



International Forum for the Challenges of Peace Operations

The rule of law and the protection of Civilians

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Let me join other speakers in Thanking the Asia Pacific Civil-Military Center of Excellence and other organizers for including a local voice on the subject and also undertaking an important initiative to one of the key elements of the success of any Peace Keeping operation—the protection of civilians—without which the credibility of the entire operation could be undermined and the hearts and minds could be easily lost. This is especially true in the case of Afghanistan today.

Maj. Gen Robert, I wish that tools you presented yesterday for “ Considerations of Mission Leadership in United Nations Peacekeeping Operations”—even in shape of current draft—was available to the leadership of UN Peace operation in Afghanistan in 2002 and afterwards.

On 28 March 2002 The United Nations Security Council adopted resolution 1401 in which the council mandated a United Nations Assistant Mission for Afghanistan with very broad and multi-dimensional task of peace building based on recommendations made by the United Nations Secretary General’s report of 18 March 2002 on “ Situation of Afghanistan”. The first element of the mandate was:

a) “Fulfilling the tasks and responsibilities, including those related to human rights, **the rule of law** and gender issues, entrusted to the United Nations in the Bonn Agreement, which were endorsed by the Security Council in its resolution 1383 (2001)”

Prior to the adoption of UNSCR1401, the UNSC resolution 1386 of December 2001 authorized deployment of “ international Security Assistant Forces”, mandate of which was: “to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment;” since then the mandate was extended each year, with slight change to extending the authorization of “Operation Enduring Freedom” to US lead coalition forces.

Therefore, mandate of the International Security Assistant Forces authorized by UNSC is much different from the classical UN Peace Keeping forces. The center of its focus has not been protection of civilians and helping with the policing and law and order in host

country, but rather fulfilling a military task under the Chapter VII of the United Nations Charter to remove a security threat to the International Peace.

This kind of mandate hindered—until recently—ISAF’s ability to assist directly in establishment of rule of law in Afghanistan. There has been instances where in the absence of a functioning police and law enforcement authority, civilians were attacked and their rights were violated by local warlords in presence of the ISAF and when they were asked for support in the first years, they would simply say “ they are not responsible for rule of law initiative and can’t act as police.”

Before discussing the role of International Security Forces and their effect on rule of law initiative in Afghanistan, let me highlight some of the key elements of rule of law that was expected by the Afghans to be strengthened by the UN mission and how the mission handled those expectations:

In December 2001 when the interim administration through a UN negotiated Bonn Agreement took the charge of the country, the country was devastated, its state was collapsed a decade ago, and its institutions of civil service, army, police, judiciary ...etc was non-functional and if existed it was nominally. The task of state building was colossal and expectation by the population from UN and international community was also very high. The task of state building decided to be equally shared by the newly appointed Afghan administration and the United Nation Assistant Mission (UNAMA) through the Bonn Agreement and UNSCR 1383. Since then many surveys and studies showed that people’s prime concern was protection from the abuses of warlords, accountability and the establishment of fair judicial process that can deliver justice. Instead, the senior leadership of the UNAMA focused entirely on political benchmarks of the Bonn accord to be achieved, as a result the rule of law aspects of its mandate was undermined or mostly pushed a side by the stronger current of the political process under a tendency to achieve number of important political benchmark that was planned to be achieved within the course of two years. Subsequently the political side of the mission grown bigger and stronger that attracted major part of the resources, while the rule of law department at the mission remain under resourced, under staffed and even the position of the head of rule of law unit at UNAMA—in the time that Afghanistan was very attractive to international experts—remain vacant for months and some times year. In a operation where the political side of it was stronger and closer to the SRSG, the rule of and Human Rights departments were put under the Humanitarian and development branch of the mission, so they would report to the DSRSG for Humanitarian and Development Affairs, a position that could not always and easily have the SRSG’s ears.

UNAMA’s mandate also included coordination and it was expected to coordinate and ensure coherence among the international community, civilian and military. A task that was already very difficult when it involves too many countries with significant military and aid resources. On top of this, the coordination didn’t took place because of the long absence of a senior rule of law officer to make sure that rule of law is placed higher in the agenda of the leadership so bigger donors could be led and coordinated efforts in this sector.

Thus, each donor started their own projects with justice department and police. The repetition and multiplication of similar task carried out by different donors through application of various approaches exacerbated the situation further. As an example for the first few years there were at least three different training to Afghan police, one lead by Norway, second by Germany both which were promoting civilian police with the task of law enforcement, while the third group of trainers were from US—founded by USAID—implemented by contractors like DynCorp that trained the police that will engage in military operation and can assist in provision of security rather solely being for protection and law enforcement. Until recently, the same was true about the justice sector, while there was no interest in donors to support correction centers.

Lack of UNAMA's leadership in coordination, give way to the creation of lead donors on each sectors. Italy become the lead nation on rule of law—which unlike East Timor—unfortunately did not resulted in coherence in the different approaches of the donors. The inability of the mission to carryout its task was a result of “light footprint” policy of the UNSRSG that resulted in deployment of the limited number of UN experts on different sectors. This policy largely affected sectors other then the political section of UNAMA.

Another major drawback about the UNAMA was the considerable influence that UNSRSG had on the future of any activity regarding justice and accountability. Despite clear outcries of the civil society and general public for accountability and justice, he preached for “first peace, then justice”. He was afraid that push for justice may upset the fragile peace process. A fear that could not have any ground at the time, because the warlords were weak and their ability to challenge the international forces was limited. this fear led the mission, the newly established government and later the elected government to adopt a policy of accommodation of the warlords who soon become spoilers in the system engaged in massive corruption.

Contrary to its mandate UNAMA did not engaged in serious transitional justice activities and was not actively engaged in promoting accountability. This has resulted to institutionalization of impunity in the country where civilians continued to be subject to the abuse of warlords and powerful.

In addition, because a large number of civilians are directly killed or wounded by the parties of the conflict, both Taliban and international forces-- more then 370 civilians in the last three months of 2010—credibility of UNAMA in protection of civilians have further undermined.

This challenge was basically added due to lack of proper public information and outreach in early stage of the adoption of the two separate UNSCR. However, its only in the last one year—with due credit to General Stanly McCrystal— that protection of the population was announced to be the center of the international forces' operation.

I will end by offering few lessons that could be learned from Afghanistan:

First: Rule of law and protection of civilians can not be taken priority in practice on ground—even if the guide lines are provided—if the political side of the mission is under immense time pressure to deliver on political development benchmarks of a mandate, unless the mandate and in case of peace agreements, the peace plan encompass a long term equally important holistic plans and benchmarks that is developed through proper consultation with the civil society actors and host country's relevant sectors.

Second: measures for strengthening of rule of law in post conflict or as part of the peace building could not be coordinated with international and external actors and it may not be successful, unless, a proper mapping of the justice sector and its need is conducted.

Third: No final decision shall be made on the question of Transitional Justice and its modality of approaches, unless, a proper national consultation is conducted to determine what the population of the host country wants. In some cases it may be possible at the outset to create an environment where the victim's suffering could be acknowledged and a vetting of the most notorious guys from an election process that mostly happen that UN mission would run it could be carried out and documentation of the past crimes could be conducted if not prosecution, ruling out transitional justice efforts entirely on the outset will only promote impunity and will undermine any reconciliation efforts in the future.

Forth: Do not hire privet security companies, specially the local ones as they are modified version of warlord armies that only the warlords in these kind of situations in which they are embraced by the newly established government and International community, are capable of registering and equipping a company. They become the main sources of insecurity and instability the minute the UN mission decides to reduce its operation and they don't have contracts any more.

Thank you,