
Impossible expectations? The UN Security Council's promotion of the rule of law after conflict

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Introduction

Post-conflict interveners tend to invoke big, abstract, idealistic, intertwined, self-evidently good ideas to justify their interventions in foreign societies. Democracy, justice, liberty, human rights and security are just some of these concepts. Another is the rule of law. As with each of these ideas, it is difficult to argue in the abstract that efforts to build the rule of law could be anything other than a good thing. But the devil is in the detail. Just what is meant by the rule of law and whose law does it imply? As Grenfell explores elsewhere in this volume, is it a principle of international law or domestic law, or both? Is it Western, state-based law or indigenous customary law, or both?

Over the last decade, the United Nations Security Council has increasingly sought to promote the rule of law in post-conflict environments by including the task of strengthening the rule of law in the mandates of UN peacekeeping operations. The combined approach of the Council, the UN's Department of Peacekeeping Operations and specific UN peacekeeping operations suggests that the rule of law is something that is commonly understood and can easily be (re)produced, (re)created or (re)constructed in any post-conflict situation. The implication is that the challenge is simply to get the strategy right: to identify a good blueprint, to adapt it to the particular circumstances of each situation and then to access and allocate sufficient human and financial resources to bring success. When approached and understood in this way, strengthening the rule of law is a technical, practically scientific, task.¹ This approach

¹ For the argument that state-building amounts to 'politics as technology', see Bhuta's chapter in this volume.

belies the complexities and unquantifiable qualities of the rule of law. Even in the most peaceful, stable societies it is extraordinarily difficult to translate the rule of law from abstract, idealistic notions into concrete, practical outcomes. The degree of difficulty is even higher in post-conflict environments.

This chapter explores the UN Security Council's promotion of the rule of law after conflict. It describes the process through which the rule of law is transformed from a complex and slippery concept into a series of concrete institutional markers for implementation on peacekeeping frontlines. This process begins in the Security Council chamber, where the Council includes the task of strengthening the rule of law in its resolutions outlining the mandates of UN peacekeeping operations. These mandates are then given concrete shape by the UN Secretariat and peacekeeping operations themselves, which interpret and implement their mandates on the ground. Through this process the rule of law, which remains quite a vague and fuzzy concept in the Security Council's decisions, gains remarkably concrete form by the time it reaches the field. The irony is that ultimately the rule of law is even less satisfying in concrete form than it was as an abstract notion. The rule of law seems to lose its power as a political ideal when it sheds its fuzziness and begins to take shape.

This chapter proceeds in four parts. Part I examines the contested nature of the rule of law, its enduring appeal and its attractiveness in post-conflict environments. Part II traces the rise of the rule of law in the UN Security Council and its peacekeeping practice. Part III explores the process through which the rule of law has been transformed from a general abstract political idea into a framework of institutions and mechanisms for implementation on peacekeeping front lines. Part IV considers whether efforts to pursue the rule of law after conflict are doomed to raise expectations they cannot meet.

I. The contested nature of the rule of law, its enduring appeal, and its attractiveness after conflict

The rule of law has been described as 'an unqualified human good'² and 'the most important political concept today'.³ Its promise has been

² E. P. Thompson, *Whigs and Hunters: The origin of the Black Act* (London: Allen Lane, 1975), 266.

³ Brian Z. Tamanaha, *On the Rule of Law: History, politics, theory* (Cambridge: Cambridge University Press, 2004), back cover.

trumpeted by presidents of countries with vastly different political, economic, religious and cultural traditions, such as China, Indonesia, Iran, Mexico, Russia, the United States and Zimbabwe.⁴ It is 'widely prescribed as the elixir for many economic and political ills',⁵ and frequently used as a trump card in contentious discussions. As the aftermath of the 2000 US presidential elections graphically illustrated, this trump card can even be played by opposing parties to the same dispute.⁶ The rule of law appears to possess a 'power or force of its own'.⁷ It seems so self-evidently good that it cannot be challenged.

A. *The contested nature of the rule of law*

Yet despite its apparent magnetism as a political ideal, the rule of law is an extremely slippery concept.⁸ Even theorists who tenaciously defend and promote the merits of the rule of law, acknowledge that the term is 'remarkably elusive',⁹ 'essentially contested'¹⁰ and susceptible to 'promiscuous use'.¹¹ Philosophers and theorists have pondered the notion of the rule of law since at least the days of the ancient Greek philosophers.¹² It is not surprising, therefore, that there should be multiple interpretations of what the rule of law means. Like other political philosophical constructs, such as democracy, liberalism and socialism, the rule of law has inspired and perplexed countless scholars. The multiplicity of possible interpretations of the rule of law has led one commentator to bemoan that '[t]here are almost as many conceptions of the rule of law as there are people defending it ... The effect is that defenders and opponents alike end up talking at cross purposes.'¹³

⁴ *Ibid.*, 1-2. ⁵ *Ibid.*, 60.

⁶ Jeremy Waldron, 'Is the rule of law an essentially contested concept (in Florida)?' (2002) 21 *Law and Philosophy*, 137-64, 137-8.

⁷ Paul P. Craig, 'Formal and substantive conceptions of the rule of law: An analytical framework' [1997] *Public Law*, 467-87, 487.

⁸ Sir Arthur Watts, 'The international rule of law' (1993) 36 *German Yearbook of International Law*, 15-45, 15.

⁹ Cheryl Saunders and Katherine Le Roy, 'Perspectives on the rule of law' in Cheryl Saunders and Katherine Le Roy (eds.), *The Rule of Law* (Sydney: Federation Press, 2003), 1-20, 3.

¹⁰ Waldron, 'Is the rule of law an essentially contested concept (in Florida)?'.

¹¹ Joseph Raz, 'The rule of law and its virtue' (1977) 93 *Law Quarterly Review*, 195-211, 196.

¹² For a useful survey of the history of the rule of law see: Tamanaha, *On the Rule of Law*, 7-90.

