

Linkages: Rule of Law, Peace and Security, Development, Human Rights and Good Governance

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Colette Rausch is the director of the Rule of Law Center of the United States Institute of Peace (USIP) in Washington, DC. Before joining USIP, she was with the Organization for Security and Cooperation in Europe Mission in Kosovo, serving first as head of the Rule of Law Division and then as director of the Department of Human Rights and Rule of Law. Previously, Rausch was with the U.S. Department of Justice (DOJ), serving as the DOJ's resident legal adviser in Hungary and later in Bosnia. She also served as the DOJ program manager for Central and East Europe, establishing criminal justice projects in Albania, Bosnia, Croatia and Kosovo. Additionally, Rausch was a federal prosecutor with DOJ in Las Vegas, Nevada, working in both the white collar and violent crime units, receiving numerous DOJ performance and special achievement awards. Before DOJ, she was with the state of Nevada's Attorney General's Office, where she was director of the Telemarketing and Consumer Fraud Unit. She was also an assistant federal public defender in Nevada. Her focus at USIP has been on criminal justice and police reform initiatives, including work in Afghanistan, Guatemala, Kosovo, Liberia, Nicaragua, Peru, Nepal, Burma, Libya, Iraq, and Yemen. She has published numerous books, reports and blogs on rule of law topics.

Time and time again, when I work with the people who have suffered through violent conflicts, from the businessman who took up arms to protect his family from Muammar Qaddafi's mercenaries in Libya, to the coffee grower in Nicaragua forced to fight on both sides of the conflict based on whether the Contras or the Sandinistas occupied his property, I ask them what it is they want for their future. Rarely do such personal challenges and resulting needs mesh neatly with the solutions often proposed by the international community.

Far too often, individually and collectively, the international community finds itself driven by the urgency of short-term goals in its own mission, only to overlook the aspirations and long-term needs of the very people we have come to assist. We do not often take time to analyze the complexity of the problem needing to be solved or carefully identify the root causes of the conflict. As history shows, despite offering vaunted expertise and deploying valuable resources, in many instances there is little to show for it in the long run. Even more worrying, we sometimes end up with results that counter the effect we had intended.

As an example, a Balkan war widow's most basic concerns may be tending to her small vegetable garden without being harassed, protecting her daughter from traffickers and persuading her son not to seek vengeance for the brutal murder of his father. But the international community may have determined that her family would be better served by building new courthouses to try cases and conducting a training course for police on human rights. Neither addresses the multiple facets of the problems the war widow is facing.

Even if we were to begin to take a problem-based, strategic and systems-wide approach, the way we are structured institutionally would stymie our efforts. We operate in silos and with lane-assignments, resulting in self-imposed blinders. We categorize, define and assign,

breaking conflict down into digestible components for easy consumption and bureaucratic organization.

The three United Nations pillars of peace and security, human rights and development are examples of such categorization. The development of rule of law as a concept of importance over the years has introduced a new “player” on the block and created what I would say is a shadow fourth pillar. But the UN is not alone. Member State bureaucracies have their own versions of these categories, causing the same challenges across the board. Complicating things further, we often find competition and disagreement that stymie collaboration amongst those who work in the different silos.

We use the terms “rule of law,” “human rights,” “peace and security,” and “development” as if there is a common and agreed upon distinction among these terms. Sometimes we throw in the concept of “governance.” In many instances, these categories are understood de facto as separate concepts.

I spent a number of years visiting multiple countries emerging from conflict and asking those on the ground affected by conflict, as well as international actors working in the “rule of law” field, “What does rule of law mean to you?” The answers varied greatly, confirming for me that while we all talk about the importance of rule of law, no single definition automatically comes to the minds of those who hear the term. In an attempt to generate consensus on the topic, the UN developed its own robust and detailed definition of rule of law.

