

CAROLYN BULL

# NO ENTRY WITHOUT STRATEGY

*Building the Rule of Law under  
UN Transitional Administration*



---

No entry without strategy:  
Building the rule of law under  
UN transitional administration

---

Carolyn Bull

---



**United Nations  
University Press**

TOKYO • NEW YORK • PARIS

---

# Contents

---

Acknowledgements .....	viii
Abbreviations .....	x
Maps of Cambodia, Kosovo and East Timor .....	xiii
1 Introduction: The elusive goal .....	1
2 Ambitions: The state-building agenda of UN transitional administrations .....	16
3 Concepts: The rule of law in UN state-building missions .....	44
4 The line of least resistance: The UN Transitional Authority in Cambodia .....	72
5 State-building without a state: The UN Interim Administration Mission in Kosovo .....	120
6 Beyond the blank slate: The UN Transitional Administration in East Timor .....	186
7 No entry without strategy .....	249

Bibliography .....	266
Index .....	299

# 1

---

## Introduction: The elusive goal

---

[A] constellation of persons or groups among whom there existed no expectation of security against violence, of the honouring of agreements or of stability of possession we should hardly call a society at all.

Hedley Bull, *The Anarchical Society* (1977: 5)

For international actors seeking to consolidate peace and democracy in so-called disrupted states,<sup>1</sup> the importance of establishing the rule of law is now well recognised. Yet the goals of ensuring security against violence and building legitimate state structures to redress disputes peacefully have proven frustratingly elusive. International actors have found it even more difficult to instil principles of governance that promote accountability to the law, protect against abuse and generate trust in the state.

In championing such goals in conflict-riven states, United Nations (UN) actors have pitched against the odds. In the hostile intervention environments examined in this book, UN peace operations have pitted meagre resources against monumental aspirations for change. Not unpredictably, these aspirations have generally remained unmet. At one extreme, renewed violence in Cambodia in 1997, Kosovo in 2004 and Timor-Leste in 2006 has been a stark reminder of the frailty of the rule of law; more invidious, perhaps, has been the everyday incidence of agreements dishonoured, instability of possession and state abuse.

A threshold question of this book is whether, in the case of UN attempts to build the rule of law, such unmet aspirations derive from deficiencies in intervention strategies or from unrealistic ambition. If

---

*No entry without strategy: Building the rule of law under UN transitional administration*, Bull, United Nations University Press, 2008, ISBN 978-92-808-1151-3

establishing the rule of law requires no less than the transformation of social norms regarding conflict, power and the state, can an external actor such as a UN mission ever expect to succeed? Is the goal elusive, or impossible?

### The peacebuilding agenda

Increasingly, rule of law objectives have been incorporated into post-Cold War UN peace operations as a core element of the doctrine of “peacebuilding”, which transformed the traditional blue helmet role of *keeping* the peace into an imperative to *build* it. This doctrine, which emerged in the early 1990s, reasoned that the pursuit by peace operations of a particular political, social and economic order in post-conflict environments was instrumental in securing the primary objective of a stable peace. The Secretary-General’s 1992 *Agenda for Peace* described peacebuilding as the “construction of a new environment” to prevent the recurrence of conflict. It stressed the obligation of UN missions to identify and support structures that consolidated peace, including disarmament, demilitarisation, repatriation, human rights protection, reform or strengthening of government institutions, and promotion of democratic political participation (UNGA 1992: paras 55, 59).

These objectives, which as Cousens (2001: 13) has observed formed a helpful but limited roadmap that covered “the entire basket of post-war needs”, were reaffirmed in subsequent keynote documents, including the 2000 *Brahimi Report* and the Secretary-General’s 2001 report *No exit without strategy*. The latter proposed that peace operations should seek to move conflict from the battlefield to a peaceful institutional framework and defined peacebuilding as “an attempt, after a peace has been negotiated or imposed, to address the sources of present hostility and build local capacities for conflict resolution” (UNSC 2001a: para. 11). It outlined three preconditions for successful peacebuilding: consolidating internal and external security through peacekeeping and security sector reform; strengthening political institutions and good governance; and promoting economic and social rehabilitation and transformation.

