

**The Rule of Law on Peace Operations: A Conference of the  
“Challenges of Peace Operations” Project**

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**The Rule of Law on Peace Operations from the Perspective  
of an Institutional Donor**

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## **Introduction**

With conflict such a visible part of the landscape of international relations, courtesy of global telecommunication networks, reflection on the nature of rule of law in these contexts is very timely. Armed conflict has affected all regions of the world and it is testament to the global scope of peace operations that this seminar is taking place in the Asia-Pacific region. The Asia-Pacific Centre for Military Law is to be congratulated for its initiative in hosting this tenth seminar in the **Challenges Project conference series**. Our region has not only confronted many of the humanitarian challenges being experienced throughout the world but has also developed some unique perspectives on their resolution. Peace support operations in Bougainville, East Timor and the Solomon Islands have provided rich experiences on application of the rule of law within peace operations.

When peacekeepers intervene in collapsed States to restore public order, monitor ceasefire/peace agreements: and cajole warring parties to the negotiating table, they do so in the full knowledge that those who have committed atrocities must be held accountable for their actions, if peace is to be sustainable and reconciliation is to be achievable. What is far less clear within the context of peace support operations, is how the rule of law may be asserted, under what penal code and by whom. Furthermore, deployment within a peace operation does not abrogate the responsibilities of military or civilian participants towards fellow human beings and they must also be held accountable under international human rights law and international humanitarian law. These are difficult issues with few clear-cut answers. I hope that discussions over the next three days will prove fruitful in providing the Challenges Project with fresh ideas and directions to be put to the C34 committee.

While military components of peace operations often receive the highest profile in the media, there are, of course, many other contributors to UN-mandated peace operations. Publication of the Brahimi Report in August 2000 brought the complexity of issues within international peace operations into sharp focus. Security, humanitarian, human rights, development and political actors must be managed to produce a coherent approach to building a functioning society in a collapsed State. This multiplicity of actors reflects the multi-faceted approaches needed to re-build societies fragmented by violent conflict. Individually, these interventions cannot restore the vital sense of normalcy on which communities can begin the tortuous process of recovery from the effects of war. Jointly they can provide a foundation for recovery and a platform for a more stable and prosperous future. But it is a long term undertaking; there are no short-cuts to peace!

Unfortunately, coherency of approaches across the various components of peace operations has often been a victim of mutual misunderstanding about responsibilities and priorities with the result that protection and assistance to populations affected by violent conflict may have been sub-optimal. Perhaps the most fractious relationship within a peace operation has been between military components and civilian actors – particularly the humanitarian community comprised of UN agencies, Red Cross/Red Crescent organisations, non-government organisations and institutional donors, such as AusAID. In a large part, this may be attributed to a clash of *modus operandi* and misunderstanding of relative priorities rather than outright rejection of respective roles. In particular, it is worth noting at the outset of this paper that the international

humanitarian community is not a homogenous entity. Rather, it is comprised of a diverse set of humanitarians driven by a spectrum of ideologies and perspectives. Humanitarian coordination under these circumstances is achieved through consensus rather than the authoritative mechanisms with which military and civilian police may be more familiar. In these terms, I hope that I can re-assure the non-humanitarian actors in the audience today that we (the humanitarian community) take policy and operational coherence very seriously. AusAID assistance to international humanitarian operations is always delivered within an acceptable coordination framework wherever available.

Fortunately, significant in-roads have been made in strengthening civilian-military cooperation and it is perhaps a small signal of enhanced cooperation within Australia that AusAID is not only a sponsor of several NGO participants at this seminar but has also been asked to make a presentation to this important international forum. It is my task today therefore, to outline the perspective of an institutional donor – the Australian Agency for International Development (AusAID), which is responsible for managing the official overseas aid program of the Australian Government. It is a welcome task that will hopefully represent a further foundation to the maturing relationship between the AusAID and the Australian Defence Force. I regret, however, that because of corporate commitments that emerged late last week, I must return to Canberra tonight. Nevertheless, I wish all participants well in their endeavours over the next three days.

