complex, multidimensional peacekeeping operations means that contemporary peace operations now assume a wide variety of responsibilities over and above core military and police operations. These tasks include: implementation of a peace agreement; maintenance of stability through military and police interventions; disarmament, demobilization and reintegration of former combatants; return of refugees and internally displaced persons to their homes; delivery of humanitarian services to those in need; restructuring and reform of local armed forces and police; strengthening of court and judicial systems and prison facilities; promotion and protection of human rights; conduct and monitoring of elections; and promotion of development and economic reconstruction.
4. Australians can therefore undertake a range of civilian roles in support of UN peacekeeping. Yet Australian civilians who participate in UN peacekeeping operations are rarely involved on the basis of formal deployment by Australian authorities. They tend to find civilian peacekeeping opportunities at their own initiative and to draw upon their own varied personal experience and training in relevant fields. Australia could improve and enhance the contribution of its nationals to civilian peacekeeping activities by providing more strategic support to nationals who are likely to be deployed on peacekeeping operations as civilians.
5. General recommendations for enhancing Australia's civilian contribution to peacekeeping operations are outlined on the following page.

Recommendations for enhancing Australia's civilian contribution to peacekeeping operations

- ***Make a stronger contribution to strengthening the rule of law:*** In a Presidential Statement dated 22 June 2006, the UN Security Council attached 'vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace' (UN document S/PRST/2006/28 (22 June 2006)). The Council urged UN member states to contribute national expertise to UN peacekeeping and peacebuilding initiatives to strengthen the rule of law and to improve their capacities in these areas. Australian nationals have valuable expertise and experience to offer in the field of the rule of law and Australia should answer the Security Council's call.
 - ***Conduct an audit of Australia's human resources in civilian peacekeeping activities:*** Australia could compile a roster of Australian experts (both academics and practitioners) who stand ready for deployment/secondment to undertake civilian peacekeeping activities. Particular attention could be placed upon identifying nationals with first-hand experience working in peacekeeping operations and in peacekeeping and peacebuilding contexts;
 - ***Support specialised civilian peacekeeping training:*** Australia should pay greater strategic attention to the training and development of nationals involved in civilian peacekeeping activities. One possibility would be to establish a centre of excellence for civilian peacekeeping in Australia. If opened up to regional nationals, the institute could also play a positive role in developing the human resources capacity of countries in our region; and
 - ***Deploy Australian officials on short-term secondment:*** Many peacekeeping operations operate with substantial civilian vacancy-rates caused by a combination of time-consuming recruitment processes and poor retention rates due to the hardships of post-conflict environments. Australia could think creatively about assisting the UN to fill this gap through the short-term deployment of Australian nationals to fill the temporary needs created by these vacancies. This would have the dual benefit of constituting a major Australian contribution to peacekeeping and of broadening the Australian human resource-base in civilian peacekeeping.
7. Members of the ANU Centre for International Governance and Justice stand ready to engage with the Standing Committee on these and other matters under the inquiry's terms of reference. For further information please contact:

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Centre for International Governance and Justice

United Nations Peacekeeping and the Rule of Law

Jeremy Farrall

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**UNITED NATIONS PEACEKEEPING
AND THE RULE OF LAW**

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*If you would like to make any comments on the paper please contact the author at
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UNITED NATIONS PEACEKEEPING AND THE RULE OF LAW

UN peacekeeping operations are increasingly called upon to play a role in strengthening the rule of law. This Issues Paper examines the implications of the prevailing approach to UN peacekeeping and the rule of law. It traces the rising importance of the rule of law to the UN Security Council, explains how strengthening the rule of law came to be a peacekeeping task, and describes how the UN has operationalised the goal of strengthening the rule of law for application on peacekeeping frontlines. It then explores how the UN approach to peacekeeping and the rule of law might be improved.