With the development of peacebuilding practice during the 1990s, it became apparent that these preconditions were linked intimately to the functions of the state or, more accurately, to its dysfunction. Accordingly, UN “peacebuilding” interventions moved increasingly to support, build or strengthen the institutions of *state*, with a view to stabilising or even creating territorial entities that fulfilled a particular conception of legitimacy and were capable of assuming their rightful place in international society. The term *state-building* entered international security lexicon

and, in the context of UN peace operations, may be defined as “an intervention designed to create a stable, democratic and viable state, primarily through building the institutions of a state”.<sup>2</sup>

Although often equated with the term peacebuilding, the concept of state-building thus extends beyond peacebuilding’s central concern of preventing the recurrence of violent conflict to an explicit focus on the state and its institutions. As discussed in detail in Chapter 2, the state-building agenda of UN peace operations has focused, primarily though not exclusively, on developing those institutions of state that underpin liberal democracy, human rights protection, transparent and accountable public administration, and a free market economy.

### State-building and rule of law strategies

The proliferation of costly and protracted state-building enterprises in the 1990s soon generated alarm that the international community was intervening in disrupted states, in increasingly intrusive ways, without a clear strategy for action. This was especially evident with respect to the most extensive state-building missions, such as those deployed in Bosnia-Herzegovina, Kosovo and East Timor, where UN missions found themselves over-extended, under-equipped and bereft of success stories.

Across the gamut of state-building issues, these frustrations were demonstrated no more clearly than in the rule of law arena. A central concern was the relative lack of priority being accorded to rule of law issues in complex peace operations, relative to other pressing issues on the agenda that seemed more visible and immediate. A second, related concern was that of continued disappointing results in attempts to implement rule of law reform. By the early twenty-first century, recognition of both sets of concerns by an increasingly wide range of UN actors prompted a significant increase in attention to rule of law issues across the UN system (UNSC 2004e: 3).

This sea change was encapsulated in the Secretary-General’s August 2004 report on *The rule of law and transitional justice in conflict and post-conflict societies*, which catalogued a myriad of problems related not only to *what* rule of law initiatives had been implemented, but to *how* they had been implemented. Beyond the question of giving sufficient priority to the rule of law in overall mission mandates, these problems included a failure to consider country context; to identify, support and empower domestic reform constituencies and cultivate broad-based support for reforms; to recognise the political dimensions of rule of law reform; to ensure post-mission support, including long-term development assistance; to develop holistic strategies that engage all official and non-official jus-

tice institutions; and to address the issue of past crimes through appropriate institutional mechanisms (UNSC 2004e: 6–19; see also Carlson 2006 and Rees 2006).

The momentum for change thus established, at the 2005 UN World Summit more than 170 heads of state and government identified the rule of law as one of four key areas that demanded greater attention. By late 2006, in his report *Uniting our strengths: Enhancing United Nations support for the rule of law*, the Secretary-General noted that rule of law and transitional justice issues were “now being consistently integrated into the strategic and operational planning of new peace operations and Member States now almost universally recognise the establishment of the rule of law as an important aspect of peacekeeping” (UNSC 2006a: 1).

Accompanying this heightened attention to the rule of law in the UN state-building agenda has been the emergence of an extensive range of guidelines, manuals and other materials and tools aimed at strengthening the United Nations’ strategic and practical capacity (UNSC 2006a 1). Notable developments included the establishment in December 2005 of the UN Peacebuilding Commission, with a mandate to advise on integrated long-term strategies for post-conflict recovery, including rule of law issues; the release in 2006 of the Office of the United Nations High Commissioner for Human Rights’ *Rule of law tools for post-conflict states* (OHCHR 2006a, 2006b, 2006c, 2006d); and the launch in 2007 of integrated “model codes”, to provide a legal framework for peace operations, other international missions and national governments to use to respond to justice needs in post-conflict environments.<sup>3</sup>

Despite these advances, in 2006 a UN self-assessment concluded that “the Organization’s engagement, approach and coordination at both the Headquarters and the mission levels remained informal and ad hoc, and was poorly harmonised with that of other key external partners” (UNSC 2006a para. 36). Much remained to be done to promote formal processes to enhance “capacities, coherence and coordination” in UN doctrine and approach (UNSC 2006a para. 28). This resulted in the decision to establish in 2007 a Rule of Law Coordination and Resource Group in the UN Secretariat, to bring together key rule of law players in the UN system (Office of Legal Affairs, Department of Peacekeeping Operations, Office of the United Nations High Commissioner for Human Rights, United Nations Office on Drugs and Crime, United Nations Development Programme, United Nations Development Fund For Women and United Nations High Commissioner for Refugees) to focus on overall coordination and strategic policy response and coordination centre, and to identify and address gaps in capacity. This points not only to the need for refinements to UN state-building strategies, but to the scope and need for further research.