### **Stability and Development**

In order to present AusAID's perspective on the "rule of law on peace operations", I will first discuss the broader interface between stability (or security) and sustainable development – our core business - drawing on a number of policy and strategic documents endorsed by the Minister for Foreign Affairs, Mr Downer, in recent months including the recent Ministerial Statement to Parliament on Australia's development cooperation program; the *Peace, Conflict and Development* policy statement (June 2002) and the *Humanitarian Program Strategy 2001-2003*. I will then attempt to further draw out this linkage as it applies within communities affected by violent conflict and also in terms of accountability of actors within peace operations towards the vulnerable populations that they seek to assist. Wherever possible, I will illustrate these issues with practical examples of international and in-house initiatives to address the issue.

### **Human Security**

The starting point for this discussion is the critical interface between stability and sustainability of development assistance. This symbiotic relationship is captured by the concept of "**human security**", which broadens the definition of security to include not only physical safety but also economic autonomy and basic freedoms. Within the context of peace support operations, the human security concept perhaps provides a useful reference point for a unified approach to assisting conflict-affected populations as it represents the nexus of the rule of law concerns contained within the mandates of peacekeepers and aid workers.

The recently published *Human Development Report 2002* noted that “*building a functioning State requires a basic level of security*”<sup>1</sup>. Apart from maintenance of security, another core responsibility of a functioning State is to stimulate development on which the future prosperity of its citizens will be assured. The Report therefore went on to stress “*the importance for human development of personal security and public security, underpinned by state security forces under firm democratic control*”<sup>2</sup>. Without basic assurances of security, embedded in respect for the rule of law, private investment - the real corner-stone of development - will not be attracted. “Decline” rather than “growth” will ensue; “inequity” rather than “equity” will be promulgated; the “strong” will prevail over the “weak”; “authoritarianism” will override “democratic principles”. Individually or collectively, deprivation, inequity, marginalisation and poor governance are powerful portents of impending violence. That is, under-development (and inequities that this creates within societies) is almost invariably a structural grievance underpinning violent conflict and civil unrest.

### ***Australian Aid: Investing in Growth, Stability and Prosperity***

Necessarily then, AusAID’s perspective on the “rule of law” incorporates broader and longer term concerns than the more restricted, peace operations environment under consideration at this seminar. Throughout this presentation, therefore, it is useful to bear in mind the relationship between AusAID’s core development goals – poverty alleviation and sustainable development - and a secure environment, which was reiterated in the title of the 11<sup>th</sup> Ministerial Statement to Parliament on Australia’s Development Cooperation Program in September this year, i.e. *Australian Aid: Investing in Growth, Stability and Prosperity* (emphasis added). Promotion of regional security was identified in the Ministerial Statement as one of the five themes through which AusAID’s overarching poverty reduction framework will be programmed and implemented. The Ministerial Statement proposes that regional security will be promoted within the aid program by “*enhancing partner government’s capacity to prevent conflict, enhance stability and manage transboundary challenges*”<sup>3</sup>.

### ***Peace, Conflict and Development***

The Ministerial Statement gives substance then to directions laid out in the *Peace, Conflict and Development* policy statement, which was launched by the Minister in June 2002. The policy represents a framework for improving AusAID’s capacity to address the sources of conflict and stability, with a focus on preventing conflict and building peace. It represents a new direction for the Australian aid program by actively seeking to work with or on conflict. This will be achieved by casting a “conflict prevention/peace-building lens” over our activities and seeking opportunities to provide concrete incentives for peace. Of course, these strategic directions will have strong resonance for those familiar with the Secretary-General’s report, *Prevention of Armed Conflict*, as well as the Report of the UN Panel on Peace Operations, the *Brahimi Report*. On behalf of AusAID, I am pleased to join the Asia-Pacific Centre for Military Law in welcoming the previous speaker, Dr William Durch, who was one of the authors of the Brahimi Report, to Australia.

