

**RULE
OF**
Law

CONFERENCE REPORT
JULY • 6 - 9 • 2004



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CONFERENCE REPORT

RULE OF LAW CONFERENCE

6 - 9 JULY 2004

**SPONSORED BY THE UNITED STATES ARMY
PEACEKEEPING AND STABILITY OPERATIONS INSTITUTE
OF THE
CENTER FOR STRATEGIC LEADERSHIP
UNITED STATES ARMY WAR COLLEGE
IN CONJUNCTION WITH
THE UNITED STATES INSTITUTE OF PEACE
AND THE
ASIA-PACIFIC CENTRE FOR MILITARY LAW
AT
CARLISLE BARRACKS, PENNSYLVANIA**

The views expressed are those of the participants and do not necessarily reflect the official policy or position of the U.S. Army, the U.S. Army War College, the Department of Defense, the U.S. Government, or the governments of the other participating nations.

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Forward

What follows is the conference report from this year's Rule of Law conference, sponsored jointly by the U.S. Army's Peacekeeping and Stability Operations Institute, the United States Institute of Peace, and the Asia-Pacific Centre for Military Law.

The conference gathered general practitioners and subject matter experts from around the globe to explore rule of law issues, to search for solutions, and to disseminate knowledge and expertise. Conference attendees included representatives of several US Government agencies, Governments outside of the United States, non-Governmental Organizations, and International Organizations. A distinguished panel of outspoken experts and practitioners ensured a lively and rich dialogue, concerning both theory and practice, among all participants.

On my own behalf, and on behalf of Colonel Michael Dooley, former Acting Director of the Peacekeeping and Stability Operations Institute, I would like to thank each speaker and participant for their dedication, time and effort in having made this conference a success.

Sincerely,

John A. Agoglia
Colonel, U.S. Army
Director, Rule of Law, USAPKSOI

Executive Summary

Background

The Rule of Law Conference was conducted at the Center for Strategic Leadership, U.S. Army War College, Carlisle Barracks, Pennsylvania from 6-9 July 2004. This was the first Rule of Law Conference and the first conference hosted by the Peacekeeping and Stability Operations Institute, the successor to the Peacekeeping Institute.

The rule of Law Conference was designed to accomplish three major goals:

- To inform senior U.S. civilian and military leaders regarding Rule of Law issues through a published conference report and recommended changes to concepts and doctrine.
- To collect information needed for the Rule of Law Chapter in the Phase II Concluding Report of the “Challenges to Peacekeeping: Into the 21st Century Project”.
- To inform U.S. Army Peacekeeping and Stability Operations Institute staff members regarding Rule of Law issues.

Participants

The conference participants represented a wide range of expertise in the Rule of Law arena to include representatives both governmental and non-governmental organizations from Australia, Canada, the United Kingdom, Italy, Sweden and the United Nations, as well as the various departments and agencies of the United States Government. More than fifty-three representatives participated in the three-day program. Workshop leaders and facilitators were drawn from Rule of Law experts attending the conference.

Methodology

The conference was constructed to maximize the contribution of each of the participants towards achieving the conference goals. This was accomplished by setting the conference environment during the

first day through a series of presentations by recognized Rule of Law subject matter experts in a plenary session. Following the plenary session, three focused workshops met to discuss the following topics as they apply to Rule of Law: a) Civil-Military relationships and issues; b) Choice of law, how law fails, how it is established, how it is reestablished; and c) Human Rights, Constitutionalism, Elections, and Guaranteed Individual Rights. At the conclusion of the conference, an executive out brief session was held to capture the findings, recommendations and conclusions of each of the workshops.

Keynote Speaker and Panelist

Keynote Speaker - MG(RET) Tim Ford, Australian Army, former Military Adviser to the United Nations Department of Peacekeeping Operations (MILAD), gave an overview of the changes that have been occurring in peacekeeping and stability operations. General Ford postulated that the role and the activities of United Nations peacekeeping missions and peace support operations conducted by other organizations, such as the European Union and the African Union, had evolved from a principally military and civil police structure who attempted to maintain a stable situation among belligerents while others, working in tandem, encouraged political components to arrive at a consensus for moving forward in a peaceful, not turbulent, manner. Today these organizations not only are charged with attempting to de-conflict the situation in the near term but also have a long term focus of stabilizing the situation and assisting the host nation in establishing an enduring infrastructure. This new multilateral mission has far greater consequences, and much greater responsibilities are placed on the peacekeeping organization. This will require different skills and training for all organizations involved in the peacekeeping effort. As a result there is a need to establish training opportunities that incorporate both professional skills and additional skills and competencies required in peace and stability operations such as human rights and Rule of Law. This necessitates the synchronized training of military organizations with organizations such as the International Red Cross, non-governmental organizations and multinational corporations. MG Ford hoped that the conference would help point the way forward for understanding

the part Rule of Law would play in future peacekeeping and stability operations.

The remainder of the plenary session was devoted to background presentations by a panel of subject matter experts on Rule of Law and peacekeeping and stability operations. Members of the panel were: Mr. Mathew Preston, Foreign Office, United Kingdom; Judge Agnieszka Klonowiecka-Milart, United Nations, International Judge; Mr. David Marshall, International Defense Attorney, Office of the High Commissioner Human Rights; Mr. Michael Hartmann, International Prosecuting Attorney, Mr. Adrian Horn, former Chief Police Officer, United Kingdom; and Colonel (Ret) Dan Rubini, former advisor to the Iraqi Ministry of Justice. The panel established the foundation for the responsibilities of sovereign governments and other organizations in today's complex Rule of Law environment. As they provide assistance to nations struggling with internal political and civil strife. The panel collectively established the importance of Rule of Law and the significance of a well thought out Rule of Law tailored to meet the needs of the host nation. The panel members expanded the concept that Rule of Law not only involved the traditional players, i.e. the courts, and the legal system, but other players such as non-government organizations, police, large multinational corporations and traditional humanitarian organizations. New concepts were discussed, designed to challenge the conference participants to "think out of the box" during the workshop sessions. Emphasis was placed on defining the techniques for implementing and embedding Rule of Law in a fledging governmental structure.

An active question and answer period followed. A more expansive discussion of the panelist's observations and the question and answer period is found in Chapter 2.

Workshops

Since this was the first Rule of Law Conference that had been hosted by the Peacekeeping and Stability Operations Institute, the Acting Director, Colonel Mike Dooley, elected to make this a hands-on session. During the second day each of the three workshops would focus on one of the three major conference themes. The workshops

would then use these theme areas to make recommendations, points or comments for inclusion in the Rule of Law Chapter that the PKSOI was co-authoring for the “Challenges to Peacekeeping: Into the 21st Century” project or areas that needed additional emphasis in the “Generic Political-Military Plan for A Multilateral Complex Contingency Operation.”

The combined groups felt that there were over thirty subject areas that need to be included in both documents. These points are discussed in detail in Chapter Three.

Conclusion

COL. Mike Dooley, Acting Director of the Peacekeeping and Stability Operations Institute closed the conference by stating that he felt that all three of his goals had been met. This was largely due to the very active dialogue and the engaging interaction of the conference participants. While this was a relatively “new area” for the military, it was clearly one that needed its attention and focus. COL. Dooley felt confident that, as PKSOI and the other two conference co-sponsors expanded the concept of Rule of Law and its significance to stability operations, there would be many more meetings such as this one. indigenous religious influence into a significant source of power for mission accomplishment.

As the United States conducts foreign policy and military operations it must assess and consider the impact of religion in societies to achieve long-term stability in a region. Successful incorporation of religious groups and religious leaders for stability operations will enable a greater chance for achieving United States foreign policy goals.

CHAPTER 1: INTRODUCTION

Overview

From 7 to 9 July, 2004 the U.S. Army Peacekeeping Stability Operations Institute hosted its first Rule of Law Conference and the first conference under its expanded charter which now included stability operations. This conference was conducted in collaboration with the United States Institute of Peace, Washington, D.C. and the Asia-Pacific Centre for Military Law, Melbourne, Australia. The conference focused on the themes of establishing, re-establishing and defending the Rule of Law. It was most fitting and timely that this focus was chosen in view of the ongoing efforts in the Balkans and more specifically in Iraq, as this nation faces new challenges to its judicial system as it moves to self-governance to take its place among the democratic nations of the world.

Current world political dynamics have created a need for assistance in establishing a Rule of Law that embodies the fundamental principles of civilized and enlightened law in emerging nations, if they are to be able to interact efficiently with the world body. Today, the United States' role is changing from that of the dominant military power in the world to that of the biggest exporter of security in the world. As the United States becomes more involved in Peacekeeping and Stability Operations, in pursuit of this new global responsibility, it becomes imperative that its leaders, both military and civilian, have an understanding of the issues relating to Rule of Law and their role in this major challenge. This responsibility has previously been left to non-governmental organizations, other countries, or bodies such as the United Nations. Today, it has become one of the United States' significant challenges as we move into our new role.

To expand the awareness of the U.S. Government and the part the departments and agencies play in Rule of Law as well as peacekeeping and stability operations has the potential of significantly enhancing the success of these undertakings.

Definition of Rule of Law

DEFINITION

“The rule of law in the context of peace operations incorporates international and municipal legal obligations and standards applicable to all parties involved in the peace process. As a principle it includes the application of the Charter of the United Nations, international humanitarian law, human rights law, military law, criminal law and procedure, and constitutional law. It also incorporates principles that govern civil and criminal accountability for management and conduct of peace operations (hereafter referred to as peacekeepers). It also allows for follow up mechanisms to ensure that complaints made against peacekeepers are investigated, and where necessary, appropriate enforcement action is taken. The rule of law includes standards by which national institutions of the host country may be held accountable for their failure to comply with universal legal principles and rules. The rule of law is also the framework that governs the relationship between intervening forces and the local community; and the basis upon which the local population may be held accountable for their actions prior to, and following, the intervention.”

- The Rule of Law on Peace Operations (2002)

Fig 1-1

Rule of Law Conference Goals

The goals of this conference were to:

- Inform senior U.S. civilian and military leaders regarding Rule of Law issues through a published conference report and recommended changes to concepts and doctrine.
- To collect information needed for the Rule of Law Chapter in the Phase II Concluding Report of the “Challenges to Peacekeeping: Into the 21st Century Project”.
- To inform U.S. Army Peacekeeping and Stability Operations Institute staff members regarding Rule of Law issues.

Methodology

The conference was constructed to maximize the contribution of each of the participants towards achieving the conference goals. This was accomplished by establishing the conference environment during the first day through a series of presentations by recognized Rule of Law subject matter experts in a plenary session. Following the plenary session three focused workshops met to discuss the following topics as they apply to Rule of Law: a) Civil-Military relationships and issues; b) Choice of law, how law fails, how it is established, how it is reestablished; and c) Human Rights, Constitutionalism, Elections, and Guaranteed Individual Rights. At the conclusion of the conference, an executive outbrief session was held to capture the findings, recommendations and conclusions of each of the workshops. The conference agenda is located at Annex A.

Participants

The conference participants represented a wide range of expertise in the Rule of Law arena. This experience included representatives from the governments of Australia, Canada, the United Kingdom,

Italy, Sweden, and the United Nations as well as various departments and agencies of the United States Government, NGOs and other civilian organizations. Moe than fifty-three individuals participated in the three day program (fig. 1-2). Workshop leaders and facilitators were drawn from Rule of Law experts attending the conference. The list of participants is located at Annex B.

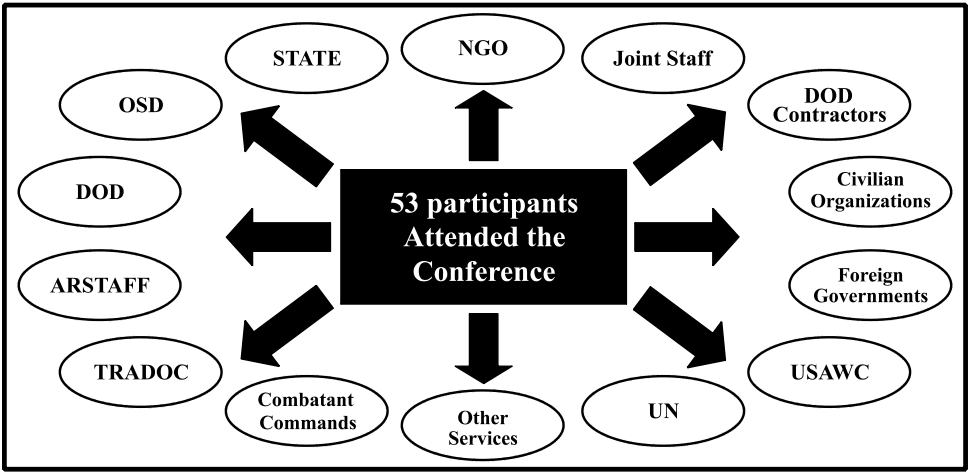


Fig 1-2

Background Material

During the course of the workshop sessions, participants received copies of the PKSOI sponsored chapter proposed outline for the Phase II Concluding Report of the “Challenges to Peacekeeping: Into the 21st Century Rule of Law chapter (Annex D) and a “Generic Political-Military Plan For A Multilateral Complex Contingency Operation” (Annex E).

Report Organization

Chapter 2 contains a summary of the keynote speaker’s presentation, the opening plenary session and the evening speakers’ presentations.

Chapter 3 contains a summary of the workshop deliberations, discussion and findings during day two.

Chapter 4 contains the executive summary, findings and conclusion of the workshop efforts.

Annexes A thru H contain supporting material, attendee lists and presentations.

CHAPTER 2

KEYNOTE SPEAKER AND PANEL PRESENTATIONS

Keynote Speaker - MG(RET) Tim Ford, Australian Army, former MILAD to United Nations Department of Peace Keeping Operations was the keynote speaker. General Ford provided an overarching picture of peacekeeping and peace building efforts, key players and significant points to consider when attempting to establish Rule of Law as part of a peacekeeping and stability operation.

The remainder of the plenary session was devoted to background presentations by a panel of subject matter experts on of Rule of Law and peacekeeping and stability operations. Members of the panel included: Mr. Mathew Preston, Foreign Office, United Kingdom; Judge Agnieszka Klonowiecka-Milart, United Nations, International Judge; Mr. David Marshall, International Defense Attorney, Office of the High Commissioner Human Rights, United Nations; Mr. Michael Hartmann, International Prosecuting Attorney, United Nations; Mr. Adrian Horn, Former Chief Police Officer, United Kingdom; and COL (Ret) Dan Rubini, former advisor to the Iraqi Ministry of Justice.

MG Ford began the keynote address by presenting an overview of where we are in the field of peacekeeping and peacekeeping operations. He felt that this Rule of Law conference was very important to the peacekeeping effort and understanding. Even more significant was the fact that the conference was being held at the US Army War College, Center for Strategic Leadership, Peacekeeping and Stability Operations Institute. He stated that the last five years were very significant to the worldview of peacekeeping & stability operations. The environment was continuously changing. Member states behaved differently now with respect to peacekeeping operations. World events such as Afghanistan and 9/11 had driven the changes. Now, Iraq was causing member states to re-look the way they approached these operations. Not only was the United Nations a major player in the field, but now many regional organizations were becoming involved. As a result of recent events, the UN had created a High Panel to examine how the UN should approach these issues in this new environment and what approach the United Nations should take to remain a viable player in this important area. There was shock

within the UN when the UN considered Iraq last year. The UN high panel is taking a good look at “itself” to see where changes need to be made and responsibilities need to be defined, in order to bring more cohesiveness and responsiveness to the international security situation. Concurrently, the European Union and the African Union are establishing organizations that are becoming more developed and as a result more involved in peacekeeping and peacekeeping operations.

MG Ford went on to give numerous examples where there were United Nations peacekeeping organizations involved in a peacekeeping operation but where there also were comparable regional organizations involved in the same operation. The degree of regional organization involvement was probably a function of both physical capability and fiscal capability. To illustrate his point MG Ford gave the example of the type of organizational structure that was fielded by the European Union and contrasted that to the an organization by the African Union. He stated that the mix of participation between the UN organizations and the regional organizations is as varied as the situation. There are examples of regional intervention and stabilization activities that continued until the situation could be turned over to a United Nations force. And then there were other examples where the UN went in first and later transitioned the operation over to a regional force. The intervention depended on what was available and what would most likely successfully work. To further illustrate the wide range of involvement examples were given where one organization provided troops and the other provided observers. In short, MG Ford asserted, the combinations of involvement are as varied as the participants themselves

As a result, General Ford stated that peacekeeping operations were becoming multinational, complex operations. Today there were over 60,000 blue berets of the United Nations peacekeepers around the world involved in some facet of peacekeeping. These operations had taken on a new mantra. Instead of just attempting to establish order out of what had previously been disorder and then turning over reins of responsibility to a fledgling government, these operations are now undertaken with a clear end state. Goals and

objectives for the host country are established, that are workable, acceptable, and sustainable by the new government. The Rule of Law is a key denominator in that equation. It is clearly a significant actor. He went on to state that peacekeeping operations are seeing a host of different actors participating in the operations. There are the traditional actors that we are all aware of such as the United Nations agencies; International Red Cross; etc. Now, however, other players such as the World Bank; Non-Governmental Organizations; big corporations and even corporate criminals and other “spoilers” are entering the picture. In some instance religious and ethnic groups have taken an active role in the political side of peacekeeping operations. All of these activities must be coordinated and focused towards a common goal. In the case of the spoilers, they must be neutralized or eliminated. He emphasized that peacekeeping operations had to have sustaining power to them. An example of what he meant was the operation in Sierra Leone. There the peacekeeping forces didn't pull out six months after the election with the installation of the new government. Instead the peacekeeping force was still operating in country some two years after the election. MG Ford stressed that this highlights the fact that peacekeeping needs to involve into peace building.

MG Ford said that the Rule of Law is a key ingredient in the peace building effort. In order for it to be effective one must understand what Rule of Law means. He felt that Rule of Law was defined by the establishment of those systems and organizations that provided social order and stability. These organizations included law enforcement agencies; judicial systems; a law system; human rights; and functioning government structure at local and national levels that were representative of the people. Rule of Law is immensely complex and difficult to plan, coordinate and execute. These next few days, he felt, would lead to better understanding of what the Rule of Law involves.

MG Ford thanked everyone for their attention and closed his presentation by encouraging active dialogue and exchange among the participants.

Question: Should Rule of Law be based on International norms and standards or should it be based on some indigenous culture? Is it a function of social and structural development or ability to assimilate say international goals on human rights, etcetera or should it start somewhere in between?

Answer: I am not qualified to answer that question. I would hope that this is one of the issues that this conference addresses. One has to look at the country, the former laws of the country, and the society. But it seems that the system that is established must be one that will work for that country and stay after the peacekeeping /stability operations stop.