At the end of the day, we find ourselves hamstrung by the very definitions we create – as lanes are carved out and partitions are made as to who does what and when. The reality is the problems faced in the global arena are not confined to these predefined partitions. The challenges of poverty, injustice, insecurity, violent conflict and power and resource struggles transcend those boundaries. Left unresolved, they can metastasize into much broader threats or even into war.

I propose that we set aside our assumptions, definitions and approaches because 20 years of experience in the field tells me they’re not working. I’ve been a federal prosecutor with the United States Department of Justice, first handling white-collar crime targeted against the elderly, then violent crime and drug cases. I moved on to international work in the Balkans, including living in Bosnia, where my focus was on strengthening criminal justice institutions. I lived in Kosovo, working with the Organisation for Security and Co-Operation in Europe (OSCE) and working closely with the United Nations to focus on strengthening rule of law and adherence to human rights standards. In that capacity, I trained judges and prosecutors, supported defense counsel, revised laws, and established systems for monitoring human rights.

Much of this work was what I describe as “down-wind,” or “working the middle of the story,” meaning that although I was technically working on “rule of law”, I was really only tinkering at the periphery of the challenges, merely treating the problem’s many symptoms. I often was disturbed at the realization that there were far greater forces or issues impacting peace and

security, and that my work alone could not solve the problem. It was this nagging frustration that led me to my current position.

Today, I serve as the Director of the United States Institute of Peace's Rule of Law Center of Innovation. I have an opportunity to develop the lessons learned from "rule-of-law" work and to collaborate with professionals from the international community as well as from conflict-affected countries who work in the field or in governance, development and human rights.

While at the United States Institute of Peace (USIP), I have traveled and worked in numerous countries embroiled in or emerging from conflict, including Afghanistan, Burma/Myanmar, El Salvador, Guatemala, Iraq, Liberia, Libya, Nepal, Nicaragua and Yemen. I have had the honor of meeting and discussing the issues of rule of law, governance, development and human rights with everyone from ministers, military officials, militia/rebels and police to human rights activists, politicians and journalists to farmers, teachers and mothers.

Over the past year, in addition to hosting Libyan colleagues in the United States, I made two trips to Libya following the civil war that ousted Muammar Qaddafi. At the time of my first visit, there were allegations of torture occurring within the militia controlled prisons. Not surprisingly, the remedies proposed by international stakeholders in the respective pillars reflected their areas of focus. Human rights specialists who, not surprisingly viewed the issue through a human rights lens, addressed the issue by stating, "Torture is horrible. We must pass laws prohibiting it," or, "We must train people not to do it." A rule-of-law practitioner looked at the same issue and declared, "The judiciary and prosecutors must outlaw torture and vigorously pursue those who engage in it." A governance expert suggested, "Torture is occurring within the prisons run by the militias, so it is essential that the prisons be brought under government control through the ministry of justice."