## Lessons learnt

These challenges of rule of law promotion were by no means new. Earlier episodes in external rule of law promotion since the United Nations' inception had generated similarly lacklustre results. For example, the numerous legal education and code reform projects implemented in Latin American and African post-colonial states during the "law and development" movement of the 1960s showed little evidence of benefits to economic development or human rights protections (Merryman 1977: 459; Greenberg 1980: 134–135).<sup>3</sup>

Although some scholars pointed to positive outcomes from the movement (McClymount and Golub 2000; Borbely et al. 1999: 6), critics argued that the attempted transfer of American ideas and systems did not take sufficient account of cultural or political context (Merryman 1977: 483; Garth and Sarat 1998b: 14; Trubek and Galanter 1974: 1062; Franck 1972: 768, 785). Seidman's model of law and development (1978: 16–18) concluded that efforts to overlay western institutions on pre-existing indigenous systems, however weakened or transformed by the colonisation process, resulted only in dysfunction and corruption. Further, it was argued that modern western legal structures could not be assumed to be the key to social and economic development, not least because formal legal systems reached only a small segment of the population (Trubek 1972: 16; Valdez in Zagaris 1988: 558; Borbely et al. 1999: 6).

Undeterred by the demise of the law and development movement, law reform continued as a feature of foreign aid programmes, which increasingly linked legal reform with the democratisation agenda.<sup>4</sup> Rule of law projects gained new impetus with the end of the Cold War; this revival related strongly to the precept that good governance, the backbone of social and economic development, could not be achieved without rule of law institutions. Rule of law projects also became linked closely to the human rights and social justice movement, and with international law enforcement programmes (Carothers 2006b). Projects typically focused on code reform through "institutional strengthening" (Hammergren 1998a: 8), with some attention also to increasing access to justice, building consensus about the need for judicial independence, and building capacity in the justice system (Biebesheimer and Payne 2001: 1).

Like their predecessors, these judicial reform projects generally produced disappointing results, falling short of or even undermining their goals (Garth and Sarat 1998b: 13; Carothers 1999: 170, 2006a: 6). By the late 1990s, many scholars painted a bleak picture of failed legal reform, corruption, biased appointments, low public confidence and extrajudicial conflict resolution. Even studies that were relatively positive about the effectiveness of justice sector projects in advancing such goals as human

rights protection, constitutional development and the expansion of civil society cautioned of the potential downsides: of aid projects that sheltered repressive regimes from scrutiny, wasted resources, distorted institutions and exacerbated social divisions. Wheel reinvention and the repeated application of flawed project design prevailed (McAuslan 1997; Thome 1997).

Twenty years into the movement, there remained considerable uncertainty about the long-run impact of specific rule of law initiatives, beyond an uneasy sense that their transformative impact was weak (Carothers 2006b). A growing body of literature on external rule of law promotion offered salient lessons – many of which echoed those of the earlier law and development movement – but few definitive solutions to the quandary of how an external actor may best seek to promote the rule of law.

Of these lessons, a recurring theme was the lack of a sound theoretical basis for projects. Upham (2002: 10) has described how the World Bank, the United Nations and aid agencies tended to embrace a “formalist model of law detached from the social and political interconnections that form actual legal systems anywhere”. This model rested on three unproven assumptions: that the description of law as a system of rules is a reliable guide to understanding legal systems; that law’s primary role in society is dispute resolution; and that such dispute resolution depends on formal legal adjudication (Upham 2002: 10–11).

These assumptions proved difficult to uphold empirically (Thome 1997: 50). Similarly, specific causal linkages such as the relationship between judicial reform and human rights protection or good governance remained unproven (McAuslan 1997: 30–31; Hammergren 1998a: 9). Moreover, concurring with law and society scholars who argued that law was deeply contextual and could not be detached from its social and political environment, judicial reform project analyses supported the view that constitutions and laws could not in themselves modify the substance of political actions, but were dependent on the political and cultural context in which they operated (Przeworski 1995: 51).

Upham (2002) demonstrated how, despite these findings, donors denied the political nature of law and continued to adopt approaches that underestimated the complexity of legal development. At the same time, some donors set impossible ideals not met in even the most advanced legal systems. As a result, institutional transfer either failed or generated unintended and sometimes negative consequences. Much of the analysis of law reform in East Germany, the Czech Republic and the Newly Independent States supported this view.<sup>5</sup>

Studies on legal sector reform repeatedly concluded that institutional change is dependent on the attitudes of the political élite, as well as key

interest groups such as the judiciary (Hammergren 1998a; Kritz 2006). As Carothers (1998: 7) noted:

reform that brings real change in government obedience to law is the hardest, slowest kind of assistance. It demands powerful tools that aid providers are only beginning to develop, especially activities that help bring pressure on the legal system from the citizenry and support whatever pockets of reform may exist within an otherwise self-interested ruling system. It requires a level of interventionism, political attention, and visibility that many donor governments and organisations cannot or do not wish to apply. Above all, it calls for patient, sustained attention, as breaking down entrenched political interests, transforming values, and generating enlightened, consistent leadership will take generations.