Question: Today we not only have military and governmental organizations assisting in operations, securing government buildings, maintaining airfields etc., but we also have private commercial organizations. How do these organizations fit in? What are their limits and responsibilities?

Answer: Again this is a very interesting question that hopefully will be addressed in the conference discussions. There are a large number of “private organizations” – not only commercial organizations but “private military organizations” – involved in peacekeeping operations. It is an interesting question as to how they are to be treated under the mandates. Are they there strictly for private gain or are they there to augment the effort? There are a myriad of issues such as self-defense and rules of engagement that need to be answered. I have no answers there either but these are precisely the issues that should generate some great conversation during the conference.

Question: The United States and its coalition partners were trying to establish creditable relationship with Rule of Law and the Iraqi judiciary. At the same time the United Nations established its own relationship with the Iraqi judiciary with little or no coordination with the Coalition Provisional Authority (CPA). Now that there is no CPA how will this work? Will there be any coordination or what?

Answer: This is precisely one of the points that the UN High Panel is examining. This is a very serious question, and I hope that this

question is answered. The relationship between the United Nations and a member state is difficult. In fact, it is quite difficult. The UN cannot defend itself; it must rely on its member states. Many of the actions undertaken by the UN are authorized by the General Assembly through the departments or the Secretariat. It (the UN) cannot necessarily please all of the member states. When the UN undertakes an effort, it is sometimes criticized by a few of its member states. Again, I hope that this is one of the issues that the High Panel is going to examine. In regards to Iraq UN forward elements there are analyzing the situation and advising the UN when the best time would be to establish an in-country presence. Security is certainly one of the issues and they have to be sensitive to not jeopardizing the security of the mission and thus the overall effort. It is an interesting phase that we are in, but one would hope that the world would get together and assist Iraq in establishing its new government.

The panel then established the framework for operational responsibilities of sovereign governments and international organizations in today's complex environment of post conflict peacekeeping and stability operations. The panel collectively established the importance of Rule of Law and the significance in a well thought out Rule of Law tailored to meet the needs of the host nation.

Mr. Mathew Preston of the Foreign and Commonwealth Office, United Kingdom led the panel presentations with an overview of the United Kingdom's efforts to champion the importance of Rule of Law in the United Nations and other regional organizations. Mr. Preston stated that this effort is a priority with the Foreign Office. UK government officials are taking an interdepartmental approach to ensure awareness and understanding of the significance of the Rule of Law. As a result of this effort, the Foreign Office has provided the Secretary General of the United Nations with a report of the significance of Rule of Law in relationship to stability operations. Mr. Preston went on to state that five points that highlighted where we are corporately with respect to Rule of Law: 1) The importance of the Rule of Law in post conflict situations. Rule of Law had to be a main issue in all stability operations. 2) The issue of moving forward and embedding the concept of rule of law was an ambitious

agenda, physically, due to the large number of actors and due to the political sensitivity. 3) They (the United Kingdom) used a holistic approach. 4) Rule of Law had to be sensitive to the local context, both legal and political. 5) Rule of Law, not rule by law, has to be clearly understood. We are not using Rule of Law for oppression but to support the nation within the context of the environment in which they (the host nation) were or are operating.

Mr. Preston also listed ten challenges facing us in the Rule of Law. The difficulty was translating the challenges into action. 1) The first was to define the “Rule of Law” policy. There now is a tremendous amount of expertise and knowledge in Rule of Law, but we must define how we are going to get there. Rule of Law encompasses numerous issues ranging from property ownership to retribution. It is a very complex issue. 2) A prioritization of the issues within the Rule of Law is necessary. We have limited resources, and capacity, etc. Thus, we cannot accomplish everything at one time. What works in one situation will not necessarily work in another. 3) We must foster local ownership and sustainability, if that is not accomplished, then, after one leaves, the sustainability will not be there. 4) It was absolutely critical to develop international civilian capability. There is a tremendous lag of civilian skills versus the military. The civilian side must become proficient too. One of the key areas for this effort is the United Nations. 5) The collaboration between the military and the civilian components must be improved, although it is not easy. There is a capability gap between the two. 6) Maintaining operational flexibility. The environment to conduct Rule of Law operations is very different. It ranges from areas posing a high threat to those with a more benign environment. We must be able to put the right people into the right situation. 7) We must be able to overcome the political sensitivities. Numerous documents from the UN and other indicate that there is positive movement in that direction, but problems still exist. 8) The Rule of Law must have human rights integrated into the Rule of Law structure. We must use the opportunity of post conflict operations to embed human rights into the structure. 9). The incorporation of a war crimes mechanism is just as important as embedding human rights into Rule of Law. It, too, is not easy, but we must not forget this. 10). We must have alternative models of justice. This is a difficult issue, indeed. We have to be sensitive to the numerous situations and cultures in which we operate.

A discussion ensued at the end of the presentation on definition of exactly what the Rule of Law is. It was pointed out that many of the societies that are or will be affected by this already have a Rule of Law. In fact many regimes have existed due to the “exploitation” of the Rule of Law, so a solid concept of the Rule of Law must exist.

Question: There is a concept of “conflict prevention pool” regarding capabilities. Some of you may not have heard about it. Do you have an example of how that has worked in regards to capabilities?

Answer: There is one example where the police had nothing to use in crowd control but the extreme of either pushing the crowd or using their weapons. There was nothing in between. There was no non-lethal option. So we had to argue relatively strongly with the Department of International Development as they can only commit their resources within certain constraints. But we were able to work things out and obtain some non-lethal alternatives. The situation improved thereafter.

Question: You brought up the importance of funding in all of this. I am sure that you find this difficult. The people in the United States who control funding for things like this take the position that Rule of Law may not be a worthwhile endeavor. But, beyond that the cost of these endeavors may be very high. It is also difficult to calculate them. How do people react to this?

Answer: Well, first the United States is the biggest contributor to the UN so it is paying. I think that we are at the halfway house. There is recognition that we will have to fund some of these initiatives. Some sort of unit, or call it what you like, is going to be the core for these issues. These people will be the ones who will develop doctrine, and form rosters. They will be the deployment unit. There is a segment that will pay for these sorts of things. But I do not see any action yet to hire 500 police officers to form a standing unit to do this. There may be some other opportunities that currently do not exist such as the World Bank.

Judge Agnieszka Klonowiecka-Milart shared her experience as a Tribunal Judge in Kosovo with the session and related that experience

to establishing parameters or background for the judiciary to operate within the Rule of Law. For example, the tribunal in Kosovo was not an International Tribunal by law but was established by United Nations resolution. Judge Klonowiecka-Milart asserted that, even as she was speaking, the globalization of justice was occurring. It started with ICTY and ICTR, the special tribunals, for violations of laws in Yugoslavia. These tribunals have all the features of an International Tribunal, however they were created not as the result of a treaty but by a UN resolution. The next step, she said, is the ICC (International Criminal Courts). They are manned by International Judges and apply International Law but are located outside the area of conflict. There are also hybrid International Tribunals or regional tribunals such as the one in Cambodia. These are special courts or tribunals with International Judges merging with local judges, working hand in hand with the local judiciary. The last categories, for instruments of the international tribunal in the classical sense, are those that are created in peacekeeping settings. Examples of these courts are the special courts established in East Timor and the International Prosecutors Program in Kosovo. These courts are also hybrid arrangements, being comprised of International Judges sitting side by side with local judges applying local law in an international setting.

Judge Klonowiecka-Milart felt that the main message is that one must define the rules of engagement when operating an international judiciary under the auspices of the United Nations or other intergovernmental organizations. She went on to state that these rules of engagement have three components: 1) authority must be defined. 2) The legal framework must be established in order to have quality justice. 3) There must be a capacity building effect. This must be an informed decision based on realistic evaluations about what is available on the ground, what is available to the mission, and what can be accomplished within what timeframes. These are extremely important to ensure that the Rule of Law is sustainable.

For example, after four years in Kosovo there was no official concept paper or document establishing the rules of engagement. It was known why the court was there, but no concept paper or plan existed to justify international judiciary. It was left up to the judges

to provide the framework, and this was found in their oath, which basically stated that they had to uphold the rule of law, maintain the highest standards of expertise and diligence, and uphold Human Rights in an unbiased and independent manner. What is missing is what the peacekeeping agencies are providing in the situation to ensure the realization of the mission of the international judiciary.

Judge Klonowiecka-Milart, based on her four years in Kosovo, felt that there was considerable need for a judicial framework for the functioning of the international judiciary. To that end she outlined the problems, as she understands them. Coordination with other actors in the community is a must. There can be negotiations by all parties up until the mandate is defined, after that there is no negotiation. As already stated, there is a great need for increased expertise on the decision making level which should come from those who have been in the field and participated in the judiciary reform process. To illustrate this, the judiciary director in Kosovo is on its seventh incumbent. At one point there was a non-lawyer in charge of the program in Kosovo. It was understood that there were numerous reasons for this, but it still highlighted the need for managerial expertise to be in charge.

Three goals of this international effort are pretty well universally accepted: They are: 1) Removing immunity from government leaders suspected of committing war crimes and crimes in violation of human rights laws; 2) Combating organized crime; 3) strengthening the capacity of the local judiciary system. These interrelated goals are not separate but are a very complex interwoven set of undertakings.

Transitioning to the subject of the mandate of the courts, Judge Klonowiecka-Milart stated that the very first item of business was to define the mandate. Designing the mandate should remain in the political domain, although the judiciary's viewpoint about the definition is significant. After the mandate is defined those in charge need to seek persons to fill the positions. While the court composition is normally defined by the mandate, in Kosovo this was different. The courts were intermingled with the local judiciary and the judges were allowed to "pick" their cases. This differs from what is considered to

be the norm. The court should not seek individual cases. The courts also diverted from strict territorial areas. The international judges were moved around and within the various parts of the judiciary process in Kosovo. The result was a denial of stability in the courts as it applies to the International Judges. One downside of this type of indiscriminate employment of judges was that later in the process the judges were disqualified due to conflict of interest. Thus when they were really needed, they were not available. By ensuring that the mandate was well defined, and the legal framework set out, the use of International Judges as “window dressing” for justice would be prevented.

The mandate is extremely important for the International Judges. It ensures that the “shape of the judges’ action is in concert with the intent of the body establishing the court or tribunal. In fact, Judge Klonowiecka-Milart felt that it diminishes the effectiveness if there is not a mandate. The mandate ensures that the “shape” of the judge’s action is in concert with the body establishing the court or tribunal. In effect, it eliminates personal variances from the operation of the court.

Judge Klonowiecka-Milart went on to state that two major types of crimes must be addressed: war crimes and organized crimes. These two areas can and must be treated differently. For example, the war crimes are a “heritage” of previous actions or events. Thus addressing war crimes is an intervention - a retroactive intervention. Then, whether or not we have laws in place that allow efficient prosecution of the crimes is another question that begs an answer. War crimes, especially those that are ethnically based, are sensitive to “panel”. Thus local judges would normally be excluded from trying the cases. Judge Klonowiecka-Milart went on to establish the other aspect of prosecuting a war crime such as evidence.

In contrast to war crimes the prosecution of organized crime is a more proactive issue: the consequence have an effect for the future. Thus, there may be the introduction of “new laws,” which is a very sensitive area, especially when we talk about the Rule of Law and human rights, etc. There is also a political decision to be made: to what extent are these modern instruments to be introduced. But

Judge Klonowiecka-Milart feels that without the introduction of these new instruments of law the battle against organized crime will not be won. Another aspect of war crimes versus criminal crimes is the issue of protection versus neutrality. The prosecution of organized crime depends on the protection of judges, lawyers, witnesses and victims. All this is to be kept in focus so that there is an end state and the international organization will at some point in time withdraw.

Judge Klonowiecka-Milart went on to state that the legal framework is very important for quality of justice. A need for intervention can be accomplished in three major ways: 1) choosing the law and alternatives, 2) reforming the existing law, and 3) developing a totally "new" law. The public generally recognizes the "choice of law" is the political choice. This method uses the laws that on the ground that are adaptable to the situation. However, it was pointed out that in many instances the organizations that are assisting in reshaping the "new" laws do not want any leftovers from the old. Alternative law has to be carefully weighed for implications. Another implication to making drastic changes is undermining stability operations in the new environment. Keeping the changes small and even incremental tends to provide more stability and clarity to the law. This is a very important point to keep in mind. Attempts to rebuild the system give rise to doubts about the legality of the new system. Rarely does the mandate give that type of latitude. It is a very dangerous exercise, because of lack of experience, and agreement on the part of the actors. There would be many challenges to the total reform.

In closing her presentation Judge Klonowiecka-Milart highlighted several key points: 1) the importance of developing local proficiency; 2) raising the standards of the local law. Bringing justice to areas that would not have justice at all. 3) developing the law of jurisprudence. This is done by introducing the international basis of humanitarian law: 4) enhancing of technical skill.

Question: Can you comment on the use of judicial review as it pertains to legislative actions?

Answer: That is an important question and an important issue and thank you for this question. In Kosovo that was not very practical,

because in Kosovo there was a constitutional framework and the International Court was acting within the local system. Also, within the local system we were bound by the statutes, which include all of the regulations and legislative issues. The judicial review would occur if the legislative issues were in conflict with DCHR and international instruments.

Question: If we introduced a panel of international judges into peace operations, do you think it would be advisable to work with a selective group of local judges instead of a rotating group? And you also envisioned the possibility of international judges, who might be retained as a way of buttressing the Rule of Law over the longer term. In other words if we create a single session court of both local judges and international judges, it might give us some assurance that the Rule of Law will prevail over the long term?

Answer: I believe that this is the right approach. This would have the advantage over the current program. This would also provide for capacity building. In fact engaging a group of local judiciaries who would provide a lead for the future development of the local judiciary would have a positive impact on the relationship with foreign actors. I do not think that the special courts would cost more. However there would be a number of cases that the special courts would not adjudicate. I would think that there would be advantages to the special courts in a host of areas from discipline to procedures. I am in favor of special courts.

Mr. David Marshall, Law Advisor, United Nations Office High Commissioner for Human Rights provided the group with an overview of the HCHR position on Rule of Law and provided background discussion on three issues the law, legacy, and the tools, as they pertain to Rule of Law. This encompasses what Mr. Marshall has been looking at over the past three months. There are many lessons out there which will be the foundation for where we go in the next several years. Over all themes that need to be kept in mind are: 1) Political will is essential, 2) there is a considerable amount of Human Rights rhetoric and 3) there has consistently not been a strategy for justice produced. Unfortunately it is more ad hoc. We have not approached this in a deliberate manner. You need to get it

right the first time. It is central to have a strategy that is short lived – long termed. Lastly are expectations; Expectations are often high, and not attainable. Particularly within the short time allocated for the operation. Managing expectations is critical in the post conflict state.

With these over arching themes in mind, Mr. Marshall described the areas discussed at the onset of his presentation. There are several components to the Law. Human Rights law is supreme over national law. It is essential that actors know that Human Rights law trumps national law; international obligations trump national law. Clarity of law is essential in determining the difference between national law and international law. Not only does it trump national law but it also fills gaps in the local or national law. The third point in this category was the perceived tension between human rights law and law and order. Especially since 9/11 are the two in conflict. International law provides a remedy for this situation by declaring a state of emergency. The next issue to consider under the category of law is the applicability of the law to the military component? Last but not least is the post conflict need for consultation with the legal actor and access to the law and the public. In many instances there is limited access to the law in a post conflict state. For example, in Kosovo the only way in which a person has access to the law is through the Internet; thus access is very limited. Most judges in a new judiciary are very timid to hold the other actors (read authorities) accountable for their actions, and there has been very little effective training in judicial review. So the judicial review process is again very limited and accountability is slim. This needs to be addressed more critically.

Mr. Marshall then discussed the legacy aspect. He felt that it was very important to leave a legacy in the judicial system. If the Rule of Law is to survive after the United Nations departs, there must be some cross training. Documentation/ Guidelines need to be established and procedures developed. In this area Mr. Marshall felt that there was a real lack of movement. Capacity building was much mentioned, but the reality of the situation was that little was done. He felt that a stronger mentoring program, cross training and training programs for the transfer of legal skills to the new judiciary

needed to exist. In order to accomplish this, one needs to rethink the training strategy. Much of the existing training is based on Human Rights statutes. While this is essential, we do not concentrate on basic legal skills. Mr. Marshall felt that more basic legal training is needed for all the actors in the judiciary system, judges, law enforcement, etc. Most drastically, the training of defense counsels was relegated to local defense counsels. In addition to creating the proper training vehicle, Mr. Marshall felt that several activities needed to be created to assist in capacity building; 1) a judicial inspection unit; 2) a legal system monitoring mechanism; 3) an oversight legislation monitoring mechanism.

Lastly is the establishment of what Mr. Marshall described as “Rule of Law Policy Tools”. They include; 1) mapping of the justices; 2) a user guide to the transitional criminal code; 3) a basic approach to developing hybrid tribunals; 4) A policy tool on truth commissions, 5) basic tools for vetting public officials in the justice center; 6) legal systems monitoring methodologies; and 7) reconciliation tools. These “tools” will be vetted and available sometime in 2005. There will be three additional tools that are proposed include benchmarking, legacy or capacity building tools, and a legal actor’s tool. The session was then opened to question and answers.

Question: You started out by saying Human Rights Law transcends national law. That is a quite controversial. What exactly does Human Rights Law cover? When you say that International Law trumps national law what does that exactly mean?

Answer: Can we address the answer to that question later?

Question: I noticed that a lot of your examples were centered on Kosovo. Do you think we are going to see many more of these types of transitional administrations? And, if we are not, does that matter to your students?

Answer: It is controversial and I am not quite sure why. Those states that have ratified the covenant have an obligation to meet the needs of the covenant. Thus, those states whose national laws violate the rights on civil and political covenants are obligated to enforce the

rights under the covenants. If their national laws are in violation of the covenants, those laws are null and void and must be amended.

Question: Doesn't it depend on what legal system you have? For example, if you have a legal system that ratifies conventions but does not adapt it into its conventional law? There is a great deal of fidelity when a human rights law that is an international obligation becomes a human rights obligation in a domestic setting. I find this particularly challenging for countries that have a different system for adopting human rights laws.

Answer: There are examples where that is correct. For example, in the United States there are instance where the national government has adopted a law or covenant and the states have not included the issue in their laws. States have obligations under the covenant whether or not the covenant is being incorporated as a national law is not relevant. So says the UN peace model. Coming back to the first question, I think that these tools are good for a number of models. You have to be prepared for that circumstance. You can't rule out another Kosovo with an executive administration. These tools bring value when they go back to developing their justice model and policies.

A discussion followed to clarify the difference between human rights law and humanitarian law.

