#Lawyeringpeace: The Role of Lawyers in Peacebuilding

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# LAWYERING PEACE: THE ROLE OF LAWYERS IN PEACEBUILDING

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Based on the Public International Law & Policy Group’s (“PILPG”) two decades of experience assisting countries and clients in conflict situations, it is clear there are a number of ways for lawyers and international law to promote peacebuilding. This article condenses information shared during the International Law Weekend panel, “International Law and States in Emergency: Responses and Challenges.” The focus of the presentation was

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how lawyers can and should make a difference in peacebuilding and post-conflict constitution drafting. The world needs more lawyers to “lawyer peace” by assisting countries and clients involved in ongoing conflicts or in peace negotiations. In the spirit of the International Law Student Association, this article provides guidance to early career legal professionals who plan to lawyer peace.

Lawyers should keep in mind five guiding principles in order to be effective resources for clients during conflicts and crises: lawyer to make a difference, put your briefcase on the ground, build bonds with clients, recognize unique qualities of clients, and know that words matter. To illustrate these principles we will share examples from PILPG’s work providing pro bono legal assistance for the past twenty years to clients involved in negotiating peace agreements, drafting post-conflict constitutions, and designing transitional justice systems.

I. LAWYERING TO MAKE A DIFFERENCE

Many of today’s young lawyers are dynamic individuals, excited about using their legal skills to make a difference in the world. For those choosing to enter public international law or to undertake substantial pro bono work through their firm, great opportunities exist to make an impact. During an active, or “hot” conflict, lawyers play an important role in resolving the conflict by using their legal skills on behalf of clients in peace negotiations, post-conflict constitution drafting, and transitional justice. Yet it is incumbent upon young lawyers to ascertain how to undertake lawyering to make a difference in each context.

A. Expect to Have an Impact

The initial step in understanding lawyering to make a difference is acknowledging that attorneys play a unique and critical role in these processes. Young lawyers at the United States Department of State are often told by their foreign service clients that they can have a substantial impact on United States foreign policy if they do not actually try to make foreign policy themselves, but rather use their legal skills to help ensure that the policy options being crafted by the foreign service officers fit within the framework of international law. This is a nuanced point, and rebel groups, self-determination movements, and civil society delegations often need that exact same service from lawyers. Attorneys should help these groups to accomplish their objectives within the framework of international law, by using international law to help their clients more effectively construct positions and negotiate for their adoption. Importantly, and as discussed in more detail below, lawyers thus make a difference by empowering their clients to make a difference.
Young lawyers, moreover, should recognize the importance of being the member of the delegation who can distill a myriad of views, opinions, tactics, and strategies into a coherent plan of action, through a readable and persuasive draft document. Rebels are good at engaging in bush conflict, civil society representatives are highly capable of amplifying the voice of the people, self-determination movements are good at maintaining momentum for self-government; however, few individuals possess the skills to empower and guide these actors to “yes” on a peace agreement—and those individuals are (or should be) the lawyers in the room. The ability of a lawyer to empower clients and synthesize a coherent action plan can make a difference in the outcome of peace talks. If done correctly, lawyering for peace can have a tangible, positive impact on peoples’ lives both immediately and for years to come.

II. Lawyerizing Peace with Briefcases on the Ground

One of the most important aspects of lawyering peace is physically traveling to wherever your clients are to work with them. While others may be working to end a conflict by putting boots on the ground, lawyers seek to end conflicts by putting “briefcases” on the ground. Your effectiveness as a lawyer will hinge on your ability to work anywhere around the world while maintaining access to resources and managing the risks of being in a conflict zone. By going where their clients are, potentially for extended periods of time, lawyers on the ground will be able to build trust with their clients in a way that other outside actors cannot.

A. Put Your Briefcase on the Ground

To be effective at lawyering peace it is imperative to be prepared to “put briefcases on the ground.” It is a simple yet crucial tenet of lawyering peace. Sometimes this requires briefcases in Doha, Geneva, Paris or Vienna, but more often it will require being present in Juba, Tripoli, Mogadishu, Baghdad, Kabul, Sana’a or some other flashpoint of conflict. Key to providing effective advice is the ability to develop trust with clients, understand their circumstances, and be available around the clock to help them prepare their tactics and strategy for successful negotiations. While much present-day lawyering can be done from a distance, lawyering peace requires more constant and on the ground contact with clients. Early in PILPG’s relationship with the Darfur rebel groups seeking to negotiate a peace agreement with the government in Khartoum, the PILPG team spent the entire month of December in Sudan with the rebel leaders to build relationships, develop trust, and provide pre-negotiation assistance. Building upon the work done together with the clients in the field, PILPG’s team then also spent a month travelling to New York, Paris, and Brussels,
training diaspora advisors to the rebel delegation. Being present on the
ground allowed the PILPG team to gain a deep understanding of the clients
and their interests.