Stimulating broader public demand for rule of law reform in the institutional change equation in some ways presented an even higher degree of difficulty for external actors than “political will” issues. As Aron (2002) noted in a study of Russian legal reform:

Perhaps even more debilitating is the deeply cynical view of the legal system held by millions of Russians. The supply of laws, no matter how excellent, must be met with an equally strong demand . . . To resuscitate that [demand] after four generations of state terror, lawlessness, and fraud – while courts, judges, and laws were instruments of a totalitarian state – will take decades.

Methods of stimulating public demand for rule of law reform pursued by external actors, such as assistance for civil society development and public support building campaigns, tended to be underdeveloped in terms of defining, mobilising and introducing individual and group interests into the reform process (Hammergren 1998d: 10; Jacoby 2001).

The need for an early focus on rule of law issues as part of an overall reform package was increasingly recognised (Kritz 2006), but donors nonetheless found it difficult to coordinate reform strategies within the justice sector, across the entire reform programme and amongst a range of donors (World Bank 2002; Biebesheimer and Payne 2001: ii–iii). Hence, although programme designs increasingly recognised that re-establishing a judiciary or police service would be ineffective without proper attention to related justice sector components, such as legal education, prison reform, victim protection and property dispute resolution, poor implementation continued to weaken the overall effectiveness of reform (UNSC 2004e: 9). In other cases, the sequencing of particular justice sector projects was mistimed, or proved ineffective in the face of larger political issues. Project evaluations also found insufficiently sus-

tained and consistent donor commitment to incremental reform (Lopez-de-Silanes 2002: 27; Biebesheimer and Payne 2001: iii; Jacoby 2001).

These “lessons learnt”, like the experience of the law and development movement, underscored the complex set of challenges facing any external attempt to strengthen the rule of law. At the time of writing, external rule of law initiatives had only just begun to move beyond institutional formalism towards a broader enterprise in institutional change that considered issues of political will, incentives and social networking analysis, the usefulness of bottom-up processes such as legal empowerment as a way of potentially stimulating systemic change, and the importance of traditional or “informal” justice systems (Carothers 2006b).

### UN transitional administrations and the rule of law

Given this rich pre-existing set of case studies regarding external rule of law promotion, what does an analysis of the experience of UN transitional administrations offer? As a specific mode of intervention in which the United Nations has assumed direct political and administrative authority over disrupted states or territories, transitional administrations represent unique situations in which the United Nations has pursued ambitious state-building projects and wielded extensive, even quasi-sovereign authority. In particular, Kosovo and East Timor constituted the first occasions on which UN peace operations exercised full judicial authority within a territory and were mandated specifically to establish a state justice system.

There has been comparatively little detailed academic focus on UN transitional administrations as a specific class of intervention or on the rule of law initiatives undertaken by these missions. Some studies of UN transitional administration, such as those by Chesterman (2001a, 2001b, 2002a, 2003, 2004a), Wilde (2001a, 2001b) and Caplan (2002, 2004a,b), have provided seminal insights, but rule of law issues have not been their primary focus. Other studies tend to fall into two groups: those that examine state-building under international intervention more generally;<sup>6</sup> and those that examine several rule of law issues in a single UN mission, or a single rule of law issue in one or two missions.<sup>7</sup>

In seeking to augment existing research, this book examines a broad set of rule of law initiatives pursued by three of the four UN transitional administrations deployed to date: the United Nations Transitional Authority in Cambodia (UNTAC, 1992–1993), the United Nations Interim Administration Mission in Kosovo (UNMIK, since 1999) and the United Nations Transitional Administration in East Timor (UNTAET, 1999–2002).<sup>8</sup> Existing studies of rule of law initiatives by these UN transitional administrations have yielded predominantly negative assessments of the

effectiveness of UN actors in establishing the rule of law.<sup>9</sup> The primary objective of this study is to investigate further these apparent difficulties.

Kosovo and East Timor are perhaps the more important case studies, because of the extensiveness of the rule of law mandates given to the UNMIK and UNTAET missions. At the time of writing, UNMIK and a successor mission to UNTAET both remained in theatre. For the sake of practicality, only the first five years of the UNMIK mission (from June 1999 to June 2004) are considered and discussion of UN intervention in East Timor is confined to the UNTAET mission only.