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<sup>1</sup> \_\_\_\_\_, (2002) *Human Development Report 2002*, UNDP, p.86

<sup>2</sup> *ibid*

<sup>3</sup> \_\_\_\_\_, (2002) *Australian Aid: Investing in Growth, Stability and Prosperity*, AusAID, p.20

Clearly preventing conflict and building peace requires an enhanced ability to analyse and understand conflict stressors within societies; an ability to support bilateral partners to design conflict-sensitive programs and activities; and risk management processes that acknowledges the high degree of uncertainty prevalent in societies in conflict. Programming decisions must allow the necessary flexibility and responsiveness to take advantage of brief “windows of opportunity” to promote peace. Work is now beginning within AusAID in all these areas as we move to “operationalise” the policy. This work will build on and synthesise some of the analysis and theories outlined by the previous speaker, not replicate it!

### ***Poor Performers***

In conflict-prone countries, the cycle of violence and under-development is self-perpetuating. It is no surprise that the countries most susceptible to armed conflict closely correlate to those countries that we refer to as “poor performers” in the development arena. There is growing realisation that disengagement with these so-called “poor performers” is **not** a viable option. By and large, penalising “poor performers” (by withdrawal of aid) not only accelerates decline and allows instability to foment but also hurts the most vulnerable segments of the population and thereby encourages radicalisation. It does not necessarily encourage reform and will inevitably prove more costly in the longer term. The post-September 11<sup>th</sup> terrorist discourse has served to further heighten awareness of the dangers of ignoring these trends.

Considerable debate is therefore underway within development cooperation circles about how we, as donors, can effectively **engage** with “poor performers” to promote an enabling environment for development to occur and arrest the despondency and drift towards extremism created by unmet aspirations. The Ministerial statement noted that *“poor performing States are those with weak policies and institutions ... This may be because countries are in or emerging from conflict or it may be a lack of political will to tackle poor policy settings and weak institutions, with a resultant lack of transparency and accountability and an environment where corruption can flourish and human rights be abused”*<sup>4</sup>. A key element of engagement strategies with poor performers will therefore be promotion of the rule of law. But this will be located within a broader agenda of policy reform. By delivering our assistance in a more holistic framework, it is hoped that an enabling environment will be created to attract private investment, which provides the bulk of funding for national development objectives.

### **Support of Australian aid program to “rule of law” initiatives**

The previous speaker has provided a comprehensive discussion on what we mean by “rule of law”. I will not attempt to compete with his discussion. Of course, maintenance of “rule of law” is established through a range of processes and, as a matter of course, AusAID has been working across all areas of the law and justice sector through our bilateral and regional development programs, i.e. we have been working to address what the previous speaker has described as structural causes of violent conflict both within and beyond this sector. Firstly, it is **a body of non-discriminatory legislation** prescribing acceptable norms of behaviour (e.g. I cite our support to legal reform programs in Indonesia, Vanuatu, Fiji, Tonga, Cambodia and

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<sup>4</sup> \_\_\_\_\_, (2002) *Australian Aid: Investing in Growth, Stability and Prosperity*, AusAID, p.54

PNG). It is a widely held **understanding and respect for this body of legislation** across all elements of society - including government, the security sector and civil society (e.g. here I cite the distinctive Australian approach to the promotion of human rights in Burma and China). It is a fully **accountable means to uphold adherence to the law** (e.g. programs to strengthening police forces in Solomon Islands, Vanuatu, Samoa and PNG) and it is the **means to prosecute those who transgress it**, based on accepted rules of documentary evidence, i.e. through established facts rather than circumstantial evidence (e.g. support for the Public Prosecutors offices in Vanuatu and Fiji to effectively manage prosecutions and reduce the backlog in bringing cases to trial). Of course, those who are successfully prosecuted should be **punished in accordance with the provisions of applicable human rights instruments**; their culpability does not diminish their fundamental rights (e.g. establishment of separate women's and juvenile correctional facilities in Cambodia). In addition to this assistance, which is directly linked to rule of law outcomes, promotion of democratic governance and broad-based reform as well as poverty alleviation –common contributors to violent conflict – are key themes for the Australian aid program.