Mr. Marshall was followed by Mr. Michael Hartmann, International Prosecutor. Mr. Hartmann pointed out that Mr. Marshall had used the example of the Kosovo intervention for what to do and not do in establishing Rule of Law. Mr. Hartmann amplified the points brought out by Mr. Marshall and went on to say that in Kosovo the international community became very risk averse to the Rule of Law, as a result there was an evolutionary process of the Rule of Law, which is not the most effective way. In post conflict operations, he asserted people do not have the time to be evolutionary when it comes to the Rule of Law. The problem with evolution is that it is not logical; it is random and by things dying off you end up with something that works. Often times the final situation is not tenable and there is a lack of confidence in the system as occurred in Kosovo.

Mr. Hartmann described what he felt were the key ingredients in establishing Rule of Law from his perspective. First, he asserted, was the necessity for intervention on the part of International Rule of Law personnel. These personnel were necessary in the areas of assistance, monitoring, mentoring, establishing a judicial commission, and assistance in national courts, as prosecutors/judges. Assistance ranged from the very basic issue of advice and training to the more complex issues of capital outlays. These actions were necessary to ensure that the Rule of Law was solidly established and the “spoilers,” such as organized crime or other power structures that wanted to prevent democratization were not able to be players in the rebuilding process.

He stated that all of the five functions were capacity building in one form or the other. All of them coordinated effectively together would provide an effective vehicle to build national capacity. But again they had to be carefully crafted to be mutually reinforcing rather than opposing.

An area that is often very delicate is the arrest and prosecution of the “George Washington” or “Robert E. Lees” of the emerging nations who are outright responsible for crimes. Mr. Hartmann felt that there was a fine line to follow. Going on either side of the line could result in adverse reactions that could undermine the effort. For example if “George Washington” was prosecuted the reaction could be immediate and violent. On the other hand, the failure to do so could result in a similar action and loss of faith in the already fragile infrastructure. Each peacekeeping and stability operations is unique and the balance point different. But, Mr. Hartmann asserted, “Long term stability will require demonstrating an end to impunity”. Examples of not moving fast enough or correctly were: Charles Taylor in Sierra Leon; Slobodan Milosevic in Yugoslavia; failing to establish Rule of Law in Bosnia. Mr. Hartmann emphasized that the most counterproductive international intervention is when the international civil (or military for that matter) organization ignores the Rule of Law for exigency of control.

In summing up prosecution in Rule of Law Mr. Hartmann stated that a successful international prosecution program must have four

key components: legal; organizational; operational; and budgetary. While all are significant players, the one requiring the clearest definition is the legal component. That component must contain a clear mandate that allows the legal mechanism to function and provides for the power of the court, the international police and prosecutors. If this fails there will be no substance within the system. Lastly, Mr. Hartmann was emphatic that the roles and functions of the international jurists, attorneys, etc should not be intertwined nor should they perform multiple functions. These functions and responsibilities were inherently conflicting and clearly needed to be kept separate.

Question: This question pertains to Afghanistan and the heavy footprint that you referred to earlier. Here in Afghanistan the justices etc. were virtually powerless prior to our intervention. Many of the problems we are facing deal with narcotics and drug trafficking. It is virtually impossible to bring these people to trial in a timely fashion using the inherent judicial system. I was wondering what your thoughts were on using a special court?

Answer: Obviously the issues of graft and corruption, bribes, and security of judiciary's lives come up. International folks don't come with a family so if you protect the judges and prosecutors that is enough. However, if the families are in country that is another issue. For example look at Pakistan. They tried to do something on graft and corruption. They secured the prosecutors and their families as well as tripling their salaries. When doing that, they had some serious prosecutions. Generally, special courts are not favored, and general courts are considered the way to go. The problem is to foresee ability and legality. You must ensure that the court is statutorily defined. You could co-locate some prosecutors and judges to help them. Do that through standard mentoring. But, you must ensure that the people you bring in have the expertise in the area.

Question: Could we go to your point about overestimating lack of reactions about arresting leaders? I wonder if you could take a moment and comment about prosecuting leaders or military commanders. Could this be done or thought about prior to the conflict so that you could move to the desired end state more rapidly?

Answer: There are people more qualified than I am to comment on this. My understanding is if you start threatening before the conflict is over to prosecute one of the leaders of the conflict it is then going to be even more difficult to bring that person to the table. My focus has always been being there after the conflict. So I really cannot say definitively, other than you could start doing the research.

A general discussion followed regarding when exactly to go after the errant or criminal leader. Timing is critical to many facets of the post conflict operations. And it is clearly a fine line to walk to determine when to prosecute and what to prosecute.

The next presenter was Mr. Adrian Horn, a policing consultant who runs his own company that specializes in the collation, analysis and dissemination of UK policing knowledge. He is a retired UK Chief Police Officer, having served in most of the specialist police departments. During his service, he attended a number of specialist courses, including the Special Course and Senior Command Course held at Bramshill Police College. He has an Honors Degree in Law. Since leaving the police service, he has worked with the Ethiopian, Ugandan and Venezuelan police.

Mr. Horn opened his presentation on the role of civil police in Rule of Law by stating that he is extremely pleased with what he heard in the conference so far. It is clear that the critical ingredients for an effective Rule of Law have all been presented and generally accepted. A year ago there would still be a discussion on what should or shouldn't be included. The list of problems and issues are consistent. But the issues are how to condense and keep the information safely? How do we implement Rule of Law? What is Rule of Law? It is about going about your daily life with out fear with out fear of being robbed, without fear of being arrested and with out fear of being harmed.

Mr. Horn stated that he wanted to discuss six areas: 1) Where is all of this "stuff" collected?; 2) planning coordination and effort; 3) Roles and responsibility of the military versus the police; 4) Understanding the context that one is going to operate in; 5) Should

we continue to talk about the role of police or should we talk about something much broader such as security, and policing; 6) Lastly, to take issue of what Mr. Hartmann has said in reference to the use of the military in Rule of Law.

Mr. Horn asked what are the responsibilities or roles of the police? He went on that in his view the roles of the civilian police were: 1) the maintenance of law and order; 2) the prevention and detection of crime; 3) the enforcement of law; 4) the regulation of traffic flow of vehicles and pedestrians; 5) The investigation of crimes and the prosecution of criminals; 6) ensuring the safety and security of the people; 7) the protection of life and property; and 8) the apprehension of offenders. These eight points, Mr. Horn asserted, were the bread and butter of the police.

Now, in post conflict operations, Mr. Horn stated, the real issues were not necessarily controlling riots, but ensuring that the populace could go about its daily business; that the farmer could go to market to sell his eggs, and that the motorist flashing his lights and speeding along the road would be dealt with. That is the real substance when considering the involvement of policing operations in peacekeeping and stability operations. Where and how does this fit in comparison to the military? How do we transition from the military operation to civil police operations? There is no sure transition but the real issues normally start years before. For example in Sierra Leon, the old police force was initially corrupt. Thus, the planning for the intervention of a policing body needs to be done before the actual operation. First you must sort out the policing responsibilities of the military. Then, over time introduce the civil policing agencies into the operation. There must be, Mr. Horn felt, as much pre-planning effort expended as there was for actual police involvement in the peace stability operation itself.

In closing his presentation, Mr. Horn used a base line example of the insertion and institutionalization of the police in Sierra Leon. He went over each phase of the transformation of re-establishing a functioning police force by a phase-by-phase description of the difficulties and pitfalls of assuming functions initially held by the military. Mr. Horn stated that this type of an operation was not

sequential. You did not sort out the military roles and then the police roles later. It had to be done concurrently. It was initiated with the policy statement from the government and from that a mission statement is derived for the police organization. From the mission statement, a master police development plan is formulated. This plan must encompass all facets of the execution from the operational to the training and logistical support phases.

Question: Let's go back to your statement for the need for preparation prior to deployment. How did we deal with Kosovo where we had effectively a six week lead in time?

Answer: Well, most of the stuff that is needed is not just focused in the country that you are going into. Much of the information needed can be taken off the shelf and you can get going from that. It serves as a starting point, a template. You cannot have a template police force, but what you can have is a template checklist. We should be ahead of the game and learn from experience.

Question: If we don't have police in the executive force other than the national police, what do you see as the role of the police other than making scheduled appointments, vetting, doing investigations and enforcement.

Answer: I very much believe that they shouldn't get involved in that sort of thing unless it is really necessary. The international police should not do it themselves. They should get involved with a counterpart. That is not easy. But, how else does one learn to do a job? One learns from someone else through the mentoring method. You have to work with the individuals you have to show them, on the ground, how you do the job and you must share that.

Question: Would you please expand on your comments as to the appropriate training of the military in this function?

Answer: Well, I can't really speak for other nations' military. But, we don't train our military for post conflict operations. Our military is trained to come in and kill somebody. We do have military police and they understand policing functions. But the military police functions

are really not focused towards a peacetime organization. They are supposed to pick up prisoners of war and detain them. The civilian function is really secondary. Unless we change the mission of the United States Army you are not going to have the US Army training to do police functions either. The military would normally take a looter to the nearest civilian police station and drop them off and not get involved in civil policing operations.

A very lively discussion followed this question. It was generally agreed upon that it was difficult enough for the military to maintain proficiency in its basic war fighting skills and that there was little room for added training for the soldier of the line.

A discussion ensued on the methodology of how that the government of Australia was handling the challenge of having a ready to deploy police force in just such instances. The Australian government had assembled an “on call” policing force of approximately 500 persons. These people went through the necessary training and then returned to their “home” police agencies and waited to be called. Their skills were maintained and the unit would be responsive when and if they would be needed. It would be ready to deploy.

The last presenter was COL (Ret) Dan Rubini. COL Rubini had been the advisor to the Iraqi judiciary during and right after the combat phases of operation Iraqi Freedom.

COL Rubini gave a very comprehensive presentation of the Iraqi judiciary that existed at the time of the occupation of Iraq by US forces. COL Rubini noted that the Iraqi judiciary was surprisingly a very sophisticated judiciary. This judiciary had been suppressed and run for thirty five years by brute force and “thugery”. Prior to the Saddam regime, the judiciary was the amalgamation of several judicial systems: primarily, European, German, Turkish, and Arab systems. The Iraqi judiciary was not under the Ministry of Justice, but separate. It was a very sophisticated judiciary with an extensive legal training system and a judicial training academy. It was quite powerful, in that it administered entrance exams to the Iraqi bar, it disciplined its members, and it could deny their ability to practice

law. Col Rubini stated that the Iraq bar has over thirty thousand members.

COL Rubini stated that the legal system is more secular than it is in Saudi Arabia or Iran. Unlike other Arab countries, Islamic law in Iraq is found mainly in family law, and inheritance law. It is not found in the criminal and civil laws of the country. Under Saddam this all changed. The justice system was simply bypassed. He (Saddam) added rule by decree to whatever court he wanted to conduct his murders in. He did not change the system of law but simply added rule by decree. His benchmark, Col Rubini said, was loyalty not religion. He was an equal opportunity butcher. In one building where Saddam held his personal court there was a room where he (Saddam) would summons his "friends". If he liked you he would reward you with a Mercedes or a new house. If he didn't, he would give you a bullet. People never knew why they were summoned. Many would have heart attacks or seizures while waiting to be seen. It was this sort of justice culture that set the stage for the justice system of the country. Saddam instituted a culture of corruption in justice far beyond anything known in the Middle East.

To illustrate this, COL Rubini stated that, under Saddam, the government agencies had to obtain their own revenue, as Saddam took the money generated by oil revenues or other sources of government income. In order to survive, the judicial system had to be corrupt. There was no judicial modernization. The buildings were in disrepair. The entire system stagnated. For thirty-five years there was no interaction between the Iraqi judiciary and the rest of the world. In the end, Rubini said, you had a 1960's judiciary overlaid with the special courts of Saddam Hussein. You also had the curse of centralized planning where mistakes made ended in the loss of you life, not just your career. There was a constant veil of fear over the entire system.

COL Rubini described the situation when US forces arrived in Iraq. Anarchy existed from the break down of the civil system. The scenes of burned out buildings and vehicles that were shown in the media were from looting, ill discipline and general degradation of

the system. They were not from battle damage. In order to “salt the earth” Saddam released over 100,000 criminals from the jails prior to the coalition forces arrival. To further exacerbate the situation he granted all pardons to all of these criminals. These pardons were recognizable under international law and could not just be revoked by Ambassador Bremmer issuing a decree calling these prisoners to come back under arrest. A situation of deliberate, calculated lawlessness existed in the country.

In order to restore the legal system as rapidly as possible, the coalition legal assistance staff, composed of legal officers of several coalition nations, traveled the nation and visited courthouses throughout the country. There, they reassembled the staffs and judges of the courts. They turned on utilities and attempted to get the judiciary system functioning as best as it could. With the help of the Iraqi judiciary, the coalition legal staff appointed a new Minister of Justice, vetted over 800 Iraqi judges and in the larger sense assisted the establishment of the judiciary system by mentoring, showing and sharing. This effort relied very heavily on “borrowed manpower from the coalition forces. An anticorruption task force was established and legislation was drafted and implemented. The establishment of a solid legal system was a two edged sword, COL Rubini said. Those Iraqis who stood up and were counted were also known and became targets. Three judges were killed and several others were injured. The need for protection of the officials was not something that had been planned for.

COL Rubini said that the Iraqis want the help of the CPA and are afraid that we will leave them and the old ways will return. He went on to state that the Iraqis feel that there are too many “old faces” in the police and the military. The security of the nation is one of the most fragile of the key ingredients. Iraqi officials are being killed at an alarming rate. Over one thousand have died for their country.

COL Rubini concluded his presentation by stating that the Iraqis want sovereignty. They want to develop a nation that will self govern. But, they must have our help. We need to have a long-term plan to bolster the judiciary and to give them the confidence and trust that we, the United States, are not going to abandon them. Our efforts

must be more than superficial and be designed to have long term sustaining effects. We must get the corruption and organized crime under control in order to see the economy flourish.

Question: I am a little puzzled that there is such a need for assistance. It was that just a year ago USAID offered assistance in the area of Rule of Law. Yet, USAID was not given the go ahead until just recently.

Answer: I was never aware of this. No one talked to me, about USAID so I just don't have the knowledge to answer the question.

Question: Now that we have this movement to the constitution, regional rights and individual rights has there been any thought given to the possible contradictions of the individual right to the regional autonomous rights?

Answer: Well, regional autonomous versus individual rights were and are a constant center of attention. There was a lot of gray hair over trying to resolve that and I do not think that they ever did. It is still a very complex ongoing issue.

Question: What are your thoughts on the constraints placed on the CPA forces? At times it seemed that all we could do was to knock on doors of houses.

Answer: We could do anything we wanted. That is the right of the occupying power. We rolled back all of Saddam's courts. We rolled back thirty-five years of "thugery" and decrees. We put the European civil code of justice in place as it was before and installed an independent judiciary with a chief judge as the head, and not a Minister of Justice. It was simple enough, and I think that that will be carried forward in the constitution. We had basic cooperation and quick identity of the issues of law by the Iraqis themselves. This also is in the transitional law and will be in the constitution. This actually took us one step further. It would scare any westerner because it looks like a fourth branch of government. Now, there are great pitfalls in that. But, they were very intent in coming up with an organization that could crack the corruption. There are laws on corruption, which actually are quite good. Everybody we dealt with spoke quite highly of the laws.

Question: I assume from what you are saying that the organized criminals or terrorists, insurgents or what ever they are, when they are caught must not be detained. That this is the very way that these justices that were detaining them got killed. The second is that as I read the Geneva Convention 4. It says at article 54 "The occupying power will not alter the status of public officials and judges in occupied territory, nor in anyway apply sanctions nor take measures of coercion against them should they abstain from fulfilling their function. The prohibition does not restrict the right of occupying powers removing public officials from their function and it goes on. But, I do not see where it gives you the right to change laws. What happens when a large criminal group or a terrorist that throws a bomb is apprehended? Are they detained, or what?

Answer: We didn't alter the status or make changes to their laws. What we did was add to their laws. But, occupying power's ground rules are recognized under international law. I can cite you chapter and verse on that. But, let me differentiate from organized crime and terrorists. Organized crime is in the category of the fact that they are making money out of something. Terrorists are not in that category. They are in another category. They are in a military category and not a criminal category. These people (the criminals) are not brought before the normal court. They are brought before a central criminal court that is protected. The chief justice and the justices are on that court. We haven't been always satisfied with their decisions. But, it is their show and we let them run with it.

Question: Can you discuss the other work that is going on with the Iraqi courts, other than the "top courts"?

Answer: There are a limited number of judges currently on the Iraqi courts; something like fewer than ten, including investigating judges. They just recently doubled that. They are moving twice the number of cases. It has not created a whole new special court system. Frankly it is just a lack of security. And, some of the lacks of security issues are Iraqi police issues. The problem is that the press reports concentrate on the bad and ugly. There is little positive reporting in the professional publications. It is a shame and there are still many things to do. But, the Iraqis are still coming to work. They still want to make this successful. They want to make it happen.

COL Dooley closed the plenary session by thanking every member of the panel for an outstanding presentation. He felt there would be some concrete discussions in the workshop sessions to follow.

Day One Dinner Presentations – an overview of Institutions Co-sponsoring the Rule of Law Conference – The United States Institute of Peace (USIP), Asia Pacific Center for Military Law (APCML) and The United States Army Peacekeeping and Stability Operations Institute (PKSOI)

The evening's presentations were provided to familiarize the conference attendees with the three organizations that were co-sponsoring the Rule of Law conference and specifically what their ongoing Rule of Law programs involved.

Ms Colette Rausch and Mr. Mike Dziedzic of the United States Institute of Peace did the first presentation jointly.

The United States Institute of Peace operates under a mandate, established by Congress, to support the development, transmission, and use of knowledge to promote peace and curb violent international conflict. This, through the United States Institute of Peace Act, directs the USIP to serve the American people and government through the “widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.”

The USIP carries out its broad congressional mandate through six activities. Specifically, they are:

- Expanding society's knowledge about the changing nature and conduct of international relations and the management of international conflicts.
- Supporting policymakers in the Legislative and Executive Branches.
- Facilitating the resolution of international disputes.

- Training the international affairs professionals from the United States and abroad in conflict prevention, management and resolution techniques.
- Strengthening the education of emerging generations of young people in the United States and in foreign zones of conflict.
- Increasing public understanding about the nature of international conflicts, as well as approaches to their prevention, management and resolution.

Ms Rausch indicated that the Rule of Law program was one of many active programs at the USIP. The Rule of Law program is an umbrella program encompassing several components. They are:

- a) Applicable law or transitional codes for post conflict criminal justice;
- b) A transitional criminal code;
- c) A detention act and
- d) Law enforcement and police powers act.

The concept is to provide a tool kit or library to which persons involved in post conflict environments can refer when they are involved in situations where they are assisting in developing infrastructure in a post conflict environment. These documents are designed to provide a practical guide for application of international standards under field conditions. In other words, it is similar to putting theory to practical application. Each situation is different and these references will serve as guidelines to the numerous individuals in the field.