¹³ Olufemi Taiwo, 'The rule of law: The new leviathan?' (1999) 12 *Canadian Journal of Law and Jurisprudence*, 151-68, 154.

Efforts to identify the essence of the rule of law are complicated by the fact that the rule of law cannot be detached from its social and political environment.¹⁴ Indeed, no two politico-legal contexts are the same. This is as true of stable societies as it is of post-conflict environments. Yet rule-of-law commentators tend to advance six, seven or eight characteristics that they consider essential to the rule of law. These commentators generally write with a particular, functioning politico-legal system in mind. Consciously or unconsciously, the essential characteristics of the rule of law they identify are those which exist in – indeed are peculiar to – the politico-legal system with which they are most familiar. These commentators then typically criticise other politico-legal systems with reference to whether they possess or lack those essential characteristics. This pattern is evident in the rule-of-law models proposed by legal theorists such as Dicey, Hayek, Fuller, Raz, Finnis and Radin.¹⁵ Although the efforts of these commentators to identify the core characteristics of the rule of law in their own systems are useful, when they take the step of criticising other politico-legal systems with reference to the elements that are alleged to be essential to the rule of law, they are effectively comparing apples with oranges.

B. *The rule of law's enduring appeal*

The notion at the heart of the ideal of the rule of law is that nobody is above the law. This means that the process for determining the content of law should be widely agreed within a given society and political power should be exercised in accordance with that law. Key principles inherent in the ideal of the rule of law are that all people should be equal before the law, all laws should be applied equally rather than arbitrarily and that political power should be exercised responsibly and in accordance with constitutive laws that lay down the scope and limitations of that power.

¹⁴ Frank Upham, 'Mythmaking in the rule-of-law orthodoxy' in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In search of knowledge* (Washington DC: Carnegie Endowment for International Peace, 2006), 75–104, 75.

¹⁵ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th edn (London: Macmillan, 1959), 187–203; F. A. Hayek, *The Road to Serfdom* (London: Routledge, 1944), 80–96; Lon L. Fuller, *The Morality of Law*, 2nd edn (New Haven: Yale University Press, 1969), 39; Raz, 'The rule of law and its virtue', 198–202; John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 270–1; Margaret Jane Radin, 'Reconsidering the rule of law' (1989) 69 *Boston University Law Review*, 781–819, 785. For a useful summary of the models elaborated by these theorists, see: Waldron, 'Is the rule of law an essentially contested concept (in Florida)?', 154.

In a domestic context, these laws are usually outlined in a constitution. Beyond these basic principles, it can be unhelpful to be too prescriptive about how to put flesh on these bones.

Yet even if most rule-of-law commentators would agree at a general level that these basic principles should form part of any rule of law system, the real challenge of the rule of law remains to be addressed. This challenge is to transform these compelling abstract principles into a practical framework in which they can bring about concrete outcomes that improve the lives of people. The rule of law must be given sufficiently tangible content to enable it to serve as the basis for and regulate concrete action by the government and citizens of a particular society.

The promise of the rule of law is thus difficult to fulfil. But the rule of law should not necessarily be discarded as a potentially transformative ideal in post-conflict environments simply because it is difficult to distil and can take different forms in different contexts. Complexity and slipperiness are defining features of almost every big, meaningful, abstract political idea. Indeed, the elusive, chameleon-like nature of big ideas can be as much a strength as a weakness, as it allows them to appeal to people from different societies with different backgrounds. The slippery nature of the rule of law actually strengthens its ability to endure as a political ideal. For an idea that can constantly be reconceived,¹⁶ recrafted,¹⁷ reconsidered,¹⁸ revived¹⁹ or revisited²⁰ is unlikely to be condemned to history's dustbin for long.

C. *The attractiveness of the rule of law after conflict*

Societies emerging from conflict face innumerable challenges. After prolonged conflict almost every aspect of society may require painstaking reconstruction. Much of this reconstruction is material. Schools, hospitals, housing and roads must be rebuilt, clean water and electricity provided and government services re-established. But the most difficult reconstruction is not material. It lies in rebuilding the trust and confidence

¹⁶ Charles Sampford, 'Reconceiving the rule of law for a globalizing world' in Spencer Zifcak (ed.), *Globalisation and the Rule of Law* (London: Routledge, 2005), 9–31.

¹⁷ David Dyzenhaus (ed.), *Recrafting the Rule of Law: The limits of legal order* (Oxford: Hart Publishing, 1999).

¹⁸ Radin, 'Reconsidering the rule of law'. ¹⁹ Carothers, 'The rule-of-law revival'.

²⁰ Allan C. Hutchinson, 'The rule of law revisited: Democracy and courts' in David Dyzenhaus (ed.), *Recrafting the Rule of Law: The limits of legal order* (Oxford: Hart Publishing, 1999), 196–224.

of people in their own society. The presence of an impartial security force can play an important role in preventing conflict from reigniting. But it is also important to provide a framework in which people can regain trust and confidence in others in their society, from the neighbours who live next door, to traders at the local market and business-people in the national capital; from public officials in the local post office right up to the head of state.

The notion of the rule of law has understandable appeal in post-conflict environments. Conflict is often characterised by the misuse or abuse of power, accompanied by the use of forceful and deadly means to impose one's views upon others. Civilians living through conflict are endangered by the arbitrary, life-threatening and violent actions of military forces. They can be deprived of any certainty concerning the basic necessities of day-to-day life, such as maintaining a roof over their head, earning a livelihood and being able to feed members of their family. In this context the rule of law offers the hope of a new era in which power is exercised in a principled and accountable, rather than arbitrary or malicious, manner. It promises predictability, safety and certainty. It also promises the possibility of being in control of one's destiny, or at least of ensuring that one's destiny is not controlled arbitrarily or unfairly by others by virtue of the possession of political power or an instrument of war.