Overall, however, sustainability over the long term is the key driver for these activities **not** ‘quick fix’ or externally imposed solutions to more immediate problems. The pervasive culture of impunity so prevalent in contemporary armed conflicts has challenged the international community to find more immediate “rule of law” solutions and new ways to interact with the perpetrators of genocide, ethnic cleansing and other atrocities collectively referred to as “crimes against humanity”. It has also raised the prospect of some perpetrators being held to account through traditional systems of justice. However, others here today are much better qualified to argue the potential for cross-over between traditional and normative legal frameworks in the context of peace operations.

The need for visible progress towards prosecuting those responsible for these crimes is undeniable. Indeed, progress of reconciliation processes may hinge, *inter alia*, on successful prosecution of perpetrators. **However, the message that I would like to impart today is that measures to re-instate the “rule of law” during peace operations should be cognisant of downstream sustainability of systems and processes.** A system that does not enjoy broad-based support within the society or depends too heavily on external inputs will inevitably collapse when the fickle attention of the international community turns to other crises. It goes without saying that the resultant vacuum could once again provide opportunities for the forces of destabilisation as grievances go unaddressed and disputes unsettled. For most countries emerging from conflict with massive debts, poor infrastructure and weak human (and social) capital, this may mean striking a fine balance between the imperative to bring those accused of war crimes to account by appropriate means (e.g. war crimes tribunals, traditional courts, truth commissions etc), and moderating objectives regarding timeframes for overhaul of the law and justice sector.

### **“Rule of Law” in collapsed States**

Unfortunately, as participants in this seminar are well aware, initiatives to manage potential sources of violent conflict are not always successful. Tensions are so enflamed that despite these efforts to cajole communities towards peace; and mediation to bring about negotiated solutions to grievances, the situation continues to descend into violent conflict. In these situations the international humanitarian

system swings into action, often within the context of mandated peace operations, to protect and assist vulnerable populations. As I have already intimated, under these failed State conditions, resolution of disputes and ultimately reconciliation, will often hinge on processes that hold those responsible for murder, torture, rape and destruction to account. The remainder of the presentation will therefore be devoted to discussion of the “rule of law” in these contexts.

For peacekeepers inserted into the anarchic conditions prevalent in contemporary armed conflict situations, the primary objective is **restoration of public order**. Of course, the level of coercion necessary to achieve this goal will vary according to the level of peace enforcement mandated by the Security Council but, in effect, this objective (restoration of public order) is concerned with ensuring compliance with the “rule of law” by would-be perpetrators of crimes. For humanitarian agencies, however, the concept of “rule of law” during the early stages of an intervention is framed within mandates that call for **protection and assistance** to vulnerable populations. That is, the focus for humanitarian agencies is on solidarity with potential (or actual) victims of these crimes.

These are two subtly different, but nevertheless mutually reinforcing, angles on the issue, which must be understood and respected if we are to overcome the perennial hiatus that seems to occur whenever the two groups are thrown together in peace operations. It is acknowledged that this relationship is significantly complicated by the heterogeneity of humanitarian actors to which I alluded earlier and which also means that agency approaches (to protection and assistance goals) will vary. There is also a vibrant debate within the international humanitarian community about the interface between the protection and assistance objectives. However, this is the reality of the international humanitarian system, which, as I have mentioned, operates through a consensual process of negotiation, incentives and careful planning.

### **Principled humanitarian action**

Delegates to this conference will be well aware that the popular image of humanitarian action, portrayed via global telecommunication networks, of sacks of grain being off-loaded from a convoy of trucks from the World Food Programme; Red Cross doctors and nurses treating the victims of forced displacement under makeshift conditions; landscapes strewn with blue plastic tarpaulins distributed by the United Nations High Commissioner for Refugees and queues of displaced people outside NGO distribution centres etc, is underpinned by a set of core principles - neutrality, impartiality and independence. Concerns have been growing within the humanitarian community about perceived challenges to these core principles and, indeed, some have even argued that they may be obsolete. In the words of one commentator, David Rieff, “*since only states could properly stem the carnage, aid workers began to call for and work with state power. The long-standing notion of ‘humanitarianism against politics’ was replaced by a politicized humanitarianism*”<sup>5</sup>. In these terms, can such assistance really be regarded as neutral and impartial?

