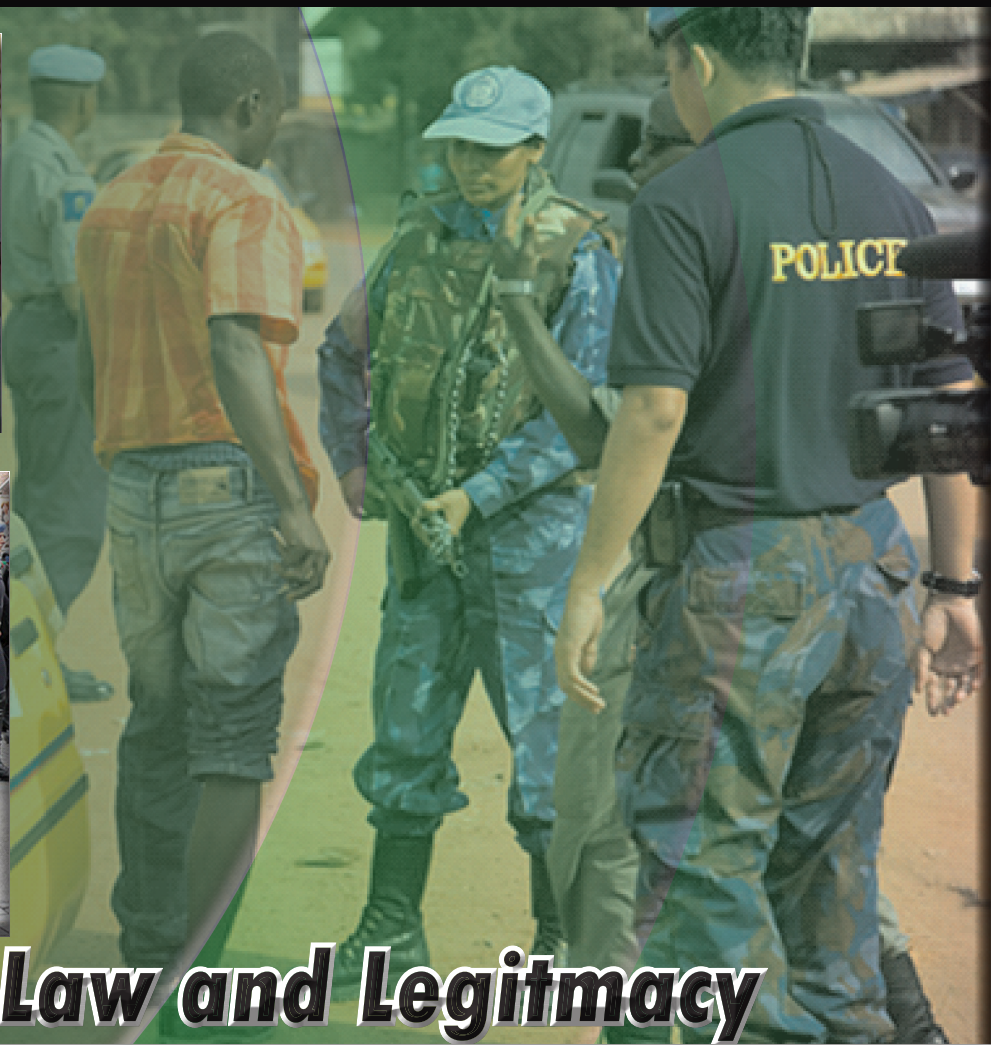


SOLLIMS SAMPLER

Targeting Peace & Stability Operations Lessons & Best Practices

Volume 1

Issue 2



Rule Of Law and Legitimacy



Peacekeeping and Stability Operations Institute

Approved for Public Release,
Distribution Unlimited



FOREWORD

This is the second edition of the Stability Operations Lessons Learned and Information Management System (SOLLIMS) Lessons Learned “Sampler”. The general structure of the “Sampler” includes (1) an **Introduction** that provides an operational or doctrinal perspective for the content, (2) the Sampler **“Quick Look”** that provides a short description of the topics included within the Sampler and a link to the full text, (3) the primary, topic/issue-focused Stability Operations (SO)-related **Lessons Learned report***, and (4) links to one or two **additional reports or other references** that are either related to the “focus” topic or that address current, real-world, SO-related challenges.

This lessons-learned compendium contains just a sample – thus the title of “sampler” – of the observations, insights, and lessons related Rule of Law and Governmental Legitimacy available in the SOLLIMS data repository. These observations are worth sharing with military commanders and their staffs, as well as civilian practitioners with a Stability Operations-related mission / function – those currently deployed into conflict environments, those planning to deploy, the institutional Army, policy makers and other international civilian and military leaders at the national and theater level.

Lessons Format. Each lesson is provided in the form of an Observation and Recommendation (O&R). The “O & R” follows a standard format:

- Title (Topic)
- Observation
- Discussion
- Recommendation
- Implications
- Event Description

Occasionally you may see a “Comments” section. This is used by the author of the “O&R” to provide additional personal perspective on the Observation. The “Event Description” section provides context for the Observation in that it identifies the source or event from which the content was developed.

You will also note that a number is displayed in parentheses next to the title of each lesson / observation. This number is hyper-linked to the actual O&R within the SOLLIMS database; click on the highlighted O&R number to display the O&R entry and access any attachments (references, images, files) that are included within SOLLIMS for this O&R. Note, you must have an account and be logged into SOLLIMS in order to display the SOLLIMS data entry and access / download attachments.

If you have not registered on SOLLIMS, the links in the reports will take you to the login or the registration page. Take a few short minutes to register for an

account in order to take advantage of the many features of SOLLIMS and to access the stability operations related products referenced in the report. We encourage you to take the time now to provide us with your perspective as related to a single observation / lesson in this report, or to the overall value of this “Sampler” as a reference or guide for you and your unit/organization and staff. **By using the “Perspectives” text entry box that is found at the end of each O&R – seen when you open the O&R in your browser – you can enter your own personal comments and observations on this O&R.** We welcome your input. We encourage you to become an regular contributor to the SOLLIMS Community of Interest !!!

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At PKSOI we continually strive to improve the services and products we provide the global stability operations community. We invite you to use our web site at [<http://pksoi.army.mil>] and the many functions of the SOLLIMS online environment [<http://www.pksoi.org>] to help us identify issues and resolve problems – we welcome your comments and insights.

****All reports in the “Sampler” are generated by the SOLLIMS Lessons Report Builder tool.***



Census taking; population control in Darfur.

INTRODUCTION

Welcome to the second edition of the Peacekeeping and Stability Operations Institute (PKSOI) Lessons Learned “Sampler”. The focus for this edition is on Rule of Law and Governmental Legitimacy.

"During stability operations, it is imperative that the local populace have confidence that they will be treated fairly and justly under the law. They must also believe that they will have access to justice, have an open and participatory government, and trust that all persons, entities, and institutions – public and private – are accountable to the law." (Para 1-40, FM 3-07, HQDA, Oct2008.)

“Rule of Law” (RoL) is 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 principles. Effectively implementing the “RoL” is one of the key conditions for achieving success during peace and stability operations. The legitimacy of a government can be directly related to its ability to achieve and sustain the “Rule of Law”.