Although limited in its rule of law activities, Cambodia provides a useful counterpoint to its more recent cousins. In effect, UNTAC begins the tale: deployed in the opening phase of the post-Cold War period, in the early days of “complex peacekeeping”, and as the United Nations’ first experiment in transitional administration, it illustrates both the detrimental effects of neglecting the rule of law and the rapid evolution of the United Nations’ rule of law agenda over the past decade.

In pursuing its primary objective, this book also seeks to enhance conceptual understandings of the state-building agenda adopted by UN agencies in the post-Cold War period and, in particular, of the rule of law agenda as a subset of this broader agenda. More broadly, it seeks to add to the body of empirical studies concerned with how external actors may assist in establishing the rule of law in a disrupted state. Although aspects of “transitional justice” are considered, and important to, the study’s conclusions, they are not the focus of this book. Many studies already deal with these issues comprehensively.<sup>10</sup>

Three key findings emerge from the study. First, at least nine distinct – and arguably foreseeable – factors appear to have contributed to the difficulties encountered by UN transitional administrations in establishing the rule of law in Cambodia, East Timor and Kosovo. UN transitional administrations failed in each of the following ways: to make the best use of their mandate; to establish effective state justice institutions; to build local commitment to the rule of law as a value system; to promote the formation or revival of social relationships supportive of the rule of law; to ensure sufficient state capacity to maintain and advance rule of law gains after the intervention; to maintain adequate levels of security; to address the existence of informal justice structures; to deal with the legacies of the past; and to ensure a level of mission performance adequate to support rule of law objectives.

Second, and more broadly, a state-based enforcement approach to establishing the rule of law proved ineffective. Although arguably an important component of the state-building agenda of UN transitional administrations, the establishment of a body of state law and judicial, police and prison services could not be equated with the establishment of the

rule of law. Such an approach did not adequately account for the existence of entrenched informal justice institutions; for the fact that adherence to the desired rules system relied less on state sanction mechanisms than on the voluntary consent of local actors to bind themselves to those rules; for the profound influence of indigenous power struggles; or for the importance of appropriate institutional design choices. As a result, the UN approach tended to be formalistic and proved limited in its ability to offer real solutions to real problems faced by local actors.

Third, as with other external actors, UN transitional administrations seriously undermined their potential to contribute to rule of law development by neglecting to consider fully how they could create an enabling “space” in which internal processes of change could occur, to engage appropriately with the recipient population, to address the tyrannies of a short deployment period or to ensure that it addressed these issues systematically at the “front end” of the mission.

The absence of a nuanced strategy that addressed the above factors seriously undermined the ability of each UN transitional administration to establish the rule of law, the self-declared cornerstone of its state-building agenda. This is what may be called, for the purposes of this study, the “entry without strategy” approach to state-building. It is an approach that seems fatally flawed.

## Outline of the book

Chapter 2 contextualises the case studies by defining the state-building agenda of UN transitional administrations. In tracing the evolution of internationally sanctioned administration of territories during the twentieth century, it demonstrates that this agenda is rooted in earlier League of Nations and UN experiments in international trusteeship as well as in contemporary peacekeeping doctrine. It argues that these forms of international administration have all pursued political solutions directed at maintaining a particular international order. As such, they may be viewed not merely as a tool for promoting international stability, but as a vehicle by which the international community has sought to construct a new political environment consistent with prevailing standards of governance.

Two features distinguish UN transitional administrations from other peace operations: the direct, mandated exercise of political authority by the United Nations; and the adoption of an intrusive state-building agenda as a primary rather than auxiliary objective. A set of benchmarks for statehood may be observed that includes a stable security environment, the foundations of a liberal democratic political system, the rule

of law, mechanisms for human rights protection, a functioning and transparent government capable of appropriating and utilising resources, a sustainable market-based economy and stable external relations. Finally, this chapter frames this state-building agenda in the context of the post-conflict disrupted state, which it argues constituted a highly hostile intervention environment.

Chapter 3 examines UN understandings of its rule of law agenda in transitional administrations, suggesting that three key concepts defined this agenda. First, the “rule of law” was perceived as a distinct normative value scheme, based on a cluster of values invested with rights-based notions of substantive justice. Second, the act of establishing the rule of law was perceived to play a critical transformative role in moving a disrupted state towards a social order characterised by peace and stability, human rights protection, democratic institutions, sustainable development and “justice”. Third, the principal means by which UN actors could hope to establish the rule of law in a disrupted state was through a state-based enforcement model constituted by publicly promulgated formal rules of behaviour with the force of law and coercive state structures to enforce those laws, namely state judicial, law enforcement and correctional structures.

