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Re-Establishing the Rule of Law in Peace Operations--the East Timor Experience.

Mark Plunkett 30 August 2001

Si vis pacem para pacem

(If you want peace, prepare for peace)

At an admission ceremony for new legal practitioners in Supreme Court of Queensland sitting in Brisbane a few months ago, the Queensland Chief Justice Paul De Jersey cited Lord Maugham who described the role of lawyers as being "the custodians of civilisation than which there can be no higher or nobler duty." De Jersey CJ observed therefore that "it is unsurprising that, in recent world history, crumbling regimes should have been looking to talented lawyers for their rescue."¹

Indeed particularly in this decade many lawyers have gone out from these shores to join other overseas lawyers to assist frustrated, fragmenting, failing, fractured and collapsed states by trying to re-establish the Rule of Law (ROL). Most of this legal work has been done by civilian and military lawyers under the auspices of the United Nations (UN) in all parts of the globe as part of various peace operations.

A peace operation:-

- (a) is a temporary intervention by outsiders;
- (b) interferes into the internal affairs of (often angry and traumatised) people undergoing extraordinary social and political power transitions;
- (c) alleviates the adverse consequences of the illegitimate use of force in coercive conflict management;
- (d) relieves, stops and protects the suffering of people (victim populations) caused by illegitimate use of force by mapping pathways and guiding parties out of coercive conflict management; and
- (e) prevents illegitimate force from being used again.

The ROL is always more starkly apparent by its non existence rather than its existence. Invariably for peace operations the break down of the ROL is essentially the absence of a functioning criminal justice system (whether or not deriving its authority or its existence from the State.) Genocide, wanton murder, rape and other physical attacks on ordinary people and their property are the principle human rights violation (rights of personal

¹ Admissions Ceremony 30 April 2001, Supreme Court. of Queensland

security and liberty) that confront peacekeepers. For the purposes of this paper the ROL is defined as :-

- (a) a notional social contract;
- (b) by people who consent;
- (c) to regulate their behaviour;
- (d) by rules;
- (e) which have the force of law;
- (f) usually (but not always) deriving their authority and legitimacy from the State.

Most recently and closest to home, Australia's most significant calling in any peace operation has been in East Timor first from June 1999 to September 1999 with the United Nations Assistance Mission in East Timor (UNAMET), then from September 1999 to early 2000 with the International Force in East Timor (INTERFET) and followed by the United Nations Transitional Administration in East Timor (UNTAET).

Peace operations have their origins in antiquity. However large-scale international peace operations to deal with complex humanitarian emergencies like UNTAET have been conducted since the early 1800s² between the world wars by the League of Nations ran them³. For the UN they began in June 1948 and since then the UN has conducted 51 peacekeeping missions. However most have occurred in the last 10 years, following the end of the Cold War. From 1988 to 1995, the UN authorised 26 new peace operations. At the turn of the millennium two more were launched, one in Sierra Leone (UNAMSIL) and the other UNTAET. Both of which were unimaginable months before the decision to embark upon them was made. Around the world there are now 16 peacekeeping missions under way.

In the last decade worldwide the number of UN peacekeeping personnel has increased eight times to 62,500 and associated costs rose from \$200 million to \$3 billion. By June 1999 there were 20 peace operations under way of which the UN was conducting 14. Currently the UN missions involve 2,718 police and 10,708 military and 921 civilian personnel from 77 countries with annual budget of \$860 million. These later day peacekeeping missions are large managerial undertakings taking place in the changing and complex operational climate of failed states. East Timor was no exception.

Despite the extensive rehabilitation necessary following the Indonesian sponsored violence that burnt most infrastructure to the ground and took hostage a quarter of its population to West Timor, East Timor was one of the smallest UN peace operations.

² Schimidl E and Oakley, R. *Peace Operations Between War and Peace*. Frank Cass & Co, 2000: 7

³ Diehl, Paul F. *International Peacekeeping*. John Hopkins University Press. Baltimore and London 1994: 15-21

It was however the UN's most ambitious, with the UN assuming all of the responsibilities of sovereignty. It was also unique in that it began with an election and essentially concludes with an election. Although the militia continue to pose a reducing menace along the border with East Timor, the great bulk of armed protagonists departed before the establishment of INTERFET. There are no land mines. The population is not heavily armed, nor militarized. Although the East Timorese had suffered more than the Cambodians per head of population, unlike missions elsewhere in East Timor there was evidence of civil society, particularly in the Catholic church. Dealing with a population of less than a million and coming at an end of a decade of hard lessons learnt in a dozen like missions, East Timor should have been the UN's most manageable mission.