II. The rise of the rule of law in the UN Security Council and UN peacekeeping

Since the end of the cold war, the rule of law has assumed a prominent place in the UN Security Council's debates and resolutions. There are two main reasons for the rule of law's lack of influence over the Security Council during the cold war. First, the phrase 'rule of law' does not feature at all in the UN Charter, let alone in the provisions of the Charter that apply to the Security Council. This is despite concerted efforts at the San Francisco Conference, where the UN was born, to ensure that the principles of justice and the rule of law would guide the action of the UN Security Council.²¹ Second, during the cold war the rule

²¹ Herbert Vere Evatt, *The United Nations* (Cambridge: Harvard University Press, 1948), 36. See also United Nations Information Organizations, *Documents of the United Nations Conference on International Organization* (New York: United Nations Information Organizations, 1945), vol. 1, 129–30 (statement by the Chinese delegate).

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of law carried ideological baggage. As Carothers notes, there is a close relationship between the rule of law and liberal democracy.²² Countries of the West thus criticised the East for violating the rule of law by being undemocratic and failing to provide their citizens with fundamental rights and freedoms. Countries of the East, for their part, criticised the notion of the rule of law for promoting and reinforcing the domination of the working class by the bourgeois, property-owning class, and for failing to prevent the inequitable distribution of property and wealth among their citizens.²³ There is just one prominent reference to the rule of law in Security Council resolutions dating from the cold-war period. On 21 February 1961, in Resolution 161 on the situation in the Congo, the Security Council noted 'with deep regret and concern the systematic violations of human rights and fundamental freedoms and the general absence of the *rule of law*'.²⁴ All but two members of the Security Council voted in favour of that resolution. The Soviet Union, one of those two, abstained.²⁵

The rule of law began its meteoric rise in the Security Council's rhetoric and practice in January 1992, when world leaders gathered in New York for the first ever Security Council meeting held at the summit level. At that landmark meeting on the theme 'The Responsibility of the Security Council in the Maintenance of International Peace and Security', leaders from countries with a broad range of political and socio-economic traditions underlined the importance of strengthening the rule of law in international affairs.²⁶ 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'.²⁷

²² Carothers, 'The rule-of-law revival', 4.

²³ Martin Krygier, 'Marxism and the rule of law: Reflections after the collapse of communism' (1990) 15 *Law and Social Inquiry*, 633–63, 651.

²⁴ SC Res. 161 (21 February 1961), Section B, preambular para. 2 (emphasis added).

²⁵ UN Doc. S/PV.942 (21 February 1961) Security Council official records for January, February and March 1961, para. 175.

²⁶ UN Doc. S/PV.3046 (31 January 1992) Provisional verbatim record of the 3046th meeting, held at headquarters, New York, on Friday, 31 January 1992: Security Council, 8–9 (UN Secretary-General Boutros-Boutros Ghali), 18 (President Mitterand, France), 23 (President Borja, Ecuador), 36 (King Hassan II, Morocco), 47 (President Yeltsin, Russian Federation), 50, 50 (a-z) (President Bush, United States), 59–60 (President Perez, Venezuela), 67 (Chancellor Vranitsky, Austria), 78–79 (Prime Minister Veiga, Cape Verde), 97 (Prime Minister Rao, India), 107 (Prime Minister Miyazawa, Japan).

²⁷ *Ibid.*, 50.

The importance of the rule of law was subsequently reinforced at multiple high-level UN meetings. The Millennium Declaration, adopted by world leaders in September 2000,²⁸ listed the goal of strengthening respect for the rule of law in international affairs as the very first of its objectives of 'special significance'.²⁹ In the 2005 World Summit Outcome document, world leaders agreed that 'good governance and the rule of law at the national and international levels' were 'essential for sustained economic growth'.³⁰ They also recognised that the rule of law belonged to 'the universal and indivisible core values and principles of the United Nations'.³¹

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'.³² The Council has since adopted many presidential statements devoted to justice and the rule of law.³³ 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. As noted, during the cold war, the rule of law featured in Security Council resolutions less than a handful of times.³⁴ 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 69 Council resolutions.³⁵ As outgoing UN Secretary-General Kofi Annan put it in one of his final reports, submitted to the General Assembly and Security Council on 14 December 2006 and entitled *Uniting Our Strengths: Enhancing UN support for the rule of law*, the rule of law had become central to the work of the UN.³⁶

²⁸ GA Res. 55/2 (18 September 2000) United Nations Millennium Declaration.

²⁹ *Ibid.*, para. 9.

³⁰ GA Res. 60/1 (24 October 2005) 2005 World Summit Outcome, para. 11.

³¹ *Ibid.*, para. 119.

³² For meetings held under this new agenda item, see: UN Doc. S/PV.4833 (24 September 2003) Security Council: Fifty-eighth year, 4833rd meeting, Wednesday, 24 September 2003, New York; UN Doc. S/PV.4835 (30 September 2003) Security Council: Fifty-eighth year, 4835th meeting, Thursday, 30 September 2003, New York; UN Doc. S/PV.5052 (6 October 2004) Security Council: Fifty-ninth year, 5052nd meeting, Wednesday, 6 October 2004, New York.

³³ UN Doc. S/PRST/2003/15 (24 September 2003) Statement made by the president of the Security Council; UN Doc. S/PRST/2004/34 (6 October 2004) Statement made by the president of the Security Council; UN Doc. S/PRST/2006/28 (22 June 2006) Statement made by the president of the Security Council.

³⁴ See, e.g., SC Res. 161 (21 February 1961).

³⁵ See Jeremy Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge: Cambridge University Press, 2007), 465–7 (Appendix 3, Table A).

³⁶ UN Doc. A/61/636-S/2006/980 (14 December 2006) *Uniting our strengths: Enhancing United Nations support for the rule of law*, 1.