This chapter argues that, although the broad thrust of this conception of the rule of law and its constitutive role has much support in the scholarly literature, it lacked substance both rhetorically and in the field. In particular, the operational emphasis on constructing courts, police services and prisons bordered on institutional formalism, in which the establishment of the rule of law was equated directly with the establishment of state justice organisations.

Finally, as the basis for scrutiny of the case studies, this chapter draws on the preceding discussion to identify nine areas of enquiry of potential relevance in understanding the success or failure of attempts by external actors such as the United Nations to establish the rule of law in disrupted states. These centre on whether the United Nations set appropriate strategic parameters; made effective choices in designing state justice bodies; succeeded in winning elite and popular commitment to the rule of law as a value system; supported the rebuilding of fragile social relationships; ensured sufficient state capacity to maintain and advance rule of law gains after the intervention; restored security to a sufficient level; took adequate account of the potential for informal structures to extract or prevent social loyalty to the rule of law; dealt with the question of past crimes; and ensured that its own performance was effective.

The book then turns to examine the three case studies. Chapter 4 argues that UNTAC’s failure to lay robust foundations for the rule of law was a critical missed opportunity and one of the most serious flaws of the

mission. It meant that UNTAC was ultimately unable to meet its own primary objectives of ending civil strife and human rights abuses, maintaining social order and supporting democratic transition. More than a decade after the UNTAC mission, the absence of crucial attributes of a democratic rule of law state – notably a lamentable judicial system and the continued primacy of strongmen operating above the law – pointed to a long-term failure of the UN intervention.

Key factors that contributed to this situation included an inadequate mandate that was interpreted narrowly; flaws in the design of state rule of law institutions; UNTAC's inability to build commitment for rule of law goals amongst the political elite and the broader community; insufficient state capacity to ensure that rule of law initiatives could be continued post-UNTAC; incomplete restoration of security; and mission shortcomings, including a truncated deployment period and poorly formulated exit strategy.

Chapter 5 examines the first five years of UNMIK, from its deployment in October 1999 to October 2004. It argues that, although UNMIK's comparatively lengthy deployment provided scope for a more sophisticated range of rule of law initiatives than in any other transitional administration, five years into the mission the inability of fledgling state rule of law structures to prevent or contain outbreaks of ethnic violence indicated a profound failure to consolidate the rule of law or even to stabilise the territory.

Uncertainty over Kosovo's final status undermined many of UNMIK's efforts to promote the rule of law. In addition, several avoidable shortcomings on UNMIK's part contributed to its failure. These included UNMIK's ambiguous interpretation of its mandate; its failure to develop a considered rule of law strategy until four years into the mission; poorly designed state rule of law institutions; a virtually non-existent capacity-building and localisation strategy; a failure to neutralise spoilers; insufficient attention to non-institutional facets of rule of law creation; and mission inertia and dissent. Critically, UNMIK did not develop an effective strategy to engage Kosovans in its rule of law initiatives. It disregarded its mandate to harness existing institutions and skills, and state rule of law structures remained inaccessible and irrelevant to much of the population. The resentment thus generated undermined UNMIK's legitimacy and ultimately the willingness of Kosovans to commit to the rule of law.

Chapter 6 considers the UNTAET mission, which administered East Timor<sup>11</sup> from October 1999 until the territory's independence in May 2002. UNTAET was also unprecedented in the history of UN peacekeeping: for the first time, the United Nations assumed sovereign control over



a territory independent of any competing official authority and with the specific objective of preparing it for statehood. UNTAET attempted perhaps the most ambitious state-building programme of any UN peace operation to date.

Against considerable odds, UNTAET made progress in nurturing state rule of law institutions and assisting Timorese to reckon with a traumatic past. Nonetheless, by the time of independence, the justice system was one of the most dysfunctional elements of the new state. Comparatively good levels of law and order relied not on robust institutions but on the self-discipline of the Timorese leadership and population, which quickly proved fallible. Fundamental building blocks of the rule of law – such as separation of powers and equality before the law – were not in place.

UNTAET's strategic shortcomings included a piecemeal approach to building state rule of law institutions; a failure to manage East Timorese expectations, to bridge the disconnect between western and Timorese conceptions of justice and the rule of law and to devolve responsibility for rule of law processes; the lack of a developmental approach to establishing the rule of law; and a failure adequately to address the question of "traditional justice".

