Promoting the Rule of Law in Peacebuilding

Lessons from Afghanistan and Iraq

Written for The Hague Institute for Global Justice, Lead Author: Scott N. Carlson
Contributing Authors: William "Spence" Spencer, Erin Houlihan, Charles Jakosa and Rob Lochary

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Foreword

Efforts to build sustainable peace in societies devastated by conflict cannot succeed without establishing the rule of law. Over the past decade, much of the international community's investment in post-conflict peacebuilding has been focused on Afghanistan and Iraq. Despite differences in the nature of the external interventions, and the levels of institutional development in both countries, peacebuilders faced many similar challenges.

This report *Promoting the Rule of Law in Peacebuilding: Lessons from Afghanistan and Iraq,* commissioned by The Hague Institute for Global Justice, is a comparative study of rule of law efforts within the context of peacebuilding in both countries in the past decade. It elucidates the challenges international and local actors faced in Afghanistan and Iraq. It analyzes practical issues confronted by peacebuilders in the field, as well as the complementary and sometimes contradictory ways in which rule of law activities interacted with wider governance and stabilization efforts.

The report highlights areas of good practice, but also evaluates what went wrong in peacebuilding efforts, and why. It provides important insights into the enduring task that confronts international actors whose expertise is vital for effective peacebuilding: how to respond to local needs, priorities and circumstances. It offers lessons that policy-makers considering future initiatives will find useful.

This report is part of a series of publications on peacebuilding in post-conflict situations.

The authors are senior rule of law practitioners with years of collective experience in designing, implementing and evaluating programs in Afghanistan and Iraq. It has been produced alongside a report on rule of law efforts in post-Gaddafi Libya, undertaken by our partner, the Van Vollenhoven Institute for Law, Governance, and Development (Leiden University), in collaboration with the Benghazi Research and Consulting Centre (University of Benghazi).

Drawing on the findings from both studies, the Hague Institute has also developed *The Hague Approach: Six Principles for Achieving Sustainable Peace in Post-Conflict Situations.* All six of them stress the importance of establishing and maintaining a close working relationship between international actors and those they seek to serve. The Hague Institute is grateful to the City of The Hague for supporting this important research project.

Dr. Abiodun Williams
President
The Hague Institute for Global Justice

Introduction

The Hague Institute for Global Justice (The Hague Institute) is committed to refining the principles and practices employed in contemporary peacebuilding. Over the last decade, peacebuilding efforts in Afghanistan and Iraq were two of the largest, and most complicated, multilateral undertakings. As these peacebuilding efforts progressed, international consensus on the centrality of rule of law as a programming component increased as well. In turn, rule of law practitioners sought to translate this general consensus into specific, practical approaches in Afghanistan and Iraq. The observations and experiences of these rule of law practitioners provide insights that ideally will inform future peacebuilding efforts.

This study describes and analyzes some of the key issues that senior rule of law practitioners faced in Afghanistan and Iraq. The goal of the study is to identify a selection of the key challenges, the programmatic interventions involved, and the results that followed. From the two experiences, comparisons and contrasts suggest productive focal points for the planners and implementers of peacebuilding operations. The goal is not to provide a comprehensive roadmap for the future, but rather to focus discussion on clear pitfalls and opportunities that should frame the efforts underway today. Peacebuilding efforts in Afghanistan and Iraq will engage scholars for decades to come, but in the interim, The Hague Institute hopes that this study will provide those at the forefront of programs the immediate benefit of expert rule of law analysis from this decade of experience.

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The study team consisted of a lead author and editor, Scott Carlson of New-Rule, and four rule of law experts with respective hands-on experience: William Spencer and Erin Houlihan of the Institute for International Law and Human

Rights, Charles Jakosa and Robert Lochary. These experts were selected because of their knowledge on a variety of rule of law issues working on the ground in their respective jurisdictions. They have written this paper from the perspective of senior practitioners working in the areas of stabilization, governance and rule of law and based their conclusions on vast experience in complex international legal assistance programs. They collaborated in the summer of 2013 to share their experiences, review literature, and reach out to their networks, understanding that they do not have a comprehensive knowledge of all relevant aspects. Accordingly, they would like to thank the following people for sharing their wisdom and insights: Damian Klaus, Art Cody, Heather Barr, Emily Winterbotham, Arthur Graham, Mary Alice Kovacs, Gary Soberay, Nina Brantley, F. Wilson Myers, and Matt Clark. Of course, their mention does not imply their support or association with any particular assertion that follows, but rather, it is intended to give a sense of scope, as well as recognition for their impressive work in these peacebuilding operations.

Furthermore, the team offers a selective bibliography that represents some of the most influential documents in their expert experience. This study is offered as a point of departure for future discussions, analysis, and reflection. The final chapter in these peacebuilding missions has yet to be written, but the team offers these insights as an invitation to refine and develop our best intentions in the future of peacebuilding.

I. International "Consensus" on Rule of Law in Peacebuilding

International guidance that emerged during peacebuilding initiatives in Afghanistan and Iraq cautioned against mechanistic, abstract approaches to promoting the rule of law. In 2004-5, the United Nations (UN) and the Organization for Economic Cooperation and Development (OECD) issued seminal guidance on rule of law in the peacebuilding context, and both chose to conceptualize rule of law infrastructure and assistance in expansive terms. In August 2004, the Secretary-General submitted to the Security Council his landmark report on rule of law in post-conflict and transitional justice, and the Secretary-General clearly indicated the need to include all justice actors, public or private, in the rule of law reform process.[1] Contemporaneously, the OECD issued a policy statement in the context of security sector reform (SSR) and governance that addressed, in pertinent part, criminal justice reform and strengthening. The OECD asserted that as a matter of formal policy the range of programmatic institutions, counterparts, and relevant actors should be conceived broadly. Not only should formal justice institutions receive assistance and support, but non-state justice actors, from vigilante groups to customary dispute resolution mechanisms, should also be taken into account in the development of programmatic solutions.[2] In 2008, the Secretary-General returned to the issues involved and issued the UN Approach to Rule of Law Assistance (the UN Rule of Law Guidance Note), endorsing and defining eight principles that should guide rule of law programming in the peacebuilding context.[3] These principles and associated guidance reflected the evolution in

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thinking and embraced an inclusive approach. Rule of law practitioners in Afghanistan and Iraq were left with the task of deciding how to take this mandate of inclusivity, and with limited resources, political will, and coordination, effectively implement the same. The case studies that follow demonstrate the fundamental struggle these practitioners faced when trying to reconcile multilateral policy with available capacity and outstanding reality.

Rule of law practitioners had been recommending inclusive approaches, and the multilateral policy support was welcomed. Implementers understood that one cannot address policing without

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inquiring into the needs of the communities served. The actions of the police should be in accordance with law, and police compliance with law is a *sine qua non* for effective operations of both courts and correctional facilities. To be just, courts, as with all actors in the justice system, must function based on the rule of law. Not only must the courts provide access to justice, they must be seen to be equitable and transparent. Likewise, detention facilities must administer sentences meted out by the courts and provide programs and services for the successful reintegration of offenders back into their communities. The justice system encompasses all these connected aspects, and when these components operate in conformity with the rule of law, they, taken as a whole, represent governance that is greater than the simple sum of its parts. This larger phenomenon signifies a state that enjoys a "rule of law culture", which reinforces public trust and participation in the civilian state—an intuitive end goal of peacebuilding.

However, the pathway to these goals is fraught with challenges in any country, and the rule of law practitioners in Afghanistan and Iraq did not control the variables that shaped the context in which they operated. Technical expertise in rule of law is a relatively new skill set for diplomats, policymakers, and host country nationals seeking to rebuild a state. Both Afghanistan and Iraq demonstrate how extraordinarily difficult it is to bring together personnel, assets, and programmatic vision in the pursuit of rule of law. Conflict entrepreneurs do not naturally submit to the rule of law, but rather, generally coalesce to resist it wherever it is sought, for they benefit directly from the lack of law and order. Consequently, Afghanistan and Iraq represent the ultimate challenge for rule of law practitioners.

To appreciate the true nature of the challenge, it is useful to keep in mind the specific language of the international definition of rule of law that has gained widespread recognition. As noted, the Secretary-General of the United Nations in 2004 provided this definition, which the United States and its multilateral partners embraced:

The "rule of law" is a concept at the very heart of the Organization's [UN] mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.[4]

This encompassing definition of the rule of law incorporates a wide range of laws, institutions, regulations, and justice professionals, and supportive interactions with the local population. As such, this definition describes an ideal end-state that realizes true peacebuilding. Though its utility cannot be overstated in terms of establishing an ultimate vision, the work of the rule of law practitioner is to translate this laudable set of targets into a series of executable assistance programs that achieve benchmarks, demonstrating incremental progress toward that end. The Afghanistan and Iraq case studies that follow document real world experience from the field. The points emphasized in these case studies may at first seem somewhat removed from the legalistic UN definition of the rule of law. However, these reflections from seasoned rule of law experts are intended to describe practical considerations and challenges that arrive from the task of converting theory to practice. A rule of law culture requires many moving parts to operate in a synchronized manner. Repetition in concepts, as well as divergence, reflects the respective experience of those involved. Whether describing success or failure, such practical insights warrant further analysis. The sum total of international sacrifice, donor funds, and local suffering involved will be tabulated in history, but rule of law practitioners will continue to be pressed into service, and this study will hopefully help prepare those who rise to the challenge in Afghanistan, Iraq, and elsewhere.

In the interest of brevity, the Afghanistan and Iraq case studies will be introduced with a short statement of the context sufficient to understand the practitioner experiences that are documented thereafter. The expert contributors acknowledge that this context is selective, and the goal is to establish an understanding that is sufficient to frame the analysis and reflections, demonstrating the basis upon which the recommendations arose. While these recommendations may be context specific in many respects, the practitioners that contributed to this study hope that they will engender a healthy debate that has application on a larger scale.

II. Afghanistan: A Meandering Multilateral Engagement

In October 2001, the United States and its allies intervened militarily and by November 2001, had control of most of the country. To begin the process of reconstruction, leaders of Afghanistan and the international community met in Bonn, Germany. On December 5, 2001, the Bonn Agreement for the Transitional Administration of Afghanistan was concluded. It provided for a process through which Afghanistan would form a new government, as well as create a new constitution. The donor community promised significant development assistance to aid in the transition. The UN established the United Nations Assistance Mission Afghanistan (UNAMA) and authorized the International Security Assistance Force (ISAF), which the North Atlantic Treaty Organization (NATO) would subsequently assume command of in 2003. In contrast to Iraq, the armed intervention and reconstruction enjoyed broad, multilateral support, as well as significant popular support from the Afghan citizenry. Furthermore, for many years the military footprint remained light, largely based in Kabul.

As a result of the Bonn Agreement, a new constitution was written and adopted by a constitutional Loya Jirga in 2004. The 2004 constitution provides for a President, two Vice Presidents, a Cabinet of Ministers, a National Assembly with two houses - the lower house (the Wolesi Jirga) and the upper house (the Meshrano Jirga), and an independent judiciary. The 2004 Constitution charged the legislature with lawmaking and defined the hierarchy of laws. Article 3 of the Constitution provides that

no law shall contravene the holy religion of Islam, but at the same time, the Constitution obligates Afghanistan to observe the UN Charter, the Universal Declaration of Human Rights, and other ratified inter-state agreements and treaties. Conceptually, the Constitution grants equal rights to all citizens and commits Afghanistan to uphold its international human rights obligations. However, the body of Afghan law is an amalgamation of new legislation and older laws that is oftentimes opaque. For instance, since 1964, Afghanistan has had five constitutions, each giving rise to significantly different forms of government, such as constitutional monarchy, republic and communist Soviet satellite-state. Given the fact that older laws, promulgated over many years, are not specifically abrogated in favor of newer laws covering some of the same issues, international and domestic legal practitioners have labored under confusion about the governing body of law. Moreover, the shifting constitutional framework makes it unclear whether various changes have overwritten parts of past legislation.

These changes in the forms of constitutions and structure of government not only impacted the validity of laws, but also meant that justice sector actors, depending on their age, had been schooled in differing justice systems. Most importantly, the period of Soviet occupation and the Taliban was devastating to legal education, and Afghanistan emerged from this legal isolation lacking a trained body of legal practitioners. When pressed into service, Afghan jurists have done their best, but a lack of legal preparation results in ignorance of the law,

inviting subjectivity into the application of justice.