On the eve of UNAMET mission on 28 May 1999, the Key Centre for Ethics Law Justice and Governance of Griffith University (KELJG) conducted a strategic peace game for members of the Australian Defence Forces, the Australian Federal Police (AFP), other Australian Government Departments, members of Non Government Organisations NGOs and others which was chaired by former head of the Australian Army and UN Force Commander in Cambodia Lt. Gen. (Rtd) John Sanderson. Many of these centred on the ROL implications of UNAMET.

Within days of the UNAMET's arrival it came as no surprise that sadly many of these scenarios unfolded. They were entirely predictable.

Following a field survey mission to East Timor in July 1999 at a conference in Canberra on 25 August 1999 KELJG and Brown University presented its forecast of the violence that subsequently unfolded. The massive ROL of deficiencies of the UNAMET mission were identified well in advance by experienced peacekeepers. ROL of law contingency plans were published for the post UNAMET scenarios.

In early September 1999 upon the evacuation of the UN mission with Dili burning (the UN said it would never leave), the predicaments for INTERFET were foretold with similarly uncanny prescience.

Article 3 of the UN Security Council Mandate gave INTERFET broad and adequate powers to "restore peace and security" and in doing so "take all necessary measures to fulfil this mandate". The mandate made under Chapter VII of the UN Charter authorised the use of powerful enforcement measures.

On 17 September lawyers warned that amidst the massive mobilisation of military men and machines, INTERFET should also make adequate provision for justice logistics. The Australian-led UN troops were as much at risk from legal ambiguity as they are from militia bullets. Within a day or two of arrival INTERFET would take prisoners. They would witness serious crimes and receive complaints of murder, rape, torture, arson and theft. INTERFET itself will be a victim of serious violence and systematic theft. What then were the powers of arrest, detention, prosecution and trial? What would they do with the prisoners? A detention facility with custodians was required. What court will the accused be brought before?

The mandate clearly allowed INTERFET to import its own transitional peace operations criminal law. While the 4th Geneva Convention of non-belligerent occupation requires respect for the local law there is a power to override or supplement it. A simple peacekeeping transitional criminal code was required which defined basic offences and defences, such as they shall not murder, rape, burn homes and steal, which must be widely distributed throughout the length and breadth of East Timor. Transitional peacekeeping courts composed of trainee judges of all factions chaired by distinguished international jurists were needed as a priority. Rewards, indemnities and witness protection (sometimes for entire villages) were required.

The lawyers warned that peacekeeping planners always falsely assume an automatic resumption of the rule of law upon arrival of the peacekeepers. A comprehensive campaign plan for re-establishment and maintenance of the rule of law using both an enforcement model and a negotiation model for compliance was urged. The rules of engagement must also be written by the multinational force for all parties at the level of elite leaderships, functionaries and at the village level.

A peacekeeping operation is a gigantic conflict resolution device involving continuous negotiation at these three levels. Much of this is a community policing exercise involving relationship building and training best done by civilian police. Twenty five years of repression has its own momentum such that force, coercion and intimidation are the only known means of conflict management. Joint negotiation training is a key tool to be employed to bring about reconciliation being cheaper and more risk free than the expensive use of military means.

Along with SAS reconnaissance advanced teams, civilian negotiators were advised to actively seek out and engage local protagonists in long running interactive problem-solving. A negotiated dialogue was urged with the Indonesian authorities, Joao da Silva Tavares of the Hauliner group of militia at Bobonaro, Basilio Araujo, Eurico Guterres of the Aitarak militia at Dili, Cancio de Carvalho of Mahadi militia group at Suai and Ainaro, Manuel de Sousa of Besi Merah Putih in Liquica, and Joanico of the Saka militia at Lai-Sorulai at Bacau, and the leaders of Pamuda Panca Sila Two as well as the independence groups.