B. Build a Team

Briefcases on the ground will be most effective if they have backup
support in another location. To be an effective lawyer in the field it is
necessary to build a team of colleagues to support the substance of the work,
through both quick turnaround and substantial legal research. The upside of
being in the field is the ability to develop close client relationships and be
responsive to their legal needs; the downside is that it is often extremely
difficult to access the resources that are routine for the substantive work of
lawyering. Part of the magic of successfully lawyering peace from the field
is to be able to provide near instantaneous, high quality work product that the
clients are unable to generate for themselves, and that others are unable to
generate because they are not physically present.

The only way to answer virtually any question from the clients while
you are with them in the field is by reaching out to a qualified team working
in another location that can draft thorough, well-researched answers, which
can then be shared with the client. In many cases, it is ideal to have the team
on a different time zone. As an example, when PILPG's team was in
Baghdad for the Iraqi constitutional negotiations in 2005 and again in 2007,
we had teams of lawyers in New York, San Francisco, and Melbourne which
were able to support PILPG's team in Baghdad by providing around the clock
research and analysis, so that the chair of the constitution drafting
commission in Baghdad had comprehensive answers the next morning to
questions he asked the previous evening.

C. Manage Risks

Putting briefcases on the ground is not without its risks, especially when
lawyering peace. Going where your clients are will involve travel to some
of the most conflict-ridden areas of the world. Those lawyering peace
occasionally find themselves wearing bulletproof vests, driving in armored
SUVs, and hearing the sound of gunfire and shelling. In rare circumstances
they may need to "duck and cover" or flee a cross-fire situation. Members
of PILPG have traversed innumerable checkpoints, made use of concrete
duck and cover bunkers on more than one occasion, and safely evacuated
nearly half a dozen posts, including being flown out in C-130s by the United
States Marines.

These kinds of situations are what your clients face every day and
sharing in that with them is part of putting briefcases on the ground. When
you are lawyering peace, you have to be aware that you may end up in
dangerous situations. While the risks you will take are necessary to build the
relationships with your clients, do not take them needlessly—nor relish them.
It is simply true that aspiring young professionals must understand the risks
and be prepared to deal with them. The key ingredient is to have an
uncompromisingly strict and comprehensive security plan, and to implement
it no matter what frivolous risks others might take.

III. LAWYERING PEACE AND MAKING A BOND

Being a briefcase on the ground with clients makes lawyers privy to a
small part of their lives and experience, which provides lawyers a chance to
bond with their clients. Bonding with the client is important in order to
continue to build and maintain trust, and enable the clients to really listen to
their lawyer. In some instances, lawyers may have to build a bond quickly
as, despite being a briefcase on the ground, they may meet some clients for
the first time right before entering the negotiating room. Demonstrating that
you can add value immediately, without telling your client what to do, is one
way lawyers can make a bond and demonstrate their support and reliability
to the client.

A. Build Trust

Putting briefcases on the ground is a key component of making a bond
because it leads to building trust. Reliably providing in-person, high quality
support and advice to clients helps to build substantial trust between the
lawyer and the client. As with any lawyer/client relationship, trust is a
necessary element if a client is going to follow the advice of the lawyer.
Governments, rebel groups, and even civil society actors engaged in peace
negotiations are, by nature and necessity, distrustful of those outside their
immediate circle. Each group, depending on their nationality, culture, and
previous experience will have a unique way of verifying reliability and
building trust. The one common factor to building trust with clients is
physical presence. Being on the ground with them in their home
environment, even for a few days or weeks, is essential to earning their trust.
Staying in touch with clients as well as up to speed with events on the ground
when you are not physically present is imperative for making subsequent in-
person meetings more effective and maintaining the trust you have built.

B. Add Value Right Away

Make sure the information provided to the client is distilled to be
immediately relevant so they can actually use it in the negotiations that day.
There is little point in giving the client a dense, unintelligible memorandum
that they would have to spend weeks interpreting. They will likely not have
time to sit, read, and think through a long legal document, but will be moving
from one highly charged negotiating session to another without much time to
reflect. The form and quality of the product the client receives from their
lawyer will directly impact their experience during negotiations.

