

“All persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.”¹

Delivering Justice: the rule of law, peace and security, human rights and development

The 2012 Declaration of the High-level Meeting on the Rule of Law at the National and International Levels highlights the linkages between the rule of law and the three main pillars of the United Nations: peace and security, human rights and development. Member States also requested the Secretary-General to propose ways and means of developing, with wide stakeholder participation, further such linkages, and to include this in his report to the Assembly at its sixty-eighth session.² This is a unique opportunity to enhance the General Assembly’s support to the rule of law.

Consultations are being undertaken with civil society, academics, the private sector, Member States, and the United Nations family, focusing on the following questions:

1. *What aspects of the rule of law are most relevant to your area of work?*
2. *How are those aspects of the rule of law that you identified important for peace and security, human rights and development?*
3. *What can the General Assembly do to further these aspects of your work?*

In order to further enhance the debate, the Secretary-General requested a diverse group of academics and thought leaders from around the globe to prepare “think pieces” on the rule of law and its linkages with peace and security, human rights and development. These are on the United Nations Rule of Law Unit’s consultation webpage (available through www.unrol.org, from September 2013). The following are common conclusions and themes that emerged from the think pieces on the rule of law.

The rule of law is a broad and holistic concept

The Deputy Secretary-General often quotes the observation of *In larger freedom*: “There will be no development without security and no security without development. And both development and security also depend on respect for human rights and the rule of law.”³ This clearly also resonates with the think piece writers.

Colette Rausch’s think piece reflects on personal experience in the rule of law field to explain the inter-linkages between the rule of law, peace and security, human rights and development, and the limitations of rigidly categorizing work in the rule of law. Her piece concludes that only by adopting a broader perspective and willingness to address root causes of conflict, can we begin developing truly effective mechanisms to resolve, mitigate and prevent conflict. All elements of the rule of law are of equal importance and each one impacts the others.⁴ Asma

¹ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1), paragraph 2.

² Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1), paragraph 41.

³ Report of the Secretary-General A/59/2005: *In larger freedom: towards development, security and human rights for all*, Annex, paragraph 2.

⁴ Colette Rausch, “Linkages: Rule of Law, Peace and Security, Development, Human Rights and Good Governance”, 2013.

Jahangir similarly reflects on the multitude of actors engaged in supporting different aspects of the rule of law, and the importance of the rule of law to each of the pillars of the United Nations.

The rule of law is a concept at the very heart of the Organization's mission. It is increasingly recognized that States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to peace and security. As Professor Muna Ndulo highlights: "wars and conflict weaken the authority of the state, breed insecurity, erode institutions of governance and civil society, and undermine development."⁵ He notes the role of transitional justice, and the need for strong and effective national institutions and governance to provide security, justice, and jobs, crucial to breaking cycles of violence within states. Dr. Bruce Jones observes that "as the international community has grappled with the relapse of civil war, the spread of organized crime, and extremism, it has increasingly focused on a strengthened rule of law as the overarching objective for the response."⁶ The establishment and maintenance of the rule of law is fundamental to conflict prevention, and to post-conflict peacebuilding.

The rule of law provides a framework in which the arbitrary exercise of power is subject to agreed rules, guaranteeing protection of both collective and individual, civil and political, and increasingly, social, economic and cultural rights. Professor Vtit Muntarhorn highlights the shared responsibility to ensure the protection of rights, and describes the essence of the rule of law as guaranteeing that there will be no "protection deficit" for human rights.⁷

The Secretary-General's concept of the rule of law is deeply linked to the principle of justice, involving an ideal of accountability and fairness in the protection and vindication of rights within a system, and the prevention and punishment of wrongs. As Professor Monica Pinto stresses in her think piece, focused on the rule of law, human rights and democracy, "the rule of law is a key element that provides context and, at the same time, qualifies the operation of other elements which are central for the observance of human rights."⁸

Similarly, the rule of law is a framework for development outcomes. It supports economic growth, and reduction in inequalities. It provides legal frameworks that increase contractual security, lower levels of corruption, allow for the timely, transparent and predictable resolution of commercial disputes, which in turn affect the economic climate for businesses and investment. Stephen Golub describes the scenarios: "from agrarian reform in the Philippines to battling apartheid in South Africa to facilitating dispute resolution in Sierra Leone to obtaining release of unjustly detained prisoners in Malawi, to protecting the communal land rights of cultural minorities in Ecuador."⁹ The rule of law and development are strongly interrelated and mutually reinforcing. As a foundation of just and fair societies, the rule of law can also be seen as a development outcome in itself.

⁵ Muna Ndulo, "The rule of law, peace, security and development", 2013.

⁶ Bruce Jones and Camino Kavanagh, 2013.

⁷ Vtit Muntarhorn, "Giving Content to the Rule of Law", 2013.

⁸ Mónica Pinto, Lucas E. Barreiros and Nadia Uman, "Human Rights and the Rule of Law, 2013.