To oversee the administration of justice, the international community presumed Afghan leaders would staff positions and engage in civil service reform as needed. This assumption ignored the lack of jurists, and underestimated considerations of patronage that have historically governed social order in Afghanistan. This approach has caused cynicism among Afghans and internationals alike, endangering the reforms and the broader reconstruction efforts.

Reform projects also face obstacles from the general population. Throughout its history, minorities of reform-minded Afghans in urban areas have intermittently tried to implement progressive reforms nationally. However, in a pre-industrial country, which lacks a true middle-class, these reforms often do not resonate with the general population. The tension between traditionalist and modernist approaches that have resulted in coups or civil war in the past remain today. Historically, tribal and religious institutions played dominant roles in the delivery of justice in Afghanistan, and even with the introduction of formal justice institutions, the legacy of community-based dispute resolution procedures has continued to play a significant role. The pull of tradition and the influence of conservative religious leaders have also undermined the role that women play in society, and women have yet to take on a major role in the reform of the justice sector. Women are underrepresented in today's justice system institutions, and are often treated poorly by them. These challenges significantly affect efforts to establish a rule of law culture. As one legal reformer eloquently framed

the problem in 2009, Afghan justice reform efforts suffer from the fundamental mismatch between the international expectations initially created and the results subsequently achieved: "Compared to where we were under the Taliban we are better off. But compared to what you promised us when you first came, we are worse, and that is what people here remember."[5] This disillusionment among reform-minded Afghans expresses the corrosive effect of failure to manage expectations and deliver results. After eight years of reconstruction, similar expressions of disillusionment echoed across Afghanistan and continue to the present. They reflect frustration, shared by some internationals, that while gains have been made in securing peace and stability in Afghanistan, things could have been better.

The challenge of building peace in a country that is deeply fragmented by geography and ethnicity and impoverished economically, educationally, socially and politically is clear. When one adds to this landscape an active insurgency, warlords, and record poppy production, corruption is a natural consequence. Evidence that epic levels of corruption have crippled efforts to build government and private institutions is well-documented and non-controversial.[6]

Most Afghans acknowledge that there was generally good will towards the international community in the immediate aftermath of the Taliban. This "international honeymoon" granted forgiveness for delays in assistance, difficulties in launching meaningful justice sector activities, and a variety of cultural and logistical complications. As of 2008, most of that good will had evaporated, and attacks on internationals and Afghan officials had risen dramatically in number and complexity. By 2010, the U.S. and its allies had shifted from a

more generalized approach to peacebuilding and reconstruction, substituting a targeted counter-insurgency strategy designed to take, hold, and build in contested areas. Consequently, the last five years have seen the peacebuilding pendulum swing between a minimalist military approach to a more maximalist one, with the expectation that the civilian efforts could and would shift accordingly. On June 18, 2013, the Afghan government announced agreement on the final segment of the security transition, setting in motion the withdrawal of most, if not all, remaining ISAF forces in Afghanistan by the end of 2014. At least in a military sense, the pendulum is about to come to a rest with a decidedly minimalist approach.

As the following experiences will reveal, these dramatically shifting approaches have yielded mixed results. While gains have been made, the quoted observation begs the central question at the core of this study: what could peacebuilders have done better? Experts who committed years of their life to Afghanistan have practical suggestions forged in experience, and the selection that follows is offered as an invitation to engage in a broader dialogue.

Peacebuilding as a Bad Example of Strategic Policy and Programming?

The failure of international actors to adequately define and refine communal strategic objectives and programming in Afghanistan compromised the peacebuilding mission from the start. Even when respective international actors have been able to define their mission, it has all too often been lost in a harried transition to the incoming rotation of new professionals taking over posts.

Afghan justice reform efforts suffer from the fundamental mismatch between the international expectations initially created and the results subsequently achieved: "Compared to where we were under the Taliban we are better off. But compared to what you promised us when you first came, we are worse, and that is what people here remember."

Military and civilian frontline personnel have faced changing, and sometimes competing, guidance: Was it counterinsurgency, peacebuilding, counterterrorism, nation building, or something else? How do those approaches relate to an agreed upon and

desired end state? The sheer quantity of Afghan strategic policy-making is daunting.

From a military perspective, immediately after the U.S. deployed its forces to the country, the mission was described as counterterrorism. However, after the Taliban government was toppled and Al Qaeda largely expelled, the emphasis switched to peacebuilding. In the most recent period, the military focus has shifted to counterinsurgency, and more specifically a new definition of what that means. Each discrete mission implies significantly different programmatic approaches, resources, and goals. As other countries contributed, the narrative shifted and increased in complexity yet again.

When NATO assumed control of ISAF, many allies viewed this change as support for a more developed nation building approach. While the U.S. continued to contribute to the ISAF mission, it maintained its own unilateral military operation that preserved capability for the original counterterrorism mission, Operation Enduring Freedom. Ultimately, fifty nations have contributed troops to the ISAF mission. This created the most complex of operating environments for Afghans and internationals. Over the years, a number of conferences, agreements, and strategies were proposed to try to manage this complex environment, set expectations, and apportion responsibility.

The relative success of the Bonn Agreement in achieving the re-establishment of the sovereign Afghan state was notable. Following a couple of years of progress thereafter, the international community facilitated the next logical step in peacebuilding. The London Conference of 2006 was hosted by the government of the United Kingdom and co-chaired by the UN

and Afghanistan. It formally marked the end of the Bonn Agreement process and allowed Afghanistan to begin the next phase of its development by introducing its Interim Afghan National Development Strategy (I-ANDS) and the Afghanistan Compact. The Afghanistan Compact, endorsed by the UN Security Council, was a five-year framework for cooperation among the Afghan government, the UN, and donors. This framework established mechanisms for coordinating development projects for three pillars: security; governance, rule of law and human rights; and economic and social development. The Compact contained expected outcomes as well as benchmarks and timelines for their achievement. Annex II of the Compact provides a commitment to improve international assistance. In support of this goal, the Joint Coordination and Monitoring Board (JCMB) was established in 2006 to provide overall coordination for the implementation of the Afghanistan Compact.

The final Afghan National Development Strategy (ANDS)[7] was endorsed by President Karzai in April 2008 and presented to the international community in June 2008 for assistance in its implementation. It was intended to be the central framework for Afghanistan's development and to establish strategic goals and a policy framework for their achievement. The ANDS provided for three pillars: security, governance, and social and economic development. It also served as Afghanistan's Poverty Reduction Strategy Paper (PRSP), and was used by the World Bank and the International Monetary Fund to assess Afghanistan's eligibility for debt relief.

As part of the ANDS process, all government ministries had to submit individual reform strategies. Accordingly, the Supreme Court, the

Ministry of Justice, and the Attorney General's Office all prepared their strategies and presented them at the Rome Conference in 2007. These strategies were combined into the National Justice Sector Strategy (NJSS)[8] and the National Justice Program (NJP),[9] which provided a series of goals and actions to reform the justice sector of Afghanistan in accordance with the ANDS and promote rule of law.

The Afghanistan Reconstruction Trust Fund (ARTF),[10] which was established in 2002 in order to coordinate donor funds, was called to support associated Afghan government expenditures. The ARTF channeled funds to the Afghan government's budget and was used for salaries, operating costs, and development programs. The ARTF was a promising attempt to pool resources for common peacebuilding objectives. However, many practitioners remained unclear on its connection to broader rule of law efforts—in particular, how it linked with the NJSS, NJP, JCMB or ANDS.

In addition, the U.S. as the lead nation in reconstruction and stabilization eventually engaged in its own broad-based strategic policymaking. At the more general level, there is the Enduring Strategic Partnership Agreement between the United States of America and the Islamic Republic of Afghanistan, which addresses the rule of law,[11] and the Afghanistan and Pakistan Regional Stabilization Strategy,[12] which sets forth a detailed whole of government approach to regional problems, including in the justice sector. At the more operational level, there is the Mission Strategic Resource Plan and the Civil-Military Strategic Framework that attempt to define and harmonize U.S. efforts in Afghanistan.[13] Underneath that layer, there is the U.S. Rule of Law Strategy for Afghanistan

that links with the Anti-Corruption Strategy, the Counternarcotics Strategy, and the Governance Strategy for Afghanistan. Almost as soon as they were drafted, the Rule of Law Strategy and the Counternarcotics Strategy entered a process of revision as the mission grappled with the security transition and its implications.

Common sense dictates that a country in transition that is fighting an insurgency might be faced with some capacity challenges. To assume that the Afghan government had the capacity to navigate any bilateral guidance is dubious, for the Afghan government was constantly engaged in a multilateral international roadshow. Most recent, and significant, is the London Conference of 2010 where the Kabul Process was introduced. The Kabul Conference that same year formalized the same. The Kabul Conference then served as a framework for partnership and mutual accountability between the international community and the Afghan government going forward. In 2012, the Tokyo Conference on Afghanistan built upon agreements from previous international conferences. At the conclusion of the conference, goals and strategies for Afghan self-reliance were reiterated. Adding to the flurry of additional international agreements, funds, conferences and strategies, it is important to note the Law and Order Trust Fund for Afghanistan (LOTFA), the Bonn Conference of 2011 that established a blueprint for transition, and the NATO summit in Chicago in 2012. The sum total is an absolutely overwhelming amount of guidance and commitments to reconcile, understand and fulfill.

Undoubtedly, this array of agreements, strategies, initiatives and programs reflect heartfelt commitment upon the part of the international community to assist Afghanistan. Moreover,

A discrete set of realistic end states should have been defined early and served as guidance for a limited number of long-term, flexible strategies coupled with effective coordinating mechanisms. The policies and strategies should have been flexible enough to define goals, but they should have allowed implementers to change tactics as circumstances changed.

in fairness, it represents a genuine evolution of attitudes towards more local engagement in the peacebuilding mission there and the changing political realities in terms of contributing nations and Afghan counterparts. At the same time, they also reflect operational incoherence that contributed to a lack of unity of effort, the

development of complicated command structures, unrealistic expectations, unclear political guidelines regarding the end state, and lack of clarity regarding the overall mission. The adage "if you have too many strategies, you have none" is a good description of the situation in Afghanistan.

The peacebuilding experience in Afghanistan shares a common challenge with other missions. Directly following the change of government, there was limited time in which to seize the initiative. After that, traditional habits, consolidation of interests, and frustration with an unrealistic list of demands/goals began to define the context. Neither the Afghan institutions, nor the international community were prepared to address the dizzying array of proposed next steps. The actors involved pursued divergent agendas with largely good intentions, and the sheer number of actors, acronyms, and ultimate goals left all parties scrambling to define space in which to make a difference. A discrete set of realistic end states should have been defined early and served as guidance for a limited number of long-term, flexible strategies coupled with effective coordinating mechanisms. The policies and strategies should have been flexible enough to define goals, but they should have allowed implementers to change tactics as circumstances changed.

Lessons: From the beginning, peacebuilders need to commit sufficient resources to establish flexible long-term strategies with properly staffed, and managed, support offices. International and local peacebuilders should avoid "coordination by conference" approaches that consume large amounts of resources and distract implementers from their programs. Coherent, effective strategic policy and programming should be prioritized and systematically supported. Overlap and duplication should be avoided.

A Glimpse of Coordinated Military and Civilian Assistance

As the peacebuilding process unfolded in Afghanistan, the international community increasingly realized that military force alone could not secure peace and stability in a country fragmented by decades of war and gutted institutionally. While the military played a crucial role in security, it was not organized or equipped to promote good governance, rule of law, and economic development. To address this issue, the international community began to develop mechanisms to integrate civilian expertise and efforts with military personnel. However, differences in organizational culture, funding, separate command hierarchies, and expectations resulted in a lack of unity of effort —and sometimes outright hostility—between international civilian-military personnel. This clash of bureaucratic cultures plagued the reconstruction effort and blunted the effectiveness of the peacebuilding mission.