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<sup>5</sup> Samantha Power (October 6, 2002) *First Do No Harm*, L.A. Times Book Review, “David Rieff (2002) *A Bed For The Night: Humanitarianism in Crisis*, Simon & Schuster”

This debate over the continued validity of core humanitarian principles should be regarded as a healthy demonstration of “an industry” prepared to reflect on (and question) its mission while, at the same time, striving to identify a common expression of **principled action**. In this regard, UN agencies, Red Cross/Red Crescent organizations, institutional donors and major NGOs now generally recognise the harmful impact of random, inconsistent and self-serving assistance.

There is, however, some consensus amongst humanitarian actors (including institutional donors such as AusAID) that these principles must be upheld in some form, if traditional “humanitarian space” is to be maintained. If we relinquish this “space”, the consequences for humanitarian access to vulnerable populations; for protection mandates of the International Committee of the Red Cross (ICRC), UNHCR, UNICEF etc and not to mention the safety of humanitarian workers themselves, will be dire. For the sake of those that we seek to assist therefore, continued insistence on the neutrality, impartiality and independence of humanitarian action is crucial.

However, overt alignment with peacekeeping elements of an operation may become detrimental to this objective. As Hampson (1998) has noted, “*what the peace-keeping’ force can do and what it is perceived as being able to do (which may well be different) will have a significant impact on the conduct of the belligerent parties. The force may become the target of attack, both directly and by being made ineffective*”<sup>6</sup>. That is, the neutrality, impartiality and independence of their actions may be challenged and, by association, the motives of those who are attempting to bring humanitarian assistance to affected populations.

And so, if humanitarian workers seem aloof to military colleagues mandated with what may be perceived as the more partial role of asserting authority over belligerents in the interests of restoring public order, it should not be misconstrued as a rejection of the security mandate but rather a product of the imperative to preserve precious humanitarian space. Insofar as the role of peacekeepers is concerned, most humanitarian workers would acknowledge that the provision of a secure environment into which humanitarian assistance can be delivered is not only an essential input but also provides the foundation for future stability on which recovery (and eventually development) can occur.

### **Conflict-sensitive programming**

Central to the concerns of humanitarian workers has been the confronting realisation that assistance could not only “fall into the wrong hands”- diversion of assistance to fighters - but could also be manipulated to sustain crises – “taxation” of relief goods by belligerents, method of control of civilian populations by militia etc. Through a process of reflection on these issues, the humanitarian community became sensitised to the prospect of relief assistance becoming an inadvertent part of the political economy of war. The work of Dr Mary Anderson and colleagues at the Collaborative for Development Action (Cambridge, Massachusetts) in developing the “**Do No Harm**” framework for programming in these difficult environments has been crucial for many agencies in coming to terms with this disconcerting reality. But, of course,

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<sup>6</sup> Françoise J Hampson (1998) *International Humanitarian Law in Situations of Acute Crisis* in “Report of Conference on the Promotion and Protection of Human Rights in Acute Crisis”, DfID and Human Rights Centre, University of Essex, p.68

even in the most adverse situation, doing nothing – i.e. simply withdrawing assistance – is not a pragmatic option on political, moral or ethical grounds. Instead the humanitarian community increasingly sought to move beyond the rather passive objective of “doing no harm” to approaches that supported **local capacities for peace**. However, this paradigm shift, which sought options to proactively support conflict transformation through aid interventions, also brought humanitarian objectives into closer alignment with political objectives and therefore represents the nexus of the concerns of Rieff, which were outlined earlier.