Drawing on the experience of the past missions, comprehensive campaign plans for the re-establishment of the ROL were presented by KEUG to UNAMET, DUERFET and UNTAET.

With the election this week of a constituent assembly, the UN considers its job in East Timor is over. Although a military presence along the border will be necessary for years to come, the UN will soon evacuate within months. A UN token presence will remain leaving the East Timorese to fend for themselves.

So after two years of UNTAET what then happened to the ROL? It is timely in this conference to reflect upon and assess progress of the East Timor mission from a lawyer's perspectives.

The scorecard is not good. In the absence of a seamless intellectual ROL map for UNAMET, INTERFET and UNTAET, these UN missions will join the long list of serial UN ROL failures.

A month ago today Amnesty International released its verdict. With East Timor set to become independent in a matter of months, Amnesty International said that the United Nations had neglected to provide it with an adequate justice system or human rights guarantees. Detainees in the former Indonesian province go for weeks or months without speaking to a lawyer, only one of four envisioned district courts is functioning, judicial officials are threatened, and officials escape justice for wrongdoing, Amnesty said in its report.

"The U.N. is failing in its primary task of ensuring that the new state of East Timor has protection and promotion of human rights at its core," The report says: "Law and order is barely maintained, justice is not being administered effectively, and the human rights of East Timorese cannot be guaranteed."

"If the U.N. pulls out now without leaving in place substantial support for the fledgling judicial system and other key institutions, its investment over the past two years will be jeopardized,"

In the report, Amnesty said people respected by the community are allowed to get special treatment. One woman who was repeatedly raped over a period of months by a local official was forced to accept money from her attacker and told not to report the crime.

Judicial officials are threatened, according to Amnesty International. In one case, 16 youths threatened to kidnap the president of a district court, an investigating judge and prosecutors if a suspect arrested in rioting was not released.

Resources are inadequate. Nine public defenders in court cases have only two vehicles to cover all of East Timor, and judicial officials need such elementary tools as fax machines, the report said.

The language of the Courts will be Portuguese which is only spoken by a small percentage of the population.

There is wide disparity in the professional standards for the various contingents of UN civilian police, many introducing poor work practices. The so-called rapid response groups are not much better than guards. As the militia threat has dwindled criminal gangs which think they can intimidate authority have emerged to replace them. Dili is not safe at night. The UN civilian police lost control of the second largest town of Bacau for a night. Prison conditions are primitive and no escape proof.

UNTAET put forward regulations to the National Council, the effect of which seriously endangered the independence of the judiciary in East Timor. Under the proposal the Cabinet Member for Justice has extensive powers regarding every sector in the administration of justice. The regulations seek to appoint the Cabinet Member for Justice to the Judicial- Commission which selects, monitors and disciplines both judges

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and prosecutors. Additionally, the Cabinet Member was to be granted the power to reassign any judge to any particular position in the Department of Justice for an unspecified period of time, which only temporarily suspends the judge's judicial functions. The Cabinet Member also directly controlled legal aid to those requiring assistance to exercise their right of legal representation. UNTAET has already promulgated the regulation which allows the Cabinet Member for Justice to temporarily re-assign a judge to any position in the Department of Justice

The UN Serious Crimes Unit, charged with investigating human rights violations in East Timor in 1999, says it is investigating 674 documented murders but has insufficient resources to do the job. 31 investigators were working on solving 10 priority cases. Six of the 10 cases had been completed and handed over to the prosecutor-general's office as crimes against humanity. Staff morale is low and several investigators have resigned from the unit over an unpopular decision to choose 10 priority cases based on 17 major incidents.