The cultural divide between civilians and military personnel was in many respects as great as the differences between peacebuilders from

different countries. As with strategic policy and planning, the failure to address these challenges from the beginning complicated peacebuilding efforts. The lack of a conceptual framework for civilian-military integration led to various parties pursuing disparate objectives. Pre-deployment training programs eventually mitigated the problem with new arrivals but by the time steps were taken to remedy the disconnect between cultures, many attitudes, habits, and processes had hardened making change more difficult.

Among major peacebuilding contributors in Afghanistan, the Provincial Reconstruction Teams (PRTs) were the major vehicle for civilian-military cooperation.[14] An Afghanistan innovation, the PRTs were designed to bring a comprehensive, joint civilian-military approach to the problem of peacebuilding at the local level. Their mission was to improve stability and build the capacity of Afghan government at the provincial level. Each PRT was operated by a single "lead" nation (but could include multinationals), varied in size and composition, and was answerable to the respective home countries. The PRT model allowed different approaches to peacebuilding depending on which country staffed the PRT, the circumstances of the individual province in which they were based, and their individual mandates and restrictions. Daily activities ranged from building schools, advising on agriculture projects, and working with local prosecutors. Moreover, sometimes the diversity sparked innovation. At one point, a German PRT took creative initiatives in policing, and at another, a Swedish PRT spearheaded work on gender issues. While there were a number of individual successes, the PRTs lacked clear, unified command to achieve unity of effort. At the same time, differing standards on the use of security assets limited capacity and impact of some PRTs, and cooperation between

civilians and military personnel was still largely based upon the willingness of individuals to cooperate with each other.

In the rule of law field, the U.S. eventually took the unprecedented step of creating the position of Rule of Law Ambassador with a mandate to bring coherence to policy-making and promote unity of peacebuilding efforts. After almost eight years in-country, the limits of the ad hoc approach to peacebuilding coordination had garnered U.S. attention. In June 2010, U.S. Ambassador Eikenberry issued a cable to Washington, describing the idea of Provincial Justice Centers (PJCs).[15] The PJC concept arose out of a U.S. interagency assessment of the provincial capitals of Jalalabad and Kandahar and the associated justice institutions. The assessment recommended a multi-pronged approach that would engage the Afghan government to prioritize human capacity development and deployment to these key areas and, concurrently, the international community to support infrastructure, training, security, and other inputs necessary to establish functional PJCs. The PJC concept was to project and provide formal good governance in key areas across the country.

Over the summer of 2010, this broad, U.S. interagency approach to promoting rule of law outside of Kabul was appropriately expanded to become an international body. The newly-founded "Rule of Law Deputies Committee" convened and discussed proposals for adding other key provinces to the PJC initiative, and bilaterals, multilaterals, civilian, and military were part and parcel of its mission. In August 2010, the Deputies Committee outlined a plan to augment rule of law efforts to establish four PJCs spread out geographically in Kandahar, Jalalabad, Mazar-e-Sharif, and Herat. Eventually, the PJC

concept was expanded to include Khost.[16] Assets were mobilized at the U.S. Department of State to support this novel effort, and dialogue was initiated to bring in international partners.

By the end of 2010, interagency and civilian-military (civ-mil) planning teams began assessing and developing courses of action for this expanded approach. Various proposals emerged from interagency partners, which attempted to further define the reach and scope of PJC efforts. The Combined Joint Interagency Task Force-435 initiated the Rule of Law Field Force-Afghanistan (ROLFF-A, which would later evolve into the NATO Rule of Law Field Support Mission - Afghanistan (NROLFSM-A, enjoying both Danish and Dutch support)), and the U.S. Department of State Bureau of International Narcotics and Law Enforcement (INL) expanded its rule of law technical assistance in the field. Simultaneously, U.S. and military agencies formed and supported a coordinating secretariat that came to be known as the Interagency Rule of Law (IROL).

In early 2011, the PJC programmatic vision lacked the formality that was intended, but the IROL team, working with civ-mil teams collaboratively, was able to define the objectives of PJCs and commence collecting information across civ-mil implementers. At the end of 2011, IROL stewarded the first, and only, report on PJC metrics, outlining successes, challenges, and next steps—which captured civ-mil results in a standard format. The results were surprising to many. For example, the initial PJC data revealed that case backlogs were lower in provinces that had higher numbers of defense counsel when common wisdom was that the lack of judges and prosecutors was the controlling variable. Unfortunately, the drawdown of support for IROL made this strategic, and analytical, initiative

a moot point. Both the U.S. and U.K. as lead supporters faced budget cuts. The commitment to personnel evaporated, and the PJC initiative, along with the commitment to systematize monitoring and evaluation across civ-mil agencies, disappeared.

Lessons: Multilateral interventions should anticipate and plan for coordinated civ-mil peacebuilding efforts. This type of coordination presupposes an ongoing mechanism that is sufficiently robust to foster communication, planning, joint programming, and monitoring and evaluation of the same. The turnover of personnel that is to be presumed in conflict environments must be factored into the equation to ensure the preservation and application of lessons learned.

Local Participation and Policy Ownership, Difficult as it is Indispensable

A common Afghan complaint has been that internationals develop programs that are not based upon what Afghans want or need. In 2005, the OECD hosted a gathering of senior government officials from developed and developing countries. This meeting concluded with the issuance of the Paris Declaration on Aid Effectiveness, which stated that donors should "[r]espect partner country leadership and help strengthen their capacity to exercise it."[17] The participating nations agreed to take steps to implement these principles, and the OECD reviewed the results in 2008. At that meeting, they issued the Accra Agenda for Action that cited progress, but emphasized significant challenges remained stating, "Country ownership is key."[18]

Undoubtedly, some Afghans and international development specialists were tracking the evolution of this guidance, and more importantly, the post-invasion experience confirmed its validity.

Despite a noteworthy commitment on all sides, implementing this approach in Afghanistan has proven difficult. The structure of the new Afghan state was highly centralized, and the geography and limited infrastructure of the country made linkages with the provinces and districts a challenge, even in the absence of the obvious security threats. Both international and Afghan officials were forced to think creatively about how to overcome these circumstances. There was a mutual understanding that ideally information flow should be simultaneously top-down and bottom-up. However, without a clear plan for strategic communication, the central institutions in Kabul would not be able to support a needs driven agenda in the provinces and districts. The media could have been a constructive force in facilitating this communication, but Afghans and internationals did not mobilize to support this approach effectively. Knowledgeable observers have speculated that the accountability that would have come from media attention was underestimated, undervalued, and even unwanted in some cases.

Even under these circumstances, the Afghan government did eventually demonstrate a commitment to address these issues in the rule of law sector. In January 2011, the Senior Security Shura[19] decided to prioritize rule of law at the district level and established the Afghan Rule of Law and Justice Initiative. On the basis of this decision, the Independent Directorate for Local Governance (IDLG) began to coordinate the efforts of all four Justice Ministries (Ministry of Justice (MoJ), Supreme Court (SC), Attorney General's Office (AGO), and the Ministry of Interior (MOI))

to develop and implement a plan to identify and address formal justice shortcomings at the district level. For the first time since the fall of the Taliban, the Afghan government had demonstrated ownership of an operational strategy and commitment to extending the formal justice system to districts in need, and the international community welcomed the initiative.

From March through June 2011, the IDLG convened the District Rule of Law Working Group (DRoL WG) that had a series of nine meetings. This body was charged with identifying districts with the most critical needs and designing an action plan. In addition to the Afghan stakeholders, participants included donor nations and multilateral organizations (U.S., U.K., Italian, Danish and Canadian Embassies, European Union Police Mission (EUPOL), UNAMA, as well as ISAF, NATO, and NROLFSM-A). By April, the DRoL WG identified 48 districts for rule of law enhancement where critical gaps existed in the formal justice system: unfilled positions, insufficient infrastructure, and poor security. In June 2011, the DRoL WG selected 29 of these districts as a first tranche. During the summer of 2011, this "29/48" Plan was presented to the Senior Security Shura and received approval from MoI and MoD. In November 2011, the Office of the National Security Council's Deputies Committee (ONSC DC) assumed responsibility from the IDLG for the DRoL WG to lead further work on the 29/48 Plan and the broader Afghan RoL and Justice Initiative.

Given the degree of coordination with the international community, the resulting Afghan goals and plans aligned well with corresponding international objectives, such as the military counterinsurgency campaign (e.g. "key terrain districts"). Consequently, the dialogue between the international community and Afghan

counterparts presumed that all parties would be working collaboratively toward the achievement of expansion of rule of law at the district level. As efforts to implement the plan moved forward, the plan stalled. The ability to actually recruit legal professionals who were willing to go to these districts had been assumed, and when it came time to actually implement this measure, Afghan legal professionals were reluctant to go to what was essentially a "foreign" village where they might not have the language skills to be truly effective, e.g., Pashto v. Dari. Some experts had predicted such difficulties, and the idea of mobile courts were discussed, but ultimately, the emphasis on maintaining a formal justice presence in the districts prevailed. In the end, the promising start lacked a promising finish, and the rapid international drawdown had begun distracting the community from developing new ideas in this arena. The program successfully deployed a significant number of professionals after a slow start, but it never realized its ultimate targets, and as PRTs closed and forces withdrew so too did the Afghan legal professionals.

The parallel process under the ANDS has met a similar fate. Following the approval of the ANDS in 2008, the Afghan government fleshed out their goals for rule of law in National Priority Program 5 (NPP5): Law and Justice for All as part of the Kabul Process.[20] After a multiyear drafting process, the final draft of June 2013 establishes five priorities in the rule of law sector:
"1) Legal reform and legislative effectiveness;
2) Enhancing efficiency of the Justice Sector;
3) Increasing meaningful access to Justice;
4) Building institutional capacity to strengthen Justice delivery; and 5) Increasing physical assets to improve Justice delivery systems."[21] These priorities are consistent with the goals of the ANDS, NJSS, and the NJP, and they incorporated

robust consultations with the international community. Unfortunately, the length of the process resulted in this Afghan-centric rule of law planning being overtaken by events. Even if the NPP5 were finalized, the international community has had to forge ahead with their own plans in alignment with the military transition plans.

Donors and their implementers have their own distinct pressures to show results according to their respective workplans and logframes. In a country flooded with money from multiple donors to work in an area like rule of law, donors and implementers will often feel compelled to conclude their own consultations, separate from a coordinated process. Coordination is not something that implementers can be expected to perform at the expense of their own goals. Each implementer has its own unique set of monitoring and evaluation standards that they must meet to show value for donor funds. Moreover, those goals have different timeframes according to the project, e.g., three-to-five years, which once established can be hard to change.

Lessons: The host country should be consulted and local participation integrated into policy and planning from the beginning. The international community needs to commit sufficient resources to support the process and agreed upon objectives, including in the package the capability to adjust for unforeseen circumstances. The overall time-frame for defining policy and planning needs to be compressed sufficiently to make them effective and capable of integration into individual donor and implementer programming. The policy and planning process should not overwhelm the peacebuilding effort itself, and it should be designed to accommodate the complexities of multiple assistance initiatives.

Working with Limited Human Capital in an Insecure Environment

As Afghans who worked with a series of foreign development experts have noted, most foreigners deployed to Afghanistan seem to stay only long enough to begin to understand Afghan culture before leaving. Cultural norms in Afghanistan can be complex and a real stumbling block to success. To be effective, foreigners deployed to assist in development and stabilization must understand concepts of religion, ethnicity, literacy, history, and inherited bureaucracies. Programs were compromised and goodwill lost with Afghan partners with common mistakes: Some insisted on shaking hands with Afghan women, some imposed Western, technology-based solutions on human resource challenged offices, and others failed to understand the nature and scope of ethnic divisions and corruption. Each soldier and aid worker is an ambassador to the local population. Credibility with key Afghan leaders is difficult to acquire and easy to lose. Peacebuilders need to be able to explain goals and programmatic steps in a manner consistent with a country's religion and culture to be successful.

The necessity to develop and preserve relations with Afghans was particularly important because Afghanistan lacks a deep human capital base. Internationals involved in peacebuilding in both Iraq and Afghanistan often remarked at the relative disadvantage Afghanistan faced due to its isolation and lack of quality education during the Soviet and Taliban period. Qualifications as basic as literacy are scarce. In fact, Afghanistan faces widespread illiteracy and conditions are worse in rural areas and among girls, women, and other vulnerable groups. The estimated adult literacy rate for those 15 years old and older is 34 per

Afghanistan: A Meandering Multilateral Engagement

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cent, with 18 per cent for women and 50 per cent for men. However, in rural areas, where roughly 74 per cent of the population lives, an estimated 90 per cent of women and 63 per cent of men cannot read, write, or do basic mathematical computations.[22] This limited human capacity was a defining factor that circumscribed Afghan capacity at all levels and in all sectors.