However, there is another dimension to this approach. Externally-driven interventions that exclude the participation of local populations in decisions regarding their welfare not only fail to harness indigenous capacities and coping mechanisms but also risks creating conditions of dependency (and therefore prolonging the deployment of the peace operation). Even our terminology tends to reinforce this structural imbalance in the relationship. Crisis-affected populations are often referred to as “victims” thus reinforcing a sense of passivity and helplessness. On the other hand, if this same population is referred to as “survivors”, their experience instantly becomes more positive and highlights their capacities. Crisis-affected populations must be given a greater voice in decisions regarding the form of assistance that they receive.

The Local Capacities for Peace – Do No Harm framework provides one mechanism for understanding our options in these circumstances. As noted previously, however, institutional donors (including AusAID) are increasingly seeking to enhance their capacity to analyse peace-conflict dynamics and design conflict-sensitive programs that support a stable, enabling environment for development. “Conflict risk analysis”, “peace-conflict impact assessment”, “early warning systems” and “preventive action” are therefore growing in prominence within the lexicon of aid terminology. The significance to this audience is that donor approaches to “rule of law” issues are increasingly likely to become embedded within broader reform processes aimed at establishing a viable, peaceful society rather than standalone (or “scatter-gun”) approaches to strengthening judicial systems, police and corrective services etc.

### **Accountability and standards**

The findings of the OECD DAC evaluation of the international response to the Rwanda crisis in 1994<sup>7</sup> generated an important initiative of direct relevance to this seminar. The evaluation found that the performance of the international humanitarian system had been mixed with many very positive outcomes but also a degree of disarray in mobilising a coherent response to the immense suffering.. Under the auspices of the Steering Committee for Humanitarian Response (SCHR) the Sphere Project has developed a set of guidelines, the *Minimum Standards in Disaster Response*. These are derived from a *Humanitarian Charter* based on an affirmation of three very familiar principles of humanity - “the right to life with dignity”; “the distinction between combatants and non-combatants” and “the principle of non-refoulement”. Together the Humanitarian Charter and Minimum Standards represent a comprehensive mechanism to meet the needs of populations engulfed by violent conflict, i.e. it contains elements of life-sustaining, material assistance as well as

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<sup>7</sup> (1996) *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience; Part Three – Humanitarian Aid and Effects*, OECD DAC, p.161-162

support to protect the capacities of those it seeks to assist. Australia is one of nine donor governments to have supported the **Sphere Project** since its inception through core grants to the project headquarters; grants to the Australian Council for Overseas Aid (ACFOA) for training programs for Australian NGOs and grants towards local NGO training programs in Indonesia and Sri Lanka. Together, this commitment towards development and dissemination of the *Sphere Humanitarian Charter and Minimum Standards in Disaster Response* (“the Sphere Guidelines”) exceeds A\$1 million.

### **Rule of law within peace operations**

Both sides of the peace operations equation (military and civilian personnel) must be acutely aware that their actions must be subject to independent scrutiny. As the Brahimi Report noted “*the majority of [United Nations personnel] embody the spirit of what it means to be an international civil servant, travelling to war-torn lands and dangerous environments to help improve the lives of the world’s most vulnerable communities. They do so with considerable personal sacrifice, and at times with great risks to their own physical safety and mental health. They deserve the world’s recognition and appreciation*”<sup>8</sup>. Equally, the actions of most non-United Nations humanitarian workers are driven by a sense of humanity and concern for those unfortunate enough to be caught up in crises and disasters.

Sadly, however, while there have been many examples of exemplary action in the course of peace operations, there have also been a minority of cases where representatives of the international community have taken advantage of the vulnerability of those they seek to assist, through corruption, criminal activity and nepotism – actions which not only destroy the trust and confidence of affected communities but also under-mine central tenets of the mandate of peace operations as well as core principles of humanitarian assistance. At its core, this reflects a heavily skewed power relationship between members of the peace operation and those they seek to assist that is structurally imbalanced and therefore susceptible to abuse, if not strictly policed in accordance with universal norms of “the rule of law”.