Eighteen months have passed since the UN Secretary-General, Mr Kofi Annan, resisted calls for an international court and called for Indonesia to be given a chance to bring those responsible to justice. But no action has been taken by Jakarta. Indonesia has not taken its international, let alone its domestic, ROL responsibilities seriously. The UN High Commissioner for Refugees deplored the light sentences of 10 to 20 months handed down against six men after three UNHCR staff members were killed in the West Timor border town of Atambua on September 6 last year. While an eight-member team of Indonesian police officers and prosecutors arrived in East Timor to investigate the killing of a New Zealand UN peacekeeper last year, no serious interest has been shown by the Indonesian legal authorities in the scorched earth genocide of 1999 in which thousands were eliminated. Those responsible for some of the worst atrocities committed in East Timor in 1999 are likely to escape prosecution by a special Indonesian war crimes tribunal. A decree by Indonesian President Megawati Sukarnoputri appears to restrict the court's jurisdiction to crimes committed to three districts during two months of 1999 at Liquica, Dili and Suai in April and September, 1999. The decreed jurisdiction does not include the massive deportations of hundreds of thousands of people from all across East Timor, nor the widespread burning of houses and looting. It does not include many of the major killings, like the massacre of up to 80 people at Passabe, in the Oecussi enclave, nor the Maliana police station massacre, or the Los Palos killings of church workers and priests Indonesian officers look like escaping justice because of the world's reluctance to upset the Indonesian Government. Matters not included-

Cailaco massacre, Bobonaro district, 22 bodies found, 13 in one grave, April 1999

Los Palos, April and September, 13 killed, including church workers, clergy, nuns, Indonesian journalist and teenage boy. Indonesian Special Forces officer indicted

Intimidation and violence against United Nations staff, UN Civpol and journalists, April-September

e Sex crimes, Lolotoe, Bobonaro district, May and September

o Maliana police station massacre, 47 killed, September 8 and 9

Mass deportation of more than 300,000 East Timorese to militia-controlled camps in West Timor, September

The only conflict resolution proposal was from the UNTAET Office of District Affairs (ODA) UNTAET in April 2001 for a \$20,000 program for 3 x 3-day training courses will to be presented over a three week period, one each in the eastern (Baucau), central (Dili) and western (Maliana) regions which was subsequently cancelled on the basis that UN procurement rules required UNTAET to have at least three, but preferably more do their selection panel could make an informed choice after serious consideration. According in April 2001, UNTAET decided not to go ahead with the Conflict Prevention Training Programme at that time. In essence, UNATET felt that they would not do justice to the objective of the training programme, by trying to rush it through before the end of the current financial year. It is to be considered after the election.

All of this sounds to horribly familiar to international lawyers who have participated in UN peace operations. Despite the prior input from the legal profession, advice freely given, the UN in East Timor has once again repeated the same old mistakes of the past.

The engine that drove UNTAET is the holding of the election. The fundamental flaw in the UNTAET mission as with all other UN peacekeeping operations is the false assumption that the Rule of Law (ROL) will automatically fall into place along side the setting up of a civil administration of government and the holding of an election.

In East Timor as elsewhere with the arrival of peacekeepers, for the non-combatant civilian population, there is an air of hesitating and expectant life for the rebirth of the ROL. The resumption of a derelict system of the ROL under civilian authority is often obscure, forbidding and most reluctant. Following a war such as that suffered by the East Timorese people it is extremely difficult to stop the momentum of two and half decades of violence and eradicate a culture of violence and impunity.

The outbreak of armed conflict and the demise of the ROL are usually an inverse ratio. But the restoration of the ROL is not an inverse ratio to the end of an armed conflict. The UNTAET peace operations planners as their predecessors before them falsely assumed that the ROL firstly existed under Indonesia and by extension following the election for independence would be extended. Despite the violence that followed the election the UN also assumed that the ROL would automatically resume upon the re-arrival of the UN with INTERFET and UNTAET. Continuing and residual conflict, enmity and anger may persist between people for generations after the end of an armed conflict. One of the causes of this is that the general population suffers the bulk of the casualties as they were deliberately chosen as military targets. After civilians have been attacked and abused by military authorities, they may be loath to accept legitimacy of any authority. The cessation of hostilities does not herald the resumption of the ROL. Peace operations planners in the past have erroneously assumed -otherwise. The experience of UN lawyers

is that the return of the ROL occurs gradually and hesitatingly and perhaps long after a cessation of hostilities.

Unless there is an adequate mandate and a proper strategically planned program and adequate resources for the restoration of the ROL, peacekeeping operations will fail to achieve the ultimate objective to bring peace to people formerly dead-locked in armed conflict.