I. Why is the UN Security Council concerned with the rule of law?

As the body tasked with primary responsibility for the maintenance of international peace and security, the Security Council might be thought to be self-evidently engaged in efforts to strengthen the rule of law. But the rule of law was effectively snubbed at the birth of the UN. Despite concerted efforts at the San Francisco Conference to ensure that the principles of justice and the rule of law would guide the action of the UN Security Council,¹ the phrase ‘the rule of law’ is conspicuously absent from the pages of the UN Charter.

During the Cold War, the UN’s rule of law-related activities tended to take place outside the Security Council and to focus on the creation and expansion of international legal agreements. Examples of successful codification efforts during the Cold War included: the Genocide Convention;² the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights (1966)³; and the United Nations Convention on the Law of the Sea (1982).⁴

It was not until the end of the Cold War that the rule of law began its meteoric rise to prominence in the Security Council’s rhetoric and practice. In January 1992 world leaders gathered in New York for the first ever Security Council meeting held at the summit level, where the Council discussed the theme ‘The Responsibility of the Security Council in the Maintenance of International Peace and Security’.⁵ At that landmark meeting, which was to set the agenda for UN action in the post-Cold War era,⁶ leaders

¹ For further discussion see Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge University Press, forthcoming), chapter 2.

² *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

³ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3, (entered into force 23 January 1976); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976).

⁴ *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3, (entered into force 16 November 1994).

⁵ For the verbatim record of the meeting, see: S/PV.3046 (31 January 1992).

⁶ At the end of the meeting the Council requested the Secretary-General to prepare a report with recommendations for strengthening UN capacity in preventive diplomacy, peacemaking and peacekeeping: see S/23500 (31 January 1992): *Presidential statement dated 31 January 1992*, paras 15-16. The resulting

from countries with a broad range of political and socio-economic traditions underlined the importance of strengthening the rule of law in international affairs.⁷ Among them, US President George H.W. Bush urged the Security Council to ‘advance the momentous movement towards democracy and freedom ... and expand the circle of nations committed to human rights and the rule of law’.⁸

The importance of the rule of law has subsequently been reinforced at multiple high-level UN meetings. The Millennium Declaration, adopted by world leaders in September 2000,⁹ listed the goal of strengthening respect for the rule of law in international affairs as the very first of its objectives of ‘special significance’.¹⁰ More recently, in the 2005 World Summit Outcome document,¹¹ world leaders acknowledged that ‘good governance and the rule of law at the national and international levels’ were ‘essential for sustained economic growth’.¹² They also recognized that the rule of law belonged to ‘the universal and indivisible core values and principles of the United Nations’.¹³

Within the Security Council itself, growing interest in the rule of law led to the establishment in September 2003 of a thematic agenda item entitled ‘Justice and the rule of law’.¹⁴ The Council has since adopted multiple presidential statements devoted to justice and the rule of law.¹⁵ But the most striking illustration of the transformation of the rule of law from curiosity to familiar friend lies in the term’s increasing appearance in the Council’s resolutions. During the Cold War, the rule of law featured in Security Council resolutions a mere handful of times.¹⁶ By contrast, in the nine years from the beginning of 1998 until the end of 2006, the phrase ‘rule of law’ appeared in no fewer than sixty-nine Council resolutions.¹⁷ As outgoing UN Secretary-General Kofi Annan put it in one of his final reports, submitted to the GA and the Security Council on 14 December 2006 and

report proved extremely influential over UN and Security Council policy in the 1990s: S/24111 (17 June 1992): *An agenda for peace*.

⁷ See, e.g., S/PV.3046 (31 January 1992), pp. 8-9 (UNSG Boutros-Boutros Ghali), p. 18 (President Mitterand, France), p. 23 (President Borja, Ecuador), p. 36 (King Hassan II, Morocco), p. 47 (President Yeltsin, Russian Federation), pp. 50 (a-z) & 50 (President Bush, United States), pp. 59-60 (President Perez, Venezuela), p. 67 (Chancellor Vranitsky, Austria), pp. 78-9 (Prime Minister Veiga, Cape Verde), p. 97 (Prime Minister Rao, India), p. 107 (Prime Minister Miyazawa, Japan).