When people have been uprooted from their homes; traumatised by violence; subject to extreme forms of degradation and seen their means to livelihood swept away overnight, they are extremely vulnerable to further exploitation. Members of peace operations and humanitarian relief agencies are, on the other hand, in an extremely powerful position as the source of protection and assistance. Earlier this year, a series of allegations were made against humanitarian workers in West Africa. These alleged that some aid workers had been trading basic relief commodities for sex with young women refugees. Clearly this is totally unacceptable and these individuals must now be subject to the full force of the law, if the allegations are proven. But which law? Sierra Leonean law or the law applicable in the country where the deploying agency is registered? Or is this even an area that might eventually fall under the jurisdiction of the International Criminal Court. And what is the responsibility of their agencies that, after all, had pledged under the Sphere Guidelines and elsewhere to “*be held accountable to those we seek to assist*”!

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<sup>8</sup> Brahimi, L *et al* (2000) *Comprehensive review of the whole question of peacekeeping operations in all their aspects: Report of the UN Panel on Peace Operations* (A/55/305 S/2000/809), para.271

This latter conundrum is the subject of an innovative international project based in Geneva – the **Humanitarian Accountability Project (HAP)**. With the assistance of grants from institutional donors (such as AusAID [A\$250,000], UK and Denmark), the HAP is attempting to define an accountability framework for agencies working in emergency and humanitarian operations around the globe. Reflecting on “industry-based” accountability mechanisms (e.g. accreditation systems, service standards, codes of conduct, complaints processes etc) HAP is examining the scope for defining a humanitarian code of conduct (possibly expanding the existing *Code of Conduct for Red Cross Organizations and NGOs in Disaster Relief*, which it describes as lacking specificity or formal mechanisms for redressing grievances). It is also attempting to define an appropriate regulatory mechanism but is unlikely to opt for a full-blown ombud-type mechanism with formalised processes for appeal and sanction.

### **Protection and Australian assistance**

I want to conclude therefore by outlining for the seminar some other practical expressions of support that Australia is currently providing for protection initiatives which may be applicable within the context of peace operations. Not only are these protection activities of the international humanitarian system far less visible than the “material inputs” covered in the Sphere Guidelines (food aid; nutrition; health services; water and sanitation; and shelter) but they also pose significant dilemmas for humanitarian agencies. Aid workers are often the “eyes and ears” of the international system in collapsed (or collapsing) States. As such, they often “bear witness” to abuses of human rights.

At their core, these dilemmas involve weighing up the potential “trade-offs” between maintaining access to affected populations and speaking out against rights abuses – an action that might result in expulsion and therefore expose these populations to even greater dangers. Ultimately, however, decisions must be made by individual agencies in accordance with their interpretation of the ethical parameters on independent action and responsibilities towards the affected population.

The conundrum under-scored publication in 1999 by UNHCR, of *Protecting Refugees: A Field Guide for NGOs*. The field guide “takes the core, legal concepts that underpin protection of refugees and attempts to make them accessible to the lay reader. It gives practical advice for on-the-ground interventions that can make the difference between rights abused and rights secured”<sup>9</sup>. Building on this text, a collaborative initiative, the **Reachout Project**, was launched in 2000 to develop a refugee protection training-learning program as part of the dissemination program for field staff. I am pleased to advise that Australia, through AusAID, was one of two institutional donors (with USA) to support this important initiative from the outset with a grant of A\$360,000 over two years. In February 2003, the Reachout Project is scheduled to deliver two 3-day learning programs in Melbourne on behalf of Australian Red Cross and the Australian Council for Overseas Aid (ACFOA) respectively.