“RoL” is evident when the following governance principles exist:

- the state monopolizes the use of force in the resolution of disputes;
- individuals are secure in their persons and property;
- the state is itself bound by law and does not act arbitrarily;
- the law can be readily determined and is stable enough to allow individuals to plan their affairs;
- individuals have meaningful and fundamental freedoms
- individuals rely on the existence of justice institutions and the content of law in the conduct of their daily lives

The cross-cutting nature of the “RoL” requires planners, operators, and other SO practitioners, from the tactical through the strategic level, to work in close cooperation with “RoL” experts in order to ensure it is adequately and properly addressed during stability and reconstruction planning and development.

Restoring and promoting rule of law is one of the most critical elements of the stabilization / reconstruction process in failed, failing or fragile states. The presence of the “RoL” is a main indicator that the government of a failing or highly stressed nation has been accepted as legitimate by both its citizens and the international community.

Focus on Rule of Law and Governmental Legitimacy

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Unless otherwise stated, whenever the masculine or feminine gender is used, both are intended.

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Sampler “Quick Look”

Click on [\[Read More ...\]](#) to go to Sampler topic.

- Contemporary United Nations (UN) peacekeeping operations are increasingly complex and multidimensional, requiring greater coordination and cooperation between the various actors involved, including military, civilian police, and civilian organizations and agencies. [\[Read More ...\]](#)
- Support to national prisons is an important component of Rule of Law and Security Sector Reform. The establishment of or re-establishment of an effective national prison system, along with the ensuing long-term support, is an integral part of the peacekeeping planning process. [\[Read More ...\]](#)
- Over the last few decades, significant progress has been made in the conduct of international civilian police operations. However, although the United Nations has conducted international policing as part of their multinational peacekeeping/peace building missions for many decades, many challenges and problems still remain. [\[Read More ...\]](#)
- Over the last 15 years, Colombia’s legal system has undergone significant changes which provide examples of the linkage between security and rule of law. As these two areas improve over time, the government and its institutions will strengthen its legitimacy with its people. [\[Read More ...\]](#)
- The rule of law and control of corruption are at the centerpiece for successfully addressing challenges in social, economic, and political development. Reducing corruption significantly impacts on the rule of law and confidence in governmental institutions. [\[Read More ...\]](#)
- Restoring and promoting rule of law is one of the most critical elements of the stabilization / reconstruction process in failed, failing or fragile states. U.S. – led stability operations in both Iraq and Afghanistan recognize rule of law as an essential component of a successful counterinsurgency strategy, and important lessons are emerging from both conflicts. [\[Read More ...\]](#)
- Recovery depends on the quality of the institutions of a country – in politics, economics, and security – as well as on the effectiveness and legitimacy of these institutions. [\[Read More ...\]](#)
- The rule of law is a major aspect of stability operations (SO). It is a cross-cutting aspect that runs through most if not all lines of operations in SO. Rule of law is necessary to promote legitimacy for a host nation. [\[Read More ...\]](#)

20 Jul 10

**Subject: SOLLIMS REPORT - RULE OF LAW AND GOVERNMENTAL
LEGITIMACY**

1. GENERAL

"Rule of Law" is 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 principles. Effectively implementing the "RoL" is one of the key conditions for achieving success during peace and stability operations. The legitimacy of a government can be directly related to its ability to achieve and sustain the "Rule of Law".

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This report contains related observations, insights, and lessons currently available within the SOLLIMS knowledge base.

2. OBSERVATIONS & RECOMMENDATIONS

**a. Topic. Better Coordination and Coordination Needed in UN
Peacekeeping ([569](#))**

Observation.

Contemporary United Nations (UN) peacekeeping operations are increasingly complex and multidimensional, requiring greater coordination and cooperation

between the various actors involved, including military, civilian police, and civilian organizations and agencies. Overcoming these new challenges, however daunting, will serve to strengthen the UN organization and its peacekeeping operations.

Discussion.

This lesson is based on an article derived from a United Nations Association in Canada (UNA-Canada) public dialogue, held on February 6th, 2007 in Victoria, Canada, to mark the 50th Anniversary of UN peacekeeping. The event included a public forum and a closed experts' roundtable. Participants of the closed experts' roundtable and panelists at the linked public dialogue event discussed the changing nature of UN peace operations. The participants examined new challenges to UN peacekeeping and identified opportunities to strengthen UN peace operations in the future.

Participants to the roundtable first discussed several new challenges facing UN peacekeeping operations. They are: political will; troop and financial constraints; capacity of forces; rapid deployment and standing capacity; rules of engagement and the use of force; and the rule of law.

Another area discussed by the panelist was creating opportunities to strengthen UN peacekeeping in the future. These ideas included integration of peacekeeping capabilities and the transition from peacekeeping to peacebuilding. Other opportunities, such as new technologies and civil society initiatives are also incorporated in this report, though participants did not specifically address them. There were four specific types of integration: (1) integrating national contingents; (2) integrating UN and regional forces; (3) integrating military and civilian actors in peacekeeping missions; (4) integrating non-governmental organizations (NGO) in peacekeeping missions.

Recommendation.

The panel offered many multi-level recommendations to strengthen and improve UN peacekeeping operations:

For the UN Security Council (UNSC):

1. To increase UN credibility in peacekeeping operations, it is crucial that the UN Security Council (UNSC) send clear messages to governments and "rebel" forces as to the consequences of violating cease-fires and the possibilities for sanctions and International Criminal Court (ICC) extraditions.
2. In devising peacekeeping mandates, the UNSC must continue to ensure that the mandate under which a force will operate matches the needs on the ground,

while at the same time being conscious of the possible negative consequences a stronger mandate can have on the overall goals of the mission. It is also important for the UNSC (and the international community) to be flexible in its response to crises. In particular, the UNSC should be able to take advantage of opportunities and to respond to changing conditions on the ground.

3. To encourage continuity between peacekeeping and peacebuilding missions, the UNSC, UNDPKO, and the Peace Building Commission should work more closely together in identifying proper sequencing and prioritization of activities.

United Nations Department of Peacekeeping Operations (UNDPKO):

1. In line with the recommendations already identified in the report on UN Reform, UN DPKO should move forward on the development of a unit of core UN staff, including both military and civilian personnel that could be in place at the onset of a peacekeeping operation to ensure that each mission does not have to start from scratch. This would allow for continuous improvement in the speed and efficiency of future UN missions.

2. DPKO should strengthen and expand the newly created Standing Police Capacity to enhance the UN's ability to deploy rapidly to post-conflict situations.

3. DPKO should promote the recruitment and deployment by Member States of women police officers to better contend with gender issues and crimes specifically targeting women.

4. In the context of UN integration with regional organizations, DPKO and the African Union should agree on practical measures to promote a systematic and structural approach to coordination and cooperation.

United Nations Peacekeeping Missions on the Ground:

1. Increase coordination and communication between the various countries involved in the training of local police through joint meetings and training exercises. Greater interaction could improve the consistency of the training and skills provided to local police, ensure the compatibility of objectives and interoperability among local police units and facilitate their future integration under one command.