The Security Council's new-found interest in the rule of law coincided with a dramatic expansion in peacekeeping and a rapid evolution in the scope of activities undertaken by UN peacekeeping operations. In more than four decades from 1945 to 1988, the UN established a total of just thirteen 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 forty-eight 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.³⁷ UN peacekeeping operations no longer simply monitor cease-fire lines. Indeed, they have at times assumed responsibility for practically all the tasks normally carried out by state institutions, as in the case of UN 'transitional administrations' 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; the maintenance of stability through military and police interventions; the disarmament, demobilisation and reintegration of former combatants; the return of refugees and internally displaced persons to their homes; the delivery of humanitarian services to those in need; the restructuring and reform of local armed forces and police; the strengthening of court and judicial systems and prison facilities; the promotion and protection of human rights; the conduct and monitoring of elections; and the 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 and sustainable peace, identified strengthening the rule of law as a key thematic peacekeeping goal that deserved greater strategic attention.³⁸ 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

³⁷ For a list of every UN peacekeeping operation, see *United Nations Peacekeeping: List of operations 1948-2007* (2007) United Nations, available at www.un.org/Depts/dpko/list/list.pdf.

³⁸ UN Doc. A/55/305-S/2000/809 (21 August 2000) Report of the Panel on United Nations Peace Operations, paras. 39-40.

for human rights in post-conflict environments'.³⁹ The task of strengthening the rule of law is now routinely included in the mandates of contemporary peacekeeping operations.

III. Transforming the rule of law from political ideal into concrete outcomes

The decision to create a new UN peacekeeping operation is made by the UN Security Council, as conveyed in a Security Council resolution. Security Council resolutions establishing a peacekeeping operation generally articulate a detailed mandate for any new peacekeeping operation, including its size in terms of military and civilian personnel, the interim period for which the operation is authorised, and the responsibilities to be assumed by the operation. While these details are ultimately endorsed by the Security Council, by the time they gain the Council's approval they will have already been vigorously negotiated by relevant stakeholders. Indeed, the finer details are threshed out in various forums as members of the Security Council, potential troop-contributing countries, and the sections of the UN Secretariat that oversee and support peacekeeping activities, namely the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS), consult to determine the contours of the new operation.

Peacekeeping mandates are a creative combination of specificity and flexibility. Ideally the Security Council should be as specific as possible about the particular responsibilities a peacekeeping operation is expected to assume, so that peacekeepers on the ground have clear marching orders. But two factors undermine the search for specificity. The first is the negotiating process within the Security Council. In the to and fro of the diplomatic tug-of-war that characterises negotiations on a draft Security Council resolution, the national positions and interests of Security Council members will dictate that certain phrases must be redrafted or deleted from the text and other new ones added. In this negotiating process certain members might seek more specificity of mandate tasks, whereas others might aim to water the tasks down. The second factor is the need to provide a certain degree of flexibility so that those on the ground are not forced to undertake tasks that may seem logical or desirable from a New York vantage point, but might prove

³⁹ *Ibid.*, para. 47(b).

unhelpful or counterproductive in the particular conditions that apply in a peacekeeping environment.

This balance between specificity and flexibility, sometimes referred to as ‘constructive ambiguity’, means that in practice peacekeeping mandates often embark on a journey of filtration and interpretation before eventually being implemented by UN peacekeeping staff in the field. This section tracks the rule of law’s journey from the rarefied air of the UN Security Council chamber in New York to the rough-edged reality of post-conflict life in far-flung parts of the world.

A. *The UN Security Council’s conception of the rule of law*

The Security Council itself has not embraced a particular definition or model of the rule of law. While it always casts the rule of law in a positive light, it tends to avoid describing the concept in concrete terms. Nevertheless, analysis of the Council’s use of the concept in its resolutions suggests that the Council attributes five basic clusters of meaning to the rule of law.

i. Law and order

The Security Council has regularly used the rule of law when emphasising the need to re-establish law and order in war-ravaged post-conflict environments.⁴⁰ 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,⁴¹ Angola,⁴² Timor-Leste,⁴³ the Democratic Republic of the Congo (DRC),⁴⁴ Côte d’Ivoire⁴⁵ and Haiti.⁴⁶

ii. 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

⁴⁰ 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), ss. V, VI (on strengthening peace operations).

⁴¹ SC Res. 1159 (27 March 1998), para. 14(e).

⁴² SC Res. 1433 (15 August 2002), para. 3B(1).

⁴³ SC Res. 1473 (4 April 2003), para. 1(iii).

⁴⁴ SC Res. 1493 (28 July 2003), paras. 5, 11.

⁴⁵ SC Res. 1528 (27 February 2004), para. 6(q).

⁴⁶ SC Res. 1542 (30 April 2004), para. 7(I)(d).

Sierra Leone,⁴⁷ Haiti,⁴⁸ Burundi,⁴⁹ Guinea-Bissau⁵⁰ and Darfur.⁵¹ The Council has also used the term when emphasising the need to strengthen national judicial institutions and systems in Rwanda, the former Yugoslavia,⁵² Afghanistan,⁵³ Côte d'Ivoire,⁵⁴ Burundi,⁵⁵ Guinea-Bissau⁵⁶ and the Sudan.⁵⁷

iii. Resolving conflict through law

Addressing the dispute between the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia, the Council invoked the rule of law to encourage the principled resolution of conflict in accordance with international law.⁵⁸

iv. Protecting and promoting human rights

The Security Council has used the phrase to stress the urgency of protecting vulnerable citizens and respecting human rights in Angola⁵⁹ and the DRC.⁶⁰ It has employed the term to denote government that respects human rights in resolutions on Liberia,⁶¹ Iraq⁶² and Guinea-Bissau.⁶³

v. 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.⁶⁴ In a 2005

⁴⁷ SC Res. 1315 (14 August 2000), preambular para. 4.

⁴⁸ SC Res. 1542 (30 April 2004), preambular para. 4.

⁴⁹ SC Res. 1545 (21 May 2004), preambular para. 9.