While UNHCR’s protection mandate, and therefore the Reachout Project, is primarily focussed on refugee protection issues primary carriage within the UN system for

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<sup>9</sup> McNamara, D (1999) Foreword to *Protecting Refugees: A Field Guide for NGOs*, UN Publications Service

promoting protection of internally displaced people has been vested in the Special Representative of the Secretary General (SRSG) for Internal Displacement, Dr Francis Deng. In 1999, the UN Office for Coordination of Humanitarian Affairs (OCHA) launched the Guiding Principles on Internal Displacement on behalf of the SRSG. The Guiding Principles represent a normative framework for protecting and assisting IDPs based on a set of existing international law provisions. They were endorsed by the Commission for Human Rights at its 54<sup>th</sup> session. In mid-2000, the Secretary General established an Internal Displacement Unit within OCHA to, *inter alia*, disseminate the Guiding Principles and otherwise promote the concerns of the global IDP population, which now outnumbers the global refugee population by nearly 2 to 1. Again Australia, through AusAID, has supported the work of the **Internal Displacement Unit**, under the leadership of Kofi Asomani, during its first year with a grant of A\$250,000. With the recent extension that the mandate of the Unit is to be extended beyond the end of 2002, we are currently considering our options for further assistance.

More broadly, the Policy Development and Studies Branch of OCHA have been working to support the Under Secretary-General for Humanitarian Affairs, Kenzo Oshima, to advocate for the protection of civilians in armed conflict. This involves a series of regional workshops around the globe aimed at raising the awareness of middle and upper level policy-makers within governments about the rights of civilians in armed conflicts and obligations of State and non-State actors towards them. This week, Mr Oshima will attend part of a *Protection of Civilians in Armed Conflict* workshop for NE Asia participants in Kobe. Next week, when he visits Australia to participate in the global launch of the United Nations Inter-Agency Consolidated Appeals, we hope to discuss the prospects of supporting a similar workshop for Pacific Rim countries.

Finally, It would be highly remiss not to mention the International Committee of the Red Cross (ICRC) who, most delegates would be aware are the custodians of the Geneva Conventions and Additional Protocols. ICRC have a crucial role to play not only in assisting non-combatant populations in times of conflict but also disseminating the Geneva Conventions and protocols and encouraging their ratification and incorporation into domestic legislation. An acknowledgement of the importance of this work is contained in the annual level of **support to ICRC operations** through AusAID's humanitarian program, which this year (2002) looks likely to again be in the order of A\$10-11 million for, *inter alia*, delegations in the Pacific, Indonesia, Myanmar, Philippines, Sri Lanka and Nepal. The forthcoming visit to Australia of President Kellenberger will serve to further cement this vital partnership, while at a strategic and operational level, AusAID will continue to participate in the ICRC Donor Support Group – the elite group of a dozen or so biggest donors to ICRC.

### **Summary**

All of these initiatives provide practical expression of support for the establishment and maintenance of the rule of law in countries wrecked by violent conflict. There are, of course, several other areas of the rule of law that time has precluded discussion on, e.g. DDR processes and reduction of small arms. Through the official aid program of the Australian Government, the work of others in this area, including our

Defence Services, can be complemented to promote sustainable peace in countries emerging from conflict.

Nevertheless, I would like to reiterate once more that the success of our mutual efforts in this area will hinge on being able to demonstrate to all stakeholders – combatants and non-combatants alike – that they have more to gain from a stake in peaceful coexistence than settling scores through violent means. Respect for (and adherence to) the rule of law, though an important pillar of this argument, is unlikely to be sufficient to avoid a repetition of violent conflict if it is not backed up by sustainable improvements in the lives of those who see greater gains in achieving their goals through violent conflict.

In conclusion, however, I cite Dennis McNamara, who I note is also a participant at this conference, the Inspector-General of UNHCR and a veteran of humanitarian interventions around the globe, who recently wrote in the International Herald Tribunal that *“the Achilles’ heel of post-conflict peace operations is that of justice/rule of law and civilian policing. There is a global shortage of qualified police available for these operations. Frequently there is also a need to bring in outside judges, prosecutors, defenders and prison managers, at least in the early stages”*<sup>10</sup>. This seems to suggest that the need for a pool of qualified personnel for UN civilian administrations, which was called for in the Brahimi Report, is even more urgent than some of us had imagined!

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<sup>10</sup> McNamara, D, *“The UN has been learning how its done”*, International Herald Tribune, 29 October 2002