2. To the extent possible, push for the integration of longer-term peacebuilding initiatives into UN missions by incorporating plans for addressing Disarmament, Demobilization, Reintegration (DDR) and Security Sector Reform (SSR) at the onset of a peacekeeping mission. This could involve conducting needs assessment on which programmes could be devised that reflect the

conditions on the ground. Doing so could also support the development of integrated institutional capabilities at the local level.

Governments:

1. Governments should work together with like-minded states to push the Security Council to adopt a balanced approach to peacekeeping operations by emphasizing the use of both case-by-case analysis and area/issue/regional specific guidelines. This could be achieved by supporting the in-depth study of the underlying socio-political setting that led to the current crisis or conflict, and tailoring measures to address the particular political, economic, and social context.
2. In strengthening peacekeeping operations:
 - a. Try to catalyze political will for the approval of UN peacekeeping missions within the UN General Assembly, G8, and other international fora.
 - b. Work with like-minded states to try to make the UNSC more transparent in its decisions to undertake peacekeeping missions.
 - c. Create working groups among UN member states to address the issue of the "use of force."
3. In ensuring the UN's financial capacity, the governments should review its overall financial contribution to UN peacekeeping, as well as its donations to specific peacekeeping missions (e.g., the UN mission in Haiti and the AU mission in Darfur).
4. In strengthening regional organizations, the governments should devote more resources to building African military and civilian peacekeeping capacity and provide greater technological and logistical support to the AU for peacekeeping operations.
5. Governments could organize seminars to discuss UN cooperation with regional organizations, focusing on the military and civilian aspects of this cooperation.
6. Governments should strengthen their engagement in capacity-building exercises of developing country peacekeepers.

International Non-Governmental Organizations (NGOs):

1. NGOs working alongside peacekeeping missions or that send personnel to field missions should ensure that all the personnel they deploy receive basic training in civil-military cooperation.
2. NGOs working alongside peacekeeping missions or that send personnel to field missions should promote communication with leading military officials in peacetime, through roundtable discussions, working groups, conferences and joint training. Increased interaction outside the context of operations will help once in the field.
3. NGOs engaged in peacekeeping issues should partner with leading peacekeeping training centers to develop joint training sessions where civilians and military could exchange knowledge and share lessons learned.

Implication.

- The surge in UN peacekeeping operations and personnel and desire for a standing peacekeeping capacity will require greater financial commitments from member states. Having a capability to rapidly mobilize, organize, and deploy peacekeeping forces requires a more capable system than currently in place. This will mean bigger budgets for DPKO but also greater commitment from member states to have a preset force ready to go.
- Member states must be willing to integrate its forces with others in order to meet the challenges of future complex missions. National contingents come with different and often unique capabilities. Future peacekeeping missions will require leaders to integrate these capabilities to become an effective force.
- Member states will have to provide more intelligence capabilities to UN missions to meet further challenging operational environments and situations. This includes use of Unmanned Aerial Vehicles (UAVs), sensors, and current technologies employed by the modern military forces.
- NGOs will have to prepare for future challenges by training with military forces so that future missions have an overall effective response by the UN or whatever organization is leading the effort. The recommendations should lead to better interaction by all applicable actors so that there is a unified effort in peacekeeping and humanitarian operations.

Event Description.

This observation is based on the article "Future Challenges of UN Peacekeeping," from the United Nations Association in Canada (UNAC, <http://www.unac.org/en/index.asp>), based on a public forum and closed expert's roundtable held on February 6, 2007, in Victoria, Canada, to mark the 50th Anniversary of UN Peacekeeping.



b. Topic. Supporting National Prison Systems ([532](#))

Observation.

Support to national prisons is an important component of Rule of Law and Security Sector Reform. The establishment of or re-establishment of an effective national prison system, along with the ensuing long-term support, is an integral part of the peacekeeping planning process. The prison system is ultimately a national ownership issue and directly affects civil society.

Discussion.

The United Nations' Department of Peacekeeping Operations (DPKO) has been very involved and aware of the importance of national prison systems in re-establishing rule of law and security sector reform(s). The Brahimi Report (2000) described the importance of supporting the prison system in peacekeeping. The preponderance of attention and resources are directed to national police services. However, a dysfunctional or ineffective prison system can undermine whatever fixes and improvements are made to government structures like the police services.

What the UN DPKO has learned is that an incremental bottom-up approach, which gradually builds a prison system, is an effective strategy for rapidly re-establishing short-term prison capacity. This approach involves the development of operational procedures, staff job roles, and prisoner and prison management systems, which then provide the foundation for subsequent strengthening of a prison system.

It is not uncommon that host-country governments are unable to meet the basic needs of the prison system (e.g., secure accommodations, food, water, and medical care for prisoners and salaries for staff) during the early phase of a peacekeeping mission, a time when the creation of sufficient secure prison

accommodations is critical given a rapidly expanding international and national police presence and an often increased arrest rate. While mission management can do much to encourage a host government to meet its obligations to meet these needs, the resulting tensions must be managed by prison components. The objective is to assist national personnel to develop and manage a viable, safe, secure and humane prison system.

The training, deployment and support for prison support personnel on peacekeeping operations and missions must be synchronized with those for the national police forces. In many cases, police forces have provided the resources to prisons which cause confusion on the roles and responsibilities in re-establishing prison systems. Many people and officials come to depend or seek help from police personnel rather than the prison/detention system personnel on prison issues. Another aspect of a prison system, after it is re-established, is setting up an independent, formal monitoring program of the prison system. This is important to ensure that prisons are complying with accepted international norms and standards for the treatment of prisoners. Again, this should be done through the prison/detention system instead of the police system.

An additional aspect of prison systems is that they can be an indicator and barometer of moods and the sentiment of people and their community. The prison population typically reflects the diversity of the community including people who are most likely to disrupt the peace. Prison support personnel can gauge the sentiments and determine the key issues affecting the imprisoned people who remain connected to the outside world through contact with family, friends, and staff.

Recommendation.

- The re-establishment of prison systems along with a support program must be included in the planning process with other rule of law components such as police and judicial support. During the planning process, the prison support program should be linked to the security sector reforms as well as the other rule of law components. Prison reforms can affect the government and civil society because of issues with gender and human rights, and criminal justice.
- Prison professionals/experts should arrive into the mission area at the same time as police personnel. This avoids operational problems and administrative confusion. Separate planning may also have to be made just to conduct a handover to UN prison support personnel.
- According to this study, the personnel supporting prison system should report to the Deputy Special Representative of the Secretary-General (DSRSG). The main point, however, is that prison personnel should not report to/through either police or any other rule of law units. If this is not practicable, prison personnel

should be located within judicial elements. Past experience has shown that when prison support personnel are combined with police units, they are tasked to conduct police-related duties.

- UN prison support personnel should immediately build the capacity of the national prison system because UN operations and missions are typically of short duration. Along with building capacity, UN prison personnel should establish programs that teaches fundamentals and provides mentoring to national prison personnel at the prison locations. It has been found that a mentoring program is more effective than basic recruit-type training.

Implication.

- Rule of law programs will be undermined if the national prison system is not strengthened at a rate similar to national police services. Resources will be diverted or taken away from one area in order to address failures in the national prison system. National prison capabilities will grow as the UN mission matures and operations are refined throughout the country. It is imperative that national prison staff personnel have adequate equipment and facilities in order to re-establish and build a functional prison system.