Another, USIP project is the development of a handbook on special crimes in the post conflict environment. Special crimes are defined as anything that threatens the security or the peace process. That could range from organized crime, drugs, smugglings, to terrorism and corruption. The idea, she stated, behind this document is to make this document a field handbook that can be used by all. In order to accomplish this goal they are using the expertise of prosecutors;

judges; and the military to “define the book”. But, she cautioned, USIP does not want to make it an academic exercise that is so cumbersome that it will not be used. Instead, the intent is to give a variety of solutions, to the user.

She went on to say, that there are three other ongoing projects that the institute is involved in; 1) The Constitution making program. This program provides ten or twelve easy steps that one should consider when developing a constitutional framework; 2) The Israeli-Palestinian conflict resolution program. In this program they attempt to bring people together at the local level to resolve such issues as an automobile accident between individuals on opposite sides (Palestinian and Jewish). Here the attempt is to bring together the two judiciaries to resolve the basic issues of whose insurance company pays what or who is liable at the very rudimentary level; 3) The last is the Iraqi initiative. Congress gave 10 million dollars to the USIP for assistance in Iraqi focused projects. Three of the major involvements focus on the War Crime trials for Saddam and his associates. The USIP brought together members of the Iraqi judiciary and went over some of the challenges associated with that endeavor. There is also work being done in the areas of a Truth and Reconciliation Commission structure and constitution making under that program.

Ms Rausch concluded her remarks and introduced her associate Mr. Mike Dziedzic, who discussed the International Network to Promote the Rule of Law (INPROL). Mr. Dziedzic indicated that there were several other programs that were new and exciting. The first was the establishment of the Center of Excellence in Vicenza, Italy as a result of the G-8 Summit. The charter of this center is to provide police focused training, doctrine and “Train the Trainer” programs to help develop cohesive and functioning units, especially in Africa and other areas to assist with Rule of Law functions in stability operations. Next, the National Security Council asked the USIP to assist in establishing an organization within the US Government that would have a Rule of Law capability for peacekeeping and stability operations. This resulted in the formation of the Office for Stabilization and Reconstruction Operations. The concept was to stand up the organization in several phases. Phase I had twenty

two positions including several Rule of Law subject matter experts. Phase II expanded the number of positions to one hundred. The goal was to have a cadre of qualified individuals who would be able to deploy to a hot spot and provide the needed expertise to assist in establishing the new government structure. This effort is parallel to other activities found in the European Union, Australia and the African Union. Currently, the State Department is taking the funding for this organization out of hide. However, State was hopeful that it would receive the necessary appropriations to go forward with the program.

Mr. Dziedzic then outlined the concept of institutionalizing the idea of Rule of Law through the mechanism known as the International Network to Promote the Rule of Law. Essentially the concept is in three phases. Phase I is that a “database” be established that provides “ready access” to the hard lessons learned in previous experience to include a series of documents, ideas and experience that need to “get to the field”. This database will contain the information with commentaries and contact information so that the user can gain ready access to the complete information needed. Phase II is to have a database of experts so when issues or requirements arise these experts can be easily contacted for assistance. This database will be a pool of lawyers, judges, and police that will be able to provide the experience needed to support the field. The concept is that this database will be a “living” source of experts that can be tapped as the need arises. The final phase is to maintain a database of those individuals who have been assisted – officials, lawyers, and judges. The idea is that if they need assistance or are at risk they can be supported easily. This concept is to be vetted mid July 2004.

Mr. Dziedzic introduced Mr. Bruce “Oz” Oswald, the Acting Director, Asia – Pacific Centre for Military Law.

The Asia-Pacific Centre for Military Law is a collaborative effort between the Australian Defence Force’s Defence Legal Service and the Melbourne University School of Law. Under this arrangement the Centre’s charter is to facilitate cooperation between military forces of the Asia Pacific Region in the research, training and implementation of the laws governing military operations.

The Centre has chosen to focus its efforts on twelve major areas to fulfill its objectives. These include:

1. Prepare and deliver Operations Law and other appropriate training programs for legal officers and operational commanders from Asia-Pacific militaries;
2. Develop and deliver graduate level training for appropriate military officers within an established regime of verification, validation, assessment and accreditation;
3. Organize conferences, workshops, seminars and other activities designed to provide solutions to particular legal problems, to ensure the incorporation, of new legal developments within the Region and to develop relationships with regional militaries and with relevant academic, humanitarian relief and other public communities.
4. Promote academic research into key Military Law issues of current concern and relevance in the Asia-Pacific Region;
5. Produce legal publications and materials in support of legal officers and Regional Defense Forces generally;
6. Participate in and contribute to the development and validation of Military Law doctrine as appropriate and relevant;
7. Centralize the accumulation and processing of legal lessons learned through Regional experience and through deployment and other overseas experience;
8. Undertake and support initiatives to promote and improve the flow of information to legal officers in relationship to professional matters such as opinions and legal developments;
9. Participate in military exercise design and development;
10. Develop military, government, academic, and other relevant relationships within the Asia-Pacific Region for the promotion

of the Rule of Law in military and defense affairs and opportunities for assistance training in operations Law within Regional Military organizations;

11. Develop contacts and mutual exchanges with other academic/military centers and with leading subject matter experts internationally to encourage the fullest exchange of information and ideas and to promote interoperability with allied partners;
12. Provide support for deployments, particularly for peace operations, including assistance to pre-deployment training, the development and maintenance of manuals and reference resources, and the identification and appropriate retention of information from operational lessons learned.

The Center operates from two nodes. One, the civilian component, is located in Melbourne, Australia at the Melbourne University Law School and the other, the military component, is currently located at Sidney. There are approximately ten personnel dedicated full time to the Center's operation.

Mr. Oswald pointed out that the Center's focus is enhancing capacity building within the region. This is accomplished by utilizing not only organic subject matter experts but experts from throughout the region to assist in presenting the curriculum. The concept is that by bringing together individuals from different backgrounds and experiences there will be a dynamic exchange of ideas and information and a value added learning experience for all.

There are currently four major vehicles that support this effort. First is a. Civil Affairs and Military operations course. Additionally, there is a two week course for commanders and planners in operational law. There is also a complementary course for legal advisors in operational law. In this course the target audience is not only the military advisors but also other legal advisors in governmental agencies and departments and non-governmental organizations as well. Lastly there is the Law of Peace Operations course.

Mr. Oswald concluded his remarks by stating that the APCML would really like to expand its exchange of ideas and thoughts in forums such as this conference. The APCML was particularly interested in the thoughts that this group and others had on the tensions and challenges of military operations in the next two to four years. By doing this Mr. Oswald felt that APCML would be a little more effective in the Asian Pacific region.

Mr. Oswald introduced Colonel Mike Dooley the Acting Director of the Peacekeeping and Stability Operations Institute.

The United States Army Peacekeeping and Stability Operations (PKSOI) was established in 2003 as an integral component of the Center for Strategic Leadership at the U.S. Army War College in Carlisle, PA. The institute's charter and structure are designed to meet future needs of the U.S. Army and the U. S. military across a broad range of peacekeeping and stability operations. In addition, PKSOI provides continuity with the body of knowledge developed from 1993 -2003 by the U.S. Army Peacekeeping Institute (PKI).

PKSOI serves as the Army's preeminent authority on peacekeeping and stability operations at the strategic and operational level. In fulfilling this mission, the institute:

- Studies strategic and operational implications of peacekeeping and stability operations;
- Advises senior Army leaders, combatant commanders and their staffs regarding the conduct of peacekeeping and stability operations;
- Understands allied and other nation's military objectives and doctrine;
- Contributes to evolving peacekeeping and stability operations concepts and doctrine;
- Helps educate the next generation of strategic leaders regarding peacekeeping and stability operations;
- Informs commanders regarding peacekeeping and stability operations lessons learned;

The institute seeks to further its understanding through information exchange and contacts with:

- International Organizations (IO)
- Nongovernmental Organizations (NGO)
- Foreign militaries
- U.S. government agencies engaged in stability operations
- Academic institutions and think tanks
- U.S. Army War College faculty and students
- Other U.S. military senior service colleges

Col Dooley began his presentation by sharing with the attendees that this past year was a year of transition for the PKSOI. A year ago to the day he had been packing boxes and had been assigned to a new job when he was notified that not only had the “powers that be” decided that the Peacekeeping Institute (PKI) had not only gotten a new lease on life, but that its mission had been expanded to include stability operations and Rule of Law. As a result of that mission change the manning of the new PKSOI was expanded to include a Director of Law Enforcement, that had just been recently filled, and the creation of the position of Professor of Rule of Law. This position was currently being advertised and interviews were ongoing to fill the vacancy as soon as possible. It would be the responsibility of the Professor, Rule of Law to develop an elective to be incorporated as part of the U.S. Army War College curriculum. In the interim the Institute had been assigned LTC Tom Kratman, a lawyer by profession, and a Reserve Civil Affairs officer, who was on loan to assist in standing up the new organization. COL Dooley stated that LTC Kratman was the individual that was responsible for this conference and should be commended for his work.

COL Dooley concluded his remarks by stating that there three major responsibilities or venues that the Institute utilized to accomplish its mission; 1) Research and publication; 2) Educate personnel at the War College and in the field to include the combatant commands; and 3) Strategic communications with meetings and symposiums such as the Rule of Law conference. As part of this effort the PKSOI had affiliated with the APMLC and the USIP to collaborate into the “Challenges to Peace Operations into the 21st Century Project” by co-authoring a chapter in their report on Rule of Law.

Day Two Dinner Presentation – Challenges to Peace Operations into the 21st Century Project – Ms. Annika Hilding-Norberg, Project Leader, Folke Bernadotte Academy, Stockholm, Sweden

COL Mike Dooley, Acting Director, PKSOI, began the evening's presentation by sharing with the audience the involvement of PKSOI with the Challenges for Peace Operations: Into the 21st Century. Prior to 2004 the predecessor to PKSOI, the Peace Keeping Institute, had the US Government lead for participation in authoring the chapter on Rule of law in the Phase II book. When the PKI was told to close operations by July, 2003, the USIP assumed the lead. Later, when the Institute was given new life, the two organizations agreed that for this year, 2004, the USIP would continue to be the executive agent for the US Government's involvement. Beginning with 2005 the responsibility would shift back to the US Army War College, Center for Strategic Leadership, Peace Keeping and Stability Operations Institute.

Ms Hilding-Norberg then gave an overview of the initiatives, objectives, organization, goals and desired outcomes of the "Challenges" project. She stated that the objective of the project was to foster and encourage a cross-professional cooperation and partnership with the primary objective of making practical recommendations that will benefit the effectiveness and legitimacy of multinational and multidisciplinary peace operations. She continued saying that to a large degree the success in peace operations depends on a varied number of factors. But, that the key was the support provided by the Member States in the areas of political, law enforcement, financial, logistical and military. For this reason the partner organizations of the project have decided that the primary target audience of the project's effort and the follow on report is the Member States.

The project has thirteen partner organizations from as many different countries. Five of the partner organizations are present in this conference. They are; The Pearson Peacekeeping Institute, Canada; APCML, Australia; USIP in conjunction with PKSOI, United States; and her own organization The Folke Bernadotte Academy, Sweden. In addition to the thirteen partners, Ms. Hilding-Norberg indicated that there were and additional twelve other "contributors".

These contributors were mainly training organizations and as such assisted the partners in developing, organizing and executing training programs for targeted or “focused” law enforcement oriented organizations.

Phase I of the “Challenges” project spanned the period 1997 – 2002. The concluding report for that period was presented to the United Nations Secretary General by the British Foreign Minister on behalf of the partner organizations: The Report made recommendations to troop contributing countries, informed organizations on current peace operations developments and contributed to the reform process of United Nations Peace Operations. In addition, to this effort the “Challenges” seminar reports were published and a wide variety of input and observations were made to the various components of the United Nations to include the Secretary General; the Security Council and the C34 work group. Partner organizations also provided literature and articles to academic and diplomatic journals. Lastly, the projects goal was to increase the knowledge about peace operations through translations of the report into the official languages of the United Nations. Ms Hilding-Norberg singled out the PKSOI for it’s’ role in translating the report into Chinese. Continuing, she stated that the “Challenges” project has fostered exchanges between partner countries. Additionally, they contributed to: a) An early warning program for Africa in Pretoria; b) Establishing an international network to promote the Rule of Law, in Washington, D.C.; and c) Establishing a center for United Nations Peacekeeping, in Delhi, India, as well as providing input to the regional processes.

Current activities of the “Challenges” project included; The 14th International Challenges Seminar, Abuja, Topic “The Regional Dimensions of Peace Operations; The 15th International “Challenges” Seminar to be conducted in Beijing November 2004; and the Presentation of the “Challenges Project Phase II Concluding Report” to the Secretary General of the United Nations and Ministers of the Partner Organizations, in July 2005.

The presentation concluded with the fact that the website www.peacechallenges.net was a very up to date site and contained all of

the reports mentioned in the presentation. However, the “Challenges Phase I” report consisted of some fourteen chapters and one might want to get a “hard copy” of that report. All of the documents had been translated into the official languages of the UN. So access was easy.

COL Dooley concluded the evening with a review of the agenda for the final day’s activities and encouraged those who had not been on the Gettysburg Battlefield tour before to join in and go to the battlefield that afternoon after the official closing of the conference.

CHAPTER 3 OVERVIEW

The conference participants were divided among three workshops focusing on three separate topical groupings. Workshop composition was determined by subject matter expertise and the conferees' indicated topical desire. Workshop A had the largest number of participants. Workshops C and D, originally designed to be separate, were combined to be more effective. Each of the workshops was assigned a member of the Peacekeeping and Stability Operations Institute and a rapporteur. Team leaders and facilitators were chosen from the among conference participants. The purpose of each workshop was to examine the assigned topics and make recommendations about what points in their topical area should receive emphasis in the ongoing "Challenges to Peacekeeping Project" and the generic Pol-Mil Plan.

The workshop topics were:

Workshop A - Civil-Military Relations, Stability Police Units, Dealing with Spoilers

Work Shop B - Choice of Law, How Law Fails, How it is Established

Workshop C - Human Rights and Constitutional Perspective on the Rule of Law
In Post Conflict Stability Operations

Workshop A

- A. Workshop A (Civil-Military Relations, Stability Police Units, Dealing with Spoilers)
- B. Mission: Discuss and report Civil Military relationships and issues (Training for Interoperability, Roles and Missions, Intelligence to Evidence, C4I and the Rule of Law, Soldiers as Police); Stability Police Units (Roles and Missions, C4I, Training

for Interoperability/Interchangeability, Intel-Information-Investigations to Evidence, Linguistics); Dealing with Spoilers (Crime and Corruption, the Drug Trade, Human Trafficking, Black Marketeering, etc.)

C. Using information provided by the Conference organizers regarding Rule of Law, acknowledging the experience and sophistication of Group A conferees, recognizing the complexity of the issues and the limited time available to address them, the Facilitator, MG Tim Ford provided the following guidance:

- invited an open but disciplined discussion (see Group A roster, attached, a large group)
- welcomed three pre-arranged presentations from Group A members
- announced his plan to summarize group findings c.1600 for presentation at plenary session on 9 July
- outlined topics and themes he thought worthy of discussion:
 - preparation of a strategic concept of operations
 - identification of what is necessary to establish public order
 - consider potential consequences of initial actions upon military entry
 - bear end-state in mind from beginning of operation
 - reflect on use of force in peace operations
 - consider unaccustomed jobs military might undertake
 - consider overlapping responsibilities (e.g., military and police)
 - note connection of intelligence collection and evidence useable in court
 - think through training for
 - Post-combat activity
 - Civilians
 - Addressing crime and corruption
 - Creating a doctrine for peace operations
- evaluate utility of Stability Police Units in peace ops
- remain open-minded to new ideas

D. Summary of Findings

Session included robust discussions and three fascinating presentations on:

- Italian Army concept of stabilization and reconstruction activities
- Spoilers' (corruption and organized crime) impact on ROL
- Australian Fed Police development of an international deployment group of 500.
- . There is a critical need for integrated strategic planning and preparation of a concept of operations from the earliest point (including all ROL components- police, justice, governance).
- . Need exists to identify the requirements to establish public order early in operational planning.
- . Beginning of operation is often a defining moment. Correct action to establish order early is essential to success of the mission.
- . The end-state (including the withdrawal of international security and ROL components) needs to be gradual against articulated measurable outputs that demonstrate that the ROL capacity is in place and can be sustained. Build safeguards to prevent collapse of the ROL institutions.
- . Peace support operations must have an ability to respond comprehensively (a credible and reasonable application of the use of force including a robust response when necessary).
- . Recognize that military component in Peace Ops needs to develop flexibility. It is often first in at a time of violence, with abundant capabilities, with little civilian support, and therefore required to undertake jobs they are unaccustomed to performing.
- . Issue of complementarity and cooperation between the military and police components is necessary to understand overlapping responsibilities.

- . Ensure military understand the legal context of police actions they may undertake and the importance of intelligence and evidence collection for the purposes of prosecution (however main focus should remain on public safety and order).
- . Training
 - Military exercises need to look more at post combat activities.
 - Civilian agencies need to train more and undertake integrated training activities at national, regional, and international (UN) levels. (Swedish Viking exercise 2005).
- . Need exists for mission concept of operations to include all elements of ROL.
- . Concept of operations must be designed to build capacity for ROL that can be maintained in the community.
- . Need exists to recognize the impact of organized crime and corruption on Peace Operations. It is a fundamental challenge to the ROL. Mission standards need to recognize the existing culture and include a level of tolerance.
- . Peace Operation needs to shape the environment to encourage capacity building and to address the security context that exists.
 - Identify the center of gravity of threats to ROL
 - Attack the structures that support spoilers and organized crime.
- . Need exists to develop common civilian, police and military doctrine for peace operations (DPKO Handbook of Multidimensional Peacekeeping Operations issued in 2003. STM from DPKO).
- . Value of Stability Police Units:
Such as Multinational Specialized Units (MSU)-combine limited combat skills and professional police training
Fill a gap that often exists. Have a non-lethal force capability

Command issue (military or police)
Useful tool against organized crime

E. Detailed Group A discussion

MG Tim Ford spent approximately ten minutes in an introduction that provided the guidance in paragraph C, above, adding that there were many issues to clarify. He then invited commentary on his remarks and the introduction of important themes he might have overlooked.

Dziedzic (last names only will be used for the sake of brevity; see roster of Group A for full names) addressed the issue of public security and the importance of the early stages of an operation when the military is initially alone, calling that, “a defining moment.” If done badly, years might be spent correcting initial missteps. He used examples like Haiti, Sarajevo and Kosovo to illustrate a point: merely because a degree of security might be achieved at a certain point, it does not follow that that condition will continue. It may ebb and flow and the cause of instability may not be evident. For example, criminal elements provoked riots in Kosovo. The riots had more to do with corruption and extortion than with multicultural issues. Many such “gray areas” will be encountered.