Peacebuilders—governments, international organizations, and civil society actors— unintentionally exacerbated this situation, recruiting some of the most talented Afghan professionals. Qualified ministry staff often leave

government service for better paying jobs with the peacebuilders, reducing the government's ministerial capacity to implement the stated goals of peacebuilding.[23] Not only do those staff leave Afghan positions, but also there is competition between and among the international implementers and "poaching" occurs between implementers as staffing needs develop.

This competition for talent is not only with regard to Afghan professionals. Among those internationals who were willing to stay in Afghanistan for an extended period of time, there has been similar competition. For example, a number of internationals have rotated among three or more justice sector projects in Afghanistan. Given the difficulties of recruiting professionals to work in Afghanistan, an additional factor has been introduced, that of staff burn-out. Some individuals that need a break from the rigors of peacebuilding are instead recycled by other projects desperate to staff their projects. While this phenomenon has had the positive effect of preserving some institutional memory within the justice sector, it has also limited the introduction of new peacebuilders with enthusiasm and fresh perspectives.

A more general consequence of peacebuilding in Afghanistan is that it has grown to play a dominant role in the Afghan economy, engaging a significant percentage of the non-agricultural labor force. Not surprisingly, economists are worried about the impact of the 2014 drawdown on the economy.[24] Peacebuilders have hired local contractors to build schools, hospitals, and court facilities, but the process has been difficult, and a lack of oversight, especially in the beginning, resulted in projects that wasted money, time, and effort.[25] Ideally, the

peacebuilders would have modeled effective private sector project management, but the results were decidedly mixed. As a result, the peacebuilding impact on even the low-skilled sector of the economy has been sub-optimal. The adage "crawl, walk, then run" is applicable for Afghanistan. Trying to do too much (rapid reconstruction) with too little (a majority illiterate workforce) in too short a time (six to twelve month deployments) has resulted in the failure of projects.[26]

A frequent rationale cited for project management shortcomings and failed projects is the non-permissive environment. Undoubtedly, the environment has grown more dangerous over the duration of the peacebuilding effort, and the need for security has increased. This fact has challenged peacebuilders as they struggled to calibrate the need for security, as opposed to the costs, both in terms of money spent and in lost opportunities. At this juncture, peacebuilders, civilians in particular, are forced to exercise supervision and oversight from secure compounds.

In terms of private sector development, peacebuilders have struggled with economic growth initiatives in this insecure, resource-poor environment. In 2005, the U.S. government awarded a USD 46 million contract to BearingPoint, a Virginia-based contractor, to facilitate Afghanistan's economic development.[27] The contract included embedded support in financial ministries, the Office of the President, and the Parliament. BearingPoint subsequently filed for bankruptcy, and one of the more prominent private sector projects with potential for overlap in the rule of law field came to an end before it could be integrated with rule of law efforts.

Lessons: Peacebuilders have to establish and maintain effective relationships with their counterparts, which requires cultural knowledge and sensitivity. At the same time, the impact of peacebuilders on the local private labor force, the civil service, and economy more generally, should be considered in planning and engaging on programming. To the extent possible, peacebuilders should engage the private sector in a manner that models effective private sector management and prepares the local population to assume ownership for their government and economy.

Rule of Law Programming as a Learning Process as Much as an End-State

Developing an effective and fair legal system based on the rule of law is a difficult, labor-intensive, frustrating experience, when done correctly. It requires attention to qualitative goals that are not easy to measure. In Afghanistan, hurdles to the rule of law exacerbated the problems, including critical gaps in the underlying legal and physical infrastructure and the fact that Afghan legal professionals lacked comprehensive legal training and experience.[28] Even if there had been no legal or educational gaps in Afghanistan, no country has a body of positive law that addresses every step that should be taken by its legal professionals. Standards of practice that ensure fairness and consistency develop over time. Helping Afghan legal professionals develop and acquire these standards implied the need for a process that fostered hands-on learning sustainable under the conditions in Afghanistan.

This type of peacebuilding programming requires allowing Afghan judges, prosecutors, attorneys, and investigators to engage in trial and error. When they encounter problems, international expertise can assist them in developing solutions, but the Afghans themselves have to take at least an equal role in solving the problems. In addition, they should be allowed to fail. Human nature is such that we learn more from our failures than our successes. Once partners arrive at workable solutions, it will take time for those solutions to become part of the standard way of doing things. This requires peacebuilding professionals to exercise patience and resist the urge to substitute foreign judgment for local judgment in the name of expedience. If peacebuilders adopted this approach uniformly, they could maximize Afghan solutions to Afghan problems, ensuring sustainability after the international presence draws down. While all this seems self-evident, the history of rule of law development in Afghanistan is filled with examples of quick, sweeping fixes based on Western approaches that were imposed by outsiders who did not entirely understand Afghanistan's legal traditions. These fiascos ranged from building "state of the art" courthouses that were not used by the Afghans to insisting on common law procedures in Afghanistan's formal civil law system.

Rather than set a good example, the peacebuilders on occasion set the very worst example. For instance, early on in the peacebuilding process, the Afghan MoJ had organized a working group of internationals to provide advice on draft laws. The U.S. Department of Justice, however, chose not to participate in this process. However, it later determined that it wanted certain provisions inserted into what would become the Interim Code of Criminal Procedure. Eventually, it applied political pressure to skirt the international engagement process

and succeeded in having the desired provisions inserted into the legislation. Not only did this action upset Afghan counterparts, but it also challenged the Italian peacebuilding leadership in the justice sector, leading to difficult relations between the donors in this sector. This type of heavy-handed misstep was repeated over the course of the last decade.

The Anti-Corruption Unit (ACU) of the AGO was a recent notable example. The ACU was established in 2009 with the idea that it would prosecute corruption cases, but start with low-profile cases. Starting with low-profile cases would have allowed the prosecutors in the unit to practice handling relatively complex anti-corruption investigations, make their mistakes and learn from them while keeping the risks of political retaliation low. This approach would have also allowed the ACU, as it gradually met with success, to find sources of political protection from superiors in the Afghan government and from the international community. The hope was that as the unit developed political top cover, aided by positive press attention, it could gradually move to mid-level corruption cases and then higher profile cases. However, soon after the unit was formed, it was encouraged by international advisors to participate in an investigation against an aide to President Karzai. Predictably, overwhelming political pressure was brought to bear against the ACU, the case was abandoned and internationals were no longer allowed to effectively work with the ACU.[29] Soon after, Afghans began referring to the ACU as the "Corruption Unit" in a black-humor jest about the unit accepting bribes after it was no longer allowed to work with internationals. The unit essentially became part of the problem.

Developing and retaining a cadre of international experts who understand the requirements of

rule of law programming in all its facets—as well as the cultural context—could prevent costly missteps. After a number of years, the international community took some steps to address some of these issues providing better pre-deployment training and extended tours. However, as a general rule, peacebuilding contributors continue to outsource most of the recruitment and staffing, using contractors as their de facto human resources departments. In Afghanistan, special skills, cultural awareness, creativity, and resilience is at a premium, for many rule of law practitioners will face legal conditions for which they have absolutely no common reference frame.

Perhaps the most significant difference is the prevalence and influence of the informal systems of justice. While precise numbers are elusive, the common wisdom is that majority of disputes in Afghanistan are resolved through informal mechanisms. Not only is access to the formal system difficult in much of the country, it is culturally not the customary manner of resolving disputes. Consequently, even where formal procedures are present and functional, outcomes are not accepted as true resolutions. This is largely because, culturally, Afghans view proper results as guided by their interpretation of sha'ria (the Hanafi school) or pashtunwali (the unwritten tribal code of Pashtuns). These are the guideposts for justice in Afghanistan, and, when there is a conflict between the positive law and the sense of justice imbued by sha'ria or pashtunwali, the latter tends to take precedence.

This fact has been demonstrated in cases in the formal sector that have received international media attention. For example, in 2006, an Islamic man who converted to Christianity was charged and convicted with apostasy.[30] Rule of law trainers in Afghanistan attempted to use this case as a

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training case study, emphasizing that the positive law in the Constitution and Criminal Code did not in fact criminalize this act. To the surprise of the trainers, though a classroom of prosecutors acknowledged the lack of a statutory basis for prosecuting apostasy, nearly all agreed that the formal justice system should administer capital punishment under sha'ria.

When confronted with such circumstances, peacebuilders have to consider the causes for the behavior in question and consider creative approaches to encouraging change through multi-pronged education initiatives. This process can be extraordinarily challenging as exemplified in the case of women and girls who are charged with the "crime" of "running away"[31]—generally, from rapists, abusers, or forced marriages. Again, the Constitution and Criminal Code, not only do not provide that this is crime, but they indicate the precise opposite. Moreover, Afghanistan's ratification—without reservation— of the Convention on the Elimination of Discrimination Against Women (CEDAW) makes it nominally the supreme law of the land. Nevertheless, in 2010, the Afghan Supreme Court in an Advisory Practice Note

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instructed lower courts that "running away" was indeed a crime. This announcement led to international criticism. UNAMA issued a legal memo rebutting the Note. However, the Supreme Court resisted and reconfirmed it.[32]

While the international community was initially caught off guard, its members did regroup and conduct outreach and education efforts. After the second statement of the Supreme Court, a number of Afghan institutions came out against the position that "running away" constituted

a crime. Most notably, on April 12, 2012, the AGO issued an instruction to prosecutors ordering them to refrain from assembling "unjustifiable case files" and "conducting baseless investigations."[33] The Minister of Justice and other senior officials took similar actions. Whether this will fully address the problem remains to be seen, but it is instructive for peacebuilders of the need to identify and cultivate multiple agents of change to move the rule of law agenda forward.

Lessons: Successful rule of law programming requires an intimate understanding of local culture, law, institutions, attitudes, and traditions, as well acknowledgement that the endeavor itself is a process. Peacebuilders should not impose views, particularly when consultative, collaborative processes are available that can breed a sense of partnership, locally and internationally. At the same time, peacebuilders need to anticipate challenges to reforms and design multi-pronged approaches that engage the full range of potential change agents.

Dynamic Circumstances and the Need for Shared Institutional Memory

With the extraordinary staff turnover in Afghanistan, the peacebuilders had a demonstrable need to effectively capture and preserve institutional knowledge to track programmatic progress, identify lessons, share information, and provide orientation materials to incoming personnel. Afghanistan bore witness to various approaches to this challenge. Some were predominantly donor led, and others

were more rooted in Afghan civil society.

A useful donor led initiative involved the collection and sharing of Afghan law. The United States Agency for International Development (USAID), through its Afghanistan Rule of Law Project (ARoLP), established a web site[34] where English translations of the constitution, laws, regulations, presidential decrees and other published materials were gradually collected and could be easily located. This was an essential resource not only for foreign nationals attempting to assist with development of the rule of law, but for anyone seeking to understand the legal and regulatory environment in Afghanistan, including members of the private sector who wished to invest in the country. Regrettably, a gap in USAID support ended its upkeep. In 2011, the U.S. Embassy's IROL briefly tried to re-start this type of data sharing via a public civ-mil internet site, using HARMONIEWeb[35], but resources were cut again. The original ARoLP site still exists, but the information it contains is now outdated.

As a result, unless an international rule of law expert can read Dari or Pashto, international peacebuilders responsible for devising and implementing peacebuilding strategies in Afghanistan run the risk of missing key legal provisions. This is especially crippling to those engaged in developing the rule of law. It is impossible, for example, to address legal gaps without an understanding of what those gaps are. What would seem to be an obvious pre-requisite for effective rule of law programming—access to the laws—has not been consistently prioritized as a basic element in the international peacebuilding toolkit, which calls into question donor understanding of what is actually involved in rule of law programming.

