A Tool Box to Tackle Law Reform Challenges in Post Conflict Countries: The Model Codes for Post Conflict Criminal Justice

Vivienne O'Connor and Colette Rausch*

Introduction

The expansion of peace operations from what has been labeled first-generation, or classical peacekeeping operations,1 to second-generation operations, which encompass ‘peace-building’2 and ‘peace enforcement’ activities, has brought with it greater challenges for those mission personnel faced with implementing highly complex and multi-layered mandates. Along with the traditional mandates, such as ceasefire observance and the provision of humanitarian assistance,2 more recent missions have

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1 A definition of ‘peacekeeping’ may be found in the Report of the Panel on United Nations Peace Operations [hereinafter Brahimi Report], at para. 12, U.N. Doc. A/55/305-S/2000/809 (21 Aug. 2000): ‘Peacekeeping is a 50-year-old enterprise that has evolved rapidly in the past decade from a traditional, primarily military model of observing ceasefires and force separations after inter-State wars, to incorporate a complex model of many elements, military and civilian, working together to build peace in the dangerous aftermath of civil wars’. See also An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, at para. 12, U.N. Doc. A/47/277-S/24111 (17 June 1992): ‘Peace-keeping is the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace’.

2 Peace-building, as defined in the Brahimi Report, encompasses ‘activities on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.’ Brahimi Report, supra note 1, at para. 13.


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involved a variety of tasks ranging from the momentous task of civil administra-
tion, to disarmament and demobilization of weapons and reintegration of former
combatants, the monitoring of the illegal flow of weapons, and the protection of
civilians, including humanitarian personnel. Another task that consistently has been
integrated into more recent mandates is that of strengthening the rule of law and
the provision of rule of law assistance. The present article focuses on this latter
task, one that has proven to be both challenging and highly complex. More specifically,
it looks at an important component of overall rule of law efforts – legal reform. The
United Nations is in the relatively early days of its involvement in the law reform
process as part of peace operations. In 1992 in Cambodia, and in 1999 in East Timor
and Kosovo, it was plunged into the process headlong, without warning or prepa-
ration. The resultant inadequacies in response were, therefore, inevitable. Part one
of this article will discuss past responses and address some of these inadequacies
and the reasons behind them. As the saying goes: ‘We do the best we can, and when
we know better we do better’. Doing better in the rule of law and law reform sphere
is certainly the focus and intention of the United Nations, as will also be detailed
in part one. Doing better, from the perspective of the United Nations, involves
advance preparation, and where possible, the creation of practical tools to assist
those involved in the rule of law in peace operations. Part two will look at the gen-
esis of a law reform ‘toolbox’ in the form of the Model Codes for Post Conflict
Criminal Justice developed by the United States Institute of Peace and the Irish
Centre for Human Rights, in cooperation with the Office of the High Commissioner
for Human Rights and the United Nations Office on Drugs and Crime. Part three
of the article looks at the process by which the codes were developed and revised,
and part four speaks to their potential uses and practical application in the context
of peace operations.

1 Reflections on the First Tenuous Steps of the UN in the Law Reform Process

As interim administrator of Kosovo and East Timor, the international civilian pres-

May 2004). See also Security Council Resolution 1509, supra note 3.
6 See Security Council Resolution 1545, supra note 5.
7 See Security Council Resolution 1565 on the Situation Concerning the Democratic Republic of
8 See Security Council Resolution 1244, supra note 4; Security Council Resolution 1272, supra note
4; Security Council Resolution 1509, supra note 3; Security Council Resolution 1528 on the