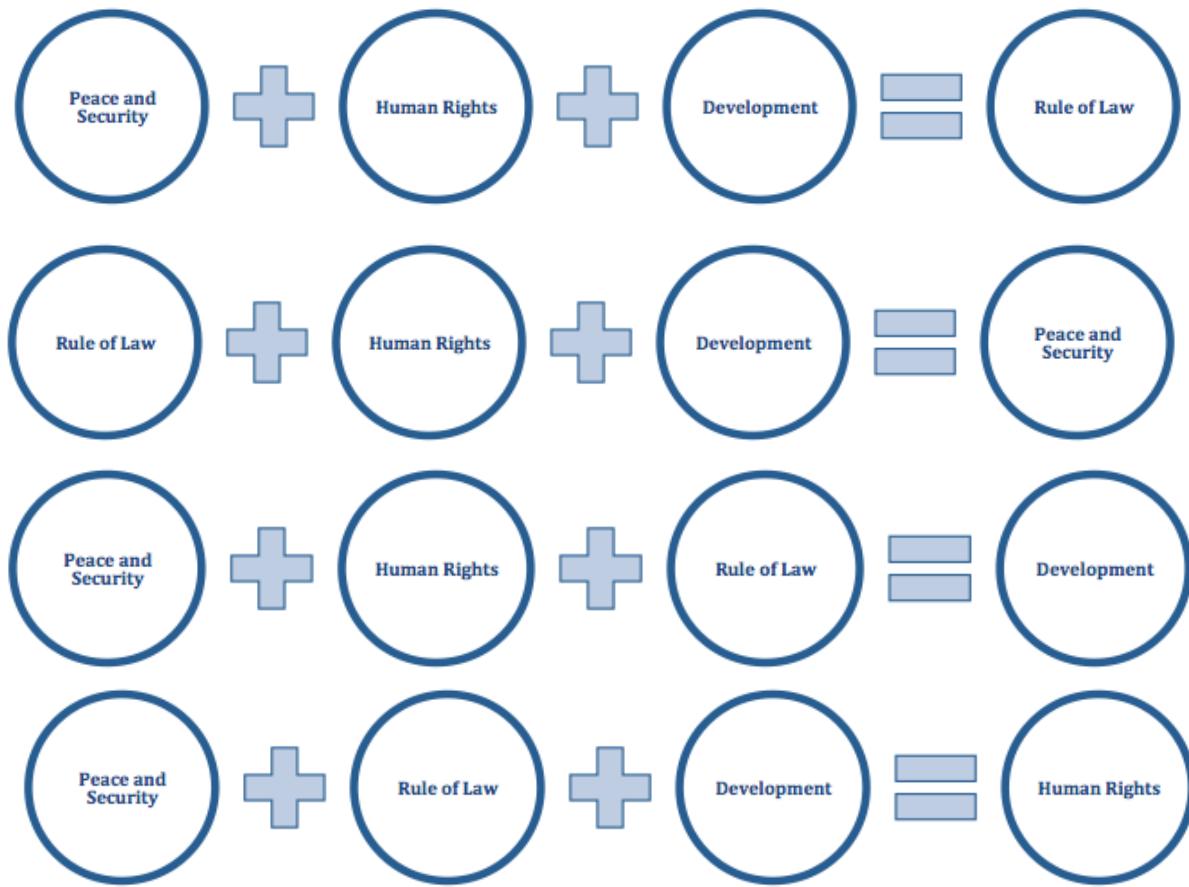
It was instructive to learn that one of the reasons the militias themselves provided for their actions was that they had been tortured at the hands of the same figures they now were torturing, so in their minds, they were taking justified retribution. Another contributing factor was that they had no trust in the new government and feared turning in their weapons only to have them be used against them again.

Ultimately, torture is as much a human rights issue as it is a rule of law issue, as it is a security issue, as it is a development issue, as it is a governance issue.

Traditionally, the problem would be tackled by suggesting that the rule of law specialists sit down with those in human rights and those in governance and, rather than combining forces, carve out space for each to deliver their own projects. But this model is built on artificial partitions that the experts created themselves and that often generate equally artificial remedies. So we run the risk of getting locked into what seems like a never-ending bureaucratic tangle of debates and divisions, especially since these "silos" overlap and cannot be carved up, no matter how hard we might try.

We can do better if we embrace unity of effort. We can start with the language we employ. I would use these equations to show that it is not possible to say that one is of heftier import in

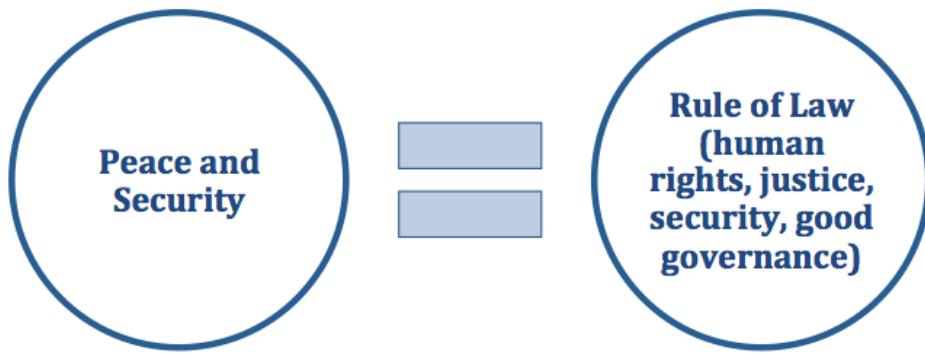
any particular situation than the other or that one is the key to the success of the others. They are all of equal importance and each one impacts the others.