⁵⁰ SC Res. 1580 (22 December 2004), preambular para. 5.

⁵¹ SC Res. 1593 (31 March 2005), para. 4.

⁵² SC Res. 1503 (28 August 2003), preambular para. 10 (on the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda completion strategies).

⁵³ SC Res. 1536 (26 March 2004), para. 10; SC Res. 1589 (24 March 2005), para. 9.

⁵⁴ SC Res. 1609 (24 June 2005), para. 2(x).

⁵⁵ SC Res. 1577 (1 December 2004), preambular para. 9.

⁵⁶ SC Res. 1580 (22 December 2004), para. 2(h).

⁵⁷ SC Res. 1590 (24 March 2005), para. 4(a)(viii).

⁵⁸ SC Res. 1345 (21 March 2001), para. 5. ⁵⁹ SC Res. 1149 (27 January 1998), para. 4.

⁶⁰ SC Res. 1417 (14 June 2002), para. 5.

⁶¹ SC Res. 1509 (19 September 2003), preambular para. 7.

⁶² SC Res. 1546 (8 June 2004), preambular para. 10, para. 7(b)(iii).

⁶³ SC Res. 1580 (22 December 2004), para. 2(a).

⁶⁴ SC Res. 1170 (28 May 1998), preambular para. 13.

resolution it used the term when mandating the UN Office in Timor-Leste to support initiatives to improve governance and eradicate corruption⁶⁵ In a 2003 resolution on Iraq, the Council used the rule of law as a metaphor for democratic, principled government.⁶⁶ In a 2005 resolution on Burundi the Council also used the rule of law to denote government that was not above the law.⁶⁷

Drawing upon these five clusters of meaning, it can be deduced that the Security Council subscribes to a general model of the rule of law that requires: (i) the maintenance of law and order; (ii) an end to impunity for crimes; (iii) the resolution of conflict through legal avenues; (iv) the protection and promotion of human rights; and (v) government which is principled and democratic.

B. The UN Secretariat's approach to the rule of law

Once the Security Council has created a peacekeeping operation, it becomes the responsibility of the UN Secretariat to take the necessary steps to ensure that the peacekeeping operation can be dispatched. This involves a complex series of steps that range from determining the budget that will be necessary to sustain the new operation's activities, to securing troops from states which are willing to contribute their nationals to the new peacekeeping force, to articulating the policies and principles that will guide the operation's activities and its relationship with its host state, and to recruiting and deploying the civilian staff who will implement the civilian tasks outlined in the operation's mandate.

The UN Secretariat is headed by the UN secretary-general and consists of a variety of departments and offices that are tasked with overseeing and implementing the UN's activities across the full range of the UN's responsibilities as articulated in the UN Charter. Peacekeeping policy is generated through a process that involves consultation between the secretary-general's office and the two Secretariat departments that have responsibility for overseeing and implementing the UN's peacekeeping activities: DPKO and DFS. The former is responsible for devising peacekeeping policy, while the latter is in charge of taking the practical steps

⁶⁵ SC Res. 1599 (28 April 2005), para. 3.

⁶⁶ SC Res. 1483 (22 May 2003), preambular para. 5 (on Iraq).

⁶⁷ SC Res. 1606 (20 June 2005), preambular para. 3 (on Burundi).

necessary to put that policy into practice. Within DPKO an office called 'Rule of law and Security Institutions' is nominally responsible for generating the department's rule of law policy.⁶⁸ It contains two rule-of-law-specific divisions: the 'Police Division' and the 'Criminal Law and Judicial Advisory Division'.⁶⁹

i. The secretary-general's conception of the rule of law

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,⁷⁰ then 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.⁷¹

ii. DPKO's conception of the rule of law

In order to operationalise the goal of strengthening the rule of law, DPKO has boiled the rule of law down into four basic areas: police, prisons, courts and human rights.⁷² 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 supporting efforts to restructure and retrain national police forces. The corrections component provides assistance with the reconstruction of prisons and the training and resourcing of national corrections officers. The legal and judicial-system support component facilitates 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.

⁶⁸ See the DPKO organizational chart at Department of Peacekeeping Operations (2007) United Nations, available at www.un.org/Depts/dpko/dpko/chart.pdf.

⁶⁹ *Ibid.*

⁷⁰ UN Doc. S/2004/616 (23 August 2004) The rule of law and transitional justice in conflict and post-conflict societies: Report of the secretary-general.

⁷¹ *Ibid.*, para. 6.

⁷² UN Doc. A/61/636-S/2006/980 (14 December 2006) Uniting our strengths: Enhancing United Nations support for the rule of law, para. 7.

C. *Haiti and Liberia: A tale of two peacekeeping operations and the rule of law*

DPKO's four-pillar approach to the rule of law can be seen in the mandates bestowed by the Security Council upon peacekeeping operations in Haiti (2004) and Liberia (2003). This section identifies the mandates for each of these operations. It also explores the chequered record of these operations in implementing their rule-of-law mandates.

i. The United Nations Stabilization Mission in Haiti

The Security Council established the United Nations Stabilization Mission in Haiti (MINUSTAH) in April 2004.⁷³ MINUSTAH was not the first UN peacekeeping operation to be deployed in Haiti. A decade earlier the United Nations Mission in Haiti (UNMIH) had been dispatched in an effort to provide stability in Haiti following the return to the country of President Jean-Bertrand Aristide, who had been forced into exile by a military coup. In 2004, the deployment of a UN peace operation was also tied to President Aristide's movements, but this time it was his departure rather than his return that triggered UN engagement.⁷⁴

In his April 2004 report proposing the establishment of MINUSTAH, the UN secretary-general painted a gloomy picture of the rule of law in Haiti. The Haitian National Police (HNP) were described as under-resourced and 'plagued by heavy politicization, corruption and mismanagement'.⁷⁵ The judicial sector lacked institutional capacity and 'suffered from limited territorial coverage and endemic corruption'.⁷⁶ The corrections sector had been decimated during the Haitian insurgency of February 2004, when all prison inmates were set free and all prison facilities, equipment and records destroyed, looted or severely damaged.⁷⁷ The human-rights environment was also dire, with a climate of lawlessness and impunity prevailing, leading to increasing human-rights abuses, extrajudicial killings, arbitrary arrests, wrongful detentions, human trafficking, sexual violence against women and girls and the use of child soldiers.⁷⁸

⁷³ SC Res. 1542 (30 April 2004), para. 1.