Dziedzic praised certain types of police forces organized in units that were particularly effective. (Constabulary, Stability Police Units, Multinational Special Unit were terms used interchangeably to describe police organized in units possessing professional police skills and limited combat capability). The National Guard was also cited for effectiveness derived from daily contact with the population and the local civilian police. The group returned to the issue of interface and overlapping of the military and police when the Italian Army representatives made an early afternoon presentation (ATTACHED). That teaching point, that overlapping is unavoidable, was made clear.

Continuing his effort to cast a broad net early in the discussion, Dziedzic spoke of the effectiveness of police who combine

the combat capability to do some heavy lifting, like crowd control, and the non-lethal cop-on-beat tasks that put police in daily contact with the populace. (The term “spoilers” entered discussion at this point without definition. It was used in the sense of unanticipated obstacles to mission accomplishment, such as crime and corruption). Police gain intelligence that soldiers are normally denied. Moreover, police glean information that allows them to sort out political motivation from plain and simple crime. The potential for using intelligence as evidence in court at some future stage of operations surfaced here.

A British officer, Marriott, emphasized the utility of a comprehensive approach, (The vast experience of the British in peacekeeping from colonial times to the present was implied and understood by this sophisticated group.) He said that the US seems to have two approaches: a specific military task perceived at higher levels; and an awareness and appreciation of effects beyond war fighting learned at lower levels. In the 21st century paradigm, purely military effects must be seen as one part of a comprehensive approach. Initial armed intervention may well focus on the use of force to establish or reestablish civil order, but the military commander must incorporate the Rule of Law, Government, Humanitarian efforts and Education—in tandem—in his plan and execution. This is a great challenge to national governments and an even greater one to coalitions. Divorcing combat operations from a comprehensive approach suggests a willingness to accept the proposition that “someone else” will address the “other” tasks. However, often there will be no “someone else.”

Ford: The overall mandate is political. The world (or some state) went in for a political purpose. The military is only one of many involved strands. The Security Council or a coalition intervenes for an essentially political purpose. Can we agree on that? (This rather goes to the heart of the matter, implying the question of who does what).

Graziano addressed the “gray area” (presumably where civil and military operators meet). (Again, see Italian Army Briefing ATTACHED for more detail).

The Italian Army in the last twelve years has gained a lot of experience in the ambiguous circumstances that accompany intervention; learning that there are no neat borders that separate civil and military. This is best illustrated by close cooperation between the military and the police. Functions routinely overlap. Only through close cooperation can police and the military sort out what each does best in a given situation. When the task is clearly combat action, the military should respond. But peacekeeping and combat are not necessarily neatly distinct. And the shift from, for example, combat to humanitarian efforts is not locked in place. Conditions may, according to the demands of the specific situation, find the intervening force shifting from humanitarian aid to a combat role. In this connection, constabulary police and the military have worked together effectively in several operations. We in the military must realistically appraise what our police colleagues and we do more effectively. Recognize the special skills and professional understanding that a policeman acquires over time. In brief, know what he can do and what we can do. Recognize phases requiring combat troops and the violence from criminality more appropriately addressed by police, particularly by constabulary forces.

Feil: Think about the creation of a matrix, not as a panacea but as a pre-operation aid, a comprehensive political/military plan. That is, recognizing that each situation is unique, we have enough experience in intervention to know what is usually required. List the requirements: military, Interpol, linguistic, Intel, logistics, humanitarian, educational, etc (the sorts of items that Marriott mentioned). Then check yes or no. What do we lack? Where can it be found? I’m not proposing a plan to address unknown circumstances, but we know enough now to anticipate the kind of requirements for a generic intervention. We should also think in advance who should lead in what circumstances. We should not begin with a blank sheet.

Discussion followed. Concurrence is hard to get, even in a single country. For example, State, Defense and the NSC disagree. Nations will disagree. Administrations favor varying ends and the ways to achieve them. There are regional differences and, around the world, cultural differences. Top down planning is one way to go, but it risks losing sight of the unique aspects of a specific intervention. Starting with a blank sheet may cost time, but that approach could be fine-tuned to address a specific case.

Serafino: Shouldn't we start with creating capabilities? Then, for example, assist the military by providing them with the means to do the job we gave them. Let's use models that worked in the past.

Feil: The matrix tells you where the "white space" (un-resourced or under-resourced requirements) is. That is, it tells you where you lack capability.

Lesperance: I agree with Feil regarding the creation of a matrix. But the initial entry troops will almost certainly need to be flexible. They'll never have all that they need. They are on the scene acting (for better or worse). The point is that leaders must know what is required even if we cannot get what's needed.

Irish: The senior level sometimes sorts out the turf in a messy way. Ad hoc adjustments are made on the ground. Often there are "unhealthy rivalries" at the upper levels, while cooperation at the operational and strategic levels is quite good.

Ford: The military looks at how the military can act. The US starts with civil-military cooperation, believing that's the future. The UN sees these interventions as being civilian led. Can we clarify this issue? David?

Lightburn: I've been very quiet. In recent years I've acted as liaison between the operational and the strategic, between the UN and Bosnia. NATO followed the US lead in Bosnia when a CIMIC was established in December of 1995. CIMIC

is a military tool in which trained officers conduct liaison with civilians. It is a well-intended but limited tool. There were false starts, local police were upset, and NGOs were frustrated. The NGOs wanted to deal with the military commander, or at least with senior operations officers. They felt they were dealing with functionaries at CIMIC. There were four or five SFOR commanders with different approaches and NGOs were confused and frustrated. So, let's not confuse the CIMIC dealing with civilians with access of civilians to the senior decision maker. At the tactical level it works. The platoon commander and the Red Cross representative cooperate. At the upper level it works less well as turf battles emerge. CIMIC is a limited tool. Civil-Military cooperation is critical.

Del Col: The European countries and the US seem to operate in ways fundamentally different. He agreed with the previous speaker regarding CIMIC as a limited tool. It exists to assist the commander, not to establish a second chain of command. Cooperation among seniors is essential. Military operations must be conducted with an end-state constantly in mind. Too often the military gives too little credence to the important and complex non-military considerations.

Ford: Right. CIMIC is a useful tool. Civilian-military relations at the operational and strategic levels are a different point.

Marriott: Yes, but CIMIC is the enabler, critical in advising the commander. It is not the solution.

Stark: Speaking as a US officer, we are capabilities based. We jump right in to take action. We know what's right. We need to get demand from the bottom up to the commander.

Cringle, Ford, Hening, Litz and Feil engaged in a rapid discussion of who takes the lead, the pressing need for physical security, overarching civilian control, the capabilities of the military, time-phasing and cultural differences between the military and civilians.

Feil: We tend to see the military as being there first, but the police are there. Let's make a concrete recommendation: we need exercises in the post-combat phase. The military does exercises, too often having soldiers role-playing or bringing in civilians as an afterthought. So the military takes the lead and charges off. Civilians and civilian capabilities need to be brought to exercises early. Now the military draws the blueprint and the civilians are added later.

Ford: Civilians don't train, so the military fills a vacuum. The Nordic countries do it right.

Feil: Yes, it's a question of political culture.

Dziedzic: Civilians and soldiers need to engage in exercises and integrated training. Also, we might coordinate policies. The French were rotating troops each four months and the US each six months.

Ford: And we need to train all agencies, not just the military.

Feil: We do some of that at the NTC. A few NGOs play. But the rest are soldiers who play the role.

Lightburn: The Swedes do exercise Viking every two years, using both civilians and civilian agencies.

Del Col: Recently there is increased cooperation between armies and NGOs, for example the CIMIC school in Oberammegau.

Ford: Yes, but it is still driven by the military. Maybe we are getting close, but it would be nice for the civilians to take the lead and the military play.

Marriott: Soldiers and governments must protect the neutrality of NGOs. NGOs would have a problem inviting the military to their training.

Lesperance: We are inclined to think departmentally when we consider who takes the lead.

Graziano: Political direction of an operation comes from NATO or the UN. Italy provides a force. The American perspective tends to be national. Europeans are different. In exceptional cases, perhaps Italy in Albania, Italy might take the lead as a nation.

Ford: Preparing an existing international force by a regional headquarters or the UN that could be deployed and employed is a “long way down the path.

Gibbons: I’m hearing a lot of answers, but what’s the question? ROL depends upon the legitimacy of the government. How do you establish legitimacy?

Much later in the day that question was at least partially answered. For example the local justice system arrests, convicts and sentences a local national for a crime against, for example, a soldier of the intervening force. Or benchmarks might be used, establishing elements that can be quantified, such as the number of policemen, judges, trials, etc. Operating government agencies might be another indicator that the ROL has been established.

Lightburn: Strategy follows the agreed concept of operations that will produce ROL. In Kosovo we were conducting operations when it was widely known that there was no overarching concept. There never was.

Litz: That concept must come from the strategic leadership group.

Ford: So we recommend that senior crisis planners provide a concept of operations. They sit down together, identify the problem and establish tasks and methods to address them in a comprehensive manner.

There was general agreement that a shared concept is essential. Discussion turned to “spoilers” and the need to dismantle them to establish a safe environment. What institutions are required? In their absence, the military does the job.

From the shared concept, build capacity.

Feil: Military emphasis on purely military issues must change. Rules of Engagement (ROE) are a case in point. Traditional ROE for combat need to be adjusted for soldiers in “contact,” as in police tasks.

Graziano: ROE are decided at the political level as a political statement. They must be consistent with the mission.

This led to distinction that individual junior leaders must make when in combat, contact or in a counterinsurgency role. For example an order given by an American general to a British general was disobeyed. A sergeant or lieutenant may well find himself in a situation where changing circumstances make it unclear if one is in combat, in contact or in an insurgency.

Dalton: ROE can be situational. ROE applies to upper limit of permissible force. It is an important issue that needs to be addressed as military works with or as police.

Marriott: The use of “credible and reasonable force” must be permitted the military in accordance with the ROE. Levels of force must shift with the shift of conditions on the ground. In multinational operations there may well be differences in ROE among nations.

Someone said combat ROE is an on-off switch, go or no-go, while police work is a dial, nuanced in degree.

ROE is relatively easy for a single army, but how does it work in a coalition in a setting characterized by change and ambiguity?

Recommend police fully engage in training with the military. But there is no common doctrine for police or the military. Develop common doctrine. But this requires common legal context.

Who determines that?

Marriot: In a functioning legal system, the army can police (as in North Ireland). In a city out of control, the army (even the same army) cannot function as police.

It was generally agreed that the military has to know as soon as possible the legal context. That is, is the military either an occupying power or something else? There is no doctrine, but perhaps one is emerging from recent experiences. Then the challenge will become how to teach it.

Ford: We don't start with a blank page. A 28 chapter UN Handbook on Multinational Peacekeeping is available on CD ROM. We need a focal point where the information comes together. We need to learn what we already know.

After lunch we will look at the issues the conference organizers provided us to determine what we have done and what we yet need to do. We will hear three presentations. After discussing them, support me in putting together my summary of our findings.

Ford: (after presentations): How do we use these excellent presentations in our findings?

The discussion of crime and corruption raised the issue of what standards to apply. Accepted western standards may not be shared in the culture in which we are operating. Moreover, we are aware of worse crime and corruption in places where new have not intervened. If you intervene, you'd better know the culture. Even if you address it, the correction might take generations if corruption is embedded in a traditional society.

Dziedzic: We must ask why we intervened. If successful in accomplishing the intended purpose of the intervention, the corruption is not our problem. We need to be realistic about that.

Litz: The Australian experience in Pacific island nations confronted Australian police with customs clearly regarded as nepotism and corruption in western cultures that is part and parcel of local custom. In brief, there must be an acceptance (by enforcers and the local authorities) of the rules that are to be enforced.

In addressing police training for soldiers and the hand-off from the military to civilian agencies, a US example was cited. Often practical experience leads to the later codification of procedures. The US Coast Guard, the US Navy, the FBI and other US agencies learned how to hand-off responsibility and authority in practice. Later, practice became policy. Who takes the lead and when to transfer jurisdiction may go through the same pattern in the international community as it addresses interventions.

Recent experience suggests the wisdom of getting the military out of the justice system as expeditiously as possible, consistent with the maintenance of civil order. This ties in to the issue of political will and competence in self-government.

The utility and legal admissibility as evidence in court that earlier had been the collection of intelligence by the military was discussed. It is a complex legal issue, but awareness by the military early on regarding the desired end-state can make the intelligence collection plan consistent with the collection of evidence that might be used in trials. Providing the force with competent legal advisors and teaching soldiers to take contemporary notes are just a couple of ways to preserve evidence that might be used in criminal prosecutions in court.

From c. 16:00 until 17:30, the group assisted Ford as he prepared notes for his presentation of the group's findings to a plenary session.

F. Summary of Presentations

- #1. Italian Army General Staff Brief, Civil-Military Cooperation in Stabilisation & Reconstruction (S&R) Operations, An Army Perspective

Summary: This presentation will outline new scenarios of engagement; recall Italian Army commitments in operations; summarize lessons learned in the last 10 years; discuss CIMIC requirements

- A three-block war: combat terrorism, provide area security, and engage in reconstruction and humanitarian assistance
- From 1992 to 2004 the Italian Army operated in nine operations in eight foreign locations
- In the spring of 2004, 7,000 Italian Army personnel were deployed abroad (Note: conscripts cannot be sent abroad.)
- Following entry and deployment, transition from combat to stabilization and reconstruction, or the reverse, is difficult; phasing is only notional, since each phase can precede, follow or coincide with other phases
- The border between war and peace is indistinct; S&R requires integrated, multi-layered, inter-agency approach in planning and execution; combines political, military, economic, social and humanitarian efforts to reach a single, clearly stated strategic goal; requires cooperation of troops and a parallel civil-military organization; civil-military interface must be addressed before deployment
- Planning & execution must consider combat and S&R simultaneously
- S&R command and control headquarters requires a broad range of expertise beyond traditional military skills
- Combat and S&R assets must be drawn from readily available, modular and flexible set and task-organized according to the mission
- An S&R package combines combat organizations with CIMIC, NBC, PSYOPS, MP, ENG/EOD, rail, medical, transport and RISTA support
- The bridge from conflict and crisis to nation building requires civil-military cooperation
- The army and constabulary forces work hand-in-hand, usually sorting out tasks according to capability, but often necessarily overlapping
- The Italian Army has worked closely with constabulary forces and fully appreciates the unique skills they bring to S&R, among them skilled criminal investigation and crowd control

- The way ahead requires joint civil-military training, planning, and permanent coordinating bodies
- NATO CIMIC Group South exists with four member states and two others applying for membership
- The Italian Army's Infantry School is host to the S&R Center, whose focus is on lessons learned, concepts, doctrine, procedures, training and liaison

#2. The Link Between Government Corruption & International Crime Presented by COL Jack Thomas Tomarchio, OSD/SOLIC

Overview

1. Types of Government Corruption
2. Consequences of Government Corruption
3. International Crime
4. Organized Crime
5. Black Market Formation
6. Why Corruption Emerges
7. Recent Developments

1. Types of Government Corruption

- Procurement Fraud
- Money Laundering
- Bribes
- Illegal Use of Power & Position
- Corrupt Judiciary
- Theft of Government Property or Funds

2. Consequences of Government Corruption

- Economic
- Political
- Social
- Global

3. Post-Cold War Opportunities for Criminal Groups

- Lower economic and political barriers
- Fragile new democracies
- Increased legitimate trade
- Advances of technology that facilitate global communication and trade

4. Types of International Crime
 - Drug trafficking
 - Arms trafficking
 - Money trafficking
 - Immigrant smuggling and trafficking in persons
5. Types of Organized Crime
 - Auto theft
 - Corruption
 - Drug trafficking
 - Counterfeiting, fraud
 - Environmental Crime
 - Gambling
 - Labor racketeering
 - Loan sharking
 - Money laundering
 - Smuggling
6. Damaging Effects of Organized Crime
 - Affects national security
 - Undermines sovereignty of a state
 - Poses threats to the global economy
 - Can damage political structures
7. Government Responses to Organized Crime
 - Highlighting the issue in public forums
 - International Crime Control Act of 1996
 - New anti-crime legislation
 - Presidential Decision Directives 42 and 35
8. Difficulties in Eliminating Organized Crime
 - Violence against informants and witnesses
 - Threats against prosecutors and juries
 - Corruption of law enforcement officials
 - Manipulation of the legal system
 - Financial contributions to political campaigns
9. Why Corruption Emerges
 - Faulty government policies
 - Poorly conceived/managed programs

- Underdeveloped civil society
- Lack of accountability and transparency
- Corrupt justice system

10. Established Black Markets

- Oil industry
- Arms trade
- Drug trade
- Nuclear weapons

11. Iraq's Black Markets

- Ancient artifacts
- Prescription drug
- Abandoned weapons and ammunition

#3, Summary, Australian Federal Police, Deployment

This presentation was very brief, (lasting two or three minutes). It described a promising recent Australian initiative. The Australian Federal Police has developed an international deployment group of 500 police officers. It has operated with some success in Papua, New Guinea and in the Solomon Islands. It is too early to be definitive, but the initiative has aroused the interest of the international community.

Workshop B

A. Work Shop B Topic- (Choice of Law, How Law Fails, How it is Established)

B. Mission/Charge- Choice of Law (Martial, Host/Occupied Nation Civil/Criminal, Other Civil/Criminal, International, Customary/Traditional Law. The difficult question of capital crimes. USIP transitional codes); How Law Fails, How is it Established, How is it Re-established.

C. Guidance- Mr. Bruce Oswald and Ms. Colette Rausch were the Workshop Team Leaders. The Workshop participants were asked to use the following questions as a guide to completing their work: Was the law of occupation an appropriate legal framework for the application of the Rule of Law on peace operations? Does the law of occupation need extensive revision to be applied effectively to peace operations? What, if any, legal basis exists to override the application of host nation law? What aspects of international law may be relevant to apply to peace operations? Is there any practical use in developing transitional justice codes for peace operations (If yes, are there any legal/practical considerations regarding this application of these transitional justice codes? If no, why not?) What legal regimes may be applied to hold contractors/NGO/IGO responsible for their actions and omissions to peace operations? What, if any, choice of law lessons have been learned on previous peace operations? How can an ongoing peace operation assist local authorities to maintain the Rule of Law so that it does not fail during the peace operation? How can ongoing peace operations assist international organizations to ensure that the Rule of Law does not fail during the peace operation? How do peace operations best establish the Rule of Law on peace operations? How do peace operations best re-establish the Rule of Law on peace operations? Is the failure and establishment of the Rule of Law dependent on improving the process of the Rule of Law? What mechanism/structure does the peace operation have to put in place to further support the establishment of Rule of Law? What, if any, lessons learned might be derived from past operations regarding the application and establishment of the Rule of Law? Identify spoilers and supporters of the Rule of Law in peace operations.