I would reframe terms. Rule of law to some is perceived as monolithic and only concerned with laws, codes and systems of justice. Sometimes it is considered akin to "law and order." To others, it includes the principles of human rights and standards. Similarly, a term such as security sector causes confusion when some see it as referring to the military and police, while others cast a much broader definition that includes justice and other systems.

So here it goes:

Rule of law and human rights are inextricably intertwined. They are two sides of the same coin. The UN's definition of rule of law states that all laws must comply with international human rights norms and standards. Good governance is also, in my mind, incorporated in how I view rule of law. Security also is integral. I would use this equation:



Development is the thread that runs through it all. Development can foster peace. At the same time, the absence of development can stymie peace. Balance is key. It is challenging but critical to balance rights and security. Over-emphasizing security while limiting human rights can create the opposite of what we're trying to avoid -- more insecurity. Likewise, putting too much emphasis on human rights while restricting the role of security can generate a different but equally undesirable outcome.

From the vantage point of someone who has been in the field living with the legacy of a violent conflict, all of these categories that we have created are so intertwined that they cannot be carved off from one another. Instead, they are all simply facets of peace.

So let me take it one step further and include descriptive phrases.



Or, conversely, the drivers of conflict and insecurity are the absence, in whole or in part, of rule of law and good governance. As I defined above, respect for human rights is part and parcel of rule of law and good governance. Instability or even conflict indicates that the equation is imbalanced and, although perhaps obvious to some, the greater the imbalance, the greater instability.

After coming to terms with the language and definitions we use, the next step is for us to amend how we approach the work itself. Rather than treat the symptoms of conflict, the international community could do better if we worked to determine the source of imbalance, take a systems-wide approach to addressing the tension, and only then consider an entry point.

When I traveled to Yemen during the time that demonstrators raged against their government from tents in the squares of the major cities, the youth and civil society leaders of the protests expressed openly their frustration with the international community's response. They yearned

for a new democratic reality in the Arab world's poorest country, where cronyism and corruption would not be part and parcel of governance, but rather a government system would be based on fairness and accountability to the people.

Instead, much of the international community emphasized security above all else, while neglecting the other equally essential issues of human rights, development, and justice. The youth and civil society leaders lamented that a disproportionate focus on security simply rearranged elements of the previous governmental structure rather than encouraging real and substantial changes that would augur peace.

By viewing the challenges through a wider aperture, we can look at possible approaches more strategically. Through thoroughly understanding the origins of conflict and how it all fits together, we even begin to find an entry point that can lead to a lasting solution rather than a temporary fix.

This new approach to our work could mean providing us space to address other underlying problems, such as the lingering issues of post-conflict or post-authoritarian trauma that impact civil society and those who would provide mechanisms of justice and security in transition. The scars of trauma, such as in the case of the Libyans who tortured in retribution, can fester beneath the surface, paralyzing the systems of justice and fueling future tensions and instability in a vicious cycle that extends from generation to generation.

Similarly, the root of conflict might be found in the inequity inherent in many modern societies, where perceptions of privilege and favoritism undermine the very foundation of a fair and equitable system of justice.

Progress toward peace and security, rule of law, development, human rights and good governance may be severely crippled if the root of conflict and open wounds remain untreated and are allowed to fester unaddressed. Only when we as the international community begin with the premise that the problem is conflict and the goal peace, and work in an integrated fashion to understand the root causes, can we begin developing truly effective mechanisms to resolve, mitigate and prevent conflict. Short of that, we will be operating from a deficit and never manage to achieve lasting peace.