

# The Rule of Law and what it means in Peace Operations

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A three-day course in  
thirty minutes.

Pay attention.

# The Rule of Law

I prefer to call it a "law-based state"

"**État de droit**" in French

"**Rechtstaat**" in German

Why is this?



The Rule of Law isn't  
really about Laws  
It isn't really about  
Rules either.

All states are based on force, as  
Trotsky said

The earliest states were based on  
nothing BUT force

Law was what the ruler decided



With the first states you  
get the first codes of laws

Law stops being arbitrary

It's enforced by  
professionals

This code does not have to be fair, or even ethical, it just has to be consistently applied.



# What are the main principles?

Laws must be binding on all

Laws must be clearly written, and published

Laws must not be retrospective

Laws must not be contradictory

Officials must follow the law.



But is the government  
bound by this code of  
law as well?



Yes, because in principle,  
no-one is above the law.

The government,  
including the security  
forces, must obey the law.



So the security forces have  
no special immunity in  
the use of force

If they kill someone  
illegally, it's murder, just  
as for you or me.



The police can't arrest you or hold you without a reason.

You can only be charged with a crime that exists.

You can't be held in prison without a reason.



# This is the Rule of Law

It's not the same as reform of the justice system, or transitional justice.

It applies to **all** states, not just to those who have suffered a crisis.



The Security Council  
thinks that the Rule of  
Law is "essential" for peace  
and security

It forms part of every peace  
mission today



# Are there any “but”s?

Yes there are, and rather a lot actually.

Here are a few, which between them greatly complicate peace missions.



Everyone agrees it's important but  
nobody agrees on what it means.

"The rule of law ... stands in the peculiar state of being the preeminent legitimating political ideal in the world today, without agreement upon precisely what it means."

Brían Tamanaha (2004)



Let's look at the political  
significance of the Rule  
of Law



## Look at this UN definition

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards



# Wait, there's more

.. measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency,



# The United Nations

.... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (Article 55)



# The Security Council

"... attaches **vital importance** to promoting justice and the rule of law, including respect for human rights, as an **indispensable element for lasting peace**. The Council considers enhancement of the rule of law activities as crucial in the peacebuilding strategies in post-conflict societies."



# The General Assembly

Stresses the importance of adherence to the rule of law at the national level, and the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations ....

UNGA Resolution 64/116 (2010)



# The African Union

respect for democratic principles, human rights, the rule of law and good governance;

respect for the sanctity of human life, condemnation and rejection of impunity and political assassination.....

Article 4 of the Constituent Act



Rule of Law

Rule by Law

Rule by Lawyers

None of them simple



The Rule of Law is appropriated by all sorts of groups for their own purposes.

Some think it's all about economic freedom.

It's often used to bully small states.



Hard to find universal  
understanding of ROL

Based on western  
"possessive  
individualism".



Is it true that "the less  
government the more  
freedom"?



Public opinion is often  
harsh and vindictive.

It demands the ROL for  
itself but denies it to  
others.



What happens if the courts  
and the media are not, in  
practice, independent?

And what happens if the  
government simply ignores  
them?



Transparency,  
accountability etc

All good stuff

But Rule of Law is a state,  
not a series of structures  
and processes.





The End

Thank you for listening