

THE FUTURE OF UN PEACEKEEPING AND THE RULE OF LAW

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This Paper examines the UN's approach to strengthening the rule of law through peacekeeping. It traces the UN Security Council's increasing interest in the rule of law (ROL), describes how the UN Secretariat has operationalized the goal of strengthening the ROL, and explores how this approach might be improved.

The UN Security Council and the Rule of Law

The ROL began its rise to prominence in the Security Council's rhetoric and practice after the Cold War. In January 1992 world leaders gathered for the first ever summit level Security Council meeting. At that landmark meeting, leaders from India to Ecuador and from France to Morocco emphasized the importance of strengthening the ROL in international affairs. Among them, US President George H.W. Bush urged the Council to 'expand the circle of nations committed to human rights and the rule of law'.¹

The most striking illustration of the transformation of the ROL from curiosity to familiar friend lies in its increasing appearance in Security Council resolutions. During the Cold

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¹ UN Doc. S/PV.3046 (31 January 1992), p. 50.

War, the term featured in a handful of resolutions. By contrast, in the nine years between January 1998 and December 2006, it appeared in sixty-nine resolutions.²

The Security Council has not endorsed one definition of the ROL. However, five clusters of meaning can be identified from its use of the term. The first cluster is **law and order**. The Council has used the term when mandating peace operations to support the (re)establishment of law and order institutions in the Central African Republic, Angola, East Timor, the Democratic Republic of the Congo, Côte d'Ivoire and Haiti.

The second cluster equates the ROL with **ending impunity for crimes**.

The Council has thus invoked the term when calling for an end to impunity for war crimes and human rights atrocities in Sierra Leone, Haiti, Burundi, Guinea-Bissau and the Sudan. It has used the phrase when emphasizing the need to strengthen national courts in Rwanda, the former Yugoslavia, Afghanistan, Côte d'Ivoire, Burundi, Guinea-Bissau and the Sudan.

The third cluster entails **resolving conflict through international law**. In the dispute between the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia, the Council thus invoked the ROL to encourage the principled resolution of the conflict in accordance with international law.

² Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge University Press, forthcoming), Table A.

The fourth cluster is the protection and promotion of **human rights**. The Council has used the ROL to stress the urgency of protecting vulnerable citizens and respecting human rights in Angola and the DRC. It has employed the term to denote government that respects human rights in Liberia, Iraq and Guinea-Bissau.

The fifth cluster equates the ROL with **principled governance**. The Council employed the phrase to underscore the importance of improving governance and eradicating corruption in Africa and when mandating the UN Office in East Timor to support initiatives to improve governance and eradicate corruption. It also invoked the term as a metaphor for democratic, principled government in Iraq.

The UN Secretariat and the Rule of Law

The UN Secretariat has long played a role in strengthening the ROL through the activities of the UN Office of Legal Affairs in support of the codification of international law. But the Secretariat has only recently focused concerted attention upon strengthening the ROL in post-conflict environments.

A. The UN Secretary-General

In his August 2004 report on the rule of law and transitional justice, then UN Secretary-General Kofi Annan endorsed the following definition of the ROL:

‘[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.’³

B. The UN Department of Peacekeeping Operations

The Department of Peacekeeping Operations (DPKO) has taken its lead from both the Security Council and the Secretary-General. In order to operationalize the ROL for peacekeeping frontlines, the Department has boiled the concept down into four basic areas: police, prisons, courts and human rights. New peacekeeping operations usually contain units dedicated to these areas. The civilian police component assumes transitional policing responsibilities and supports efforts to restructure national police forces. The corrections component supports the reconstruction of prisons and the training of national corrections officers. The legal and judicial component supports the rebuilding and effective functioning of national courts. The human rights component promotes human rights and supports transitional justice mechanisms.