True and enduring peace only occurs when there is a genuine return of the ROL, which is the foundation for a proper functioning and legitimate State. Apart from natural disasters, all complex humanitarian emergencies are caused by the use of force as a means of coercive conflict management. The peacekeepers will not as, in any society, be able to eliminate all criminal behaviour. What they must do is to strive to replace a culture of violence and impunity with systems of rule observance without using violence for the management of conflicts.

Peace operations are exercises in shrinking conflict time by condensing and terminating coercion activity. This is achieved by focusing on the restoration of the ROL as the primary objective of every peace operation.

In peace operations ROL restoration must take priority over, and irrespective of, constitutional settlement. Peace operations take place where there is no ROL. The task of a peace operation is to restore the ROL first and foremost before recreating the State. The core task of peacekeeping is to restore the ROL which is achieved through specific designer planned and implemented peace operation justice packages using the two combined models of.

- (a) **an institution creating enforcement model** eg, through legitimate minimal and lawfully sanctioned coercion such as arrest, prosecution, detention and trial by war crimes tribunals, and transitional peace operations courts; and public shaming and office disqualification by peace operation criminal justice commissions; rebuilding, resourcing and training local judges, police, prosecutors, defenders, and custodial officers; and
- (b) **a community negotiation model** eg. securing voluntary compliance by negotiating mass community psychology to bring about fundamental shifts in population consciousness, at the three levels of the elite leadership, functionary and village level to replace the culture of violence with negotiated management systems which includes use of media, education, training and inter-active problem-solving, community negotiations, confidence building measures, etc.

For UNTAET the constitutional re-engineering process of the elections was given prominence over all else and to the exclusion of all other objectives including the re-establish the ROL.

To enter in to some one else's dispute will change it. Accordingly, there is a high overriding ethical duty on peacekeepers to do no harm by their intervention, whether invited or not. Peacekeepers must commit not to make the conflict worse.

However into the disorder suffered by the traumatised victim population of East Timor from 25 years of military oppression and the recent post 1999 election violence UNTAET brought further confusion with:

A vague mandate and ambiguous rules of engagement;

Poorly-defined and changing areas of operation;

A polyglot of markedly different national military, police and civilian units;

Presence of self-directed and competing involvement of non government organisations (NGOs), diplomatic representatives of foreign governments, overseas aid organisations, other well-meaning and often misguided groups, civilian contractors and mass media; untrained and poorly equipped peacekeepers;

Temporary rotating peacekeeping staff, mutual bafflement and cultural conundrums;

Disparity in significant visible material resources enjoyed by peacekeepers not filtering through to the people generating hostility from local population (White Car Syndrome);

An absence of a comprehensive coordination plan by peacekeepers;

Rapidly diminishing moral authority of the peacekeepers;

Risk of local armed opposition to peacekeepers; random and organised crime against peacekeepers;

Bottomless social dilemmas and unanswerable paradoxes.

At least a dozen distinct outside groups entered the East Timor mission area. These included:

- UN military component;
- UN civil administration component;
- UN civilian police component;

UN electoral component;

Other UN agencies, eg UNHCR, UNICEF, UNWFF; WHO;

Overseas government diplomatic representatives;

Overseas national aid organisations and international aid groups, eg World Bank, Asian Development Bank;

Non government organisations (NGOs);

Commercial contractors;

World media;

Diplomats from various nations and international organisations;

Other assorted self-interested volunteer groups, including missionaries, misfits and mercenaries.

None of these outside groups are coordinated by an over all coordinated comprehensive campaign plan or alignment of goals. Within each group there are multiple players who pursue their own, and often, competing agendas. The UN military component consists of many different national military units from different countries each with different equipment, doctrines and approaches as to how to participate in the mission, including when and how to use force. The civilian police consist of many different national groups of greatly varying quality and standards drawing from vastly different police forces with different legal systems, investigative techniques and modus operandi. The diplomatic corps consists of ambassadorial staff from many different nations seeking to advance their own national self-interest in the mission area with varying degrees of territoriality and concern. Similarly, NGOs not only operate according to their own self-ordained programs, they may be jealously territorial jockeying to secure humanitarian turf, although some NGOs are highly efficient operators, better trained and equipped than the UN. The mass media may hunt in packs, but they are competitively internecine in nature. However the media are highly mobile, with excellent communications and are usually better informed than the UN. Further an assorted group of returnees, outside political activists, freebooters, spoilers, carpetbaggers, drop outs, missionaries, misfits, criminals and even sometimes mercenaries enter the mission arena to exploit the opportunities presented by the absence of a state apparatus.