- A failed prison system will negatively impact other rule of law components and the security sector. Police and military entities will have to fill the void in the absence of a coherent national prison system or the current system is not up to the task. This creates problems because police and military are not trained as prison guards, to run prison facilities or to manage the overall system. When this happens, problems such as human rights come to the forefront and can negatively affect public support for peacekeepers and the national government.

- Improvements to the prison system will improve the chances that the national government will be committed to sustain and further develop its prison systems. A corps of trained prison staff and professionals is essential once UN peacekeeping missions end and the government depends on its own people for operations, training and development.

- A balanced police, judicial, and prison system should help political and security systems in the country. Each component plays a part in public sentiment. Having people regard the government and related institutions as legitimate and fair will help to maintain peace-building measures and ultimately sustain the peace.

Event Description.

This observation is based on the United Nations Peacekeeping Best Practices Section's study "Supporting National Prison Systems: Lessons Learned and Best

Practices for Peacekeeping Operations," December 2005. This study is linked and supports some recommendations made in the "Report of the United Nations Panel on Peace Operations," August 21, 2000, commonly known as the Brahimi Report (Study chaired by Mr. Lakhdar Brahimi).



c. Topic. International Civilian Policing ([527](#))

Observation.

Over the last few decades, significant progress has been made in the conduct of international civilian police operations. However, although the United Nations has conducted international policing as part of their multinational peacekeeping / peace building missions for many decades, many challenges and problems still remain.

Discussion.

The United Nations Civilian Police (UNPOL) has participated in numerous peacekeeping operations since its introduction in the early 1960's. Its role has undergone many changes since that time. International policing is an essential part of post-conflict reconstruction and peace building and plays a crucial role in establishing stability in a post-conflict environment. International police are just as important as other international entities employed to strengthen the rule of law and its institutions.

The 2000 [Brahimi Report](#) reflected the increased importance and value of civilian police in peace operations. The report called for a more holistic approach to civilian policing operations involving more entities developed for rule of law and associated institutions. International judicial experts, penal experts, and human rights specialists need to work together with the civilian police in strengthening the rule of law and like activity

The paper raised some challenges facing international policing operations in post-conflict environments:

1. Security Gap. It is preferable to deploy civilian police as early as possible but not in areas where there is extreme conflict and instability. A 'security gap' exists between military deployment and the deployment of the civilian police where some kind of policing is needed.

2. Training and Reform of Local Forces. International policing is ideally intended to lay the foundation for long-term sustainability of local police forces and continued stability in the mission country. However, the assistance, training and reform provided by international police missions have often not been tailored to the specific context of the UN mission or have been ad hoc; more problematically there has been a tendency to focus much less on institutional development than on training and assisting police officers.

3. Judicial Reform. Judicial reform is an imperative component of post-conflict reconstruction processes, without which international policing operations and local police forces will eventually fail. International and local policing cannot be sustained without a functioning judicial system. A functioning judicial system is needed whether the mandate for the international policing mission is from a formal operational mandate or from a low-level training and monitoring.

4. Penal Reform. Penal reform is also central to international policing missions; but penal reform, or corrections, has long been ignored in such operations. However, a training, monitoring, assisting, and advising local police force becomes an incredibly difficult task if corrections are not addressed from the outset. A non-functioning penal system can lead to vigilantism on the part of both the local police and the local population, which can lead to further destabilization and insecurity. A police force, whether international or local, cannot operate effectively without a functioning penal system.

5. Traditional Justice Mechanisms. The challenges faced by international police forces in terms of penal, judicial, local police reform and the role of the military are more recognized than the challenges posed by traditional justice mechanisms. Traditional justice mechanisms are here defined as mechanisms for solving disputes, conflicts and crime at community level in which a village or tribal council, community meeting or council of elders deals with crimes committed against the community or individuals, or focuses on resolving conflicts such as marital disputes; such mechanisms can be restorative as well as retributive. It is a form of justice that seeks to redress crime or injustice committed within the community with established traditions and customs - thus distinguishing it from vigilantism. Such mechanisms commonly coexist with judicial systems based on common, civil or religious law.

Recommendation.

There are many lessons learned from the last few decades on international policing. The following lessons learned are developed from core problems associated with the five challenges in international policing that were previously identified above.

1. **Mandate.** The effectiveness of an international policing mission is dependent upon its mandate. It is crucial that the mandate is clear; policing operations are severely complicated by vague mandates, which can lead to mission creep or to incoherent approaches being taken to policing, monitoring and training in different parts of the mission country. Moreover, the mandates must be comprehensive and realistic as to the challenges that will face the mission. It will heighten efficiency if the mandate is as specific as possible, particularly in relation to coordination and command structure.

2. **Planning.** Substantial planning is critical to the success of a policing operation - planning while conducting the mandate of the mission has often proved ineffective. For example, there was little advance preparation for the police component of UNTAC. As a result, planning and execution of the policing component of the mission was inconsistent with the overall goals of UNTAC; policing operations proceeded simultaneously with other essential activities, which hampered the force's overall effectiveness.

3. **Needs Assessments.** When a crisis erupts and police forces are dispatched to a mission country, often an adequate assessment of the needs of the society in question has not been conducted. Deployment usually takes priority - get "forces on the ground." However, for international policing missions it is crucial that such needs assessments are made prior to deployment. Therefore, standard procedures and guidelines for conducting such assessments must be established. These assessments should not only include what is needed from UNPOL, but should also include a background analysis of the conflict itself, the potential for reoccurring conflict, and what factors may influence an international policing mission.

4. **Resources.** The lack of sufficient resources has been an issue in most UN policing operations. One exception was Mozambique, but that was more by coincidence than by design. The mission was able to support an expansion of the police component due to the lesser-than-anticipated cost of the cease fire observer mission. More resources must be allocated to international policing missions, so that officers are not hampered in executing the mandate once in the field.

5. **Donor coordination.** Donor coordination is critically important to police assistance, monitoring, mentoring and training missions in a post-conflict context. There is a consensus that donor coordination in the areas of police, security sector reform and rule of law must be achieved; however, it has been difficult to do in practice.

6. **Coordination, cooperation, and Communication (International, External, Local).** Coordination and cooperation within the police component in the mission area, between the policing mission and headquarters, and among the police

component and other agencies and the local population has proven problematic in international policing missions. The quality of cooperation has tended to depend on the individuals involved rather than on existing structures for coordination, cooperation and communication.

7. Pre-deployment Training. There has been too little emphasis placed on unified pre-deployment training for international police officers - predeployment training has been in the remit of the contributing nations. The result is a great deal of variation in police training, capacity and capabilities. There is a reliance on the contributing nations to provide officers that meet a certain standard, although this standard has repeatedly not been met. Once in the mission country the UN provides a one-week-long course. However, the course tends to focus too much on the history of the UN and human rights. What has largely been omitted is in-depth pre-deployment training in the history, culture and conflict of the mission country.

8. Deployment. The deployment of international police officers often takes much longer than desired. This results from the difficulty in finding a sufficient number of officers and from having national police officers quickly relieved from their home duties. Having more officers ready to deploy at short notice is therefore needed. Rapid deployment of small teams in the immediate aftermath of conflict is crucial in this context.