⁸ *Ibid.*, p. 50.

⁹ A/RES/55/2 (18 September 2000): *United Nations Millennium Declaration*.

¹⁰ *Ibid.*, para. 9.

¹¹ A/RES/60/1 (24 October 2005): *World Summit Outcome*.

¹² *Ibid.*, para. 11.

¹³ *Ibid.*, para. 119.

¹⁴ For meetings held under this new agenda item, see: S/PV.4833 (24 September 2003); S/PV.4835 (30 September 2003); S/PV.5052 (6 October 2004).

¹⁵ S/PRST/2003/15 (24 September 2003); S/PRST/2004/34 (6 October 2004); S/PRST/2006/28 (22 June 2006).

¹⁶ See, e.g., SC Res. 161 (21 February 1961).

¹⁷ See the Table at the end of paper.

entitled *Uniting our strengths: Enhancing UN support for the rule of law*, the rule of law has become central to the work of the UN.¹⁸

II. How did the rule of law come to be seen as a peacekeeping task?

During the Cold War, the creation of a peacekeeping operation was a relatively rare event. In more than four decades from 1945 until 1988, the UN had established a total of 13 peacekeeping operations. These early UN peacekeeping operations were generally tasked with the basic responsibility of monitoring cease-fire lines. By contrast, in the two decades since 1988 the UN Security Council has created 48 new peacekeeping operations. A total of sixty-one UN peacekeeping operations have thus been deployed around the globe, from Haiti to East Timor and from the Balkans to Mozambique.¹⁹

This vast expansion in peacekeeping operations has been matched by a brisk evolution in peacekeeping responsibilities. UN peacekeeping operations now tend to be much more complex and multidimensional. UN operations can assume responsibility for practically all the tasks normally carried out by state institutions, as in the case of UN operations in Kosovo and Timor Leste. In between the extremes of basic cease-fire monitoring and complete transitional administration, there are almost limitless permutations.

Peacekeeping operations commonly support local authorities in, or assume outright responsibility for, the:

- implementation of a peace agreement;
- maintenance of stability through military and police interventions;
- disarmament, demobilization and reintegration of former combatants;
- return of refugees and internally displaced persons to their homes;
- delivery of humanitarian services to those in need;
- restructuring and reform of local armed forces and police;
- strengthening of court and judicial systems and prison facilities;
- promotion and protection of human rights;
- conduct and monitoring of elections; and
- promotion of development and economic reconstruction.

The 2000 Report of the Panel on UN peace Operations ('the Brahimi report'), which sought to establish a platform for more strategic peacekeeping interventions that would build genuine, sustainable peace, identified strengthening the rule of law as a key thematic peacekeeping goal that deserved greater strategic attention.²⁰ Brahimi recommended 'a doctrinal shift in the use of civilian police, other rule of law elements and human rights experts in complex peace operations to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments'.²¹ The task of strengthening the rule of law is now regularly included in the mandates of contemporary peacekeeping operations.

¹⁸ A/61/636 – S/2006/980 (14 December 2006): *Uniting our strengths: Enhancing United Nations support for the rule of law*, 1 (executive summary).

¹⁹ For a list of every UN peacekeeping operation, see: www.un.org/Depts/dpko/list/list.pdf.

²⁰ A/55/305 – S/2000/809 (21 August 2000): *Report of the Panel on UN Peace Operations*, paras 39-40,

²¹ *Ibid.*, para. 47(b).

III. How has the UN conceptualized and operationalised the goal of strengthening the rule of law?

A. *The UN Security Council*

The Security Council's dozens of references to the rule of law reveal no single definition, conception or model of the rule of law. However, five basic clusters of meaning can be identified from the Council's use of the term.