On the Afghan civil society side of the equation, a few groups have emerged as sources of legal information and trusted commentators on rule of law issues. They have been able to produce a variety of materials documenting legal developments and an analysis of the same—quite often in multiple languages to ensure that information flows equally to internationals and Afghans. For example, the Afghanistan Research and Evaluation Unit (AREU) has been in operation since 2002, and its combined Afghan-international staff have produced a wealth of information that can be useful for peacebuilders in understanding the Afghan perspective and experience on what constitutes justice.[36] Over the first decade of peacebuilding, AREU has been an Afghan leader in establishing a shared institutional memory, and it continues this mission to this day. Thus, one promising outgrowth of peacebuilding efforts has been the growth of the local civil society capacity to document legal concerns and promote rule of law.

Lessons: Institutional knowledge must be captured early and maintained consistently if peacebuilders are to have a hope of keeping abreast of local developments. To be credible in the rule of law field, peacebuilders must commit sufficient resources to understand the laws they are seeking to help implement. Local organizations can assist in the collection, dissemination, and analysis of legal information, and support for these organizations builds valuable local capacity.

III. Iraq: Will They Greet Us With Flowers?

After the U.S. led invasion of Iraq in 2003, there was a period of military occupation. This first phase, which officially spanned from April 2003 to Iraq's first Council of Representatives elections in January of 2006, featured the establishment of the Coalition Provisional Authority, the Governing Council, a Transitional National Assembly, Transitional Administrative Law, and a Referendum on an Iraqi Constitution (which occurred in October 2005[37]). While some consultations with Iraqi leaders occurred during this period, U.S. and allied interests were at the forefront, and significant decisions were made in concert with the interests of the military occupying power.

The occupation period was initially based on the U.S. premise that a minimal military force would overthrow the former regime, as Iraqi civil servants and leaders would rapidly return to their jobs to restore order and government services. Having correctly identified that it had a significant civil infrastructure, talented workforce, and established nationwide systems, the U.S. government presumed that it had the ability to quickly establish a political framework and jumpstart an economy debilitated by years of international sanctions. However, despite warnings of potential destabilization, the Coalition Provisional Authority issued well-known orders disbanding the Iraqi Army and implementing strict De-Ba'athification. This sweeping approach to De-Ba'athification at the outset of reconstruction laid foundations for Iraq's civil war and complicated peacebuilding from the beginning. Within several years,

peacebuilding priorities shifted away from reconstruction and developing political institutions, to focus on counter-insurgency and the military surge.

Events such as the bombing of the UN's Baghdad headquarters in August 2003 quickly put an end to the idea that building a sustainable peace would be a comparatively easy, self-funded task. The peacebuilding strategy became an existential struggle for the idea of a unitary, peaceful Iraq that delivered services to its citizens. As an insurgency exploded across the country, a weak Iraqi government – largely dependent on its international masters – was helpless to respond. Neighborhoods were ethnically cleansed and millions of Iraqis fled the country. Key parts of Iraq's power grid and oil industry sustained damage and significant parts of its cultural heritage were destroyed, while the peacebuilding process took second place to "force protection."

In the early post-invasion period, unilateral U.S. initiatives, such as the Iraq Reconstruction Management Office, established many programs that did not benefit from local expertise. Operating under a largely U.S. Department of Defense mandate, large amounts of dollars flowed into and out of Iraq, and negligible results were achieved given the expense involved.

European governments and international civil society organizations were reluctant to work on reconstruction and stabilization efforts. The U.S., U.K., Australia, and a small "Coalition of the Willing" responsible for the occupation and

rehabilitation of the new Iraq were left to shoulder the effort. In many ways, the perception of Iraq as a "dirty" conflict – based on the controversial circumstances of Saddam's overthrow – continued to affect international support and strategies over the following ten years.

In 2005, the US government imported the Provincial Reconstruction Team (PRT) concept to Iraq from Afghanistan. By 2008, there were PRTs in each Iraqi province.[38] Meanwhile, the Iraq Reconstruction Management Office disbanded and tasks were assumed by the U.S. Embassy in Baghdad. The surge deployment of additional U.S. soldiers to Iraq complemented the "Anbar Awakening," in which largely Sunni sheikhs, repelled by the excesses of Al Qaeda and other elements of the insurgency, organized and received U.S. support starting in 2005.

In October 2007, U.S. troops in Iraq reached a peak of 166,000, and on December 18, 2011, the last convoy of U.S. forces left Iraq at a Kuwaiti border crossing. As U.S. patrols left Iraqi streets, violence abated. Meanwhile, the new Iraqi government asserted its authority, most notably in the March 2008 "Charge of the Knights," in which Iraqi forces drove Mahdi Army militia out of Basra. Reinforced by this success, the Iraqi government began a process of taking hands-on control of all Iraqi ministries and the security apparatus, adopting many of the tactics of the Ba'athist regime in the process. This accretion of power was supported by widespread corruption and a "bought" political class, and funded through a resurgent oil industry. The comparative peace in this phase allowed for incremental improvements in service delivery, but also saw a parallel rise in endemic corruption. International development and institution-building support declined as the international community has focused its attention elsewhere.

Recent events demonstrate that the internal divisions are growing, as opposed to receding. The Prime Minister's Office has alienated key parts of the country (including key Shia blocs, Kurds, and Sunni groups) and has fuelled new terrorism and conflict. Regional issues, such as the conflict in Syria, have destabilized the country further. International assistance has slowed to a trickle, and the mediating role of groups ranging from the U.S. Institute of Peace to Pax Christi has diminished.

Former Secretary of State Colin Powell observed "don't try to use Iraq as [a] model for reform, without recognizing and acknowledging that it was as much a process and personality as it was a structural problem."[39] In the case of Iraq, many of the issues were evident to implementers, and much of the chaos and churn of the Iraq story is not the result of a lack of thinking, strategy, and analysis, but rather the result of poor management choices, ignorance, and malfeasance.

Conflict Prevention Measures Secure Space for Rule of Law

When conflict prevention efforts succeed there is the problem of "the dog that didn't bark" – what actions produced that result? For example, against a backdrop of regular, spectacular terrorism in the towns and cities of Nineveh, a governorate in northern Iraq ,U.S.-Kurdish-Iraqi patrols and checkpoints as part of the Coordinated Security Mechanisms (CSM) undoubtedly prevented a much larger conflict – and loss of life – between Kurdish Peshmerga, Iraqi forces and local citizens. Proving the extent of these successes may not be possible, but much can be learned from the practical measures proposed and attempted.

First and foremost, conflict prevention relies upon collection and sharing of information. To provide early warning and a rapid response to changing events, information-sharing architecture is needed. This architecture will be judged on its ability to minimize the warning-response gap: data and other information may be collected, but the actions actually taken using this data are what prevent conflict. Furthermore, the structure and mechanism employed will need to distinguish between operational conflict prevention, that is, addressing immediate events, and structural conflict prevention that is concerned with underlying causes.

The U.S. military in Iraq prioritized the type of information-sharing architecture that addressed many of these concerns. The U.S. military used technology to package and route information, and Iraqi civil society organizations developed simple email tools, such as listservs, which allowed them to communicate as never before. The goal of the U.S. military was to share horizontally (with other security forces) and vertically (with individuals and civil society—as well as within organizations). While this information sharing worked reasonably well, it had limitations, for implementers were not willing to give up control over their security information in various situations.

With this information-sharing platform in place, confidence and security building measures were facilitated. The CSM effort in Nineveh broke new ground in terms of conflict prevention and management, but the sustainability of the effort fell short. After the U.S. military's withdrawal in 2011, the United Nations sought to both continue the information-sharing at the combined checkpoint coordination centers and proposed targeted economic and infrastructure investment in key areas of Nineveh.

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Unfortunately, this initiative was never fully implemented in 2012 due to limited United Nations resources, lack of leadership, and behind the scene Arab and Kurdish opposition to the project.

Prior to, and alongside, CSM efforts, PRTs were deployed to coordinate military, diplomatic, and development policies in all of Iraq's governorates. However, the PRT's lacked a coordinated strategic vision for their work, and in many cases, security concerns limited their ability to engage in their mission and frequently restricted their ability to interact with Iraqi counterparts. When confidence and security building measures have yet to provide operational space, policy and planning should be modified to address the underlying conflict conditions.

Since the invasion of Iraq in 2003, the non-permissive operating environment has played a

significant role in spectacular – and world-class – corruption and development failures, which actually undermine rule of law. For example, the inability to properly monitor grants to nascent Iraqi civil society organizations had the perverse effect of creating a cottage industry of small shops that developed generic conference documents, photoshopped conference photos, and provided dummy reporting for grantees. U.S. grant administrators, hunkered down in PRT compounds and Baghdad's International Zone were defrauded, and their ability to respond was limited.

In some instances, such as elections, the insecure environment threatened the entire peacebuilding effort and taints efforts to this day. The lack of access for international election observers combined with international certification of results was viewed as dubious by many in the face of electoral complaints. For example, many Iraqis allege that electoral fraud accompanied Iraq's Constitutional referendum in October 2005. The close result – particularly in Nineveh province – and the inability of international monitors to travel outside Baghdad put a seal of "legitimacy" on what many believe to be a stolen election.[40]

Lessons: Peacebuilders must commit to sharing security information vertically and horizontally on a systematic, ongoing basis. Modern technology greatly simplifies this task, but it nevertheless requires a sustained commitment of resources. Furthermore, strategic information-sharing needs to be integrated into a larger package of confidence and security building measures designed to prevent or at least mitigate conflict. The ability of peacebuilders to conduct their common tasks must be guaranteed.

Strategic Communication, A Necessity for Rule of Law

In Iraq, the goal of most strategic communication was to prevent conflict and build respect for the rule of law, while simultaneously engaging the national government and community stakeholders to institutionalize the new state. U.S. forces developed strong and innovative information sharing architecture and early-warning structures, but they failed to engage with key segments of the Iraqi population. Throughout the "surge" of international forces and beyond, occupation forces and the Iraqi government were viewed with suspicion, and engaged Iraqi partners were seen as collaborators.

Integrated civilian-military PRTs were charged with introducing post-conflict reconstruction, security, and development activities into areas deemed too hostile to host NGOs and UN relief agencies. Like in Afghanistan, they lacked common objectives, a mutual framework for reconstruction operations, and an overarching strategy to achieve their under-defined goals.[41] These challenges were compounded by a lack of adequate pre-deployment training for PRT personnel, all of which hampered a common language or framework for strategic communication across agencies and sectors.

The need to balance a strong military presence for security purposes with a robust civilian presence also contributed to a lack of clarity on the part of both coalition partners and Iraqi and international stakeholders as to the overall role and objectives of the PRTs.[42] Within individual governorates, coordination across civ-mil branches also varied significantly. Though Iraq's PRTs were "civilian led" in order to shift priorities toward development, some PRTs

were paralyzed by an inability to secure military cooperation.

Developing an information architecture to address the warning-response gap and share information and analysis across coalition, Iraqi, and Kurdish forces was a critical component to creating peacebuilding early-warning structures. However, this approach assumed the ability to project a cohesive campaign theme and strategy that was not present to secure the support and commitment of local leaders and communities.

In seeking to combat coordinated low-tech campaigns by insurgent groups and bolster morale and confidence, the U.S. saturated the broad Iraqi market with billboards, ads, and text messages, but was not able to develop an overarching campaign theme or a centralized command authority to guide and supervise counter-insurgency communication operations.[43] Organizations located in different U.S. government agencies and departments each managed their own strategic communication campaign to win "hearts and minds"' often with overlapping or conflicting messages. This experience highlights the need to develop and integrate information on local culture, language, and social relationships, including consultations with stakeholders at the local level.

Coalition efforts to counter insurgent propaganda were often not backed up by meaningful improvements in security, infrastructure, or access to services. Communications at the province and community level did not strategically seek to identify and address the fundamental needs of—and sources of tension facing—Iraqi families: clean water, sanitation, electricity, and constant threats to life.

Smaller, simpler needs were not addressed because of a failure of both military and civilian operations to effectively engage with local leaders, community members and civil society organizations. In Nineveh, for example, thousands of Shabak and Christians fled to the Hamdaniya district during the civil war, significantly straining markets for available housing and land, and shifting the ethnic and religious balance of power on local councils. PRT confidence-building measures were not responsive to more urgent local needs because there were few mechanisms for local groups to inform reconstruction policies at the local level. Instead, grant-making with virtually no oversight allowed shadow organizations affiliated with political parties to use U.S. money to bolster the status of competing groups, or claim funds to implement community-level projects with only limited actual work ever taking place.