Within each category of outside group there are many smaller teams each proceeding on its own. In all there are hundreds of players with different aims and objectives, systems, resources, standards, levels of training competence and languages. Peacekeeping brings into the theatre of operations between 300 to 500 different species of outsiders each seeking to intervene in their own different ways. An even more complex aspect is the respective impact of each participant on the others.

The intervention creates a dual economy, one massive-for the consumer orientated infrastructure of the interveners and the other, meagre- for small numbers of the host people who receive the crumbs at the edges, in menial jobs servicing the former. The impact of peacekeeping on the host economy is rising prices and scarcity of local commodities with severe wage distortions, which exacerbate existing hostilities and create new ones in the theatre of operations. These become causes of crime directly attributed to the social impact of the presence of the peacekeepers in the host country.

The UNTAET mission was extraordinarily ambitious in scope but sadly muddled in execution. The features of failure are now all to embarrassingly familiar. UN staff, contributing nation staff, non-government organisation (NGO) personnel, and commercial contractors have been singularly lacking in technical training and practical know-how, especially in relation to the ROL.

The result was a rapid decline of the moral authority of the United Nations in the medium to long term of the UNTAET mission. Many peace practitioners were abysmally ignorant not only about what they were supposed to be doing, but also how to go about it. UNTAET personnel are singularly lacking in not only in techniques for ROL maintenance, state renovation, good governance and re-building civil society, but also how to negotiate among themselves, let alone mediate between protagonists.

A failure to train personnel exposes the UN, participating governments, NGO's and commercial contractors to litigation by the peacekeeping personnel or by the subject people themselves who suffer damage as a result of negligently conducted interventions.

At the strategic, operational and tactical levels there is one common medium that should bind all aspects of peace operations (internally and externally) and that is-negotiation. The single biggest deficiency is the failure to train peacemakers and peacekeepers in the science and art of negotiation. Negotiation is the universal medium in which all peace operations are made possible. Few of the UNTAET staff were trained in it.

Peace planners can erroneously assume that the creation of the organs of justice alone can bring about a return to the rule of law. More than paper institutions are required. With a few years of the \$2 Billion dollar UN Cambodian mission (1992-1993), the newly established state (with an ennobling and sophisticated constitution) but no ROL soon collapsed into the anarchy of bloody coup. Under the institutional model competent people need to be vested with responsibility which they must account for in its exercise and more importantly as well as the non-exercise or responsibility. In addition to design of organisational structures, deep reconciliation and personal redemption is essential for a ROL. While the institution enforcement model for ROL compliance involves the use of legitimate minimal and lawfully sanctioned force by arrest, prosecution, detention and trial, the negotiated model secures voluntary compliance by negotiating with the local people to bring about fundamental shifts in population consciousness against tolerance for impunity for violence. The effectiveness of force and merit review umpires (such as courts and commissions) is uncertain, risky and costly. Negotiations give greater control of outcomes and enable the parties to Make their own future. Peacekeepers show people how to make better future for themselves. People locked in intractable conflict rarely, if

ever, pause, maturely reflect and crystal-ball possible future scenarios for enduring resolutions. The job of the peacekeeper is to road-map the conflict, draw up menus of navigable and safe pathways and if necessary act as guides walking the parties through them. Getting the local people to think of molding their own future through negotiation is a powerful concept.

The negotiation model for the re-establishment of the ROL is a high intensity people-centred activity. Nevertheless it is low cost and low risk with considerably higher yield for compliance with the ROL than the enforcement model. It involves a process of direct and continuous negotiation and ROL training by peacekeepers at the levels of the:

- (a) great mass of the population;
- (b) military commanders, police and local war lords (functionaries);
- (c) central leadership (ruling factional elites).