D. Summary of the findings

1. There was a consensus that transitional codes had a practical use for peace operations. The value of the transitional code is that it provides a “toolbox” for the newly formed country to use as it re-establishes the Rule of Law.

2. The strength of spoilers rested in their superior knowledge of the land, their knowledge of the local language and their use of fear. Spoilers have as a disadvantage the fact that they have no program for the country. Occupiers have as strengths their program for the reestablishment of the Rule of Law, and they bring hope and a vision for the country. Occupiers should not be “suckered” by fluent English speaking locals.
3. The laws that should be given priority when re-establishing the Rule of Law are those laws that encourage investment. These include labor, commerce, property, and contracting laws.
4. Peacekeepers should look at local laws first and try to amend them instead of bringing in an outside legal system. If changes to the local law are necessary, Articles 64-70 of the Fourth Geneva Convention can be used. If at all possible, the engine of change for the laws should be the new government.
5. In regard to the “Law of Privileges and Immunity”, every soldier, contractor, and expert who is occupying must be accountable to someone.
6. It was agreed upon that the “Law of Occupation” was useful. It was also agreed upon that Article 66 should be used only as a last resort as civilian courts should be used, if at all possible, to try personnel instead of military tribunals.
7. In the planning of military operations, those personnel who are to facilitate the re-establishment of the “Rule of Law” should be embedded early on with the occupying force.
8. Along with transitional codes, “properly effective forms” can assist in re-establishment of the Rule of Law. Examples of these forms include arrest warrants and citations.
9. Occupiers need to analyze carefully what local populace they need to get “buy-in” for the new laws. Diversity in ethnic groups, religious groups, and gender must be weighed in the calculus of who must buy-in to the new laws.
10. Internally displaced people are a very difficult problem. Administrative law must be set up quickly to deal with these problems. Quick “Retail Justice” ameliorates many of these domestic law problems.

11. A listing of commonalities from previous operations included: things will go slower than you think they should; spoilers will always try to maintain fear; you must always show that you are moving forward; you should never promise something you can't deliver. The decision-making process should be peaceful, phased and orderly.
12. It was agreed that there should be an "Institutional Environment" to provide training for personnel engaged in the establishment of the Rule of Law. This would include pre-deployment training and post-deployment debriefings. Of particular note is that departing legal personnel should out-brief the incoming legal personnel to provide some sense of continuity.

E. Detailed Discussion

1. Ms. Rausch began the discussion with a case study on Kosovo and East Timor entitled "Laws, Laws, and More Damn Laws." She stated that in Kosovo military JAG officers were early-on organized and ready to hand off the legal process to civilian authorities. However, because there were a variety of different sectors (French, American, British, Italian), the Kosovars could not count on consistent justice from the different sectors.
2. COL Zanin said that the Iraqi invasion had serious Rule of Law problems because there were no police or prisons. He continued that there must be courts, police and prisons for the legal system to work.
3. There was some discussion about who makes the Law: UN, CPA (Iraq), or the new government. It was pointed out that personality and the amount of resources are contributing factors to the laws that are made. Ms. Kushner stated that what type of resources you are going to receive to re-establish the Rule of Law is always problematic.
4. There was some discussion about how the military plays a role in making the law. Ms. Rausch said that the military plays some role but it should be in the planning phase. COL Zanin said that the current military, unlike 1945, now assists the civilians in putting the laws together.

5. Amb. Farrand stated the Rule of Law must be established at the outset. It is the fundamental starting point. In Bosnia, he said, it was mandated that the Serbian and Croatian laws be gradually molded into a common law.
6. Ms. Rausch started a discussion on what laws should be used. She recommended that there should be an effort to use local laws. To bring in outside laws, she contends, will only cause chaos and confusion. Her methodology for occupying forces to reestablish the Rule of Law is:
 - a. Start with what local law you have.
 - b. Get buy-in from the local populace.
 - c. Process should be systematic.
 - d. Personnel doing the negotiating should be there on a long-term basis.
7. COL Zanin made the point that what is problematic is that certain elements of local law may be offensive to the donor countries. These particular portions of the local law (particular crimes for example) will have to be tweaked to maintain the support of the donor countries.
8. Mr. Aseltine said, that to get the local populace to buy in to the changes to their legal system, it might be necessary to give selected members of the local populace a course(s) on Rule of Law. The course may help them to understand the necessity for changing their system.
9. Mr. Hartmann made the point that the best solution for changing the law is to let the new government drive the creation of any new laws.
10. Mr. Oswald said, that in setting up a legal system, it is important to realize the importance of phasing an operation and knowing what entity (military, UN, local civilian) has primacy during each phase. Mr. Oswald also said that security and the Rule of Law cannot be separated. Mr. Hartmann said that the military is always welcome to help plan the reestablishment of the Rule of Law. Mr. Horn said that the phasing of operations is parallel rather than sequential.
11. There was some discussion of detention. Occupiers must recognize that people are detained in all phases of an operation. Mr. Hartmann said that the value of detention

to the local populace might be that they do not believe a crime has been committed unless there is detention of the suspect. Mr. Oswald said that accountability of detainees is necessary. He said that the local populace must believe that detainees are properly cared for. Ms Kushner said it is a huge problem when the military puts detainees in prison where criminals are housed.

12. There was discussion of transitional codes. Mr. Hartmann said that the value of transitional codes is that it gives the new government a toolbox that the country can use to help re-establish the Rule of Law. Amb. Farrand said a transitional code would have been very useful in Bosnia as long as the local laws were used first..
13. There was some discussion of spoilers. Amb. Farrand said that spoilers have the advantage of knowing the land, better fluency in the local language, and their use of fear. Spoilers have the disadvantage of having no program for the country. Amb. Farrand said occupiers have the advantage that they have a program, bring hope, and have a vision for the country. Amb. Farrand also said that occupiers should beware of fluent English-speaking locals who may in fact be spoilers.
14. There was discussion about what laws should be the priority of the occupiers to establish. Amb. Farrand said that the laws that should be priority are those that make the country investor friendly. These include labor, commerce, contracting and property laws.
15. Ms. Kushner brought up the subject of resources for embedded legal advisors. She said that perhaps “best practices” should be developed for embedded legal advisors. Ms. Rausch said that resources for embedded legal advisors are sometimes intertwined with ethical issues and that advisors should not take personal advantage of the resources being provided to them.
16. Amb. Farrand spoke on the problem of internally displaced people. He said it was important to get people quickly back into their own homes as it provides a sense of calmness. Mr. Garzon said that administrative domestic law should be set up quickly to have “Retail Justice” for the local populace.

Ms. Kushner said that there should be a “toolbox” on property law that occupiers can quickly incorporate. LTC Feidler provided an anecdote on the importance of establishing local domestic law. Mr. Horn added, that in dealing with property laws watching who is trying to get money from you and knowing that traffic regulations are both important. Ms. Rausch concluded that property disputes must be addressed as quickly as possible and that war-fighters, if at all possible, secure property records as soon as possible.

17. There was discussion about the Law of Occupation. Mr. Oswald stated that we should try to apply Article 64 toward local laws and only tweak those laws that need to be changed. Mr. Aseltine raised the possibility of using Article 66 of the 4th Geneva Convention and using Military Tribunals in helping reestablish the Rule of Law. Mr. Hartmann stated that, if possible, all court cases of new or old law should be tried in civilian courts, not in military tribunals.
18. There was some discussion about the use of soldiers in the re-establishment of the Rule of Law. Mr. Hartmann said that soldiers could deter, detain, and preserve evidence. He said that soldiers do not do well in the area of preservation of evidence. He believed that soldiers could be given guidelines about what they need to do properly preserve evidence.
19. There was discussion about the subject of commonality in different operations. Ms. Rausch was interested to know if there were flashpoints that occur in every operation. Amb. Farrand said that: things always go slower than you think they should; spoilers will always try to maintain fear; with the Rule of Law occupiers are trying to bring “justice” with them; occupiers must always show that you are going forward; and occupiers should never promise something that they can’t deliver. Further discussion revealed that there must be appropriate resources provided for the personnel who are establishing the Rule of Law, that the legal personnel should not be understaffed (done on the cheap), and the occupiers should provide good examples of law for the nationals to emulate.

20. There was discussion about how to institutionalize the legal lessons learned that have occurred in other operations and then pass them on to the legal personnel who will be in future operations. The conclusion of the group was that there should be pre-deployment training, post-deployment debriefings and some type of formal mechanism to make this happen.

F. Presentations and Summary of Presentations - N/A

G. Points worth additional effort in support of Conference Objectives - N/A

H. Conclusion - N/A

Workshop C

Human Rights and Constitutional Perspective on the Rule of Law In Post Conflict Stability Operations

- A. Workshop Topic: To examine the role of Human Rights (HR) and Constitutional challenges for determining the Rule of Law in post conflict stability operations. The conference was originally organized with separate HR and Constitutional workshops. The HR and Constitution workshops were combined because the number of personnel assigned to two workshops was not big enough to support two groups and because of the close similarity of the issues.
- B. Mission/Charge: Mr. Marshall was the facilitator for the combined workshop. Mr. Preston facilitated discussions on Constitutional issues. COL (Ret) Rubini was the facilitator for the discussion on HR abuses. Mr. Marshall identified two major workshop objectives at the beginning of the session: to examine peace keeping operations vice the Rule of Law from a HR and Constitutional perspective: to review and provide comment on the draft "Generic Political - Military Plan for a Multilateral Complex Contingency Operation" dated 18 July 2002, referred to hereafter as reference 1. The facilitator was

provided a recommended list of questions for both workshops. A third task, to provide comment on a draft topic outline supporting a thesis statement of “What are the challenges to cooperation and coordination in relation to the Rule of Law?”, was assigned to all workshops during the session, referred hereafter as reference 2.

- C. Workshop attendees: The following personnel comprised the HR – Constitution workshop. Personnel originally assigned to the Constitution workshop are identified.

Mr. David Marshall (Combined workshop facilitator)

CAPT John Cherry USMC

COL Tim Cornett USA (Constitution workshop)

(Only attended part of the afternoon session)

COL Richard Dillon USA (Constitution workshop)

Ms. Agnieszka Klonowiecka-Milart

MAJ Kevin Lanigan USA

LTC Jeff McNary USA (Constitution workshop)

Mr. Matthew Preston (Constitution workshop facilitator)

COL (Ret) Daniel Rubini USA (HR abuses facilitator)

Mr. Mark Walsh

Mr. Lawrence Woocher

Mr. Jim Simms (Recorder)

- D. Guidance: The conference agenda listed the following topics to be discussed by the workshops participants. The purpose of the HR workshop was to examine war crimes, property settlement, justice versus revenge, and doctrine. The purpose of the Constitutional workshop was to examine the United Nations (UN) generic constitution, “flash to bang” (time instituted to time accepted and respected) elections and guaranteed individual rights.
- E. Summary of the findings: Workshop C participants examined three major topics. First, the group identified six primary challenges facing the international community in the area of the Rule of Law during post conflict stability operations.

Second, the group identified the primary challenges for stability operations concerning the Constitution. Third, the group identified the major issues related to HR and the Constitution that deserve further study and considered for inclusion in reference 1. In addition, the workshop participants briefly examined references 1 and 2. Each of these topics is addressed below and additional detail is provided in paragraph 6.

1. Primary challenges facing the international community.
 - a. Status of existing laws.
 - b. Status of the institutions that provide a country's legal framework.
 - c. Capacity of the host nation to be governed.
 - d. Status of previous HR abuses.
 - e. The spoilers that will have an impact on the Rule of Law in the post conflict stability operations process.
 - f. The international community's position concerning the host nation being assisted.
2. Constitutional challenges.
 - a. As with HR challenges, what is the Rule of law?
 - b. Is a meaningful Constitution in place? Do the key national "stake holders" support all facets of the Constitution? Does the population support the constitution?
 - c. The legal framework document must contain three basic parts.
3. Major issues related to HR and the Constitution that warrant further study and consideration for inclusion in reference 1.
 - a. The centrality of HR as the basis for post conflict stability operations
 - b. Meaningful consultation must be established and maintained with key host nation "stake holders.
 - c. The reform expectations in post conflict stability operations must be balanced.
 - d. It is key to have a communication strategy.
 - e. The stability operations strategy must ensure that the justice sector is sustained and engaged.

- f. The military's role in HR must not undermine the rule of law.
 - g. There must be coordination among the "actors" in the reform process.
 - h. Developing an interim and permanent Constitution through a process that is considered legitimate, embracing of HR and democratic principles.
4. The workshop reviewed and decided not to comment on references 1 and 2.

F. Detailed discussion:

- a. Review of reference 1. The workshop participants spent fifteen minutes reviewing reference 1 at the beginning of the session. Because reference 1 was provided to conference attendees the evening before, attendees did not have time to develop detailed comments. This workshop group felt the following paragraphs in reference 1 had application in the HR and Constitutional area. Paragraphs 8.14 Rule of Law & Administration of Justice Tasks (State, AID and Justice), 8.15 Counter Official Corruption/Organized Crime/Security Force Extortion Tasks (State, CIA, Justice, FBI, Treasury, Customs, OSD and Joint Staff) and 8.19 Human Rights Abuses/Atrocities/War Crimes Tasks (State and Justice). The workshop did not discuss reference 1 in detail.
- b. Rule of law from a HR and Constitutional perspective. Mr. Marshall did not use the questions provided to address the HR and Constitutional issues. Instead he proposed three (expanded to six) main challenges facing post conflict stability operations. Each of these broad issues must be analyzed in detail to establish a baseline for each area. An observation is that historically the international community over-estimates the in-place requirement and under-estimates the time required to transition to a new government. A description of each primary challenge is addressed below.

1. Status of the existing law: The existing law, both national and international, must be reviewed to determine efficiency and value. This includes reviewing the legal framework, the constitution, and the criminal and civil law. Normally the criminal law is examined first because it is needed to stabilize society. Does society support the current legal system? Laws may be in place that are not being obeyed or enforced. Unwritten laws may be used to rule society. Public understanding of the law must be determined. If the population is rejecting the current law it must be either enforced or replaced. What is the role of “traditional” justice in society? HR law reviews should be conducted. How is the law disseminated to the public? The review of the legal system should include short, mid and long-range goals. Ways, ends, and means should be used during the assessment process. Do not base the analysis on historic operations; rather, people must think “out of the box” and be creative in thinking. For example, in Iraq the coalition was able to go back to the laws in place in the 1960s and establish a legal framework. In Haiti there was no law in place in the past.
2. Institutions: What is the status of the court system and to what degree is it functioning? If there are courts established, are they functioning and funded? What is the status of the criminal system from arrest to conviction? The system should have established maximum time lines from arrest to trial, recommend 72 hours. People found not guilty should be released. People found guilty should be sentenced and begin serving their sentence in acceptable period. In Haiti arrest meant confinement without trial. Is there a viable police force and prison system? The evaluation must include both the numbers and quality of judges. It is critical to have an early understanding of the host nation’s existing institutions and funding; much of this information is available before entering the host nation. If shortcomings are identified in the institutional

system, corrective action must be taken immediately. Does the host nation have an HR institution already operational? What is the public's perception of HR? What expectations do the national actors have to frame efforts needed during post operations? Previous HR compliance must be evaluated and that compliance must be evaluated during post conflict operations. Institution expectations are traditionally different outside the capitol area. There is a legal structure, but it is a shell initially and required refinement. Different expectations cause difficulties in changing the system. What is reasonable to try to construct "western organization?" What needs to be done in the short term? Institutional systems may break down. Essential elements must be identified for the short term with plans to build a productive system in the future.

3. Capacity: What is the capability of the court system to operate? The court system includes the legal establishment actors, prosecutors and defense lawyers, forensics experts, courts and Department of Justice, intervening authority, Ministry of Justice, Ministry of Finance, Rule of Law, prisons, and other legal institutions. The host nation Bar Association, if one exists, and civil society are good organizations to use to determine the legal system's capacity. Does the host nation population support the national and local level institutions? There is a difference in the level of education between countries, i.e.; the educational level in Kosovo was different than that found in Afghanistan. The population's educational level will impact on the ability for reform to be implemented.

The international community must be examined to determine the level of support available. Do nations that show a willingness to provide support have the capability to provide the support? There should be an international standing assessment capability to respond to post conflict operations' request for assistance. At times international funding is available; however, there are no international

organizations that are capable of providing requested assistance.

The following are aspects of the capacity of institutional actors; the numbers of personnel and budgets, logistics (buildings, equipment, salaries, working mechanisms/systems to deliver these); knowledge and training experience, court records; the management and tracking system for cases (often not found); and awareness of HR norms. Does the host nation have the concept of HR? Are minorities included? What is the level of security?

4. Status of previous HR abuses: COL (Ret) Rubini led the discussion on HR abuses. The discussion focused on actions the international community should accomplish before arriving in the host nation and actions required for a good assessment of the host nation upon arrival.
 - a. Certain actions are required before deployment. Before deploying to the host nation conduct a thorough review of open sources, i.e., the National Geographic and classified intelligence reports to obtain as much information as possible about past HR issues. This historical information will provide the basis for the planning on prosecuting previous HR abusers. However, in some cases little information may be available prior to entering the host nation, as was the case in Kosovo. The first action on arrival in the host nation is to identify lawyers and translators who will assist in validating HR abuses. This networking and making contacts with lawyers and translators may be available from exile political groups, as was the case for determining HR abuses in Kuwait. Because of the family system in Kuwait, these lawyers and translators from Kuwait provided quick access to key senior government officials who assisted in re-establishing the government in Kuwait. In other cases networking will be done upon arrival for lawyers and translators as was done in Iraq. The Department

of State provided the names for the first group of Iraqi lawyers and translators. The second group of lawyers and translators came to coalition forces and were assembled off the streets. A pool of translators may be available from the US or other international communities going into the host nation as was the case when the US went into Haiti. Several thousand Haitians serving in the US military were used as translators in Haiti. These soldiers and Marines were highly respected by the local population. However, there were few Arabic translators available in the US; most used were identified in country. In Iraq, one could not operate without a translator.

- b. Once in country, a detailed assessment must be made to validate the level of HR abuses. This process begins with the lawyers and translators identified before or shortly after arrival. Whatever the source of lawyers and translators, some of these personnel will provide outstanding support, becoming advisors and guides, while others will not be very good and will not be retained. The assessment must be based on field research not done at only the national level. Judges, prosecutors, police and practicing lawyers are a good source to use in conducting the public sampling. In Iraq most of the “regular” justices at the local level were not corrupt. The regular judges were not involved in criminal activity but did function in a corrupt regime. However, the justices in the “special courts” were frequently identified as war criminals. Based on the experience in Bosnia, the international community must do more than just talk to people in the assessment. The assessment must follow trials to make sure the trials are run correctly. In Bosnia it took six years to finally receive approved funding and recruit people working in system. A matrix of types of personnel involved in the legal profession should be developed, qualifying the capabilities of each.