Organizations and governments engaged in peacebuilding should have developed mechanisms to identify, vet, and assess local interlocutors. In Iraq, coalition forces relied on diaspora elites, religious figures, and experts with limited vetting or oversight. Not only does this process of "picking winners" marginalize significant sectors of society and capable potential leaders, but it also shapes the nature and structure of policies aimed at preventing conflict and building peace. Many of these decisions were really a function of security. The volatile security environment kept most civilian personnel locked within heavily guarded compounds. As anti-American and anti-Coalition sentiment grew, Iraqis working with or engaging with PRTs and other coalition structures faced an increased risk of targeted assassination and threats.

Lessons: An integrated strategic vision for institution building and longer-term development needs to be elaborated. Strategic communication can identify specific confidence and security building measures through engagement with the community at the local level and coordination with relief agencies. Mechanisms to identify appropriate interlocutors are a critical first step that should be followed with efforts to build the capacity of local leaders, civil society, and community members to engage in structured dialogues to identify needs and evaluate the impact of projects in a secure fashion.

Effective Networking vs. "Coordination" Meetings

The larger peacebuilding environment in Iraq since 2003 has been fraught with rivalries, compartmentalization, mutual suspicion, and bureaucratic infighting in both the international community and the Iraqi polity, and this was also reflected in the rule of law arena. These issues impeded policy development, planning and execution of tasks. As the international presence became more sophisticated, innovative tools were developed that built networks and furthered cooperation. On a parallel track, civil society found ways to exchange information and foster teamwork.

One of the defining aspects of peacebuilding in Iraq from 2003 to 2008 was the plethora of coordination meetings that were convened by different international agencies. For example, in the field of rule of law, the United Nations, United States, and European Union regularly convened separate coordination meetings, inviting the same group of program implementers. These

general "thematic" meetings were accompanied by subgroup coordination meetings, in some cases convened on a weekly basis, such as transitional justice or judicial training. Civil society implementers lacked sufficient time and resources to participate in constant coordination meetings, a frustration which was much commented upon at the time.[44]

Meanwhile, critical information was often not shared. The atmosphere of competition and mutual suspicion retarded progress. Coordination meetings were seen by conveners as an opportunity for smaller implementers to "report in," and information frequently flowed one way. To name one example, many civil society implementers supporting the work of the Iraqi Parliament were excluded from an almost daily email update produced by the U.S. Embassy that summarized the parliament's activities. This important information was distributed inconsistently, and in some cases denied to out-of-favor implementers in the name of "security." As is common in Iraq, the situation is not one of absolutes, and there are notable successful examples of networking. The NGO Coordinating Committee for Iraq (NCCI) is an independent initiative that was launched by a group of NGOs present in Baghdad in April 2003. At the time of inception, the 14 original members focused on establishing a base for assistance coordination, highlighting intervention priorities, and optimizing aid responses. NCCI now has more than 68 NGO members and five observer organizations, both Iraqi and international.[45]

The failure of the international community to fully understand the Iraqi context and its proclivity to try and "pick winners" had cumulative effects. As time passed, these once-critical partners burrowed into their

own positions and developed patronage and political power, while a new Iraqi leadership class developed under the noses of international funders and supporters. This phenomenon is most apparent in the support provided to the Iraqi judiciary, in particular the Higher Judicial Council and Federal Supreme Court. Within Iraq's judiciary, key institutions such as the State Shura Council and Court of Cassation were overlooked due largely to a U.S. lack of understanding of civil law systems.

The tidal wave of unaccountable funding that swept Iraq (later replaced by oil revenues) distorted the map of private sector, civil society, military, and government actors. In the potentially promising and critical case of Nineveh, substantial sums of development assistance funds were diverted away from their stated goal of economic support for minority towns and villages. Similarly, many civil society organizations are now arms of well-funded Iraqi political parties, and distort the humanitarian and advocacy environment in the country. Corruption in Iraq ossified many relationships and networks, which retarded efficiency, transparency, and information-sharing.

In both Afghanistan and Iraq, the U.S. introduced the Commander's Emergency Response Program (CERP), which allowed U.S. field commanders to respond to urgent humanitarian relief and reconstruction needs by funding and executing programs that immediately assisted the local population. These programs included purchasing critical infrastructure equipment, performing large-scale civic cleanups that employed as many local Iraqis as possible, and encouraging the growth of local institutions. Through CERP discretionary projects – managed by U.S. brigade and division

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commanders – the U.S. government developed effective, high impact working relationships with the community in some jurisdictions.[46] In Nineveh, the Mosul Commander's fund was arguably the most effective tool to promote dialogue, build networks, and demonstrate bona fides, largely free from the rest of Iraq's bureaucracy and delay.[47] When it worked, CERP was an important and flexible tool.

Lessons: Major players in any peacebuilding effort have the responsibility to organize themselves and share information efficiently and effectively. Ill-conceived coordination mechanisms will hamper the coordination they seek to promote. Networks must be continually reviewed and renewed as the operating context develops and as local knowledge of how things work expands. Stronger networks need innovative tools to demonstrate bona fides and aggressively address local needs.

Private Sector as A Potential Model for the Rule of Law

Today, Iraq's economy remains largely state-run and oil-centric, with weak institutions and policy frameworks, antiquated commercial and labor laws, and a poor business environment. Analysts suggest that these challenges and the failure to attract foreign investment have hamstrung Iraq's ability to address its underlying economic challenges to date, which in turn aggravated levels of violence over the past 10 years.[48] In the 2012 Corruption Perceptions Index, Iraq ranked 169th out of 174 countries.[49]

Iraq's oil resources provide over 90 percent of government revenue and 80 percent of foreign exchange earnings. The International Energy Agency predicts that Iraq will become the world's second largest oil producer by the 2030s.[50] However, Iraq's oil sector accounts for only one percent of the total labor force, and Iraqi fiscal policy exposes the nation to significant risks from oil revenue volatility. Moreover, high rates of unemployment, poverty, and inadequate services have prompted the government into unsustainable spending patterns, with huge outputs on public employment, energy subsidies, a Public Distribution System, and transfers to state-owned enterprises. What has been absent is a rational policy to support the private sector.[51]

In 2006, the U.S. Department of Defense established a task force to reduce unemployment in Iraq by increasing economic opportunity. The team visited state-owned industrial companies that were either idle or producing below capacity. At least 25 factories were deemed capable of resuming production, but most lacked orders for products since their traditional operating model of sales with a protected and subsidized economy capsized by the 2003 invasion. These visits represented the first time that U.S. government representatives with substantial knowledge of global manufacturing had met with factory managers and assessed capacity.

These assessments were several years too late. Shortly after the Coalition Provisional Authority assumed control in Iraq in 2003, it issued Order Number 39 establishing an official policy to privatize state-owned enterprises and providing foreigners the ability to gain full ownership control over former Iraqi companies. The Coalition Provisional Authority sought to implement this policy "by starving [state-owned enterprises] of resources, including emptying their bank accounts, cancelling their receivables, and prohibiting loans to the [state-owned enterprises] by the state-owned banks."[52] This policy, combined with the impact of decades of sanctions, effectively shut down many factories and left others without the capacity to employ workers or improve conditions, resources, and operations. Instead, businesses from coalition countries dominated the market, with companies seeking to capitalize on military and development opportunities rather than invest

in industries that would spur a sustainable economic recovery.

Since Iraq's economy remains largely state-controlled, if not state-owned, corruption in the public sector is particularly damaging given its impact on development of the private sector. While the U.S. can take credit for supporting the creation of Iraq's current anticorruption institutions—which were largely designed after 2003—these institutions did not logically fit into Iraq's existing watchdog infrastructure, and these initiatives have created a system of overlapping jurisdictions and inefficiencies. Today, the institutions remain, but are plagued by weak mandates and ineffective authorities.[53] The Commission on Public Integrity (CPI), for example, is empowered to conduct investigations, and the rate of investigations has steadily increased since 2004. By 2011, 90 percent of complaints led to investigations. At the same time, intimidation, an uncooperative police force, and political interference leave the CPI a highly passive institution with limited impact.

In most jurisdictions, the judicial system would handle the majority of anti-corruption cases. However, the Iraqi court system is subject to intimidation and political pressure, like the CPI. Public perception of the independence of the courts is low. A 2013 UN study reports that the number of people investigated, referred to court, and convicted for corruption has increased in recent years, but prosecutions remain largely limited to low-level cases, opposition figures, or subject to political pressure.[54]

Further complicating this situation, Iraq's legal and regulatory framework is currently a mixture of conflicting and outdated statutes, ineffective

mechanisms to boost transparency, and a lack of awareness and technical understanding in both the government and the private sector. OECD experts and others have suggested that Iraq's legal and institutional framework should be revised to improve clarity, coherence, consistency, and effectiveness in order to provide a level playing field for private sector development.

In 2003, the U.S. government awarded a USD 240 million contract to BearingPoint, a Virginia-based contractor, to facilitate Iraq's economic development, including by conducting an analysis of government policies, laws, regulations and institutions that regulate trade, commerce and investment. After years of work, no systematic analysis of Iraq's legal and regulatory framework focused on bolstering economic or private sector development emerged.

Lack of economic opportunity at the local level is a key point of tension among different communities, ethno-religious groups, and individual families. Confidence and security building measures, undertaken in broad consultation with local community leaders, civil society, and other interlocutors, that target economic opportunities at the local level would mark an important step in conflict prevention and stabilization—particularly in areas with large mixed communities. By supporting provincial governments to better execute investment budgets, workfare programs or other schemes, for example, communities would jointly improve local infrastructure and receive much-needed economic opportunities. Improvements in the local regulatory framework could also speed licensing and certification processes for local businesses.

With one of the world's largest public sectors relative to the population, Iraq's current

financial reserves cover government operating expenditures for less than one year. Funds allocated to the country's infrastructure foundations (e.g. health, education, water, and sanitation) are less than half the energy sector's investment budget.[55] The lack of infrastructure for basic services accordingly limits the development of the private sector. Moreover, these circumstances highlight the need for the Iraqi government to rationalize its spending and increase investment in key development sectors, while simultaneously increasing the efficacy of current allocations. Specific capacity-building and skills trainings should focus on improving fiscal discipline and budget processes as a foundation for effective rule of law, and a rule of law culture writ large.

In Iraq, this type of policy shift will need to commit the necessary resources for the non-oil sector, such as agricultural production. Prior to its war with Iran, Iraq produced almost one million tons of dates annually. Decades of international sanctions and government neglect destroyed the industry, and young Iraqis today can make better salaries in government jobs. Iraq's Ministry of Agriculture, in partnership with various international governments and organizations, have refocused on the ailing date industry, but the impediments to private sector growth described have slowed progress. In addition to an improved service infrastructure and legal framework, the agriculture sector requires access to, and training in, advanced technology and farming practices, as well as strategic market protections, such as import-export regulations that could bolster a fledgling industry. Other sectors of the economy should receive similar support.

Lessons: Assessments of national industrial capacity and knowledge of international business practices should inform development policy and target economic and capacity-building interventions. Robust, effective anticorruption mechanisms should be emphasized. Legal and regulatory frameworks must be reformed to establish a foundation for entrepreneurship, foreign investment, and a positive business environment. The capacity of the state to improve performance on budget planning and execution and investment execution should be supported in a manner that fosters diverse revenue streams.

