

Summaries

Justitiële verkenningen (Judicial explorations) is published eight times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in cooperation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (nr. 4, 2010) is *Peace missions and capacity building*.

Rethinking rule of law assistance in Afghanistan; a decade later

V.L. Taylor

In this essay the author looks back at ten years of rule of law foreign assistance in Afghanistan. She first surveys the elements that make Afghanistan particularly challenging as a development. This is followed by a brief outline of foreign donor-assisted efforts at rule of law reform in the last decade. The features of law and legal systems in Afghanistan that are salient for would-be foreign reformers are analyzed. The concept of judicial independence serves as example of well-intentioned rule of law interventions that have not fared well in this complex environment. The author argues that better prepared international advisors with a better grasp of legal history and comparative law may have produced stronger outcomes. Ultimately, however, a *pre*-post-conflict setting constrains conventional rule of law programs in important ways and calls for more realism about what can be achieved, within what time frame and with what degree of sustainability.

Winning the hearts and minds in the Dutch East-Indies

M. Bloembergen

This essay is a tentative exercise to compare ideals and practices of daily colonial policing, in particular in the late colonial state of the Dutch East-Indies, to those of present-day international peace and police development missions in post-conflict societies. In both cases we see foreign powers, represented by a minority of experts and professionals, aiming to control (or to assist in controlling) local security problems, out of care and fear; they do so by training indigenous recruits for professional (civil and military) police forces, build on western models of policing which they presume superior.

But the most important thing the colonial police and international peace and developmental missions share is their actual weak base of power: both institutions have to operate in states that are characterized by fragmentation of power, by fragile authority and by lack of security control. Both institutions have a problem of legitimacy: the mandate they get from the local population is doubtful. This explains why both the police and international peace missions, whether consciously or not, often fail to solve local power struggles, or to grasp the point of local security problems, sometimes with very dramatic effects.

Police officers on a peace mission

H. Sollie

The Dutch police participated in eleven peace missions since 2000. This article describes the experiences of Dutch police officers who carried out police reform during recent missions in Bosnia, Sudan, Kosovo and Afghanistan. In their role as instructor and/or adviser, these police officers taught local constables (basic) policing and management skills. During their mission, they were confronting many obstacles that stem from cultural differences, ethnic tensions, opportunism, unwillingness, corruption and language barriers. Given these limitations, expectations regarding police reform must be tempered. Creating or transforming local police into effective law-enforcement institutions that operate under the rule of law and with respect for human rights, is not a quick fix. However, by means of training and advice, local police officers realize that they should protect and serve.

Legal development cooperation in Rwanda

R.H. Haveman

Ownership, sustainability and capacity building are the buzz words of development cooperation; that is not different in the legal field. Five years of experience in legal development cooperation in Rwanda, both on the side of the northern and the southern partner, shows that this is not a merely southern responsibility. The fact that a project is demand-driven instead of donor-driven is only the start. The northern partner has the responsibility to seduce the southern partner each and every day again, and keep him at the steering wheel. This implies that the northern partner shows personal involvement, and leaves the southern partner deciding about

what is happening and when. This implies certain flexibility in the execution of a project, both time and content wise. And it means that the northern partner recognizes that the southern partner does not exist merely for the northern project. Otherwise it will lead to a southern partner that says 'yes' and picks the best cherries, but for the rest does 'no' and obstructs where possible.

The integration of police and judicial cooperation into the European Union's foreign policy

C. Fijnaut

Cross-border police cooperation, in any case against political adversaries, has always been an important component in the foreign policy of European states, especially when police forces were established in their colonies during the nineteenth and twentieth centuries. Against this background it was quite astonishing, because very artificial, that in the Maastricht Treaty a rather clear distinction was made between a second pillar (foreign and defense policy) and a third pillar (justice and home affairs, later on called police and judicial cooperation). Over the years this gap has been bridged from two sides: on the one side the geographical enlargement of the European Union into Central and Eastern Europe asked for the integration of police and judicial cooperation in the related policies vis-à-vis the (new) member states; on the other side the enlargement of the political and military role of the European Union on the international stage, reinforced by the 9/11 attacks on the United States. The proposal in the The Hague Program (2004) that it is necessary to develop a coherent strategy with regard to the 'external' aspects of the European Union policy in the area of freedom, security and justice, has led to the formulation of such a strategy by the member states. This strategy partly focuses on the containment of serious general problems like the containment of terrorism and organized crime and partly on the reinforcement of criminal justice systems in, respectively the strengthening of police and judicial cooperation with specific important third states. The Stockholm Program sticks to this format, but underlines the necessity to reinforce the coherence between the 'external' freedom, security and justice policy of the European Union and the police missions it organizes in a number of weak, failing or failed states.

The rule of law mission in Kosovo

A. Bouten

This article gives an overview of the UNMIK and especially the EULEX mission in Kosovo thereby concentrating on the judiciary. The current state of the judiciary and its organisation are analysed as well as the main starting points and goals of the mission. From her own experience the author describes the cooperation between EULEX workers and local partners and the influence of cultural differences.