Lawyers should also be prepared to answer extemporaneous questions
that arise during the day, or during the evening, while preparing for the next
day. As discussed above, building a supporting research team either on the
ground or at your fingertips by email is vital to maintain a steady flow of
useful information to the clients. PILPG has discovered that clients are
particularly fond of two types of initial legal analysis: memoranda that
address core elements and memoranda that address comparative state
practices. Clients want to know what are the few core elements of an issue
that they must focus on, and they want to know how similarly situated states
have dealt with the issues they are facing. Clients are also very keen on their
lawyers discovering comparable situations that they can use to bolster their
position or support the solution they are negotiating for.

C. Do Not Tell Your Clients What to Do

When giving information to clients, lawyers should always be advising
them how to do something, not telling them what they should do. It is up to
the clients to make their own decisions, but lawyers can equip them to do that
by explaining all the options and giving examples of how the various options
have played out in other conflict situations so that clients feel supported, not
commanded.

One practical tool that lawyers can use to support clients and add value
immediately is a decision tree. A decision tree is a series of questions on a
particular topic for the clients to discuss and determine the most appropriate
path for themselves. It provides a tool for immediate use and guides clients
in a discussion based on the realities of different options for how to do
something, rather than prescribing one direction or another for them.
Working through a decision tree with clients prepares them to negotiate by
helping them determine how they can reach their desired outcome at the
table.

D. Always Sit in the Second Chair

This chair is not at the table, but is behind the client who is at the table. The
physical position represents a large part of the lawyer's role in the
delegation—the role of supporting and providing information to the client who
is at the table making decisions about their own future and the future of their
country. Sitting in the second chair will further support the trust you have already built with the clients.

IV. LAWYERING PEACE WITH UNIQUE CLIENTS

Lawyers who are lawyering peace will have the challenging and inspiring opportunity to work with a wide variety of clients. These clients will likely be coming from very different backgrounds and will also be experiencing varying levels of impact from the ongoing conflict in their country. Young lawyers should be ready to try to understand the context of the conflict from their clients' perspective by dedicating themselves to learning about their unique clients.

A. Get to Know Your Clients

As lawyers go around the world lawyering peace, putting briefcases on the ground, they will get to know their clients well. Young lawyers must realize that clients in this field are highly unique. Lawyering peace is quite different in this way from more traditional lawyering. As a lawyer for a client from a country in crisis, imagine walking into the negotiating room. The clients, and the other negotiating parties, may be rebels or opposition leaders, antagonists, perpetrators, or victims. The majority of these clients do not have legal training and have never negotiated before. Often they have an imperfect grasp of English (or whatever the international language of negotiation might be at a particular venue), which may be their second, third or fourth language.

Early on in a relationship, a client asked his PILPG lawyer, “Right, when I enter the negotiation room, what do I do?” The PILPG lawyer started to explain various negotiation tactics and the client interrupted, asking, “No, I really mean what do I do first, where do I sit, must I shake the hand of the war criminals on the other delegation, who speaks first—remember, this is my first negotiation.” Another PILPG client spent two full days sitting with the PILPG team discussing the history of their conflict, with no notes. This client came from an oral culture and needed to ensure that PILPG understood the complete story of their conflict before engaging on even the most minor legal issue. The oral culture dynamic of this particular client presented unique challenges in the negotiation process as the opposing delegation was highly legalistic and was constantly dropping written proposals on the table.

These experiences demonstrate how interesting, yet challenging, it can be to work with clients in this field. Understanding the hurdles of working with such unique clients is imperative to achieving the goals you are working with the clients to reach.
B. Recognize Your Clients’ Mental State

On top of the characteristics discussed above, lawyers must know that their clients will also be experiencing a tremendous amount of psychological stress. This is the context of a crisis. The clients may have been involved in conflict for months or years, constantly fearing for their lives or those of their family and community. As members of a negotiation delegation, they are likely to be under even more pressure, possibly receiving serious death threats. The clients have almost definitely lost friends and family in the fighting, and may have seen their community pulled apart and destroyed. In spite of this, or because of it, they are committed to negotiating for the future of their country. Imagine the weight and responsibility they must feel at every decision, at every stroke of the pen writing a ceasefire, peace agreement, or constitution.