The first cluster is **law and order**. The Security Council has regularly used the rule of law when emphasizing the need to re-establish law and order in war-ravaged post-conflict environments.²² It has employed the term when mandating UN peace operations to support the (re)establishment of law and order institutions, including security agencies and police forces, in the Central African Republic,²³ Angola,²⁴ Timor Leste,²⁵ the Democratic Republic of Congo (DRC),²⁶ Côte d'Ivoire²⁷ and Haiti.²⁸

The second cluster equates the rule of law with **ending impunity for crimes**. The Security Council has referred to the rule of law when stressing the need to end impunity for war crimes and human rights atrocities in Sierra Leone,²⁹ Haiti,³⁰ Burundi,³¹ Guinea-Bissau³² and Darfur.³³ The Council has also used the term when emphasizing the need to strengthen national judicial institutions and systems in Rwanda and the former Yugoslavia,³⁴ Afghanistan,³⁵ Côte d'Ivoire,³⁶ Burundi,³⁷ Guinea-Bissau³⁸ and the Sudan.³⁹

The third cluster of meaning entails **resolving conflict through law**. Addressing the dispute between the Former Yugoslav Republic of Macedonia and the Federal Republic

²² SC Res. 1040 (29 January 1996), para. 2 (on Burundi); SC Res. 1168 (21 May 1998), para. 4 (on Bosnia and Herzegovina); SC Res. 1327 (13 November 2000), Sections V and VI (on strengthening peace operations).

²³ SC Res. 1159 (27 March 1998), para. 14(e).

²⁴ SC Res. 1433 (15 August 2002), para. 3B(i).

²⁵ SC Res. 1473 (4 April 2003), para. 1(iii).

²⁶ SC Res. 1493 (28 July 2003), paras 5, 11.

²⁷ SC Res. 1528 (27 February 2004), para. 6(q).

²⁸ SC Res. 1542 (30 April 2004), para. 7(I)(d).

²⁹ SC Res. 1315 (14 August 2000), preambular para. 4.

³⁰ SC Res. 1542 (30 April 2004), preambular para. 4.

³¹ SC Res. 1545 (21 May 2004), preambular para. 9.

³² SC Res. 1580 (22 December 2004), preambular para. 5.

³³ SC Res. 1593 (31 March 2005), para. 4.

³⁴ SC Res. 1503 (28 August 2003), preambular para. 10 (on the ICTY and ICTR Completion Strategies).

³⁵ SC Res. 1536 (26 March 2004), para. 10; SC Res. 1589 (24 March 2005), para. 9.

³⁶ SC Res. 1609 (24 June 2005), para. 2(x).

³⁷ SC Res. 1577 (1 December 2004), preambular para. 9.

³⁸ SC Res. 1580 (22 December 2004), para. 2(h).

³⁹ SC Res. 1590 (24 March 2005), para. 4(a)(viii).

of Yugoslavia, the Council invoked the rule of law to encourage the principled resolution of conflict in accordance with international law.⁴⁰

The fourth cluster is the **protection and promotion of human rights**. The Security Council has used the phrase to stress the urgency of protecting vulnerable citizens and respecting human rights in Angola⁴¹ and the DRC.⁴² It has employed the term to denote government that respects human rights in resolutions on Liberia,⁴³ Iraq⁴⁴ and Guinea-Bissau.⁴⁵

The fifth and final cluster of meaning equates the rule of law with **principled governance**. In a 1998 resolution addressing the situation in Africa in general, the Security Council employed the phrase to underscore the importance of improving governance and eradicating corruption.⁴⁶ In a 2005 resolution it used the term when mandating the UN Office in Timor-Leste to support initiatives to improve governance and eradicate corruption.⁴⁷ In a 2003 resolution on Iraq, the Council used the rule of law as a metaphor for democratic, principled government.⁴⁸ In a 2005 resolution on Burundi the Council also used the rule of law to denote government that was not above the law.⁴⁹

B. The UN Secretary-General

The UN Secretary-General has taken the step of proposing a definition of the rule of law. In his August 2004 report to the Council on the rule of law and transitional justice in conflict and post-conflict societies,⁵⁰ Secretary-General Kofi Annan described the rule of law as:

[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.⁵¹

⁴⁰ SC Res. 1345 (21 March 2001), para. 5.