⁹ Stephen Golub, "As the Resolution Clearly States... Reflecting on 30 years of rhetoric, rationalisation and reality in promoting the rule of law", 2013.

Institutions and norms are critical

Institutions and norms are the tools of the rule of law. Asma Jahangir, herself a member of the Pakistani judiciary, emphasizes the critical role to be played by an independent judiciary in maintaining the rule of law, similarly the responsibility of legal professionals and bar associations.¹⁰ Dr. Bruce Jones highlights the role of the rule of law in providing normative support to countries transitioning from authoritarian rule, including those in the Middle East and North Africa. Many of the demands articulated by popular revolts can be usefully understood as a demand for a normative rule of law framework.¹¹

Professor Muna Ndulo observes that in post-conflict contexts there are typically “a lack of strong and effective national institutions to deal with past and present human rights violations, advance good governance to deal with massive poverty, violence, displaced populations, monumental underdevelopment, and a lack of institutional and physical infrastructure to support economic development.”¹²

Stephen Golub notes that institutions and organizations are frequently conflated terms. “Institutions” include rules and laws but also the informal rules of social interactions, the “rules of the game”, political economy analysis and the power and political dimensions at play. He warns against the “rule of law orthodoxy” which maintains a state-centric focus on organizations, at the expense of a legal empowerment approach which instead focuses on the rule of law and rights specifically to help disadvantaged populations gain greater control over their lives.¹³

The rule of law cannot be divorced from the reality on the ground

Understanding the reality of a rule of law situation requires listening to the local context, and empowering local actors. Professor Muntarbhorn emphasises the importance of ensuring the accessibility of rule of law institutions in order for them to be meaningful: “The rule of law is not only about the need for judicial systems and a judiciary... It is also about the judiciary being accessible to the public. It is not only about formal institutions such as the courts, but also informal mechanisms, such as mediation and local participation in dispute settlement.”¹⁴

Dr. Bruce Jones also focuses on the response of the United Nations to the request for rule of law support, suggesting that the United Nations should better gear its rule of law approaches to the different settings in which it works, and enhance partnerships, for example with international financial institutions.¹⁵ Colette Rausch recalls that “rather than treat the symptoms of conflict, the international community could do better to determine the source of imbalance, take a systems-wide approach to addressing the tension, and only then consider an entry point.”¹⁶ These again, are strong arguments for the importance of grounding rule of law in local realities.

¹⁰ Asma Jahangir, “Rule of law, peace and security, development and human rights”, 2013.

¹¹ Jones and Kavanagh, 2013.

¹² Ndulo, 2013.

¹³ Golub, 2013.

¹⁴ Muntarbhorn, 2013.

¹⁵ Jones and Kavanagh, 2013.

¹⁶ Rausch, 2013.

The rule of law, good governance and democracy are closely interrelated

Another conclusion to emerge from the think pieces was the inter-relationship between the rule of law and democracy and good governance. As Asma Jahangir articulates: “Citizens of almost all countries have heightened expectations of governments. They want a voice in policy making and assume a right to good governance...they want a democratic system of decision making which converts into effective policies and is implemented with transparency as well as efficiency. Distributive justice in political, economic and social terms is central to the principles of the rule of law.” Ms. Rausch agrees that good governance – based on fairness and accountability, without cronyism and corruption – is incorporated into a view of the rule of law.

Professor Pinto observes that many of the elements used to describe what constitutes the rule of law equate to the basic elements of democracy. Protecting the core values of democracy – including liberty, equality, justice – sets the foundation for an environment in which human rights can flourish.¹⁷ A strong rule of law is critical to democratic processes. Dr. Bruce Jones also notes the particular importance in peace operations of first building confidence in legitimate political settlements, that can then over time foster the emergence and deepening of the rule of law.¹⁸

People the world over are calling for better governance. They want their voices to be heard and they want governments that are transparent, responsive, capable and accountable. The rule of law “includes the effective delivery of public goods and services, the maintenance of law and order, and the administration of justice. It also involves the creation of an efficient and dynamic market that secures economic growth... as well as a vibrant civil society, which facilitates interaction between the state and economic and social actors.”¹⁹

The importance of rule of law to good governance and democracy is also reflected in the recent Report of the High Level Panel of Eminent Persons on the Post-2015 Development Agenda.

Conclusion

In conclusion we can highlight a proposal from Professor Vtit Muntarbhorn of Chulalongkorn University, Bangkok, who argues in favour of making the United Nations itself more accessible and responsive to the people it works in support of, suggesting that we should aim for the establishment of a peoples’ assembly, and facilitate greater civil society participation in the United Nations system.²⁰ Indeed, we must use these consultations to ensure that the United Nations General Assembly hears and is responsive to the views of a wide range of stakeholders on the rule of law.

¹⁷Pinto, 2013.

¹⁸ Jones and Kavanagh, 2013.

¹⁹ Ndulo, 2013.

²⁰ Muntarbhorn, 2013.