9. National Doctrine - A common Standard. One problem facing UN policing operations is that they consist of many police contingents from multiple countries, with a wide variety of policing backgrounds, each with different policing methods, standards and doctrines. Unless there is a common standard applied in the mission country, friction can emerge among the various national contingents, each thinking their policing standard and methods are superior to the others. Moreover, it can lead to different methods being taught to the local police forces.

10. Quality of Personnel and Skills. The quality and skills, including basic policing skills, language and driving abilities of the participating policing officers in international missions, has been much discussed and elaborated upon. Unfortunately, the skill levels of officers have been frighteningly low. The minimum requirements for participation in a mission have tended to be knowledge of the mission language, having a driving license, and a minimum number of years policing experience (usually eight years or more). In many operations, however, only the last requirement has been met routinely. The limited skills of many police officers have been a problem in most missions, in which officers have often arrived extremely unqualified.

11. Rotation. The rotation of contingents and of officers within the mission country decreases efficiency of a given operation. Particularly, the rotation of commanders negatively affects the quality of missions. There is no common,

established policy for how long UNPOL officers should stay on post in the mission country. The length of deployment of international police officers in UN missions is the decision of the contributing nation, and it can be anywhere from three months to over one year. Most officers can apply for an extension after they have served their first rotation. It would create a considerable advantage if civilian police officers from the different national contingents were deployed the same length of time. The Brahimi report suggested a one-year minimum to provide a level of continuity.

12. Accountability. Accountability is crucial for fulfilling any part of a UN mandate, particularly in relation to policing. The UN civilian police are trying to instill in local police forces a sense of 'democratic civilian policing ethic' which respects human rights, while emphasizing the importance of civilian oversight and control mechanisms. At the same time, the UN lacks adequate accountability structures for its own staff. Hence the UN is trying to impose a set of standards that it is often lacking itself. This can send the wrong signal to local society and local police forces, consequently weakening the effect of teaching democratic policing.

13. Institutional Memory (In Field and Headquarters). There is an absence of institutional memory in UN international policing operations. This absence is felt both in the field and at UN headquarters in New York. There are several reasons for this. There are no policies for transferring responsibility from one contingent to the next, so that frequently contingents will withdraw without leaving anything to the replacement contingent regarding their experience, achievements, and difficulties - thus leading in the field to a loss of institutional memory. Policies enabling a smooth transfer of responsibility from one contingent to the next need to be established to help ensure that the knowledge accumulated during the mission is not lost and so that the follow-on contingent(s) need not repeat the same work, but rather can build on what has already been achieved.

14. Capacity-building (Regional and International). There is a real need to build capacity in international policing; as mentioned, there is a persistent shortage of police officers available for deployment in international policing missions. In particular, Western countries have problems with providing adequate numbers of police officers. Because of this problem, and the local preference in some mission contexts to be policed by culturally similar contingents, attention is now being paid to regional capacity-building. There is currently a focus on training African national police forces to increase availability for deployment to policing operations in Africa writ large.

15. Local Ownership. Local ownership of the entire process of training and reforming local forces is essential. Reform must reflect the realities and needs of the mission country and it must take into consideration local socio-economic factors. Long-term sustainability is essential; for example, the international force

should not introduce technology which cannot be maintained once they have left. The local police forces and civil society must be consulted and must feel that they own these processes that are so crucial for the long-term stability of their country. The international civilian police must cooperate with local police officers, politicians and civil society and there must be a clear understanding of what are the desired goals. If there is to be long-term success in any police reform process it is vital that the local population is consulted. If they are not there is heightened risk that upon international withdrawal the local police will not have legitimacy, because they will not reflect local needs nor desires of how policing should be conducted. The most significant negative outcome would be a return to previous styles of policing.

Implication.

- International civilian policing is an indispensable part of peacekeeping operations. It has to be included in the planning for and the conduct of post-conflict reconstruction and the transition to stability operations. Rebuilding governmental institutions will be very hard to do without civilian policing. It must also be remembered that civilian policing cannot be done alone or in a vacuum. Civilian policing operations along with justice, penal, and judicial reforms are complementary and important for the eventual goal of achieving local ownership and sustainable local police forces.
- The sources for international civilian police forces come with different levels of training, readiness, and capabilities. The recommendations layout how to bring different civilian police forces to as level of a standard as possible before deploying to peacekeeping operations. The risk is that the different civilian police forces may apply their own standard to their specific areas of responsibility instead of one standard (UN standard). In many cases, local police had different standards which were part of the problem.
- The recommendations will have the effect of creating a more effective and responsive justice system that maximizes the effect from the police, judicial, and penal systems.
- The local population will probably be more accepting of a civilian police force than a military force. The faster this transition happens, the faster the transition to reconstruction and long-term stability.
- Effective international civilian policing can have a significant impact on long-term stability. Normally, the number of international civilian police rotations is dependent on the length of the operation or overall UN mission. More effective civilian policing will have a direct positive impact on reducing the length of operations and thereby reduce the number of rotations of international civilian police forces.

Event Description.

This observation is based on the paper, *Identifying Lessons in United Nations International Policing Missions*, (Policy Paper No. 9), by Eirin Mobekk, Geneva Centre for the Democratic Control of Armed Forces (DCAF), November 2005.



d. Topic. Security and Rule of Law Provides Legitimacy to Government ([524](#))

Observation.

Over the last 15 years, Colombia's legal system has undergone significant changes which provide examples of the linkage between security and rule of law. As these two areas improve over time, the government and its institutions will strengthen its legitimacy with its people.

Discussion.

This paper explores the impact of the changes in the administration of law on governance in Colombia. While fighting a long and difficult war against terrorists and narcotics traffickers, Colombia began converting its judicial system from the Roman law based inquisitorial system to an accusatory system. The United States has assisted with money and advice as part of its overall support program under Plan Colombia. There have been many lessons learned from Colombia's legal system transformation. For example, rule of law programs cannot be sustained without adequate security, which must also be established within legal norms. The host country must design, implement, and make the sacrifices for its own program of reform and institution building in order for the effort to take deep roots in the political culture. Moreover, the primacy of legitimacy and the rule of law must be a central component of instruction, doctrine, and education and planning for post-conflict reconstruction governance activities.

The author also delves into security and the rule of law. Although security, state presence, and social and economic progress are all-important, mutually reinforcing elements in establishing a government's authority and legitimacy, it is the rule of law and its acceptance by the people that binds them all together. Achieving security and the rule of law requires political will, resources, and time to repair and build institutions and develop the rules of democratic community that are generally accepted by the populace.