⁴¹ SC Res. 1149 (27 January 1998), para. 4.

⁴² SC Res. 1417 (14 June 2002), para. 5.

⁴³ SC Res. 1509 (19 September 2003), preambular para. 7.

⁴⁴ SC Res. 1546 (8 June 2004), preambular para. 10 and para. 7(b)(iii).

⁴⁵ SC Res. 1580 (22 December 2004), para. 2(a).

⁴⁶ SC Res. 1170 (28 May 1998), preambular para. 13.

⁴⁷ SC Res. 1599 (28 April 2005), para. 3.

⁴⁸ SC Res. 1483 (22 May 2003), preambular para. 5 (on Iraq).

⁴⁹ SC Res. 1606 (20 June 2005), preambular para. 3 (on Burundi).

⁵⁰ S/2004/616 (23 August 2004): *The rule of law and transitional justice in conflict and post-conflict societies*.

⁵¹ *Ibid.*, para. 6.

C. *The UN Department of Peacekeeping Operations*

In order to operationalise the goal of strengthening the rule of law, DPKO has boiled the concept down into four basic areas: police, prisons, courts and human rights.⁵² DPKO thus recommends the creation of units dedicated to each of these areas in new peacekeeping operations. The civilian police component undertakes a range of transitional policing responsibilities and plays a major role in support of efforts to restructure and retrain national police forces. The corrections component supports the reconstruction of prisons and the training and resourcing of national corrections officers. The legal and judicial system support component supports the rebuilding, reopening and effective functioning of the national court system. The human rights and protection component promotes the protection of human rights and the creation and functioning of mechanisms that seek to provide transitional justice.

In Liberia, the key problems facing each of these components related to a dearth of infrastructure and financial and human resources. The original pre-existing Liberian police received extremely low salaries and a culture of corruption was rampant. There are few prisons across Liberia and a dearth of qualified and well-trained corrections officers, which has resulted in overcrowded prisons with substandard conditions. Similarly, the court system infrastructure was devastated by the Liberian Civil War and there is a severe shortage throughout the country of court facilities and trained judges and magistrates. With respect to human rights, the greatest challenge is a culture of impunity and the widespread nature of human rights abuses. Efforts to address these problems through transitional justice institutions have not proceeded smoothly. The August 2003 Comprehensive Peace Agreement signed by the major protagonists in the most recent Liberian Civil War provided for the establishment of both a Truth and Reconciliation Commission and a National Human Rights Commission. Three and a half years later, neither body is fully functional. Both have been plagued by disagreements over appointments and both have been undermined by a severe lack of financial and human resources.

IV. How might this approach be improved?

The dominant UN approach to strengthening the rule of law is thus to focus upon (re)building institutions: police forces, prisons, courts and human rights and transitional justice bodies. This approach has both strengths and weaknesses. In terms of strengths, the institutional focus is a familiar working model for international UN staffers. The goal is to recreate institutions that function effectively in stable democratic societies. The institutional focus permits a new peacekeeping operation to follow precedents pursued in other UN peacekeeping operations. It is also an uncontroversial policy to (re)build rule of law institutions, as few people would argue that these institutions are not essential in a stable society. An added advantage is that it is relatively simple to monitor progress in rule of law initiatives. Advances can be measured by the creation of institutions, the construction of buildings and the training of officials.

⁵² A/61/636 – S/2006/980 (14 December 2006): *Uniting our strengths: Enhancing United Nations support for the rule of law*, 4 (para. 7).