Chapter 7 concludes the book. It argues that each of the case studies confirms the relevance of the nine areas of enquiry listed in Chapter 3 to the success or failure of UN peace operations to build the rule of law, and highlights the particular importance of three factors: establishing state rule of law institutions, building local commitment, and addressing informal justice structures.

This chapter argues that the case studies back up both relevant theoretical debates and empirical studies in cautioning against an operational approach that equates building the rule of law too closely with the establishment of state laws and justice structures. This chapter then contests three key assumptions implicit in the United Nations' approach: first, that the disrupted state is a receptive environment for the liberal normative template that underlies the United Nations' state-building strategy; second, that state-based institutions are the key to establishing the rule of law; and third, that external actors are well placed to have a substantial impact on rule of law development. The chapter concludes that UN actors undermined their capacity to support the establishment of the rule of law by failing, from the outset, to develop a nuanced strategy that took these issues in hand.

This book concludes that many of the flaws exposed in the study are inherent to the institutional dynamics of the UN system and its interaction with conflict or post-conflict social and political environments. It suggests that many elements of the United Nations' self-declared state-

building agenda are therefore unrealistic, and that the very statement of such a “mission impossible” risks generating expectations amongst both local and international actors that simply cannot be met. Ultimately, this dilutes the potential for UN state-building missions to deliver a more modest set of state-building objectives that might contribute more successfully to the consolidation of peace in disrupted states.

## Notes

1. See Chapter 2 for a discussion of this term.
2. In its work on state-building, the International Peace Academy has advanced a similar definition of state-building as “extended international involvement (primarily, though not exclusively, through the United Nations) that goes beyond traditional peace-keeping and peace-building mandates, and is directed at building or re-building the institutions of the state”. See International Peace Academy (2003a); see also Chesterman (2003, 2004a).
3. In Korea, for example, the government used modern law imposed by Japanese and US occupiers to expropriate the best farmland and to support a secret police system. The population viewed the laws as alien and continued to use traditional conciliatory mechanisms (Greenberg 1980: 136).
4. The Reagan administration’s Justice Improvement Project for the Commonwealth Caribbean in the mid-1980s was a typical example. See Zagaris (1988: 569).
5. For example, see Offe’s examination of attempts by East Germany and the Czech Republic to import political and economic institutions. In those cases, the lack of regard given by reformers to the ideas and traditions of the importing society demonstrably undermined the performance of new institutions (Offe 1996: 212). Similarly, Sharlet (1998) demonstrated that US constitutional advisers assisting constitution drafters in the Newly Independent States were ignorant of both historical and prevailing conditions, and as a result much of their advice was disregarded.
6. See, for example, Ignatieff (2002, 2003); Maley, Sampford and Thakur (2003b); Dorff (1999); Fukuyama (2004); Chopra (2000); Cousens and Kumar (2001); and Chesterman, Ignatieff and Thakur (2004, 2005b).
7. For examples of works that examine a single UN administration, see Marshall and Inglis (2003); Babo-Soares (2001); Donovan et al. (1993); Guterres Lopes (2002); ICG (2002); Linton (2001); and Lorenz (2000b). For examples of those that examine a single rule of law issue in one or two transitional administrations, see Clark (2002); Crosby (2000); Dziedzic (2002); Fitzpatrick (2002); Judicial System Monitoring Program (2001, 2003a); Katzenstein (2003); Mobekk (2001); Stahn (2001b); Strohmeyer (2001).
8. The fourth UN transitional administration deployed to date, the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium (UNTAES, 1996–1998), was excluded from the study because of its lesser significance with respect to state-building issues generally and the rule of law area in particular. It was a relatively short and small mission, which focused on the peaceful reintegration of existing administrative and economic structures into those of the government of Croatia and the establishment of political institutions to facilitate greater participation in Croatian political life by the region’s ethnic Serb citizens. Although the UNTAES mission incorporated some rule of law elements, notably the establishment of a temporary police force that would later be integrated into the Croatian police force, these elements were more lim-

ited than those of the three case studies chosen for this book. Preliminary research indicated that the benefits to be derived from detailed examination of UNTAES rule of law initiatives did not warrant the difficulties of fieldwork and more extensive research.