There are many models useful for negotiating the ROL. The models range from techniques used by colonial officers (despite the repugnancy of their overall objectives), old-fashioned community policing, large scale environmental disaster response, town planning public involvement, native title land dispute processes, public social work action, electoral lobbying, political campaigning and even political activism, Gandhian non violence movements, etc. There are many relevant models to draw on for peace operation techniques. The negotiation model for the restoration of the ROL is achieved by negotiating agreement with the host people using community consultation, public participation, stakeholder representation, mutual gains negotiation, alternative dispute resolution, and the development work techniques called here: *Rapid Participatory ROL Appraisal* (RRA) and *ROL Participatory, Assessment, Monitoring and Evaluation* (RPAMIE).

Peacekeeping is not a panacea for all the conflict ills of a population. The legacy of violence will persist into future unborn generations. There may be no immediate solutions to many of the problems. For example, the demand to deal with land disputes arising from successive dispossession caused by war is usually beyond the capacity of any peace mission because the claims will be so innumerable and resource consuming requiring years before proper determinations can be made. Rather than trying to impose specific solutions in the short term, peacekeepers should aim to impart good processes for coping with conflict generally in the long term. Elegant outcomes are more likely to result from concentrating on providing fair negotiation processes rather than on substance. The job of the peacekeeper is to skill people to manage conflict rather than impose rapid quick fix resolutions. This task involves negotiation training (preferably joint factional), provision of communication facilities, relationship building, confidence building, and reconciliation process.

Peacekeepers themselves must be properly trained negotiators in order to negotiate effectively. The objectives of the peacekeepers negotiations is to persuade and secure

agreement from the factional elite, military and police functionaries and the ordinary people to:

- (a) cease using violence, force, coercion and intimidation as a means for managing conflicts;
- (b) accept the legitimacy and operation of a criminal justice system to umpire disputes about the use of force and the rules which govern it;
- (c) be prepared to submit disputes where they are victims and/or accused to the criminal justice system for determination and abide by the result;
- (d) negotiate:
 - (i) internally within themselves; and
 - (ii) externally with each other.
- (e) demonstrate the peacekeepers alternatives of the use of transitional peace operation courts and criminal justice commission if they do not develop their own criminal justice system.

To measure the degree to which the ROL exists, the questions to be answered are as follows:

- (a) are the relationships between people regulated by rules?
- (b) are the rules commonly accepted?
- (c) are the rules observed by ruler and ruled alike?
- (d) is force used to manage conflict?
- (e) if force is used, is it authorised by the rules?
- (f) where a dispute exists about the rules:-
 - (i) is there a rule that the dispute is determined by an independent umpire whose decision is accepted by all parties?
 - (ii) do the political elites and functionaries (military and police) observe the rule to:
 - submit themselves to the determination of the independent umpire?
 - abide the decision of the independent umpire?

In answering these questions one must be realistic enough to acknowledge that no peace operation can eliminate crime. In well-resourced communities crime still flourishes. What a properly run peace operation must strive to do is to eliminate cultures of impunity (See Joinet Principles as the bench marks). The tools and methodology of both models are available to the UN if they can finally see the sense in using them.

On 21 August 2000 Ambassador Lakhdar Brahimi presented the UN's own internal comprehensive review of peacekeeping operations. Its recommendations have received the endorsement of the Security Council and the General Assembly. They were also endorsed by the UN World Millennium Conference.

Finally after a decade of largely wasted effort, the UN in theory has finally accepted that "a doctrinal shift in the use of civilian police and related rule of law elements in peace operations that emphasizes a team approach to upholding the rule of law and respect for human rights and helping communities coming out of a conflict to achieve national reconciliation."

Only time will tell whether this lesson apparently learnt at the high policy level will achieve what field lawyers have been asking for a decade. There are many dysfunctional UN personnel in New York and in the mission areas who simply have no idea about the ROL. Some come from countries that sadly do not have a ROL. Accordingly the task of the lawyers in the UN is a very heavy one indeed.

In the mean time the UN mission in East Timor joins a long list of UN ROL failures. While the people of East Timor in the months ahead celebrate the birth of their new nation, how much better would it have been if they could also have celebrated the foundations of an emerging and enduring ROL. For without the ROL their fledgling democracy, as happened with Cambodia, is at risk of being still-born.