⁷⁴ For further discussion of events leading to the deployment of MINUSTAH, see UN Doc. S/2004/300 (16 April 2004) Report of the secretary-general on Haiti, paras. 8–16.

⁷⁵ *Ibid.*, para. 31. ⁷⁶ *Ibid.*, para. 35. ⁷⁷ *Ibid.*, para. 39. ⁷⁸ *Ibid.*, para. 41.

a. MINUSTAH's rule of law mandate When the Security Council established MINUSTAH it provided for components under each of the four rule-of-law pillars of police, corrections, courts and human rights. MINUSTAH was to assist the Haitian transitional government in monitoring, restructuring and reforming the HNP, as well as mentoring the HNP's members.⁷⁹ The mission was also to help re-establish the Haitian corrections system.⁸⁰ With respect to the legal system, the mission was to assist with the development of a strategy for reform and institutional strengthening of the judiciary.⁸¹ In the area of human rights, MINUSTAH was to provide advice and assistance to the transitional government in the investigation of human-rights violations and violations of international humanitarian law,⁸² and to support the transitional government and Haitian human-rights institutions and groups in their efforts to promote and protect human rights.⁸³

b. Progress in implementing MINUSTAH's rule of law mandate The 2006 presidential and legislative elections gave renewed impetus to efforts to strengthen the rule of law in Haiti.⁸⁴ By late 2006 the major achievement in the police sector had been the conclusion of a reform plan for the HNP.⁸⁵ In the legal system, MINUSTAH had provided training for members of the judiciary, justices of the peace and public prosecutors, and supported efforts to draft legislation to strengthen judicial independence.⁸⁶ MINUSTAH strengthened prison management through supporting efforts to reform budget control and expenditure procedures, and collaborated with the National Prison Administration and the International Committee of the Red Cross (ICRC) to develop a comprehensive approach towards prison health and nutrition.⁸⁷ In the area of

⁷⁹ SC Res. 1542 (30 April 2004), para. 7(I)(b). ⁸⁰ *Ibid.*, para. 7(I)(d).

⁸¹ *Ibid.*, para. 8(b). ⁸² *Ibid.*, para. 8(a). ⁸³ *Ibid.*, para. 7(III)(a).

⁸⁴ For discussion of the Haitian elections process, which was generally considered to have been free and fair, see UN Doc. S/2006/592 (28 July 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, paras. 2-11; UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 2.

⁸⁵ UN Doc. S/2006/726 (12 September 2006) Letter dated 31 August 2006 from the secretary-general addressed to the president of the Security Council, Annex.

⁸⁶ UN Doc. S/2006/592 (28 July 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 24; UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 32.

⁸⁷ UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 33.

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human rights, MINUSTAH had provided human-rights training to a range of Haitian authorities, including police stations, prosecutors' offices, and courts and prison personnel.⁸⁸

Nevertheless, more than three years after MINUSTAH's initial deployment, Haiti's rule-of-law challenges remained substantial. The International Crisis Group (ICG) has stressed the continuing urgency of conducting a 'clean-up' of the HNP.⁸⁹ Meanwhile, as the secretary-general pointed out in December 2006, the criminal justice system remained dysfunctional and there was a continued lack of co operation between the police and justice systems.⁹⁰ According to the ICG, the absence of formal justice had encouraged 'vigilante vengeance'.⁹¹ Moreover, prisons were still overcrowded and pre-trial detention was often prolonged.⁹² Haiti's prisons were described as 'powder kegs awaiting a spark',⁹³ widespread violence and extrajudicial killings were undermining the average citizen's enjoyment of human rights.⁹⁴ Indeed, the UN High Commissioner for Human Rights expressed concern at shortcomings in Haiti in respect for the whole gamut of human rights, including civil, political, social and economic rights.⁹⁵ The UN's independent expert on human rights in Haiti also reported serious human-rights shortcomings in the operation of the Haitian police force, judiciary and prison system.⁹⁶

ii. The United Nations Mission in Liberia

The UN Security Council established the United Nations Mission in Liberia (UNMIL) in September 2003.⁹⁷ As with MINUSTAH, UNMIL

⁸⁸ UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 38.

⁸⁹ International Crisis Group, *Consolidating Stability in Haiti* (Brussels: International Crisis Group, 2007), 3.

⁹⁰ UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 29.

⁹¹ International Crisis Group, *Consolidating Stability in Haiti*, 4.

⁹² UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 29.

⁹³ International Crisis Group, *Haiti: Prison reform and the rule of law* (Brussels: International Crisis Group, 2007), 1.

⁹⁴ UN Doc. S/2006/1003 (19 December 2006) Report of the secretary-general on the United Nations stabilization mission in Haiti, para. 35.

⁹⁵ *Ibid.*, para. 37.

⁹⁶ UN Doc. A/HRC/4/3 (2 February 2007) Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled 'Human Rights Council': Situation of human rights in Haiti.

⁹⁷ SC Res. 1509 (19 September 2003).

was not the first UN peacekeeping operation to be deployed to its destination. A decade earlier the Security Council had deployed the United Nations Observer Mission in Liberia (UNOMIL) to provide security in the lead-up to Liberian elections in the mid 1990s. UNMIL was created as a multidimensional peacekeeping operation with a mandate to provide security and stability in Liberia, as well as wide-ranging support to the Liberian peace process and the transitional government's efforts to consolidate peace.