One weakness of employing an institution-specific approach to strengthening the rule of law is the danger that it will be viewed by the local population as imposed in response to external whims rather than domestic needs. Newly created institutions are also extremely resource-intensive. They tend to rely upon the ongoing commitment and support of external actors. Another drawback is that a focus on police, courts, prisons and human rights does not directly confront one of the major threats to the rule of law in post-conflict environments - the corruption of governments and ruling elites. But perhaps the major danger of adopting an institution-focused approach to the rule of law is that if these institutions are not anchored in the local context and do not gain the support of local actors, they can collapse following the withdrawal of peacekeepers. For this reason, the institution-centric approach to the rule of law has thus been equated to building 'a house without foundation' and characterized as a philosophy of 'build it and they will come'.⁵³

The current institution-focused approach of the UNDPKO to strengthening the rule of law could be improved both in terms of depth and breadth. In addition to the important task of (re)building rule of law institutions, UN peacekeeping operations should place greater emphasis on fostering a culture of the rule of law. The current rule of law activities related to the promotion of human rights and transitional justice represent a constructive step in this direction. But UN peacekeeping operations could take two additional steps to encourage sustainable cultures of the rule of law. The first is to strengthen the foundations of rule of law institutions by grounding them as much as possible in the local context. The second is to include governance reform as a key component of strengthening the rule of law.

A. *Strengthening institutional foundations*

I should clarify that I am not arguing that peacekeeping operations should abandon the goal of building rule of law institutions. The (re)creation of police forces, prisons, the court system and mechanisms to protect and promote human rights are important in any stable and peaceful society. But these institution-building efforts should be undertaken with greater emphasis upon the overall objective of ensuring that the rule of law is sustainable. The focus should be upon fostering among the local population a sense of buy-in and ownership of initiatives to strengthen the rule of law. Efforts to (re)build rule of law institutions should thus be undertaken with as much sensitivity to local context as possible. There should be broad consultation with the local community concerning the ideal shape and operations of rule of law institutions and where possible transitional justice bodies should encourage and build upon traditional approaches to justice and accountability.

Recent UN documents on strengthening the rule of law through peacekeeping acknowledge the importance of creating a broader environment conducive to the rule of law. The DPKO primer for justice components in multidimensional peace operations on strengthening the rule of law includes under its principles for rule of law reform the

⁵³ Golub, Stephen, 'A House without a Foundation' in Carothers, Thomas (ed.), *Promoting the Rule of Law Abroad* (Washington, DC, Carnegie Endowment for International Peace, 2006), 105-136, 106.

following headings: ‘Respecting National Ownership and Leadership’; ‘Pursuing Participatory Approaches’; and ‘Creating Partnerships and Ensuring Sustainability.’⁵⁴

The broader peacekeeping literature is also beginning to pick up on the importance of building sustainable cultures of the rule of law. A recent publication by the RAND Corporation, entitled *The Beginner’s Guide to Nation-Building*, thus states:

Promoting the rule of law involves creating new norms and changing culture as much as it does creating new institutions and legal codes. Without a widely shared cultural commitment to the idea of the rule of law, courts are just buildings, judges just public employees, and constitutions just pieces of paper.⁵⁵

B. Governance reform

Governance reform is something of a missing link in the UN’s current approach to strengthening the rule of law through peacekeeping. To illustrate the challenge posed to the rule of law by governance, let me refer to an example of the problematic nature of governance during Liberia’s transitional peace process.

The August 2003 Liberian Comprehensive Peace Agreement (CPA) provided for a two-and-a-half year transitional peace process, which would culminate in democratic elections at the end of 2005.⁵⁶ The CPA created a transitional government, consisting of a transitional head of state, executive and legislative assembly. One of the first acts of the National Transitional Legislative Assembly, in the second half of 2003, was to pass a bill authorizing the purchase of a Chrysler 4WD/SUV worth USD \$37,000 as the official vehicle for each member of Congress.⁵⁷ Two years later, one of the last acts of the transitional legislature was to pass a bill permitting members of Congress to retain these cars as their personal property after leaving office!

The transitional head of state, Chairman Charles Gyude Bryant, vetoed the bill. Unfazed, the Assembly met to vote again on the bill. By this time, however, there had been substantial coverage of the matter in the Liberian press. With the national unemployment figure sitting at 85% and the average Liberian public servant earning approximately USD \$20, it is no surprise that there was a public uproar about the attempt by transitional politicians to take for themselves a 4WD/SUV worth USD \$37,000. Ultimately the Assembly did not pass the bill again.

