

The first part of the project focused on the role of international law and on the perspectives of different actors involved in post-conflict management (PCM). In the following a short overview of the discussions during the Berlin workshop is given. Then, an outline work plan for the second part of the project, the conference taking place in Washington, D.C., in late June is presented.

Part I: Workshop at SWP in Berlin, February 28 and 29, 2008

The workshop provided a valuable forum for in-depth discussion and generated substantial input for the transatlantic debate on PCM. The exchange benefited from the participants’ extensive experience and knowledge relating to this issue and a high awareness of the commonalities and differences in the approaches to PCM promoted by the U.S. and the EU.

The role of international law

The first workshop session focused on situations in post-conflict environments in which the role of international law is particularly critical: What situations are we talking about? What international legal norms are applicable? And are these norms apt to meet the specific challenges of PCM?

Attention was drawn to the fact that there exists a wide spectrum of peace-building measures, reaching from the provision of humanitarian aid to the reconstruction of governance structures. Accordingly, the affected rights include the right to sovereignty of the target state as well as individual rights. Considering the variety of post-conflict scenarios and the multiple legal problems posed by each, developing overarching standards and guidelines poses a great challenge. Drawing upon core principles of the U.N. charter, other international treaties and customary international law would be one way through which a modern “ius post bellum” could be drafted, providing a legal framework for PCM efforts.

The question of legitimacy was intensely discussed: How is legitimacy to be defined and by whom? Is there an alternative to the United Nations as a source of legitimacy with regard to international law? What role could the EU play? It was stressed that only those peace-building projects that comply with international law may enjoy legitimacy. Legitimacy is essential in determining whether a PCM process will be accepted and supported by the states and societies involved as well as by the international community.

The discussants agreed that it was important to distinguish between different forms of legitimacy – input legitimacy focusing on the way decisions are taken and output legitimacy, which relates to the capacity of international law to solve the addressed problems adequately and efficiently.

Linked to the question of legitimacy is the “responsibility to protect” on which views differ greatly across the Atlantic divide. However, a legal framework for the implementation of this principle has yet to be defined. It was further pointed out in the discussion that there are transatlantic nuances in the approach to international law: In the Anglo-Saxon area, a pragmatic interpretation and use prevail, whereas in Continental Europe a more principle-based view is taken. Finally, international law does not only influence post-conflict environments, but conflicts also have an impact on future law development.

Post-Conflict Management from the Perspective of the Actors

In three different sessions, representatives of government agencies, of international organizations, and of NGOs presented their respective views of and approaches to PCM.

State Actors

Looking at the activities of state actors in PCM, it became obvious that among the transatlantic partners, goals and strategies differ less than the perceptions of each other's roles. There is, for example, a simplified view of the operations in Afghanistan promulgated by the German media – Operation Enduring Freedom (OEF) under US-American leadership being the “bad mission” and the NATO-led International Security Assistance Force (ISAF) the “good” one. However, OEF and ISAF may also be viewed as two mutually complementing rather than two distinct operations. In fact, the differences between the two missions become more and more blurred as a large part of OEF is engaged in training the Afghan National Army, for example.

National approaches do diverge, though, and even within one mission, such as ISAF, concepts differ. The varying weight accorded to military and civilian components within the national models of Provincial Reconstruction Teams (PRTs), however, may partly be ascribed to the differing degrees of security challenges confronted in the respective areas of operation.

Diverging national approaches to PCM may be explained to a large degree by different institutional contexts. In the Swedish case, for example, a sharp divide between the ministries and agencies involved hampers effective participation in PCM. The same holds true for the German case, where there is strong parliamentary control of military activities. In the United States, one institutional problem is posed by the differing ability of agencies to provide funding in a timely manner – through Emergency Response Funds, the Department of Defence may react much faster than the U.S. Agency for International Development (USAID).

Defining goals early and clearly and then pursuing them consequently was seen as crucial for successful PCM by state actors. However, goals may only be accomplished if they are matched with the appropriate resources and capacities.

Taking on the perspective of state actors immediately draws attention to the limits of this role. There is an increasing tendency to outsource PCM activities to private companies. There are three different categories of private military companies (PMCs) – (1) military provider firms, which carry out actual combat assignments, (2) military consultant firms, which provide advice and training to military and civilian authorities, and (3) military support firms, which offer various forms of non-lethal assistance. While the United States outsource PCM activities to all three categories, most Europeans only hire PMCs of the second and third category. The outsourcing of PCM activities raises the question of accountability: Who may and who should be held accountable for these activities - the individual employers, the respective company or the outsourcing state? Reflecting on accountability is linked to the question of sovereignty: May state authority be transferred to private firms? Some experts pointed out that it is critical to not award PMCs a combatant status – they would turn into mercenary forces which are illegal according to the UN Mercenary Convention. Deploying PMCs may also cause conflicts between the self-interest of the individual employee, corporate interests and national interests. However, it was also pointed out that other actors could and should profit more from the experience PMCs gain through their work on the ground, e.g. working with refugees.