Rule of Law Beyond the Police and Prosecution

As President of the Iraqi Bar Association, Aswad Al Minshidi, stated in a 2008 letter to U.S. President Bush:

America's Rule of Law effort in Iraq has focused almost entirely on training police, building prisons, and supporting prosecutions. This is understandable. These areas are important to security but they represent a policeman's and prosecutor's definition of what Rule of Law means. This definition is limited to law enforcement…. Our legal culture is in need of assistance and America's millions of dollars have done little to assist our institutions…If you think "implanting" the Rule of Law in Iraq is limited to your current Rule of Law efforts, then you are receiving poor advice.[56]

International efforts to build a post-Ba'athist system that respected the rule of law were indeed hamstrung by a narrow interpretation of rule of law itself and poor understanding of Iraqi jurisprudence

and traditions.Iraq's ancestors gave the world the first written laws. In 2003, Iraq's civil law legal system was in many ways more progressive than others in the Middle East. The Egyptian legal scholar Abd Al Razzak Al Sanhuri famously worked with Iraqi jurists in the 1930s to develop new Iraqi codes that harmonized their Islamic law to secular and various Islamic schools of jurisprudence. In many respects the Coalition Provisional Authority found in 2003 a comparatively strong judiciary, legal community, and legal framework. This finding was disregarded and did not appropriately shape the programmatic responses. A hybrid common law-civil law system was implanted in a number of new judicial institutions, such as Baghdad's Central Criminal Court and the Iraq Special Tribunal. Notably, both institutions were criticized for significant due process and human rights violations.[57]

Moreover, the framework for the Judiciary laid out by the Coalition Provisional Authority and codified in Iraq's Constitution of 2005 established a Federal Supreme Court along American lines, grafted onto Iraq's civil law institutions, including the Court of Cassation and Constitutional Court. All three institutions function together to this day, with no clear delineation of authorities. Likewise, a failure to understand the functions of the State Shura Council led to this critical institution being almost completely ignored by the international community. These and other foreign concepts and institutions continue to confuse Iraqi citizens and jurists, waste needed reconstruction assistance, and undercut the smooth functioning of justice in post-Ba'athist Iraq.

A belief that codification of law alone was sufficient to build respect for the rule of law permeated much of the international community's work. However, many Iraqi lawyers

International efforts to build a post-Ba'athist system that respected the rule of law were hamstrung by a narrow interpretation of rule of law itself and poor understanding of Iraqi jurisprudence and traditions.

and judges were unaware of legal reforms, Iraq's international obligations, or Coalition Provisional Authority orders. Underlying social, cultural, and legal norms in Iraq point to a dense cynicism on the part of Iraqi citizens, and perhaps more importantly, judges, lawyers, and law enforcement officers.[58] The perception of "occupier's justice" versus "Iraqi justice" also dulled the impact of international assistance. The resources provided to legal education and bar associations were spectacularly meager compared to law enforcement tasks.

The politics of the occupation impeded rule of law assistance in Iraq. Most notably, neither the UN nor EU provided support for the Iraq Special Tribunal due to U.S. and Iraqi insistence on the death penalty. Similarly, the marquee rule of law contribution of the European Union, EUJUST LEX, saw its effectiveness reduced as a result

of internal divisions among European Union Member States. Also, the mission's inability to operate in country resulted in disconnects between the program and Iraqi legal and police counterparts. The United States, which oversaw the majority of police training activities, saw EUJUST LEX as a professional, but token, contribution from Europe, largely as a way for EU Member States to demonstrate goodwill after the diplomatic fallout over the 2003 invasion.[59]

According to the U.S. Office of the Special Inspector General for Iraq Reconstruction, from 2003 to 2012 the U.S. government spent approximately USD 560 million to support corrections and judicial components of the rule of law effort.[60] Since 2003, the U.S. has spent about USD 8 billion to train, staff, and equip Iraqi police forces.[61] The political and security issues that underpinned international support, combined with wasteful procurement and corruption on a historic scale meant that ten years after the overthrow of the Ba'athist regime, there are approximately 36 American rule of law officers in-country at any time, acres of buildings and facilities have been abandoned and misused, and training materials have disappeared or are unused.

One senior Iraqi official reported that the Iraqi negotiating team coordinating the future provision of rule of law support from 2009 to 2011 felt offended at the behavior of American counterparts, who in any event did not respond fully to the specific training and equipment requests of their Iraqi partners. Finally, while the finances were there, the governments and contractors lacked the capacity to deploy the hundreds of advisors and trainers needed. Recruitment of qualified rule of law international expertise is normally difficult around the world, but the special challenges of Iraq meant lower recruitment standards and wage inflation to attract those willing to work

in Iraq. The result was a justice system that was fundamentally unchanged, but with the injection of corruption, ineffective programming, and legal confusion. One Iraqi noted that officials were only interested in "milking the buffalo," extracting as much cash and patronage from the system with little regard for the rule of law.

Lessons: Any system must be adapted to local tradition and practice, and as noted by the President of the Iraqi Bar Association, work to build respect for the rule of law should transcend police, courts, and corrections and include a broad array of legal institutions, including overlooked institutions like the State Shura Council, legal education, and judges associations. National cultures and political agendas will influence rule of law work. Rule of Law Assistance should be strategic, adequately staffed and appropriately resourced.

To be Learned a Lesson Must be Recognized

Shortly after the September 11, 2001, attacks against the United States, the U.S. State Department began compiling a 13-volume report called the "The Future of Iraq Project." The Project set out to identify and answer a host of questions that would confront a post-Ba'athist Iraq, from economic development to governance structures, to infrastructure and transitional justice. The expert working groups recommended strategic plans, flagged key background facts, and identified potential pitfalls and problems in a post-Ba'athist transition.[62] Despite the warnings about potential violence and destabilization under specified contingencies, when the Office of Reconstruction and Humanitarian Assistance

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(ORHA) was established in the Defense Department, the work and personnel from the Future of Iraq Project were almost wholly frozen out.[63] Donald Rumsfeld reportedly told the head of ORHA to ignore the Future of Iraq Project. The Future of Iraq Project and the subsequent turf wars between the Departments of Defense and State describe an unfortunate lesson about failed inter-governmental coordination, false assumptions, and uninformed decision-making.

While it may be impossible to identify all potential questions, pitfalls, and relevant background country data prior to engaging in peacebuilding, there is often adequate time to prepare for a number of the core issues that will be confronted. Regrettably, peacebuilding and reconstruction in Iraq immediately charted a course that intentionally disregarded volumes of professional insights and sent a shocking message of disdain to the development community that contributed to the project. The Future of Iraq Project provided an informed picture of the future of peacebuilding in Iraq. We will never know whether the guidance and insights included in the Future of Iraq Project would have been sufficient to prevent Iraq's spiral into violence and challenges to institutional legitimacy. However, we do know that disregarding this research and analysis was clear negligence, and the Iraqi people, aid workers, and soldiers who lost their lives in Iraq deserved better. At root, such mistakes stem from the inability of civ-mil sectors to coordinate in knowledge management, and to integrate insights and experiences gleaned from a broad range of experts into strategic planning.[64] This type of coordination is a fundamental necessity in order to bridge the "knowledge gap" and provide experts with an appropriate framework to implement peacebuilding missions.

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Complicating that task was the fact that Western attitudes about Iraq's culture, legal system, and capacity to govern largely overshadowed the reconstruction period. Few foreign experts were regional or Iraq specialists, and few spoke Arabic. There was no standardized, integrated training on Iraq's culture or systems, and missions experienced a shortage of translators to provide hands-on education even when security permitted. Throughout the post-invasion period, many foreign legal experts worked on rule of law projects without access to translations of Iraqi legal codes, legal literature, or other government documents. Other assumptions—such as the role of women in Iraqi society and the significance of ethno-religious minorities—also served to further marginalize, rather than empower, Iraq's women and minority leaders as they were largely left out of reconciliation and reconstruction processes. The Special Inspector General for Iraq Reconstruction noted in 2009 that "the [Coalition Provisional Authority]—and the U.S. government agencies that supported it—demonstrated an inadequate understanding of both Iraqi culture and the complicated internal political relationships that existed among and within various Iraqi groups."[65] This lack of information and assumptions about Iraq's history and capacity resulted in the imposition of inappropriate systems and rules that Iraqis today still struggle to understand.

Complicating this situation, Iraqi interlocutors and the future political elite were largely hand-picked based on existing relationships with neoconservatives in Washington, D.C., or on the advice of experts whose own connections received limited vetting. Members of Iraq's Interim Governing Council were hand-picked from among those that had supported the invasion. Similar challenges arose among

Iraqi advisors and experts that accompanied coalition authorities to rebuild the country. Questionable experience, political affiliations, or conflicts of interest were often secondary to whether advisors supported the invasion and the U.S. vision for a new Iraq. The U.S. simply failed to adequately identify and vet interlocutors, ensuring a broad representation across political, ideological, religious, ethnic, and other spectra.

The aggressive timeline set for institutionalization in Iraq created a massive resource gap. When combined with the alienation of development experts, staff and consultant positions were often filled by experts with limited professional experience and limited Iraq or regional knowledge. Moreover, the political circumstances of the American invasion restricted European participation in peacebuilding missions early during the reconstruction period, further limiting the pool of expertise. Consequently, many mid-level coalition officials lacked sufficient experience managing large-scale operations in a fragile security and political environment. Fears of foreign influence limited cooperation with experts from within the region. These staffing challenges stem from a mixture of political, logistical, and informational issues that hampered program quality and peacebuilding generally.

Lessons: Civ-mil peacebuilding missions need the input and participation of experienced professionals who are familiar with foreign structures. Western legal approaches and attitudes should not be imposed on the local cultural, legal, and governance systems. Adequate resources to analyze and disseminate information on a state's legal norms, standards, and frameworks (including full and accessible translations of legal codes) should be provided prior to embarking on rule of law reform. International staff and consultants should be selected on the basis of adequate experience and skills, and they should receive pre-deployment training that educates them properly on the local cultural context.

IV. Iraq & Afghanistan: Two Converging Peacebuilding Experiences

The peacebuilding experiences in Afghanistan and Iraq originated from dramatically different circumstances. Afghanistan enjoyed genuine multilateral support, and Iraq faced multilateral opposition. Afghanistan brought allies together, and Iraq drove them apart. Afghanistan immediately emphasized restoration of sovereignty, and Iraq demonstrated an almost colonial approach to occupation. Despite these contrasting beginnings, it is indeed puzzling how relatively quickly, and seemingly inexorably, these two experiences seemed to converge in terms of challenges, outcomes, and the lessons they provide.

While there remains history to be written, the current trajectory for both nations is fraught with instability, violence, and minimal rule of law in a meaningful sense. Moreover, the bulk of the peacebuilding efforts have entered, or are about to enter, a discretely limited engagement. These two case studies have highlighted some differences and common themes that influenced the two missions along their, soon to be shared, trajectory. Hopefully, a growing understanding of these can increase the likelihood of future success.

Common Themes, Distinct Differences, and Muddled Results

Peacebuilding efforts in Afghanistan and Iraq started with two distinctly different sets of local conditions. Afghanistan was a rugged, agrarian environment with very low rates of literacy and limited professional capacity and infrastructure, and Iraq was a resource rich, relatively sophisticated country with complex infrastructure and an educated workforce. However, a common theme was the failure of international peacebuilders to properly estimate, and address, their own impact on the local workforce and leadership.

The occupation approach to peacebuilding in Iraq quickly erased much of Iraq's advantage in terms of education with a number of sweeping decisions. Poorly conceived de-Ba'athification and a "pick the winners" approach injected a somewhat random re-allocation of resources and responsibilities. The Iraqis adapted in ways that aggravated the situation and supported drivers of conflict, e.g., disenfranchisement of minority populations. Moreover, the failure to grapple with the politics attached to the vast natural resources, relegated other sectors of the economy and fed into a bloated state that was unprepared to tackle corrupting pressures.

In contrast, Afghanistan struggled with basic issues of illiteracy and development of a civil service that could credibly govern in a state where governance was sparse. As the peacebuilding presence grew, international actors' need for local professionals also grew with corresponding impact on government and the private sector. Afghan ministries struggle to retain competent professional staff, and the combination of low salaries and limited professional qualifications

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have fostered conditions for corruption, which is a threat to the viability of the state.

To counter corruption, both states developed new government mechanisms to combat corruption— e.g., Iraq, the CPI, and Afghanistan, the ACU. There is a striking similarity as to how they commenced their work, and an equally striking difference where they have ended up respectively. While both began their work focusing on simple corruption cases, the ACU, with international pressure, quickly attempted to take on a case targeting the inner circle of the Afghan President. Political resistance mobilized immediately and stopped international involvement, cancelling the investment in time and effort. Moreover, the international community blinked from a strategic communication perspective, and a damaging message of impunity on a grand scale was delivered. In terms of Iraq, the CPI receives

criticism for not taking on the "big fish," but interestingly, recent years have been characterized by a steady increase in citizen engagement and corresponding CPI investigations. While it may be too early to claim CPI success, it is not too early to term the ACU a failure. Moreover, the failure was both a loss in institutional investment and peacebuilding credibility.