Given the stress the clients are feeling, lawyers cannot interact with them like normal clients. Their minds will be in ten places at once and they may have trouble focusing on putting words on paper. Although the words are ultimately important, the client may not be thinking about the long term, but rather the shots being fired right now. Being sensitive to this is key for successfully lawyering peace.

C. Do Not Define Success for Your Clients

Young lawyers must also recognize the reality that delegations will bring some level of self-interest to the negotiating table, and some may not have a fair and equal future in mind. Lawyers must be prepared for the consequences of getting to yes with unjust parties—the yes at the end of a negotiation may not be the ideal. There is a balance to strike between working towards a better deal and recognizing when the “yes” you have might be the best deal your clients are going to get. It is best to let the clients determine what “success” means in this situation rather than holding that burden as the lawyer. Towards the end of the Dayton Peace negotiations, the Bosnian delegation decided to sign the agreement in spite of its numerous flaws, and even though it fell short of a dozen key redlines the Bosnian delegation had set forth at the outset. When asked why the delegation was going to sign, the head of the delegation replied, “We will not survive another winter, we are getting 50,000 NATO troops, and we were promised this agreement is only temporary.”

V. LAWYERING PEACE WHEN WORDS MATTER

Ultimately, everything the parties decide during a negotiation will have to be drafted with words on paper. While it may sound like a simple enough task to write down the parties’ decisions, this can often be one of the most
complicated parts of the process. Nevertheless, getting the words right when recording the final terms of the agreement is vital for effectively lawyering peace.

A. "Getting to Yes" is Complicated

Getting to yes, and then getting "yes" down on paper is a process, with many challenges. During negotiations, there is first a political negotiation, where the parties to the talks work out the outcome, with support from their lawyers. Then there is a legal negotiation, where the lawyer steps forward to choose the words that will describe the political decisions that have been made by their clients. In lawyering peace, getting to yes is only half the process. The "yes" the parties agree on may be fairly ambiguous, meaning one thing to one side and something else to the other side. It is the lawyers that have to decide how to spell yes, and in what language.

This may involve another level of negotiating, which is working with the clients to ensure the words match the decisions made, and will bring about the intended results. Often the parties may agree to broad concepts such as federalism, devolution, maximum protection of human rights, and equitable sharing of natural resources. Each of these concepts requires at least two or three pages of text to effectively encapsulate the details of the concepts, as well as establish clear rules and mechanisms for accomplishing the objectives of the parties. That work is often left to the lawyers, who are uniquely suited to this task because of their training and close bond with their clients.

B. Words Matter

The words recorded during and after a negotiation will shape the country for years, or even decades, to come. For any negotiated peace agreement, the details are what make it sustainable, and the details are the sphere of the law. A peace agreement is not just for the moment; the provisions in the agreement go on to shape constitutions and have an enduring impact.

Focusing on the words used during the negotiation and drafting processes is a key part of a lawyer’s role. Lawyers will determine the terms used for peace, justice, and power, and through actually putting words on paper they will shape the direction of the country for years to come. It is for this reason that lawyers play a key role along with other custodians of long-term peace—they are uniquely trained to focus on, and understand, the impact that word choice can have on the future of a country. It is important for young lawyers not to forget this basic tenet of their profession—words matter.
VI. CONCLUSION

Lawyers can have an enduring, global impact by lawyering peace in conflict situations and working closely with clients who are fighting for a better future. Unfortunately, the world today is not a peaceful place. Almost every continent has countries or communities in conflict. Working with these clients is one of the greatest opportunities for dynamic young lawyers to go out and make a difference in the world.

Lawyers who want to lawyer peace will have to keep the five guiding principles discussed in this article in mind in order to lawyer peace effectively. They will have to go where their clients are, putting briefcases on the ground. This may involve risks but will also involve exciting chances to build close relationships in different corners of the world. Lawyers who lawyer peace will learn new ways to interact with and add value to meet their clients’ immediate needs. Bonding with those clients will be key to earning their trust and showing them how valuable the support and assistance of a lawyer is in negotiating. They will be working with unique and sometimes challenging clients with diverse interests and intense experiences. A lawyer who “lawyers peace” stands behind his client with ready support and information to help them make the best decisions.

Ultimately, lawyers in this field will end up writing the words that shape a country’s future for years to come. It is the lawyers who will draft the final agreement or the final constitution, locking in place the “yes” reached by all parties. This will last long after the lawyer has returned home, or hurried to another negotiation with another client, in another conflict. The world needs more lawyers to lawyer peace in times of crisis, lawyering to make the world a safer and better place both now and in the future.