In his report proposing the establishment of UNMIL, the secretary-general noted that Liberian judicial institutions had suffered 'an almost complete breakdown as a result of years of conflict and the disregard of the Taylor Government for the rule of law.'⁹⁸ The Liberian police force had functioned as 'an instrument of repression', with corruption endemic.⁹⁹ The judiciary had also suffered from corruption and political interference, and had lost public confidence; courts were not functioning as court infrastructure had been destroyed or looted; and prisons throughout the country were empty and/or dilapidated.¹⁰⁰ The armed conflict in Liberia had also resulted in serious violations of human rights, including deliberate and arbitrary killings, disappearances, torture, widespread rape and sexual violence against women, girls and boys, arbitrary arrests and detention and the use of child soldiers.¹⁰¹

a. UNMIL's rule of law mandate The UN secretary-general proposed the creation of a criminal justice component, consisting of civilian police, judicial and corrections elements, as well as a human-rights protection section. The Security Council endorsed this general approach.¹⁰² UNMIL was to assist the transitional government of Liberia in monitoring and restructuring the police force of Liberia and to develop a civilian police training programme.¹⁰³ It was to help the transitional government to develop a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions.¹⁰⁴ It was also to contribute towards international efforts to protect and promote human rights in Liberia,¹⁰⁵ and to carry out human rights promotion, protection and monitoring activities.¹⁰⁶

⁹⁸ UN Doc. S/2003/875 (11 September 2003) Report of the secretary-general to the Security Council on Liberia, para. 24.

⁹⁹ *Ibid.* ¹⁰⁰ *Ibid.* ¹⁰¹ *Ibid.*, para. 26.

¹⁰² SC Res. 1509 (19 September 2003), paras. 1–3. ¹⁰³ *Ibid.*, para. 3(n).

¹⁰⁴ *Ibid.*, para. 3(q). ¹⁰⁵ *Ibid.*, para. 3(l). ¹⁰⁶ *Ibid.*, para. 3(m).

b. Progress in implementing UNMIL's rule of law mandate By late 2006, the secretary-general reported that there had been substantial progress in restructuring the Liberian police force. UNMIL had helped to train more than 2,500 new Liberian police recruits and assisted with planning for the full restructuring of the Liberian police.¹⁰⁷ With respect to the judicial system, UNMIL had supported reform of the vetting and appointment process for judges, assisted the Liberian government to draft and enact laws relating to rape, jury and judicial independence and conducted comprehensive legal training for members of the legal and judicial system.¹⁰⁸ The mission had also supported efforts to develop a Law Reform Commission.¹⁰⁹ In the corrections sector, UNMIL facilitated the opening of eight prisons and the recruitment and training of dozens of corrections officers.¹¹⁰ In the field of human rights, major achievements included the establishment of the Liberian Truth and Reconciliation Commission and the Independent National Human Rights Commission.¹¹¹

Yet despite these achievements, Liberia's rule-of-law institutions and mechanisms remained 'fragile and underdeveloped'.¹¹² While there had been progress in training new police recruits, the overall restructuring programme was delayed due to difficulties in demobilising and reintegrating members of the old Liberian police force. The deployment of police outside the capital was being hampered by a lack of basic infrastructure and equipment.¹¹³ There were still few prisons across Liberia and a dearth of qualified and well-trained corrections officers, resulting in prolonged pre-trial detention periods in overcrowded, substandard prisons.¹¹⁴ It was also proving difficult to retain trained corrections officers, who could earn higher salaries in the police and armed forces.¹¹⁵

¹⁰⁷ UN Doc. S/2007/151 (15 March 2007) Fourteenth progress report of the secretary-general on the United Nations mission in Liberia, para. 17.

¹⁰⁸ UN Doc. S/2006/159 (14 March 2006) Tenth progress report of the secretary-general on the United Nations mission in Liberia, para. 29.

¹⁰⁹ UN Doc. S/2006/958 (11 December 2006) Thirteenth progress report of the secretary-general on the United Nations mission in Liberia, para. 39.

¹¹⁰ UN Doc. S/2006/159 (14 March 2006) Tenth progress report of the secretary-general on the United Nations mission in Liberia, para. 29.

¹¹¹ *Ibid.*, para. 28. ¹¹² *Ibid.*, para. 30.

¹¹³ UN Doc. S/2007/151 (15 March 2007) Fourteenth progress report of the secretary-general on the United Nations mission in Liberia, para. 21.

¹¹⁴ UN Doc. S/2006/958 (11 December 2006) Thirteenth progress report of the secretary-general on the United Nations mission in Liberia, para. 28.

¹¹⁵ *Ibid.*, para. 42.

In terms of the legal system, there was still a severe shortage throughout the country of court facilities, and trained judges and magistrates.¹¹⁶ As a result, traditional forms of justice, including both state-sponsored and non-state-sponsored varieties, tended to predominate outside the capital.¹¹⁷ External rule-of-law interventions had tended either to be ignorant of, or pay little attention to, these customary forms of justice.¹¹⁸ Although the customary justice systems themselves were susceptible to corrupt and inequitable practices, they had provided a viable short-term mechanism through which to resolve conflict in remote areas.¹¹⁹ Low-level judicial corruption and inefficiency were also undermining the delivery of the formal justice system,¹²⁰ and these shortcomings were in turn undermining the enjoyment of human rights.¹²¹ Efforts to address human-rights concerns through transitional-justice institutions had stalled. Although both a Truth and Reconciliation Commission and an Independent National Human Rights Commission had been formally established, both had been plagued by disagreements over appointments, and undermined by a lack of financial and human resources.¹²² As a consequence, neither body was functioning as planned.

