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The Rule of Law in Peace Operations

PEP

BRIEFING NOTE

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**A Partnership for Effective
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The PEP is a non-partisan policy working group that brings together the humanitarian, human rights, peace and security, think tank, and academic communities in support of greater peace operations capacity. The PEP promotes public policy solutions to improve national and international peacekeeping infrastructure, and works to build the political will to support such policies by: providing an open forum for discussion of peace operations issues; serving as an information resource for media and policymakers; and engaging in educational efforts that facilitate greater understanding of peace operations. The PEP does not exclusively support any one particular solution for the capacity problems that prevent effective peacekeeping operations. Rather, the PEP facilitates the exploration of all potential pragmatic and achievable solutions in a candid and 'outside the box' atmosphere.

Introduction—the Rule of Law in Peace Operations

The successful establishment of public order and civil security in the aftermath of violent conflict, natural disaster and/or military intervention is the foundation for all other reconstruction and stabilization activities. Without the development of this basic level of security, sometimes referred to as the “rule of law” (ROL), international engagement will be jeopardized by a loss of credibility and an entrenchment of organized crime, extra-judicial processes, and terrorist activities.

However, while the security aspects of ROL are of primary importance, ROL is not just about public order and security. Establishing the ROL in post-conflict societies also involves dealing with past grievances and/or (re)creating frameworks and institutions of governance that function according to laws so as to regulate societal life.

What Does the ROL Encompass in a Post-conflict Environment?

In the immediate aftermath of conflict or disaster developing the ROL means providing and establishing public order so that the public is protected and frameworks and institutions of governance can be (re)created.

Public order requires that there is a level of physical safety for citizens so that their day-to-day activities can commence. It requires the capability to control riots, looting, and sporadic, often vengeful, violence. Maintaining public order also entails ending impunity by getting criminals and perpetrators of violence off the streets.

Protecting the public in the short and interim term is priority one, but protecting the public in the longer-term and creating a sustainable peace requires government institutional reform, especially judicial reform. ROL work involves developing principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights.

This work includes developing constitutions, forming a predictable legal system with fair, independent and effective judicial institutions, reforming “power” ministries and addressing transparency and corruption problems in government work and finance. Ultimately these institutions should provide impunity for no one, especially government officials, and should protect citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals.

It is important to remember that frameworks for economic and business regulation should also be developed so that economic activity can be held to internationally recognized standards. Commercial law and regulation standards become especially

important for transitioning societies when seeking to attract foreign investment during economic revitalization efforts. It is also closely linked to combating institutional corruption, which is a major problem in most failed and failing states.

Professionals must be trained in order to operationalize these institutions. Legal professionals, including judges, lawyers, clerks and ombudsmen, are necessary for pursuing legal cases against suspects, processing cases in a timely and just fashion and incarcerating law-offenders at correctional facilities that are properly maintained. Development of civil society groups that engage the judicial system are also important and include bar associations, anti-organized crime organizations and human rights activists. Together these legal professionals and links to the judicial system support professional police officers who are the front line of defense for public safety and order.

Police reform is one of the most important and controversial areas of ROL work in post-conflict settings. Police reform includes deciding whether or not (or how) to incorporate former combatants or enemies in civil security forces, deciding force model and composition and reorienting law-enforcement doctrine to emphasize civilian protection, versus protection of particular regimes, political parties or individuals.

In the broadest sense, ROL efforts also touch on issues of transitional justice and reconciliation. Justice, as provided by the institutions and professionals described above, is supposed to protect citizens and help maintain public order in the present and future. But justice in transitioning societies also means addressing past grievances so that the society can move towards a more peaceful future.

The value of truth and reconciliation commissions to compliment a criminal prosecution strategy is now widely recognized. There are several successful models on which to draw, including South Africa and East Timor. National human rights commissions are another example of a non-penal procedure, which can play a complimentary role in helping to restore the ROL, protect the rights of vulnerable groups in society, and help to resolve ongoing disputes peacefully.

Conclusion

While the ROL encompasses many different tasks, how broadly or narrowly ROL is defined in a particular peacekeeping, post-conflict reconstruction or stabilization operation depends on at least two important factors.

- First, the scope of the peace mission's mandate given by national, regional or international authorities delineate what the mission is seeking to achieve and by what means.
- Secondly, the depth and breadth of ROL efforts in a mission depends on the availability of resources and expertise.

Contemporary peacekeepers have to be much more than soldiers as their work involves responsibilities far beyond those of traditional peacekeeping. But unfortunately for peacekeepers expected to establish the ROL, they are seldom given sufficient resources to accomplish the job successfully. Adequate resources must be committed if the scope of work expected of peacekeeping operations continues to widen.

Written by Jamie Ekern, while serving as a Peacekeeping Intern at Refugees International.

Sources: US Institute of Peace Special Report #104: Establishing the Rule of Law in Iraq, <http://www.usip.org/pubs/specialreports/sr104.html#justice>