- c. A report on HR abuses should be published after the assessment is complete. The report should highlight the priorities, strategies and resources, i.e., personnel, funds and possibly the military available to begin the stabilization process. The stabilization process will be constrained by the security situation and political environment. The international community providing support during post conflict operations must also be monitored for HR abuses. Historically international forces have committed HR abuses in post conflict operations. It is critical to publish the report in a timely manner. Time is of the essence to correct HR abuses. The international community must determine the time required for rebuilding the legal foundations. In Haiti there was a major failure of institution and capacity building. There was too little assistance and that provided did not last long enough. The U.S. Army wanted to complete the mission as soon as possible. The President of Haiti did not “buy into” the recommended institutional changes required for reform. A small percentage of the population had the majority of the wealth and did not want to implement changes that would cause their financial holdings to be adjusted.
5. Spoilers: Spoilers are those who obstruct the mission and challenge peace and security and conditions for economic growth. The following are examples of spoilers: previous government personnel, former regime loyalists, external actors, and organized crime and criminal elements (generally, HR violators, war criminals and insurgents and extremists). Some of these groups may have economic motivations, i.e.; an industry may be closed because of HR issues or a part of the banking industry maybe closed because some banks may be operating outside the law. The media at times can be considered a spoiler if the media supports any of the above or if it is used to incite violence. Someone or an agency could be a spoiler at one point but may not always remain a spoiler.

The assessment process must include a plan on how to deal with the different types of spoilers. If the spoilers' threat is great, the military must deal with the threat. In some cases spoilers remain in power as they did in Haiti under the Carter Agreement. Sometimes a leader is loved by people but under attack from the international community. The political dimension of spoilers must also be addressed in the strategic plan. Spoilers cannot be left in place without being dealt with. A communication strategy explaining the international community involvement needs to be developed. Legal responses to spoilers must be developed.

6. Define the international community: When assessing the host nation the international community must also be assessed. What organizations, i.e., the United Nations (UN), regional organizations, states, non government organizations (NGO), donors (i.e., World Bank) and information operations need to be evaluated against the international mission to provide support. The culture, host nation language, the allocation of resources, security, learning process and partnership (i.e., the level of cooperation and coordination) determine the type of support required. The knowledge of HR, training, and practice the international community has is also key.
- c. Mr. Preston was the facilitator for the discussion on the constitutional challenges encountered in a host nation. The following is a list of the constitutional challenges developed by the workshop.
1. Rule of law. Does the host nation have a Constitution? If there is not a Constitution or if the one in place is not acceptable to the international community, then an interim equivalent must be developed to establish a transfer framework from the current Rule of law to one required at the end of stability operations. The international mandate will determine what type of legal framework is required. In Iraq the decision was made to

revert to the Rule of Law from the 1960s era. The new document was titled a “transitional document” instead of an interim or new Constitution because of the sensitivity surrounding development of a revised Constitution. In Iraq the occupation power was in control and the Governing Council was established by a grant from the occupation power. This council was made up of twenty-five people who formed a combined legislative and executive branch. This arrangement did not work in Iraq. Is there a requirement for a “far end” legal document? Is the international community’s role only to provide an interim document and not a final document? What input should the international community be thinking of having? Democratic separation of powers and HR issues were tied to discussions about the legal system and Rule of Law led by Mr. Marshall. The UN may be developing an interim Constitution example to assist in developing the interim Constitution in post conflict stability operations. Whatever the international mandate, it is important to have host nation involvement in development of the revised legal framework document.

2. A rule by decree and/or an interim constitution mandate is key to establish the post conflict government. Are there executive declarations of principle? There must be some oversight mechanism for excessive use of power by the interim authority. Grass roots involvement in the process during the interim period is critical.
3. The three functions are needed for Constitution or legal framework documents: establish an independent judiciary; incorporate a basic set of governing rules that should contain elements of a Bill of Rights incorporating HR and democratic principles of elections; third establish a framework of laws that control the functions of government that set norms for the various ministries in government. HR and judicial structure should be address in this framework.

d. The final workshop objective was to identify one or two issues related to HR and the Constitution that deserve further attention and inclusion in reference 1. Mr. Marshall facilitated the closing discussion. He proposed two key issues, which the workshop participants expanded to the eight below.

1. The centrality of HR as the basis for post conflict stability operations. Insuring that international HR norms are established and obeyed is key for a democratic society and impact on the primary challenges and the transition strategy in post conflict stability operations. There is little reference to HR in reference 1.
2. Meaningful consultation must be established and maintained with key host nation “stake holders.”
3. The reform expectations in post conflict stability operations must be balanced. Balancing the expectations is more important than lowering expectations and trying to accomplish the transition too quickly. The protection of HR must be clearly defended. Ways must be identified to fight crime and protect civilians.
4. It is key to have a communication strategy. Rarely do host nations know what reform strategy is to be conducted in their country during post conflict stability operations.
5. The stability operations strategy must ensure that the justice sector is sustained and engaged.
6. The military’s role in HR must not undermine the rule of law. Military operations must protect the population, monitor and report any HR violations, support HR organizations, closely coordinate with key HR actors and provide HR training. HR is not an add-on to political and military operations; rather HR is critical to a good political strategy. There must be HR legal advisors.

7. There must be coordination among the “actors” in the reform process. Information operations must be coordinated with all key HR participants.
 8. Develop an interim and permanent Constitution through a process that is considered legitimate to embracing HR and democratic principles.
- G. Presentations and summary of presentations: There were no presentations made to this workshop.
- H. Points worth additional effort in support of conference objectives:
Mr. Marshall expressed a desire to assist U.S. Army Peace Keeping and Stability Operations Institute review reference 1.
- I. Conclusions: None were identified by this workshop.

CHAPTER 4

CONCLUSION

Colonel Dooley opened the concluding plenary session with a review of the expectations of the three day session. He placed strong emphasis on the effort to obtain feedback from the participants on the chapter outline for the “Challenges” project and input to the “Generic Political-Military Plan for a Multilateral Complex Contingency Operation”. He stated the workshop presentations would be given in reverse order and that workgroups C and D had been combined. At that point he introduced the presenter for workgroup C/D.

Workgroup C/D felt that eight significant points would aid in the developments of the two documents. The conclusions were the result of a collaborative effort of all the workgroup attendees. The points were not listed in any particular significant order. The group leader expressed the hope that there would be continued dialogue between the PKSOI and the participants on this effort. The points include:

1. The centrality of human rights: We must move away from the rhetoric of human rights to the implementation of human rights. Without human rights as an integral part of any transition plan in a post conflict stage we are failing to establish sound government
2. The development of a justice strategy: A strategy is needed for justice. Circumstances, once you get on the ground, may dictate that you modify your original strategy.
3. Meaningful consultation: A thoughtful deliberate strategy with meaningful consultation with key stake holders, the legal actors – lawyers, doctors, judges, or key actors is vital.
4. Balancing expectations: Balance the expectations between “us” and the stakeholders. There must again be realistic expectations that can be accomplished and understood what cannot in the time allocated frame that you have;
5. Effective communications between those stake holders on your law reform metrics. These communications must be meaningful, genuine and occur before the implementation of the reform measures; not after. Post facto communications do not lead to effective involvement and support from key stake holders;

6. Strengthen the communications between the military and the human rights organizations. This point is very important to the United Nations. A very strong relationship already exists between the military and humanitarian organizations. A similar relationship must exist for the human rights organizations. It is critical for the military to be able to identify and inform the respective human rights organizations when there are violations of human rights. The military must be able to assist in being an active player in advancing human rights and rule of law;
7. Improved coordination among all actors involved in legal reform efforts. There is no lack of coordination between the traditional players in the legal reform effort. But we must expand that effort to all “actors” such as policy makers, civil society, etc. and
8. Legal reform and law making, establishing a constitution or other legal instruments means that they must be viewed by all as legitimate, realistic and genuine, both by the international community and the public at large. Without these key components, a legitimate process will not exist.

A comment was made that it might be better to modify the statement in point six to read, “The military and security organizations” vice “the military and human rights organizations”. This is due to the fact that security organizations include the entire spectrum of players, the law enforcement community being just one. It was agreed that this was a better representation of the intent of point six.

Group B expressed a hope that commanders and others preparing to go on operations would have the benefit of the expertise that existed in the conference and that they could be provided with a sort of pre-deployment train up packet that would utilize the expertise represented in this workshop.

The group examined the experience and lessons learned from the multitude of recent operations ranging from Afghanistan, Kosovo, Brcko, East Timor and Iraq. With this experience in mind the group then discussed the key issue of: law of occupation, the law of occupation must be applied when a military force is involved

in belligerent occupation. The group felt that whatever laws were enacted must be workable to the situation to which they related. An example is the "occupational law" for Afghanistan. Here the local population agreed to abide by the laws but, at the end of the day they "threw them into the trash can". They just were not as workable as they should have been. In contrast to this was Brcko, where the ambassador had tremendous latitude in relation to Rule of Law. He could draft laws that enabled the effort to move forward and be effective. The training of peacekeepers is absolutely a must as far as the rule of law is concerned. The training needs to be conducted prior to deployment. It was felt that institutionalizing Rule of Law at "home" needed to be done, so people in the field as well as those at "home" would be more cognizant. The end result would be a more effective program. People would be accountable for their actions. The group identified a number of common tension points when forces were trying to maintain law and order during peacekeeping operations. These included such areas as spoilers and supporters, promising something you cannot deliver, adapting a short term solution that would adversely affect the long term solution and success of the operation. And leaving a viable legacy for the host nation. The workshop participants felt that one of the most critical laws relevant to stability operations was the property law. It was key and essential to have an equitable property law. It was recognized that the justice system would gain its most support and success from local fundamental laws that impact on families, local merchants etc, and could be labeled retail justice. Last but not least was accountability. Who was going to be involved in establishing, maintaining and promoting the justice system? All concerned must be held accountable from top to bottom. Change must occur, peacefully, justly, and orderly.

An observation was made concerning the availability of training modules for units going into peacekeeping operations. Currently over twenty two modules are available to the force. They can be delivered before, during and after deployment. Obviously the most effective or opportune period is before deployment. The packages can be tailored for the needs of the units.

A conference participant commented that it was key to bring down the big spoilers. These people had to be identified quickly and moved out of the way or they would attempt to derail the effort. One could look at Saddam Hussein and Osama Bin Laden; both of these people had tremendous influence in the areas that they operated or controlled. We got rid of Saddam and were attempting to eliminate Bin Laden. These “spoilers” had and have extensive second and third order effect on any peacekeeping operation.

It was acknowledged that a coordinated effort to capture the experiences of law judges, police officers and military personnel who had gone through these many operations was currently not in place. If such an effort existed, those were going to deploy and find themselves in a situation could use this effort for operational lessons learned. There are some rudimentary ongoing efforts, but it is recommended that one of the points that the conference should support was the establishment of some sort of web hosting or list server where that type of information could reside and experience could be contacted, such as an alumni association.

Workshop participants asked about the latitude an occupying power had under the law of occupation and, if that power could privatize heretofore non-private industries. The response was that, under the law of occupation, you became an administrator and had certain inherent responsibilities, although, that you could not do just what you wanted to do. The first time that there was any formal writing on the topic was around the turn of the 20th century and then again at the end of World War II. However it was felt that, due to the changing world, the law of occupation needs to be reexamined and maybe even rewritten. It was proposed that this might be a topic that the PKSOI and APCML might sponsor and host sessions to examine the law of occupation and make recommended changes.

Workgroup A presented their findings. The session was lively as it had the largest number of participants, over twenty three in the group, and then a large number of people came in and out of the session offering equally significant contributions. The session included active discussions on the Italian concept of stabilization and

reconstruction, spoilers and how they impacted on Rule of Law, and the Australian police development and international deployment of the group of 500.

Some of the conclusions are:

- 1) That there is critical need for interrelated planning at the strategic level;
- 2) Strategic analysis must be done early on;
- 3) The beginning of the operation is the defining moment in most cases. Often there are long term impacts;
- 4) The end state to include the withdrawal needs to be gradual. The handover needs to “soft not abrupt”. It needs to be defined by successful objectives. Not budgets etc;
- 5) Peace support operations must have the ability to respond across the full spectrum;
- 6) It is the military component that is often in at the critical initial period of time of the operation. In many instances they are called upon to take on jobs for which they are not trained. Thus the more junior leaders who are often at the front must also be trained on the Rule of Law and procedures;
- 7) Ensure that the military and the police understood and developed the mission from the very start;
- 8) The military must understand the legal context of the police actions that they might be called upon to undertake;
- 9) Training exercises need to focus on the post-conflict and integrate civilian agencies at all levels. The military needs to exercise the difficult gray areas that occur after the conflict or hostilities cease;
- 10) The Rules of Engagement and Rule of Law need to be embedded from top to bottom and applied consistently;
- 11) Need to recognize the impact of organized crime and corruption on the Rule of Law;
- 12) The impact of spoilers must be considered at every occurrence. Their center of gravity needs to be identified and attacked. This needs to be in every operations order;
- 13) Capacity building must be included into the concept. How do you change environment and have it be sustainable?;
- 14) The group felt that common doctrine needed to be developed and embedded across nations, organizations and units;

- 15) Stability police units play a key and valuable function on peace operations and the establishment of Rule of Law. Often these units fill the gap and can be a very good tool against organized crime. The issue of chain of command must be determined, but that is more of a procedural issue.

The participants discussed the issue of command is critical to the ability of the stability police to react to situations. It was felt that they need to be under a regional organization that enables these units to react and deploy rapidly. One needs to look ahead to the second and third order effects of command and effectiveness. Plan ahead and do contingencies.

The issue of media control was also discussed at the end of the session. How are the inflammatory media reports halted? It was felt that the whole issue of media and media effect needs to be examined. A lively discussion ensued and numerous examples were given where in Bosnia NATO actually took over TV towers and stations and shut the inflammatory media down and brought some order to the operation.

Colonel Dooley closed the session by stating that in his opinion all three of the objectives of the conference had been met. There were many great points and observations that would enable the work to go forward. This conference contained a host of significant contributors. Many more than normal and each and every one of their contributions were appreciated. Colonel Dooley then thanked the group for their efforts.

ANNEX A - AGENDA

Agenda

Rule of Law Conference, 6-9 July 2004

Day 1 (6 July) Tuesday

0800-1500 Travel
1500-1800 Billeting
1900-TBD No-Host Icebreaker Letort View Community Center
Social

Day 2 (7 July) Wednesday: Main Conference Room, Collins Hall

0830-0845 Intro COL Dooley
0845-0945 Keynote speaker MG (Ret) Tim Ford, MILAD to
UN DPKO
0945-1030 Political Aspects Matthew Preston, UK Foreign
Office
1030-1100 Break
1100-1145 International Judge Agnieszka Klonowiecka-Milart
1145-1345 Lunch, Ardennes Room
1345-1430 Intl Defense Atty David Marshall, OHCHR
1430-1515 Intl Prosecuting Atty Michael Hartmann
1515-1545 Break
1545-1630 CIVPOL Adrian Horn
1630-1715 Institution Building COL (R) Daniel Rubini, Former
advisor to Iraqi MOJ
1715-1730 Admin COL Dooley
1900-1930 Cocktails (no host) Letort View Community Center
1930-2100 Dinner Letort View Community Center

Day 3 (8 July) Thursday: Collins Hall

0830-0900 Group Photo Front steps of Collins Hall
0900-1700 Collins Hall Workshops

NOTE: lunch in Ardennes Room by workshop: 1130-1330

Workshop A

Civil-Military relationships and issues (Training for Interoperability, Roles and Missions, Intelligence to Evidence, C4I and the Rule of Law, Soldiers as Police); Stability Police Units (Roles and Missions, C4I, Training for Interoperability/ Interchangeability, Intel-information-investigations to evidence, linguistics); Dealing with Spoilers (Crime and Corruption, the Drug Trade, Human Trafficking, the Black Marketeering, etc.)

Facilitators: MG(R) Tim Ford, Former MILAD to UN DPKO; Michael Dziedzic, USIP; Sonja Litz; Col. Jack Tomarchio.; BG Claudio Graziano

Recorder: COL (Ret) Henry Gole

Workshop B

Choice of Law (Martial, Host /Occupied Nation Civil / Criminal, Other Civil / Criminal, International, Customary/traditional law. The difficult question of capital crimes. USIP transitional codes); How Law Fails, How is it Established, How is it re-established.

Speakers / Facilitators: Colette Rausch; Bruce “Oz” Oswald, Asia-Pacific Center for Mil Law; Robert Feidler, RFPB

Recorder: COL (Ret) Frank Hancock

Workshop C

Human Rights (War Crimes, Property Settlement, Justice v. Revenge, Doctrine)

Facilitator: Neil Kritz, Mark Walsh

Recorder: LTC (Ret) James Simms

Workshop D

Constitutionalism (UN Generic Constitution, “Flash to Bang” (time instituted to time accepted and respected), Elections, Guaranteed Individual Rights)

Speaker / Facilitators: Matt Preston, Global Issues Research Group, Research Analysts, UK Foreign and Commonwealth Office, Col. (Ret.) Larry Rubini.

NOTE: Workshop D combined with Workshop C

1830-1900 Cocktails (no host), Letort View Community Center
1900-2100 Dinner, Letort View Community Center

Day 4 (9 July) Friday: Main Conference Room, Collins Hall

0830-1030 Workshop Summaries
1000-1030 Break
1030-1200 Workshop Summaries
1200-1315 Lunch, Ardennes Room
1315-1330 Concluding Remarks (COL Dooley)
1330-1800 Gettysburg Staff Ride

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ANNEX C – CHALLENGES CHAPTER OUTLINE

Working Group: Chief Arthur Mbanefo
Bruce “Oz” Oswald
Vivienne O’Connor
COL Mike Dooley

Rule of Law Thesis Statement:

“What are the challenges to cooperation and coordination in relation to the Rule of Law?”