The Lessons Learned from this paper are applicable to many countries besides the United States:

1. Reform programs are more likely to succeed if there is a strong convergence of national interests between the United States and the host country, and if the host country's political leadership is fully committed, and if there is national citizen-level commitment.
2. Host nation structural change is more likely to occur if there is a long-term process of familiarization and institutionalization of the program, involving people and agencies, as well as continuity of programs. For example, the U.S. assistance program to Colombia has roots going back over 40 years to the 1960s.
3. Rule of law programs cannot be sustained without adequate security, which must also be established within legal norms.
4. Rule of law programs must be part of an integrated whole of governance strategy, to include economic and social development.
5. The host country must design, implement, and make the sacrifices for its own program of reform and institution building for the effort to take deep roots in the political culture.
6. Big reforms are expensive, requiring money not only from the supporting country but budgetary commitment from the host country. Some reforms, such as rule of law, are relatively inexpensive and have a high payoff that will legitimize and strengthen the effectiveness of other reforms and reconstruction efforts.
7. The primacy of legitimacy and rule of law must be central components of instruction, doctrine, and education for post-conflict reconstruction governance activities.

Recommendation.

The recommendations from this publication were specific to the United States and Colombia but can be applied to country(s) actively supporting governance and rule of law programs in other countries:

- Continue to provide financial and technical assistance to a host country's legal system. The emphasis should be on improving professionalism and modernizing equipment and techniques to bring it closer to "western" standards.

- Continue financial support to educate and promote a host country's rule of law, judicial reform, and capacity building. Expand any existing judicial or law exchange programs.
- Limit the number of supporting government and military personnel to strengthen ownership of the host country to its efforts of improving governance and security. This will legitimize host government efforts with its people.
- Supporting country Defense Departments/Ministries continue to emphasize rule of law and professionalism in its programs and peer-to-peer training and contacts with the Colombian military.
- Supporting government agencies must continue to emphasize for the protection of its government employees working on various programs.

Implication.

- The United States must continue engagement with Colombia to consolidate gains in the rule of law/judicial programs and keep improving respect for law, professionalism, legitimacy, and ethics of all concerned Colombia entities. Colombia is described as neither a failed or failing state but still in constant conflict with narco traffickers, paramilitary groups and dealing with a high crime rate and widespread poverty.
- Colombia can fall into a failing state without solidifying conversion from its former inquisitory system to its current accusatory system. The government and ultimately its citizens must embrace and accept higher standards of law, ethics, and honesty instead of corruption, graft, violence, and illegal drugs.
- A long-term approach and plan has to be taken because a new judicial system (accusatory vs. investigative) will not happen quickly because the previous system was in place since Colombia gained independence in the early 1800's. This is a process that will take a generation or more to grow and mature. There are also many areas in Colombia where the paramilitaries and narcotraffickers are still in control or exert great influence and strength.

Event Description.

This observation is based on the publication, *Democratic Governance and the Rule of Law: Lessons from Colombia*, by Gabriel Marcella, December 2009.



e. Topic. Reducing Judicial Corruption (USAID) ([507](#))

Observation.

The rule of law and control of corruption are at the centerpiece for successfully addressing challenges in social, economic, and political development. Reducing corruption significantly impacts on the rule of law and confidence in governmental institutions. Ultimately, people must have confidence in their system in order to accept it, use it for legal actions, and participate in improving it.

Discussion.

Judicial corruption is defined as "" ... the abuse of entrusted authority for private gain by judges, prosecutors, public defenders, court officials, and lawyers who are intimately involved in the operation of the judicial system." Addressing judicial corruption requires attention to the broader context of corruption in the entire justice system, including law enforcement agencies and society as a whole.

Some corruption is found in the judiciaries of all countries, whether rich and poor, democratic and authoritarian. Corruption is found in all legal systems, whether state-based or non-state, formal or informal, civil law, common law, or religious law. Completely eradicating corruption is not realistic. The goal should be a judicial system that adheres to high standards of independence and impartiality, integrity, accountability, and transparency.

Judicial systems that provide timely access to fair and impartial judicial services and uphold the rule of law consistently display qualities of independence and impartiality, integrity, accountability, and transparency. Judicial systems that respect these values minimize opportunities for corruption, exercise vigilance against risks of corruption, and respond decisively to corruption when it is detected. Principal measures include transparent and merit-based selection of personnel, reasonable compensation and working conditions, simplified procedures, internal controls, reliable statistics, objective performance standards, vigorous ethical and disciplinary programs, adequate financing, public access to information, and civil society monitoring. As a result, corrupt acts are rare and isolated events. At the same time, such measures increase the system's overall efficiency, fairness, and effectiveness.

Recommendation.

Knowledge of the lessons of experience is also important for informing programmatic judgments. A number of development organizations and NGOs have reviewed their experience in published reports that reach highly consistent

conclusions and contain helpful recommendations for programming. In general, these reports reflect the following as common features of successful efforts to reduce judicial corruption.

1. Address the legal, political, social, economic and cultural context within which the judiciary operates.

- Sustainable solutions take into account the social norms, economics, politics, institutional culture, and legal traditions of the country that can influence the supply, demand and tolerance of corruption.

- Anticorruption efforts should not be freestanding. Rather, they should be integrated into coherent programs to strengthen the capacity and effectiveness of the judiciary and should take into account broader issues of fairness and transparency throughout the multi-institutional and multi-stakeholder justice system.

2. Rely on in-depth knowledge of the local legal system, including its history, procedures, practices, institutions, and relationships that affect the administration of justice.

- An assessment, with input from a range of experts and disciplines, should document baseline data about the justice system, including prevailing kinds of corrupt activities, key actors, and apparent causes and consequences of corruption.

- Knowledge of the system can help determine the appropriate sequencing of actions. Strengthening corrupt institutions before reforms are introduced might further entrench corruption in the judicial system. On the other hand, measures that depend on capacity (e.g., for producing accurate statistics about system performance) obviously cannot be implemented if the responsible institutions lack the necessary capacity.

- An assessment should include input from those who know the judicial system best - those who operate it (judges and court staff) and those who use it (lawyers and litigants).

3. Consider the readiness of leaders to take risks of confronting corrupt interests, the strength of motivations and incentives for change of various stakeholders, and the capacity of local institutions to implement change.

- Sustained commitment from senior levels of the judiciary and leadership by example are especially important because achieving a non-corrupt judiciary is a complex and time-consuming process. Intense opposition from vested interests are likely and attitudes among judges accustomed to existing collegial norms are

often resistant to change. (Brief tenure in key leadership positions might warrant an initial focus on creating a more sustainable environment for a long-term effort.)

- Identifiable stakeholder interests should be engaged within the public sector and civil society, including potential champions in the executive and legislative branches and in universities, law-related research and policy advocacy organizations, legal services groups, NGOs, professional and business associations, and the media.

- Demands on institutions' response for implementation need to be consistent with their capacities, usually accompanied by capacity-strengthening efforts and increasing responsibilities.

4. Give high priority to the independence of judges to decide cases on their merits, balanced by the need for judges to be accountable under high standards of integrity, productivity, and sound management of public resources.

- Judicial independence involves issues of the selection of judges, security of tenure, promotion and transfers, financial and administrative autonomy, and safeguards against interference through manipulation of budgets, salaries, or working conditions.

- Judicial accountability involves responsibility for compliance with performance standards, the applicable code of professional conduct, and established legal norms. While judges must be accountable, it is a constant challenge to find the appropriate balance so that accountability does not undermine independence.

- Even the most carefully crafted structures for independence and accountability can be abused. Beyond specific rules and procedures, these values need to be reinforced by attitudes, expectations, and continuous vigilance through transparent processes and concerned citizens.