In both Afghanistan and Iraq, the international community did not employ a comprehensive approach to strategic communication. Given the diverse array of potential counterparts and numerous legitimate programmatic activities, the international community should have been prepared to manage expectations, solicit inputs, and distribute appropriately packaged information—both internally and with the counterparts—across the peacebuilding space. The international public rhetoric about shared rule of law standards becomes meaningful when it is effectively calibrated to local conditions, and an effective strategic communication plan is critical to understanding local concerns, involving the population, and garnering support for peacebuilding. In Iraq, there were some achievements cited in terms of communications concerning security and conflict prevention, and in Afghanistan, pre-deployment training eventually showed promise in preparing assistance providers to arrive with a better understanding of how to communicate with counterparts. However, in general, the basic lack of a sustained understanding of local conditions hampered effective communications.

There simply was not an international cadre of professionals steeped in the local culture and languages, and the rapid rotation of personnel, local and international, short-circuited absorption of the local context and communications

routinely. The turnover of international personnel was a commonly acknowledged problem, but what was perhaps less understood was the fact that this diplomatic carousel did not impact all sectors equally. In the rule of law field, the pool of specialized personnel in the international diplomatic corps is very small. When you filter for specific regional qualifications, the number shrinks further.

A potentially attractive solution to this challenge would have been the establishment at the outset of peacebuilding of a multilateral strategic planning and consultation mechanism that comprehensively networked locals and internationals around rule of law. When this approach is attempted years after the intervention, valuable opportunities are lost and unproductive habits formed. In both countries, the initial peacebuilding postures were not favorable for creating such a foundation. In Iraq, the occupation approach distorted the selection of counterparts, messages, and goals, and in Afghanistan, the contrasting light touch with an emphasis on Afghan sovereign actions, where capacity was lacking, led to lengthy delays in establishing a dialogue about common rule of law priorities. While it may be generally taboo to speak against "coordination," experts agree at least privately that all coordination is not created equal. When the burden of coordination outweighs the benefits, implementers will follow their own agenda. Both Afghanistan and Iraq bore witness to an abundance of competing coordination activities that buried personnel with the best of intentions.

The tough question becomes who can convene and share information effectively around a specialized area like the rule of law. Clearly, implementers will respond to their donor's demands if they want to continue to receive funding, but that begs the question, what

can motivate donors and implementers to network together systematically? The short answer seems to be common interests and demonstrable probability of benefit, and Iraq and Afghanistan offer two experiences that provide valuable insights. In Iraq, the NGO Coordinating Committee for Iraq (NCCI) started immediately following the intervention, and it has grown consistently ever since, including, now, international organizations as observers. This initiative demonstrated civil society's understanding and capacity to demonstrate leadership when the major peacebuilding nations were struggling for legitimacy. Civil society organizations quickly understood their common interest in projecting their own sense of legitimacy and independently working on issues of common concern. In Afghanistan, the U.S. experiment with the international Deputies Committee held out great promise, and their PJC concept of integrated multilateral, civ-mil programming and communications was greeted positively. In the end, shrinking staff and falling peacebuilding budgets tabled the PJC initiative. While it may not have been able to achieve networked operations, the Deputies Committee at least did succeed in promoting systematic sharing of information across nations and the civ-mil divide that was unprecedented in the rule of law sphere. While these cases may not have provided permanent planning and coordination capacity to support rule of law, they both serve as examples of when peacebuilders may be motivated to network systematically with their colleagues.

Interestingly, despite its capacity limitations, the Afghan government has sought to network with the donor community to exert guidance and ownership in the rule of law programming in a mutually agreed upon format. As the case study outlined, the Afghans and international

community invested in a variety of attempts to realize the Paris Declaration and Accra Agenda on the provision of assistance, emphasizing local consultations and priorities. A positively dazzling array of rule of law initiatives were launched, cultivated, and allowed to languish. The sheer combined effort was as historic as it may ultimately have been debilitating. The showcase National Priority Program: Justice for All is just now nearing final completion, and its prolonged gestation has limited its likely utility. A country that was least prepared to project a rule of law vision has done so as the international sun begins to set on the peacebuilding initiative that garnered the most multilateral support over the last decade. If this concrete set of local priorities had emerged in 2006, as opposed to 2013, one has to wonder what might have been possible.

When a peacebuilding presence withdraws, there is a corresponding impact on the economy. The stakes are high for Afghanistan. In stark relief to Iraq, Afghanistan is not a country blessed with natural resources, the poppy crop notwithstanding. However, the ability of Afghanistan to navigate the complex aid assistance network may be sufficiently sophisticated to keep the economy afloat, and in Iraq, the lingering mistakes of the "Coalition of the Willing" occupation will be felt in the development of the economy for some time to come. Both donor assistance and economic development will depend in part on the ability of the two countries to secure a modicum of rule of law. Neither peacebuilding effort has been a showcase of economic development or rule of law, but Iraq's sheer resources and human capacity may create a pathway forward to mutual agreement on division of natural resources, and Afghanistan's savvy in the development community may preserve critical development

assistance to diversify and promote economic development. Both private sectors have benefited from, and been distorted by, peacebuilding efforts. The decisive factor may come down to the relationships and mentoring that has occurred during these interventions. If the respective countries have absorbed the essential professional advice and skills to navigate the global economic environment, they may very well be able to succeed in an international economy that relies on rule of law for its basic operations. Experiences in both countries suggest that this prospect remains an open question.

In terms of core rule of law objectives, both countries have muddled forward. Creating a common legal basis for rule of law is a process that takes time and deliberation. Iraq suffered from the imposition of a large number of foreign legal concepts on an established, respected system, and Afghanistan suffered from the selective imposition of foreign concepts on a devastated formal system that tends to default to an informal one. Establishing the appropriate applicable law is important, but it is not something that happens without local buy-in. In Afghanistan, the shortage of competent legal professionals made engaging in the process to achieve buy-in a challenge. In any case, the attempts in both contexts to inject foreign legal concepts without due consideration for context were clumsy at best. The judicial constitutional, and institutional confusion that prevails in Iraq has not fostered rule of law, and its constitutional origins—pushed by the occupying forces— make the situation all the more intractable and untenable. The Afghanistan saga of the criminal procedure code is at best awkward, and at its worst, the squabbling of internationals over proper advice and procedure set a bad example that undermined peacebuilding credibility.

Regardless, despite all these missteps, the end result is that Afghanistan is now stepping forward to own its rule of law agenda, and Iraq has inherent talent and natural resources that may provide the ability and the impetus to navigate their constitutional muddle.

Awkwardly framing both peacebuilding missions are the international standards on human rights and rule of law, which Westerners generally espouse, the respective constitutions endorse, and the local populations do not uniformly understand. When the Supreme Court of Afghanistan recently issued a Practice Note of the Court that disenfranchised women, the international community was caught off guard. A deeper understanding of local culture might have prepared them, but it raises serious questions about what the ratification of CEDAW means in Afghanistan.

The international community has now recalibrated and is pushing a progressive multi-pronged strategy, but the vignette shows they had failed to effectively promote human rights despite overwhelming lip service to gender issues from the earliest days of the intervention. In Iraq, a progressive human rights agenda has been hampered by the U.S. and Iraqi insistence on the death penalty, but the U.S. divergence with the ICCPR is well established, and a relevant question is whether that warrants disengagement by Western allies or more engagement? In any case, the salient point is that constitutional references to human rights and rule of law standards are important, but the actual implementation of these standards is what is critical. The international community must prepare for situations in Afghanistan, Iraq, and elsewhere where the aspirations of such constitutional provisions are destined to fall short absent a significant investment in education and practical programs designed to model proper implementation of these standards. The consequences of failing to do so goes to the very viability of peacebuilding missions. Shocking international headlines about human rights abuses can erode domestic support for international assistance very rapidly.

All of these themes and differences highlight the importance of peacebuilding leadership, both locally and internationally. To be effective, leaders have to understand their objectives, counterparts, and available resources, and their decisions must be based on the same. In Iraq, where there was never a coherent program to assemble, translate, and understand Iraqi law, it is fair to ask how the international leadership there expected to be effective at communicating with their counterparts on rule of law issues. The complete disregard for the Future of Iraq project is indicative of a disinterested and dysfunctional approach to peacebuilding leadership that undoubtedly hampered efforts to take a systematic approach to rule of law, but the leadership that rejected the Future of Iraq information left office, and the approach stayed the same. In Afghanistan, the initial approach was the opposite, and very promising strides were made at least in terms of assembling the Afghan laws in English, but soon, there too the effort languished. While it was rekindled briefly, that effort lapsed as well. In terms of commitment to appreciate the local laws, Afghanistan and Iraq could not have started out more differently, yet in the end, they became virtually indistinguishable. Something so fundamental to effective rule of law programming as collecting the laws in a language the peacebuilders can understand in the end eludes both missions. Perhaps the ultimate lesson is that the biggest need for education is with the future leaders of peacebuilding missions themselves.

Conclusion

Afghanistan and Iraq are both facing difficult conditions that are defined by violence and instability. After a decade of international assistance, the future for both countries remains uncertain. The waste, mistakes, and missed opportunities are documented in greater detail with each passing day. At the same time, the question of what would have happened had peacebuilding never been attempted is rarely, if ever, asked. Could the international community have simply walked away after the two governments fell? In today's interconnected world, it seems implausible that the international community would have been able to stand idly by while anarchy reigned. Not only did international leaders support peacebuilding efforts at the beginning, but the domestic populations of many contributing countries shared this sentiment. There was a consensus that peacebuilding should be done.

Where the consensus proved more difficult to obtain was in terms of what, where, when, and how much. The core international rule of law and development standards set shared, laudable objectives, but they do not define the tools required to achieve them. The international community now has sufficient experience with various attempts to promote the rule of law that lessons have emerged, a few of which this study addresses. The challenge for the future will be how to convert these lessons that have been identified into actual lessons learned. This discussion is a beginning, not an end. Even when the lessons are put into practice, there will always be a need to monitor and refine. In the end, peacebuilding is at its core a process that implies a continuous commitment to greater understanding.

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List of Abbreviations

ACU	Anti-Corruption Unit		NATO	North Atlantic Treaty Organization
AGO	Attorney-General's Office		NCCI	NGO Coordinating Committee for Iraq
ANDS	Afghan National Development Strategy		NGO	Non-Governmental Organization
AREU	Afghanistan Research and Evaluation Unit		NJP	National Justice Program
ARoLP	Afghanistan Rule of Law Project		NJSS	National Justice Sector Strategy
ARTF	Afghanistan Reconstruction Trust Fund		NPP5	National Priority Program 5
CEDAW	Convention on the Elimination of Discrimination against Women		NROLFSM-A	NATO Rule of Law Field Support Mission-Afghanistan
CERP	Commander Emergency Response Program		OECD	Organization for Economic Cooperation and Development
civ-mil	civil-military			
CPI	Commission on Public Integrity		ONSC DC	Office of the National Security Council's Deputies Committee
CSM	Coordinated Security Mechanisms			
CSOs	Civil Society Organizations		ORHA	Office of Reconstruction and Humanitarian Assistance
DroL WG	District Rule of Law Working Group			
EUJUST LEX	The European Union Integrated Rule of Law Mission		PJCs	Provincial Justice Centers
			PRSP	Poverty Reduction Strategy Paper
I-ANDS	Interim Afghan National Development Strategy		PRTs	Provincial Reconstruction Teams
			ROLFF-A	Rule of Law Field Force-Afghanistan
ICCPR	International Covenant on Civil and Political Rights		SC	Supreme Court
			SSR	Security Sector Reform
IDLG	Independent Directorate for Local Governance		U.K.	United Kingdom
			EUPOL	European Union Police Mission
INL	International Narcotics and Law Enforcement		U.S.	United States of America
			UN	United Nations
IROL	Interagency Rule of Law		UNAMA	United Nations Assistance Mission in Afghanistan
ISAF	International Security Assistance Force			
JCMB	Joint Coordination and Monitoring Board		USAID	United States Agency for International Development
LOTFA	Law and Order Trust Fund for Afghanistan			
MoI	Ministry of Interior		USD	United States Dollar
MoJ	Ministry of Justice			

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