IV. Between ideal and reality

The previous section illustrates the complex journey of the rule of law from a powerful abstract political ideal in the Security Council chamber to the tentative, concrete, institution-focused measures that struggle to gain traction in peacekeeping theatres. MINUSTAH and UNMIL have both followed broadly similar rule-of-law trajectories. In each instance the rule-of-law sector, interpreted by the UN Secretariat to mean the police, the judicial system and prisons, along with the overall human-rights situation, was devastated prior to the UN's intervention by maladministration and lawlessness in Haiti, and by protracted conflict and oppressive government in Liberia. In each case the situation was

¹¹⁶ *Ibid.*, para. 36.

¹¹⁷ See International Crisis Group, *Liberia: Resurrecting the justice system* (Brussels: International Crisis Group, 2006), 6–10.

¹¹⁸ *Ibid.*, 6.

¹¹⁹ *Ibid.*, 10. See the discussion of customary legal systems in Grenfell's chapter in this volume. Grenfell argues for greater attention to the contribution of customary law to the rule of law.

¹²⁰ UN Doc. S/2007/151 (15 March 2007) Fourteenth progress report of the secretary-general on the United Nations mission in Liberia, para. 33.

¹²¹ *Ibid.* ¹²² *Ibid.*, paras. 38–9.

compounded by the widespread destruction of infrastructure and a paucity of qualified personnel and material resources. MINUSTAH and UNMIL each employed an institution-focused strategy, centred upon reforming the police, reconstructing prisons and courts, building corrections and judicial capacity, and supporting human-rights and transitional-justice mechanisms. Yet each operation has made chequered progress in creating or supporting effective mechanisms in each of these rule-of-law sectors.

Two conclusions might be drawn from the Security Council's efforts to promote the rule of law in Haiti and Liberia. First, it is possible that the rule of law raises expectations that are impossible to meet. Given the concept's highly contested nature, this would not be a surprising conclusion. Indeed, the scholarly crisis surrounding the rule of law in politico-legal systems that are widely considered to adhere to the rule of law suggests that even in the best of circumstances the rule of law may not be able to deliver on its promise. The second, related, conclusion is that the rule of law is most powerful when it remains an abstract political ideal capable of inspiring people from a wide array of backgrounds. The closer one gets to identifying the practical contours of the rule of law, the more elusive its essence appears to become. Once the rule of law gains concrete form, it becomes fallible. It seems that no incarnation of the rule of law can reach the high standards implied by the ideal of the rule of law.

These conclusions suggest that the rule of law is doomed to disappoint, whether it is being pursued in a stable, peaceful state or in a post-conflict environment. One response would be to advocate that the UN Security Council should abandon its efforts to promote the rule of law after conflict and instead devote its peacekeeping energy and resources to other, less ambitious tasks. But this impulse would leave much of the current agenda of peace-building off-limits. Indeed, as noted in Part I, no matter how enormous the task of material reconstruction may be, the most important reconstruction lies in the non-material area of reconstructing human relations and governance. When seeking to restore trust and confidence in the national community, it is necessary to grapple with big political ideals such as democracy, justice and the rule of law, regardless of the expectations they create.

As long as UN peacekeeping operations continue to engage in complex post-conflict peace-building activities beyond the (relatively) simple task of monitoring cease-fire lines, the Security Council will remain duty-bound to navigate the treacherous strait between the impossibility and the necessity of the rule of law. There are a number of strategies that the

Security Council might employ in an attempt to make this journey less difficult. First, the Council, DPKO and UN peacekeeping operations could be more honest about the limitations of the concept of the rule of law. This would entail acknowledging that there is no one-size-fits-all, perfect model of the rule of law, and that not even in the most peaceful and stable societies does the rule of law exist in a complete form. It would mean acknowledging that law and the rule of law are human constructs and as a consequence can be as fallible as humans themselves. As Krygier has noted, the goal of the rule of law should be 'to mediate between power and people'.¹²³ The objective of any society seeking to adhere to the rule of law should thus be to continue to refine the balance between the exercise of political power and the impact of that power upon citizens. Second, there could be less emphasis upon the concrete form that rule-of-law systems take and more emphasis upon the general goals that should be pursued by any rule-of-law system. Rather than pre-empting the final shape of rule-of-law mechanisms, UN peacekeeping operations could support a process of genuine consultation, in which local stakeholders determine their own rule-of-law priorities and strategies. The goal of rule-of-law interventions could thus be subtly shifted away from (re)creating perfect rule-of-law systems and towards harnessing and, if necessary, (re)creating politico-legal processes that seek to minimise conflict in society. As Laura Grenfell points out in the next chapter, it is also important to understand the limitations of international legal principles in contributing to the rule of law.

Conclusion

The UN Security Council creates high expectations when it asks UN peacekeeping operations to strengthen the rule of law. Yet on both a practical and a political level, there is little the Council can do to avoid this. In post-conflict environments where a peacekeeping effort is welcomed by the local community, it is appropriate for the UN to do more than simply keep the peace. The stabilising presence of thousands of UN peacekeepers provides a fleeting window of opportunity in which both local and external actors can pursue peace-building activities that aim to prevent the reignition of conflict after the peacekeepers depart. If the main goal of these UN peace-building interventions is to enable the emergence of a peaceful, stable society, then it is entirely appropriate

¹²³ Krygier, 'Marxism and the rule of law', 645.

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for the Security Council to support the (re)construction of a system of the rule of law that provides mechanisms to maintain law and order, resolve conflicts peacefully, promote and protect human rights, and prevent the excessive, abusive or corrupt use of political power.

Nevertheless, when the Security Council decides to give its peacekeeping operations a mandate to strengthen the rule of law, it should be more circumspect about what this entails. It should acknowledge that there is no single recipe for (re)building the rule of law that is readily applicable to every post-conflict environment. It should avoid promoting idealised, resource-intensive, Western models of the rule-of-law system that are so foreign to the local community that they will almost certainly collapse once the peacekeeping effort ends and the international community turns its attention elsewhere. Instead, the Council should employ a more flexible approach to the rule of law which fosters local adaptation of governance institutions, mechanisms and strategies for pursuing the political ideal of the rule of law.