International Organizations

The three international organizations discussed – United Nations (UN), European Union (EU) and NATO – each focus on different aspects of the post-conflict process. The UN is largely dependent on its members and on regional organizations for providing civil and military means for its missions, NATO disposes of military means which it uses for providing security as well as assistance in police and army training and for reforms of the security sector. The EU is still a relatively young actor in international security affairs and still building up its civil and military capabilities. As most of its members belong to NATO too, a fruitful and trouble-free cooperation should be possible. In the discussion, however, owing to experience on the ground, the view prevailed that due to a failure to better coordinate and integrate approaches, the involvement of different international organizations causes competition rather than synergies. The tendency of the United States to hold some reservations towards the UN exacerbates the inter-institutional problems.

The discussion revolved around the question as to the preconditions or circumstances that are necessary for successful PCM by state actors. The political process in the target country was judged as a crucial factor, as much as lasting stability. Local ownership was also seen as essential in successfully carrying out PCM and obtaining legitimacy on the ground. The mandating of PCM operations by the UN was also regarded as highly important as far as the question of legitimacy is concerned – a UN mandate creating legitimacy in the view of both target country and the international community. Furthermore, the question of legitimacy relates to the historical context – in Africa, for example, as a couple of participants remarked – the EU is discredited through its incorporation of former colonial powers. Just like state actors, international organizations are exposed to certain bureaucratic and institutional constraints, e.g. the lengthy and cumbersome decision-making process within NATO, the EU or the UN Security Council.

Non-governmental Organizations

The discussion of the role of NGOs in PCM focused on the advantages and disadvantages of their involvement. On the one hand, NGOs benefit from larger timeframes of engagement – unlike military actors who are subject to short-term deployments, they are able to build up longstanding relationships with the local populations. Their political independence enables them to act without the constraints of narrow mandates, while their flexibility and confidentiality allows them to talk to several parties without losing their trustworthiness. On the other hand, the competition for funding and the resulting motivation to sustain the conflict situation (in order to obtain arguments for further funding) may limit efforts to constructively manage a (post)-conflict situation. Another (related) dilemma was mentioned: By providing refugees with food and security, NGOs also provide them with an incentive to stay in their camps, thus potentially contributing to sustaining rather than changing the post-conflict situation. From a normative perspective, not all NGOs pursue goals that are in line with the principles and aims of the international community's PCM activities. One example is the existence of Serbian NGOs which support alleged war criminals put on trial at the International Tribunal for the Former Yugoslavia. The ensuing discussion showed that the term NGO is not taken as just an organizational principle or criterion but widely associated with a humanitarian purpose, most particularly in Germany.

The integration of NGOs into a comprehensive and multi-actor approach to PCM may be regarded from different perspectives. Through their unique capacities mentioned above NGOs may contribute significantly to the success of a comprehensive approach. On the other hand, such integration could also cause them to lose these specific capacities.

How do Concepts and Policies Fit Together?

As in the previous panels, the discussion demonstrated that clear definitions of concepts, goals and benchmarks are deemed crucial in PCM – especially when seeking to reach coherence and coordination of different approaches.

What are the goals? In defining them, the context needs to be taken into consideration; furthermore, goals must be measurable and match our resources and capacities. With regard to the goal of security, the question is, how to ensure best both our own security and that of the target country with limited resources. It was pointed out that we should further distinguish between short-term goals (e.g. provision of security) and long-term goals (e.g. good governance or even democracy). Hence, American and European approaches to PCM focusing on short-term and long-term objectives respectively, must not be regarded as conflicting but rather complementing each other.

Another question closely linked to the definition of goals, is that of “success”. One suggested definition was sustainability. However, one participant brought up this point, sustainability may only persist as long as the context does not change. Prioritizing goals was considered to be an important means of defining “success”. Measuring success is also closely linked to the question of “accountability”. Since international actors cannot be held accountable to the local population, the interaction with it may lead to situations in which the locals manage the international actors rather than the other way round.

Coordination is hampered by cultural differences, different bureaucratic and organizational cultures of the actors, conflicting priorities, lack of policy coherence and limited commitment, i.e. limited political will and resources (funding, personnel, time). More realism and pragmatism is called for when drafting mandates and setting the state and peace building agenda.

During the discussion, the term “post-conflict management” was put into question. Several participants shared the opinion that we do not actually *manage* but rather *influence* post-conflict environments. Besides, this influence is not necessarily positive. If we fail at drafting and implementing effective PCM approaches, we run the risk to negatively influence the post-conflict environment.

Finally, the discussion centred on the question as to whether it is actually possible to reach coordination and coherence of our PCM approaches. On the one hand, looking back at recent progress allows for optimism. On the other hand, the obstacles discussed will be hard to overcome.

Part II: Conference at CSIS in Washington, D.C., June 23 and 24, 2008 (work plan)

The second meeting will take place in Washington, D.C. on June 23 and 24, 2008 and will be hosted by the Center for Strategic and International Studies (CSIS) and National Defense University (NDU). Visualizing the concept of the first and second meeting within a matrix, the first workshop looked at the horizontal dimension of PCM (the perspective of the actors). The second event will focus on the vertical dimension of PCM approaches: the issues of security, development, and governance. How to deal with insurgents and new non-traditional actors are questions to be discussed. Other subjects will be, whether the international community taking on more than it is able to shoulder and whether nation building is conceived in the right way. Finally, necessary adaptations to civil-military and NATO-EU cooperation are to be debated. The conference aims at making a timely and significant contribution to the development of common transatlantic approaches to PCM.