Governance reform should be included as an additional fifth pillar of peacekeeping efforts to strengthen rule of law, along with the police, corrections, legal system support and human rights protection. The incorporation of a governance reform component would ensure that the goal of building rule of law cultures was further mainstreamed into peacekeeping efforts to strengthen the rule of law. Support for focusing on governance as part of the rule of law can be found in the approach to the rule of law of both the Security

⁵⁴ *Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of law* (New York, UNDPKO, 2006), 6.

⁵⁵ Dobbins, James, Jones, Seth G., Crane, Keith & DeGrasse, Beth Cole, *The Beginner’s Guide to Nation-Building* (Santa Monica, RAND Corporation, 2007), 88.

⁵⁶ See: www.usip.org/library/pa/liberia/liberia_08182003_cpa.html.

⁵⁷ See: ‘Off-road rage’ Vol 46, No 23 (18 November 2005) *Africa Confidential*, 3.

Council and the Secretary-General. Earlier I identified five clusters of meaning attributed to the rule of law by the Security Council. Four of them are already incorporated in the institution-centric approach. The fifth cluster is the notion of principled governance. The Secretary-General's definition of the rule of law also emphasizes the fact that the State itself must be accountable to the law.

I would propose the establishment of a dedicated DPKO governance branch within its rule of law unit at HQ. The Governance Reform Unit should be empowered to liaise with a range of stakeholders to support the evolution of a home-grown, sustainable culture of the rule of law. It should consist of specialists in the fields of political affairs, constitution-building, human rights and anthropology. The goal would be to ensure that governance reform initiatives are based upon broad consultation and where possible are grounded in local tradition.

I am not suggesting that peacekeeping operations are not doing anything to build cultures of the rule of law. At UNMIL different components of the Mission did focus on consulting and strengthening civil society and on exploring broader questions pertaining to constitutional reform and governmental accountability. Governance reform initiatives were also undertaken by a range of other UN actors, such as UNDP, international financial institutions, such as the World Bank, and civil society. International donors, led by the European Union and the World Bank, also developed a new approach to improving governance and economic management in Liberia, in the form of the Governance and Economic Management Assistance Program.⁵⁸ But by injecting a strategic focus on governance reform into the rule of law activities of UN peacekeeping interventions right from the start-up phase of a new operation, early priority would be placed upon the critical post-conflict task of strengthening governance and (re)building cultures of the rule of law.

Concluding remarks

The major observation of this paper is that the dominant UN peacekeeping approach to strengthening the rule of law focuses almost exclusively on (re)building rule of law institutions. The main argument is that there should be greater emphasis upon (re)building sustainable cultures of the rule of law. The key main reform suggestion is that UN peacekeeping operations should focus greater strategic attention upon a neglected dimension of the rule of law: governance reform.

⁵⁸ See: Dwan, Renata & Bailey, Laura, *Liberia's Governance and Economic Management Assistance Program* (New York, United Nations Peacekeeping Best Practices Unit, 2006).

Table: UN Security Council resolution provisions referring to the rule of law

Source: Farrall, United Nations Sanctions and the Rule of Law (Cambridge University Press, forthcoming)

<i>Agenda Item</i>	<i>Provisions referring to the rule of law</i>
Afghanistan	SC Res. 1536 (26 March 2004), paras. 10, 13. SC Res. 1589 (24 March 2005), paras. 9, 11. SC Res. 1662 (23 March 2006), paras. 8, 11.
Situation in Africa	SC Res. 1170 (28 May 1998), preambular para. 13.
Angola	SC Res. 1149 (27 January 1998), para. 4. SC Res. 1157 (20 March 1998), para. 11. SC Res. 1173 (12 June 1998), para. 8. SC Res. 1180 (29 June 1998), preambular para. 6. SC Res. 1202 (15 October 1998), para. 11. SC Res. 1213 (3 December 1998), para. 6. SC Res. 1433 (15 August 2002), para. 3B(i).
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