9. See, for example, Linton (2001); Marshall and Inglis (2003); Chesterman (2002a); Carlson (2006); ICG (2002); and Judicial System Monitoring Program (2003a).
10. See, in particular, the case-study series and other output developed by the International Center for Transitional Justice. These include Hirst and Varney (2005); Reiger and Wierda (2006); and Perriello and Wierda (2006).
11. Now referred to officially as Timor Leste, the term East Timor is used in this book for consistency and to reflect usage during the UNTAET period.

© United Nations University, 2008

The views expressed in this publication are those of the authors and do not necessarily reflect the views of the United Nations University.

United Nations University Press  
United Nations University, 53-70, Jingumae 5-chome,  
Shibuya-ku, Tokyo 150-8925, Japan  
Tel: +81-3-3499-2811 Fax: +81-3-3406-7345  
E-mail: sales@hq.unu.edu general enquiries: press@hq.unu.edu  
<http://www.unu.edu>

United Nations University Office at the United Nations, New York  
2 United Nations Plaza, Room DC2-2062, New York, NY 10017, USA  
Tel: +1-212-963-6387 Fax: +1-212-371-9454  
E-mail: unuona@ny.unu.edu

United Nations University Press is the publishing division of the United Nations University.

Cover design by Maria Sese-Paul

Cover photograph by REUTERS/AFLO

Printed in the United States of America

ISBN 978-92-808-1151-3

Library of Congress Cataloging-in-Publication Data

Bull, Carolyn Gardner, 1969–

No entry without strategy : building the rule of law under UN transitional administration / Carolyn Bull.

p. cm.

Includes bibliographical references and index.

ISBN 978-9280811513 (pbk. : alk. paper) 1. Nation-building—Case studies. 2. United Nations. Transitional Administration in East Timor. 3. United Nations. Transitional Authority in Cambodia. 4. United Nations Interim Mission in Kosovo. I. Title.

JZ6300.B86 2008

341.5'23—dc22

# No Entry without Strategy: Building the Rule of Law under UN Transitional Administration

**Carolyn Bull**

For international actors seeking to consolidate peace and democracy in disrupted states, the importance of establishing the rule of law is now well-recognised. Yet this goal has proven frustratingly elusive. UN peace operations have struggled to ensure lasting security against violence and to build legitimate structures to redress disputes peacefully. It has proven even harder to instill principles of governance that promote accountability to the law, protect against abuse and generate trust in the state.

In championing such goals, UN state-building missions have pitched against the odds. Beyond the complicated tasks of reforming laws, judiciaries and police forces, UN actors have confronted a fundamental dilemma: if embedding the rule of law rests on complex political and social transformations regarding conflict, power and the state, can external actors make a difference?

This book investigates the challenges faced by UN transitional administrations in establishing the rule of law in Cambodia, Kosovo and East Timor. In so doing, it explores conceptual understandings of the UN's state-building agenda and speaks to broader questions about the role of external actors in disrupted states.

"The UN's resources for keeping the peace and building states are being strained by so much peace to keep and so many fragile states to nurture and consolidate. In this significant contribution to the theory and practice of UN peacebuilding, a number of cases are studied to draw key lessons for establishing domestic and international order on the secure foundations of a robust rule of law."

**Dr. Ramesh Thakur**, Distinguished Fellow, The Centre for International Governance Innovation, and former Assistant Secretary-General of the United Nations

**Carolyn Bull** is Counsellor (Development Cooperation) at the Australian Embassy in Beijing, with responsibility for delivering Australia's aid program to China, Mongolia and North Korea. She has a PhD in Politics from the University of New South Wales, Australia.

---

## Ordering information

### North America, Latin America, Asia & the Pacific:

#### UNITED NATIONS PUBLICATIONS

2 United Nations Plaza,  
Room DC2-853, Dept 174  
New York, NY 10017  
Tel: 212 963-8302,  
800 253-9646 (credit card orders)  
Fax: 212 963-3489  
E-mail: [publications@un.org](mailto:publications@un.org)

### Europe, Africa, and the Middle East:

#### UNITED NATIONS PUBLICATIONS

Sales Office and Bookshop, Bureau E4  
CH-1211 Geneva 10, Switzerland  
Tel: 41-22/917-2614, 41-22/917-2613  
Fax: 41-22/917-0027  
E-mail: [unpubli@unog.ch](mailto:unpubli@unog.ch)

---

ISBN 978-92-808-1151-3  
326pp US\$35.00



**United Nations  
University Press**

53-70, Jingumae 5-chome, Shibuya-ku, Tokyo 150-8925, Japan  
Tel +81-3-3499-2811; Fax +81-3-3406-7345  
E-mail: [sales@hq.unu.edu](mailto:sales@hq.unu.edu); <http://www.unu.edu>