5. Encourage a broadly participatory, locally owned program that fosters adherence to high standards of judicial integrity through sound policies, competent institutions, and transparent procedures.

- A normative framework for the judiciary should strive for clear and objective standards.

- Management practices and systems should minimize opportunities for corruption through procedures that limit possible favoritism (e.g., random case

assignment, accountability for case files), standardized performance guidelines, and timely collection and analysis of data.

- Codes of ethics should be given practical vitality through educational programs, judicial mentoring and counseling, citizen complaint procedures, and investigative and disciplinary mechanisms.

- Transparency should extend to all aspects of the judicial system: selection of judges, openness of proceedings, publication of decisions, public access to information about court operations and performance, disclosure of assets and income of judges and other senior judicial officials, and civil society monitoring of judicial performance.

6. Foster harmonized international support for locally owned programs, including enhanced incentives for sustained improvement in achieving measurable results.

- Assistance programs are temporary; they should support enduring local capacity for improved performance.

- Harmonized donor support for local strategies increases prospects for sustainable development and opens possibilities for complementarities of efforts and rewards.

Implication.

Programs and assistance that do not include judiciary high standards, independence, impartiality, integrity, accountability, and transparency will not succeed in reducing judiciary corruption. It will reflect the effectiveness of governance as a whole.

An ineffective or poorly designed judicial monitoring and evaluation system will not be able to weed out corrupt personnel in the judicial system. Problems in the system will not be identified and national stakeholders and international partners cannot evaluate progress, anticipate problems, or apply corrective measures.

These recommendations should help to develop a good judicial system and provide timely access to fair and impartial judicial services and uphold the rule of law in a consistent manner. Successful judicial systems should be able to minimize opportunities for corruption, be more vigilant to the risks of corruption, and respond decisively to corruption when detected.

Strengthening the judicial system will also foster public confidence in the system and rule of law. The confidence also may extend to other government institutions and bureaucrats as well. Ultimately, a strong and fair judicial system should

allow people to be more participatory. A strong judicial system along with effective rule of law should also improve donor support and international assistance.

Event Description.

This observation is based on the report *Reducing Corruption in the Judiciary*, June 2009, produced for review by the United States Agency for International Development. It was prepared by Mr. James Michel, Senior Counsel for DPK Consulting.



f. Topic. Rule of Law Activities: Lessons Learned ([492](#))

Observation.

Restoring and promoting rule of law is one of the most critical elements of the stabilization / reconstruction process in failed, failing or fragile states. It is increasingly recognized as both a critical enabler of and contributor to security sector reform. U.S.-led stability operations in both Iraq and Afghanistan recognize rule of law as an essential component of a successful counterinsurgency strategy, and important lessons are emerging from both conflicts. In Iraq, participants included the U.S. Department of Justice (DOJ) assistant United States attorneys (AUSA), U.S. Department of State Bureau of International Narcotics and Legal Affairs Foreign Service officers, U.S. military lawyers (Staff Judge Advocates), and contracted private sector attorneys.

Discussion.

Since 2007, rule of law activities in Iraq have been primarily directed by assistant U.S. Attorneys detailed to Iraq from their regular duties as federal prosecutors. They operate under the direction of the Deputy U.S. Attorney and the Rule of Law Coordinator in Iraq. They work in coordination with the Multi-National Force-Iraq Office of the Staff Judge Advocate. They also provide direct advice and assistance to host nation rule of law actors and officials.

This is a change to the initial practice in Iraq in which the rule of law programs were overseen by Foreign Service Officers (FSO) from the Department of State Bureau of International Narcotics and Law Enforcement (INL) and actual advisor duties were performed by contracted attorneys. DOJ AUSAs have said that their federal credentials are important to establishing an official standing with Iraqi counterparts. The reach back capability to the U.S. justice and law enforcement

system was also important in meeting the needs of rule of law programs. The deployment of the AUSA was beneficial when compared to the contracted attorney counterparts. The AUSA had broad experience rule of law advisory tasks. The AUSAs were also effective because of the highly personal nature of the advisory relationships to Iraqi counterparts. The AUSAs fostered a sense of common experiences with the Iraqi justice officials.

The Department of State INL has extensive experience with program management and were able to administer complex initiatives. INL is also heavily involved in other DOJ programs which makes it a valuable partner in all capacity building programs in Iraq.

As mentioned before, the contracted attorneys generally lacked the criminal and prosecutorial justice experience as the AUSAs. However, the contracted attorneys do have advantages of their own. As one senior Judge Advocate pointed out, these attorneys were effective in an advisory role. In some cases, they brought superior intercultural communications skills to the advisor mission. In other cases, the contracted attorneys were more experienced in other areas of the law such as commercial law, administrative law, and regulatory law. This was important at the provincial level and below.

The military rule of law support came mostly from Staff Judge Advocates (SJA). All of the AUSAs interviewed commented on the value of collaborating with their SJA counterparts. *Operation Hammurabi* is an example of military rule of law support.. The operation was launched in 2004 in the Baghdad area. This operation established a program to train Iraqi justice officials in basic administrative skills, provided equipment and facilities to restore justice services in the Baghdad area. The operation used military attorneys and INL attorneys.

Recommendation.

1. Sustain programs focused on individual advising and mentoring, like the AUSA rule of law advisors in Iraq and Afghanistan.
2. Continue to leverage the partnership developed in Iraq between AUSAs from DOJ and veteran FSOs from INL which enhances the effectiveness and legitimacy of individual host nation justice officials while generating long-term, sustainable improvements in host nation judicial institutions and processes.
3. Continue to use contracted attorneys to complement the efforts by Department of Justice and the military attorneys. In many cases, the contracted attorneys will have more expertise in administrative, regulatory, and commercial law. The contracted attorneys can also be used to rapidly respond to ad hoc or changing requirements.

4. Sustain the relationship between the Department of Justice attorneys (federal and contracted) and the military Staff Judge Advocates. The SJAs were the important link between country team rule of law programs and military operations.

Implication.

The rule of law programs in Iraq and Afghanistan cannot achieve success without dedicated Department of Justice, Department of State, **and** military attorneys and programs. Success requires all the organizations and agencies to cooperate and its rule of programs have a synergistic effect to improve host nation rule of law systems throughout the different levels of government.

The use of federal, contracted, and military attorneys has shown that each offers an area of expertise and are complementary in establishing rule of law in the host nation. No one organization, agency, or program can cover the entire range of law. Whatever level of success has been achieved can only be sustained if U.S. military and USG agency programs have a balanced effect on host the nation justice system. The Iraqi and Afghanistan justice systems are far from being self-sustaining and will require continued U.S. support.

Event Description.

This observation is based on The PKSOI Perspective article "Rule of Law Activities: Lessons Learned," 30 July 2009, by Mr. Thomas Dempsey, Professor of Security Sector Reform, and Mr. James H. Nichols, Professor of Rule of Law, both from the U.S. Army Peacekeeping and Stability Operations Institute.



g. Topic. Governance and Rule of Law in Post-conflict Recovery ([476](#))

Observation.

Recovery depends on the quality of the institutions of a country—in politics, economics, and security—as well as on the effectiveness and legitimacy of these institutions.

Discussion.