My own peacekeeping experience comes from Liberia, where I served with the UN Mission in Liberia from 2004-2006. The key problems facing the ROL stemmed from a lack of infrastructure and resources. The original police force received low salaries and a culture of corruption was rampant. The challenge has been to restructure the police force

³ UN Doc. S/2004/616 (23 August 2004), para. 6.

in accordance with international standards of policing and human rights. There are few prisons across Liberia and a lack of well-trained corrections officers, which has resulted in overcrowded prisons with substandard conditions. In late-2006 there was a break-out of 57 prisoners from a major Monrovia prison. The court system was devastated by the Liberian Civil War and there is a nationwide shortage of court facilities and trained judges. The greatest human rights challenge is a culture of impunity concerning widespread human rights abuses. Attempts to establish a truth and reconciliation commission and an independent national human rights commission have been plagued by an absence of political will, disagreements over appointments and a lack of financial and human resources.

How might DPKO's approach be improved?

The dominant DPKO approach of focusing on (re)building ROL institutions has both strengths and weaknesses. In terms of strengths, the institutional focus is a familiar working model for international UN staffers, entailing the reproduction of mechanisms that maintain the ROL in stable countries. Progress can be measured by concrete indicators, including the construction of buildings and the training of officials.

However, new institutions are extremely resource-intensive and thus tend to rely on long-term external support. But the greatest danger of adopting an institution-focused approach to the ROL is that if new 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.

UN operations could improve their efforts to foster the sustainable ROL by strengthening the local foundations of ROL institutions and by focusing strategic attention upon governance.

A. Strengthening local foundations

Peacekeeping ROL interventions should place greater emphasis upon fostering a sense of ownership among local populations. There is a growing awareness of this both within DPKO and the broader peacekeeping community. A DPKO operational primer provided to justice components in peace operations includes as key principles: ‘Respecting National Ownership’; and ‘Ensuring Sustainability’.⁴ Dobbins et al. have also emphasized that:

‘Promoting the rule of law involves ... changing culture as much as it does creating new institutions ... 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.’⁵

B. Governance reform

⁴ *Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of law* (New York, UNDPKO, 2006), 6.

⁵ Dobbins, James, Jones, Seth G., Crane, Keith & DeGrasse, Beth Cole,, *The Beginner’s Guide to Nation-Building* (Santa Monica, RAND Corporation, 2007), 88.

Governance is also a missing link in the UN's current approach to peacekeeping and the ROL. In Liberia the 2003 peace agreement provided for a two-year transitional peace process, culminating in democratic elections.⁶ One of the first acts of the transitional legislative assembly was to pass a bill authorizing the purchase of \$37,000 Chrysler SUVs as official vehicles for assembly members. Two years later, one of its last acts was to pass a bill permitting members to retain their official vehicle as their own personal property.⁷ At the time, unemployment stood at 85% and \$20 was an average monthly wage. Ultimately the bill was retracted, but the unsavory sight of members of parliament making a blatant grab for public property illustrates the urgent need to promote good governance in peacekeeping environments.

Governance has traditionally been viewed as the domain of donors and development agencies, such as the World Bank, USAID and the UN Development Programme. Peacekeeping operations thus tend to defer to these actors on questions of governance. The danger of this approach is that these actors rarely become fully operational in post-conflict peacekeeping environments until the onset of the peacebuilding phase, which begins once there is widespread stability and democratic elections have been held. An important window of opportunity can therefore be lost. By incorporating governance as a fifth pillar of efforts to strengthen the ROL, UN peacekeeping operations could focus strategic attention on governance reform right from their start-up phase. An increased focus on governance would ensure that the ROL was conceptualized not simply as a

⁶ www.usip.org/library/pa/liberia/liberia_08182003_cpa.html.

⁷ 'Off-road rage' Vol 46, No 23 (18 November 2005) *Africa Confidential*, 3.

matter of building new institutions, but also as encouraging the improvements in governance that are necessary to nurture and sustain those institutions.

Concluding remarks

The post-conflict environments into which UN peacekeeping operations are deployed tend to operate as lawless zones. Fragile and failed states pose a genuine threat to international peace and security and thus raise a critical challenge to international law. If UN peacekeeping operations can succeed in fostering sustainable cultures of the rule of law, then they will reduce the number of situations posing a threat to international peace and thus decrease the challenges confronting international law. However, if they fail to achieve this objective they risk undermining the effectiveness and credibility of both the UN and international law. The evolution of UN peacekeeping policy on strengthening the rule of law could thus play a significant role in shaping the future of international law.