1. Define Rule of Law (acceptable definition-to be provided by Oz from the Melbourne report)
2. Explain its relationship to peace operations-legitimacy (use UN definitions/NATO, etc.)
3. Describe the Rule of Law in the context of cooperation and coordination
“What are the challenges to cooperation and coordination in relation to the Rule of Law?”
 - a. Guidelines
 - b. Force Commander’s directives
 - c. Soldier’s cards
4. Identify key Rule of Law issues raised in previous Challenges seminars/conferences
 - a. Phase I Concluding Report
 - b. Melbourne
 - c. Krussenberg
 - d. Ankara
 - e. Abuja
 - f. Beijing
 - g. High-level panel
 - h. Others (incl peace operations missions)
5. Key Rule of Law issues examined:
[Discipline: relationship to ICC]
 - a. Transitional justice
[Addressing healing process for crimes that occurred during conflict]
 - i. Peace and security councils with local institutions/actors

- ii. Truth Commissions
- iii. International Tribunals (incl ICC)
- iv. Hybrid
- v. Customary/Local
[Law and Order including corrections/detention]
- vi. Facilities/Infrastructure
- vii. Office of Legal Affairs (OLA) definition re: transitional justice
- viii. Dealing with the past/temporal jurisdiction from past offences to current
- ix. Mandate/sources of authority (incl differences between UN, Regional, Sub regional, etc.; incl residual powers)
- x. Coordinating institutions for transitional justice
- xi. Post-deployment
 - 1. Handover issues
 - 2. Capacity building
 - 3. Monitoring and reporting
 - 4. Body of laws
[UN/regional orgs; FCE; Host Nation]
[Need for multidisciplinary approach to cooperation and coordination (e.g. police, courts, military, prisons, security operatives)]
- b. Human Rights (General Comment 31)
[Melbourne: need for mainstreaming of Human Rights throughout UN activity (DPKO responsibility)]
 - i. Conventions/basic of rights
 - ii. Jurisdictions
 - iii. SG Bulletin
 - iv. Mandate-Kosovo (Force with local actors)
 - v. Accountability-who is responsible for coordination and cooperation of human rights issues?
- c. Accountability of NGO, IGO, and transnational organizations
 - i. Accountability in the Host Nation
 - 1. State actors
- 2. Non-state actors
 - ii. Laws and standards of the host nation
 - iii. Standard setting
 - 1. Individual non-state actors or

- 2. UN/Regional/Member State
- iv. Link to protection and privileges
- v. Enforcement
- vi. Criminal vs. Administrative Action
- vii. Who decides? Accountable to whom?
- viii. Awareness-ignorance is not an excuse
- ix. Standard settings-who sets the standards?
- d. Protection / Security
 - [See Japan Challenges report; taken to C34; 6th Committee was to have taken up this issue]
 - i. Protection of UN personnel
 - ii. Of other personnel
 - iii. Conventions
 - 1. UN
 - 2. Regional organizations (e.g. EU)
 - 3. Member states
 - iv. Accountability-who is responsible for coordination and cooperation of security?
- e. [Environmental??]
- f. Program, Planning, Progress
- 6. Conclusions

ANNEX D - GENERIC PLAN

GENERIC POLITICAL-MILITARY PLAN FOR A MULTILATERAL COMPLEX CONTINGENCY OPERATION 18 July 2002

NOTE TO THE READER: This generic political-military plan is an educational aid for government officials, including both military and civilian, to better coordinate and plan for a complex contingency operation. The first generic pol-mil plan was developed in 1995 to facilitate interagency training activities. Since that time this generic pol-mil plan has been updated periodically to capture lessons learned from recently conducted missions. Accordingly, the reader should view this generic plan as a “living document” because it integrates recent “best practices” under the Advance Planning Process, the methodology used within the interagency to complete policy planning tasks at the strategic level in anticipation of a complex emergency. This document should be viewed as a representative plan since an actual pol-mil plan often varies somewhat due to specific policy planning requirements for a particular operation. Nonetheless, the format and content of this generic plan are very similar to those produced by the interagency since 1996. Those efforts produced pol-mil plans in about 3-5 weeks time in anticipation of a regional crisis. These planning efforts were initiated normally by the Deputies Committee, although a few originated at the call of the NSC, a department Under Secretary, a U.S. Ambassador or a regional Combatant Commander. Please note that this generic plan does not in any way determine U.S. policy for any particular crisis that may occur in the future.

EXECUTIVE OVERVIEW

Purpose

Summarize the purpose of the pol-mil plan. Describe the crisis and its associated threat to regional peace and security. Forecast what adverse developments loom on the horizon if the situation grows worse.

Geo-Strategic Situation

Explain why the crisis is important for policy makers to be concerned

about-highlight the geostrategic affects of the emergency, with emphasis on how it will likely affect the U.S. at home and abroad. Emphasize the important geo-strategic realities posed by this crisis.

Crisis Planning Scenario

Describe briefly the crisis planning scenario as outlined in Section 1.0 of this plan. Briefly forecast what events are likely to occur as well as the potential scope of instability that could arise as the crisis unfolds.

Key Actor(s) / Adversary(s)

Name the key actor or adversary in this crisis and highlight his likely intentions, aims and commitment in the emergency. Convey a sense of who this actor is and what he seeks in this crisis at the end of the day.

Policy Planning Guidance

Summarize the Principals/Deputies Committee's policy planning guidance as presented in Section 2.0 of this plan. Emphasize what Principals/Deputies view as critical in managing down this crisis.

U.S. Strategic Purpose

Present the broad U.S. purpose in responding to this crisis, as stated in Section 4.0 of this plan.

Mission Statement

Present the mission statement for the complex contingency operation as spelled out in Section 4.0 of this plan.

Desired Pol-Mil Endstate

Present the desired political-military endstate for the mission as spelled out in Section 4.0 of this plan.

U.S. Political-Military Strategy

Summarize the U.S. strategy to manage down this crisis on our terms as presented in its entirety in Section 5.0 of this plan. Highlight the central thrust of the U.S. approach as well as the major components of the strategy to achieve our aims and summarize the core strategy that strengthens the current U.S. position to act on our terms in this

crisis; the crisis prevention strategy that seeks to avert the crisis; the coercive strategy that outlines both military and non-military coercive measures to be taken in harmony against key actors and adversaries; the escalation control strategy that seeks to contain the spread and escalation of hostilities; and last, hedging strategies for major geo-strategic discontinuities that would require a full reassessment of the Administration's approach to managing down this crisis.

Mission Organization

Briefly describe the coalition that will be formed to carry out this strategy and list the likely participating nations and organizations that will form the core of the coalition's capabilities. Briefly explain how the coalition will be led and supported.

Concept of Implementation

Summarize the concept of implementation as presented in Section 6.0 of this plan

Major Mission Areas

List the Mission Areas as presented in Section 8.0 that require intense interagency planning and coordination at all levels-political, strategic, operational and tactical. These Mission Areas include a range of critical efforts involving diplomatic, political, military, anti-terrorism, law enforcement, economic, public diplomacy, emergency response, and security efforts, among others. Emphasize that agency officials are accountable for integrated implementation of lead agency assignments for each Mission Area.

Interagency Management

Describe briefly the special interagency coordinating mechanisms, such as an Executive Committee, or "ExComm," that will be responsible for interagency management of policy development, coordination, planning and assessment throughout this crisis. The ExComm normally supports the Deputies Committee in its day-to-day management of crisis response. Agency responsibilities for effective participation in interagency management of this crisis are spelled out in Section 9.0.

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ANNEX E – WORKSHOP A - CONCLUSIONS

Session included robust discussions and received fascinating presentations on:

Italian Army concept of stabilization and reconstruction activities

Spoilers (corruption and organized crime) impact on ROL

Australian Fed Police development of an international deployment group of 500

There is a critical need for integrated strategic planning and preparation of a concept of operations from the very earliest point (including all ROL components- police, justice, governance)

Need to identify the requirements to establish public order early in operational planning

Beginning of Operation is often a defining moment. Correct action to establish order early is essential to success of the mission.

The end-state (including the withdrawal of international security and ROL components) needs to be gradual against articulated measurable outputs that demonstrate that the ROL capacity is in place and can be sustained. Build safeguards to prevent collapse of the ROL institutions.

Peace support operations must have an ability to respond comprehensively (a credible and reasonable application of the use of force including a robust response when necessary)

Recognize that military component in Peace Ops needs to develop flexibility. It is often first in, at time of violence, with abundant capabilities, with little civilian support and therefore required to undertake jobs they are unaccustomed to performing.

Issue of complementarity's and cooperation between the military and police components to understand overlapping responsibilities.

Ensure military understand the legal context of police actions they may undertake and the importance of intelligence and evidence collection for the purposes of prosecution (however main focus should remain on public safety and order)

Training

Military exercises need to look more at post combat activities
Civilian Agencies need to train more and undertake integrated training activities at national, regional, and international (UN) levels. (Swedish Viking exercise 2005)

Need for mission concept of operations to include all elements of ROL

Concept of operations must be designed to build capacity for ROL that can be maintained in the community.

Need to recognize the impact of organized crime and corruption on Peace Operations. It is a fundamental challenge to the ROL. Mission standards need to recognize the existing culture and include a level of tolerance.

Peace Operations need to shape the environment to encourage capacity building and to address the security context that exists.

Identify the center of gravity of threats to ROL
Attack the structures that support spoilers and organized crime.

Need to develop common civilian, police and military doctrine for peace operations (DPKO Handbook of Multidimensional Peacekeeping Operations issued in 2003. STM from DPKO)

Value of Stability Police Units

Such as Multinational Specialized Units (MSU)-combine limited combat skills and professional police training

Fill a gap that often exists. Have a non-lethal force capability

Command issue (military or police)

Useful tool against organized crime

ANNEX F - WORKSHOP B - CONCLUSIONS

WORKSHOP B

CHOICE OF LAW, HOW LAW FAILS, HOW LAW IS ESTABLISHED

The key to successful peace operations is the rule of law. Without the rule of law there will be no long lasting stability.

Experiences and Lessons Learned

There have been many lessons learned from previous peace operations. For example:

Kosovo: different military sectors applied different legal regimes in their AOs. The French applied French criminal law, the Germans applied German criminal law, the UK contingent applied UK criminal law, and the US applied US criminal law. There was no consistency of law. This was clearly inadequate because: (1) uncertainty; (2) unfair; and (3) made prosecution and defense very difficult.

UNMIK is authorized, pursuant to SC Res, to pass laws to supplement local laws.

Afghanistan: Lots of laws, including criminal law and procedure have been drafted by various international organizations. However, these laws continue to sit with various local authorities and have not been implemented.

Brcko: The International Supervisor was authorized pursuant to the Arbitration Agreement to issue such orders and regulations as he thought appropriate. His orders and regulations prevailed, pursuant to the Agreement, over any other existing law.

East Timor: The Indonesian law was used as a basis for establishing the legal regime applicable in East Timor. UNAMET issued regulations to deal with law and order thus amending some of the Indonesian laws that applied. More recently there has been a shift

from the application of Indonesian/UN law and regulations to the adoption of Portuguese law. This change has allegedly come about because there is a desire amongst some of the East Timorese to align their law with that of Portugal.

Iraq: In the early days of military operations in Iraq, soldiers would carry out arrests and detentions but have no local authority to hand over the detainee to.

A number of amendments were made to the IZ criminal code where that code created offences that breached international human rights law. For example the CPA issued regulations getting rid of laws concerning political and press crimes.

Key Issues discussed

Law of Occupation

Law of occupation must be applied when a military force is in belligerent occupation. There was some discussion as to whether this is a question of fact or whether states may determine when they are in occupation. In situations where the law of occupation may not apply as a matter of law, it was decided that it is a useful tool to ensure that the operation is conducted according to best practice standards.

Some key provisions discussed in relation to the law of occupation: art 63 and 66. It was agreed that art 63 provides a bench mark as to applicable law in the AO. In relation to setting up courts (art 66), it was decided that only as a last resort should the military set up courts. The preference was for appropriate civil organizations to set up courts where necessary.

We also determined that there is a need to establish a methodology to identify whether it is necessary to implement new laws or amend existing laws. One suggested methodology involves:

- (1) Recognizing the prima facie application of local laws;
- (2) Consulting with local authorities and appropriate people to

- identify what laws need to be added or amended;
- (3) Developing mechanisms to get 'buy-in' for the development of those laws;
- (4) Amending or introducing those laws that breach human rights or are required in order to maintain the security of the force, and law and order.

Recognizing the prima facie application of local law:

The need to recognize the prima facie application of local law must be the start point for establishing security in the AO. There are many reasons for this: (1) the law of occupation requires that this be the start point (Geneva Convention IV, art 64); and (2) it recognizes that we are seeking adherence of the laws by locals and this is the law that they are familiar with.

It was generally accepted that most local law will continue to be good law in the host nation. If any substantive law needs to be amended it is most likely going to be because that law breaches fundamental human rights law or the amendment is required for the maintenance of law and order (i.e. security).

It was also recognized that it is the criminal procedure law that will in all probability need the greater amendment. This is likely to be the case because often it is the criminal procedure law that fails to keep pace with developments in international human rights law.

In the context of amending or introducing laws, it was felt that the Transitional Justice Codes being developed by USIP and the Irish Centre for Human Rights would provide a useful guide (tool box) as to best practice standards. The Codes would also be useful in filling any lacunae in the local law.

Consulting with the local authorities

Before amending the local law there must be consultation with the local authorities and appropriate individuals. This consultation should provide authorities and the individuals with an opportunity to 'by-in' to any amendments and additions to their laws.

It is important to recognize who we are consulting with and why we are consulting with them. An essential part of this process is identifying who are the spoilers and supporters of the rule of law. It is also essential to identify groups who may be minorities, and locals who may not have a voice (including women and children). In other words the challenge is to identify a sufficiently representative cross-section of the population that is likely to be affected by the amended or introduced law. It may also be necessary to consult with spoilers in order to gauge their reaction to the changes that are being suggested.

‘By-in’

Before changing the law, it is necessary to get ‘by-in’ or acceptance of those changes from local authorities and appropriate individuals. This is a delicate process as peacekeepers must be able to identify that they have by-in from the appropriate people in the AO. Again, it is necessary to identify supporters and spoilers. It may be necessary

Amend laws that breach fundamental principles of human rights and introduce laws that are necessary and reasonable for the maintenance of law and order (i.e. security).

The amendment of laws that breach fundamental human rights principles is arguably justified pursuant to art 64 of GC IV. Similarly, the introduction of laws for the purposes of maintaining law and order is justified pursuant to art 64 and art 43 of Hague Convention IV.

In relation to applying this methodology, it was generally recognized that much would depend on the phase of the operation and who had primacy at the particular time.

We discussed the means by which a law may be amended or introduced in a host county. It was argued that there are three accepted ways of amending or introducing laws: (1) by consent of the host nation; (2) by a binding Security Council resolution; and (3) by the law of occupation.

Other Laws Relevant to Stability Operations

Other laws that might be required to be identified, amended or introduced include:

Customary law

Property law: particularly where you have a large IDP and refugee population

Administrative law: particularly law dealing with identification papers, marriage, divorce and pensions.

Traffic laws and regulations.

Institutional Structures and Administration

Need to establish appropriate working institutional structures to administer law and order as soon as possible. Often the establishment of appropriate structures to administer law and order is more important than amending or creating new laws.

In this context we discussed the concept of 'retail justice' vs. 'wholesale justice'. Retail justice refers to focusing on the micro or tactical level. Establish institutions and administration so that individuals feel that their lives are being directly improved. Recognize that you may need to establish a magistrate court as a matter of priority. That you may need to permit local courts with customary law judges to start adjudicating at grass roots level. This is an excellent way of demonstrating to the local population that law and order is a key component of the mission.

Accountability

It was generally accepted that accountability of expats (contractors, NGOs, IOs, etc) and peacekeepers is an essential requirement to demonstrate that the operation is taking the rule of law seriously.

Some of the issues that need to be considered include (1) the application of privileges and immunities for all those involved in the mission; and (2) best practice standards for expat staff that are embedded with local authorities as advisers.

Common tension points in maintaining law and order

A number of common tension points or flash points were identified when trying to maintain law and order on peace operations. These include:

Recognizing and accepting that reconstruction of institutions will always need to be a priority.

There will always be spoilers and supporters

Change must occur 'peacefully, phased and orderly'. There will always be a need to show decisiveness and to seize the moment to make changes. It is important however to recognize that the speed and momentum at which change will occur will vary depending on the circumstances on the ground and the recourses available.

Never promise anything that cannot be delivered.

Never adopt short term solutions at the risk of adversely impacting on the long term remedy.

Resources will always be limited, and therefore there will always be a need be selective as to what can and must be done.

It is important to recognize the limitations of the particular military forces that may be involved in justice reconstruction.

We must set a good example and leave a valuable legacy for the host nation. Give nationals as much responsibility as appropriate as soon as possible.

There should be no understaffing.

May need to embed experienced law and order personnel with military personnel so that military personnel receive the appropriate level of support when conducting law and order tasks.

Training

Training of peacekeepers in the rule of law is essential. This training needs to be conducted before deployment.

Debriefs need to be conducted post deployment.

Institutionalizing Rule of Law at home

It was generally agreed that it is of fundamental importance to institutionalize the importance of the rule of law in the structures of appropriate authorities at home. This may include:

Setting up an appropriate rule of law office that can monitor developments in the field.

Taking a whole of government approach to the rule of law in the field.

Having the field send regular updates as to developments regarding the rule of law to a central organization that can inform donors and other institutions.

Developing mechanisms to hold people in the field accountable for what they do in the field.

Raising the need to develop rule of law options at the very highest government levels.

ANNEX G - WORKSHOP C/D - CONCLUSIONS

The Role of Human Rights and the Rule of Law in Post Conflict States

Key Elements for inclusion in the Challenges to Peacekeeping Project & the draft Pol-Mil Plan for Multilateral Complex Contingency Operation

1. The centrality of human rights: Law reform, lawmaking, policy, institutional and capacity building reform programs
2. The early development of justice strategies that ensures sustained engagement
3. Meaningful consultation with key national stakeholders on legal reform prior to reform
4. Balance expectations of what can be achieved and what cannot be achieved
5. effective communication strategy on law reform efforts
6. The need to strengthen interaction and coordination between military (security) and human rights organizations
 - a. The military have essential human rights-related roles in post conflict states: protection of civilians, monitoring and reporting, supporting human rights partner organizations (i.e. UN human rights units), performing policing functions
 - b. training programs should focus on how the military can practically contribute to advancing human rights so that deployed personnel can be active players with regard to human rights and rule of law issues
7. Improved coordination among all actors involved in legal reform efforts (military, law enforcement, corrections, courts, prosecutors, defenders, policy makers, civil society etc...)

8. Developing an interim and permanent constitution through a process that is considered legitimate, embracing human rights and democratic principles.

The United States Army Peacekeeping and Stability Operations Institute, in conjunction with the United States Institute of Peace and the Asia-Pacific Centre for Military Law hosted a Rule of Law Conference from 6-9 July, 2004. The conference was held in Carlisle, Pennsylvania. This year's conference was concerned with the Rule of Law: establishing it, re-establishing it, and defending it.

Given the backdrop of ongoing operations in Iraq and Afghanistan, the breakdown of the rule of law in many areas of the globe, and the rise of organized crime, we found this year's Rule of Law Conference to be a lively, provocative, and valuable exchange of information.



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