Legitimacy refers to the perceptions of various groups in a society that the state is acting or not acting with encompassing interest. Ethnic groups can co-exist

peacefully as long as they are confident they are being fairly treated by the government; systematic discrimination generally triggers opposition and rebellion. All countries afflicted by conflict are different. The syndromes include failing, recovering, fragile, and could-fail states. Donors are often too hung up on effectiveness rather than legitimacy.

Three concepts explain how stabilization and economic growth can be sustained in countries affected by conflict: **resiliency**, **effectiveness**, and **legitimacy**.

The fundamental source of state **resiliency** is the quality of its underlying institutions. These institutions comprise the political, economic, social, and security elements or dimensions of state capacity. Its quality depends on the legitimacy and effectiveness of each element.

Effectiveness refers to the degree to which a state has the administrative capacity to successfully carry out tasks of public service provision and governance—e.g., balancing the budget, training judges, or upgrading telecommunications.

Legitimacy refers to the perceptions of various groups in a society that the state is acting or not acting with encompassing interest. Ethnic groups can co-exist peacefully as long as they are confident they are being fairly treated by the government; systematic discrimination generally triggers opposition and rebellion.

Recommendation.

-- The roles of the local and of the central governments should be a function of what has to be done, when, and where. Each level of government may separately play the lead part at some point along a continuum of developments that may occur sequentially.

-- Society is an organic system subject to change and culture matters. Change in any component ripples through the system, often in unexpected ways. Culture looks backward, is sustained by experience, and changes slowly.

-- Technical assistance may be needed to jump-start governance and public administration when these have been neglected and have seriously deteriorated.

-- Short-term technical assistance intended as a stopgap often takes on a life of its own. Such aid should be used early to train nationals, preferably career civil servants, of the country assisted. Its guiding principles should reflect the need to transfer technical and management functions to local officials as soon as possible, as well as to progressively diminish their reliance on expatriate expertise.

-- Aid appropriate to an emergency may be ill suited for long-term capacity development. Technical assistance should be provided beyond the emergency period if long-term capacity development is not to be neglected because of donor focus on the short-term. The training of, and transfer of functions to, local officials and experts in order to build long-term capacity is practically impossible in the absence of a firm commitment among expatriates and donors to empower local officials.

-- When the ability of a government to meet the immediate needs of a conflict-affected population determines the popular legitimacy of that government—and indeed of a fragile transitional post-conflict or post-crisis political order—meeting those needs is essential to the maintenance of security.

-- The international donor community must avoid the donor-centric mistakes of the past. Practitioners must anticipate the competition for scarce aid resources and how it increases the concomitant risk of failure of post-conflict stabilization efforts. Donors must maintain realistic expectations. It takes time to effect sustainable reforms, often more time than donors are prepared to allot to the task at hand.

-- Donors should provide more predictable and multi-year funding to enable the governments and donor agencies to plan capacity building coherently. Year-to-year changes make it impossible to carry out the long-term planning necessary to develop sustainable capacity.

-- Technical assistance should be made a part of the core government budget as soon as possible rather than allow it to remain uncoordinated in various donor budgets. Keep in mind that such loss of control makes donors nervous, particularly in cases of government incapacity or corruption. However successful national capacity building efforts prove to be, failure to bring along sub-national governmental units will constitute a serious weakness of a government struggling to establish its legitimacy and sustainable capacity.

-- Host country governments must assume leadership. It is preferable in all cases to allow them to learn from failure while donors remain in country than to have these governments run the risk of failure to build sustainable capacity after donors depart from the scene.

-- The strengthening of the central government may require a bottom-up approach. It is possible to consolidate a weak central government, whose action is circumscribed by stronger sub-national governments as the latter cede powers to the center, once trust and centralized efficiencies are achieved. A post-conflict regime's success requires that the relevant players believe it will succeed. When they do, it generally succeeds; when they do not, failure becomes a self-fulfilling prophecy.

-- Donor commitment to the needs of the new regime through several elections supports the legitimacy of the new order and serves to adjust mutual expectations toward success. Donors need to strike the right balance between the best and the good. They must distinguish between what needs to be done in a situation if everything necessary could be done and the opportunities in it for effective intervention (not necessarily what is most needed, but what is possible).

Implication.

Given that the state is an organic system, strengthening the elements of state capacity independently of one another will have limited and possibly unsustainable effect. Changes should be made across the dimensions of state capacity in order to strengthen the constitutional order. Practitioners must recognize that failed and fragile states come in many “flavors” (syndromes). A one-size-policy response does not fit all.

Event Description.

On November 12, 2008, CNA and U.S. Army Peacekeeping and Stability Operations Institute (PKSOI) hosted a *Stabilization and Economic Growth Workshop*. An interim report was produced, authored by Mr. Franklin D. Kramer, Project Director CNA; COL Richard Megahan, Project Director, PKSOI; and Henry H. Gaffney, Jr., Rapporteur-CNA.



h. Topic. Rule of Law, Defined ([662](#))

Observation.

The rule of law is a major aspect of stability operations (SO). It is a cross-cutting aspect that runs through most if not all lines of operations in SO. Rule of law is necessary to promote legitimacy for a host nation.

Discussion.

A definition of ‘Rule of Law’ for deployed U.S. Judge Advocates: Rule of law is 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 principles. Rule of Law can be broken down into seven effects:

- The state monopolizes the use of force in the resolution of disputes
- Individuals are secure in their persons and property
- The state is itself bound by law and does not act arbitrarily
- The law can be readily determined and is stable enough to allow individuals to plan their affairs
- Individuals have meaningful access to an effective and impartial legal system
- The state protects basic human rights and fundamental freedoms.
- Individuals rely on the existence of justice institutions and the content of law in the conduct of their daily lives

Recommendation.

Rule of law affects the legitimacy of host nation governments and their citizens' acceptance U.S. or coalition presence in the nation. The cross-cutting nature of the rule of law requires planners and operators at all levels, strategic to tactical, to work in close cooperation with judge advocates in order to ensure it is addressed.

Event Description.

Judge Advocate General's Legal Center and School, Rule of Law Handbook, A Practitioner's Guide for Judge Advocates (Charlottesville, VA: Judge Advocate General's Legal Center and School, Center for Law and Military Operations, 2009, 5,6)



3. CONCLUSION

The cross-cutting nature of the "RoL" requires planners, operators, and other SO practitioners, from the tactical through the strategic level, to work in close cooperation with "RoL" experts in order to ensure it is adequately and properly addressed during stability and reconstruction planning and development.

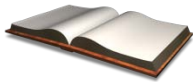
Restoring and promoting rule of law is one of the most critical elements of the stabilization / reconstruction process in failed, failing or fragile states. The presence of the “RoL” is a main indicator that the government of a failing or highly stressed nation has been accepted as legitimate by both its citizens and the international community.

4. COMMAND POC

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Related Documents, References, and Links

- SOLLIMS Report: [Observations & Recommendations concerning Security Sector Reform](#)
- [Considerations for the Employment of Transitional Law Enforcement Capabilities](#)
[**SMALL WARS JOURNAL** Blog: [Transitional Law Enforcement](#)]
- [Measuring Progress in Conflict Environments \(MPICE\)](#)

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