

# The global pandemic and the rule of law: a stress test for Law Enforcement and NATO Stability Policing?

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## Abstract

**Purpose:** The aim of the article is to draw the attention toward the diverse challenges posed by COVID 19 pandemic to the Law enforcement activities either in a safe environment or in the context of NATO Operations where Stability Policing activities aim to re-establish law and order and reinforcing the Rule of Law in fragile countries.

**Design /methodology/approach:** The article was the result of a combination of qualitative and quantitative study (observations collected by NSPCOE Lessons Learned Branch with reference to NATO COVID 19 LL collection plan, analysis of articles and existing archival documents gathered by the author from open sources).

**Findings:** The current crisis posed a number of threats, in the form of a stress test, to law enforcement agencies while they afford at the same time daily tasks, the enforcement of unpopular protective health restrictions, the safeguard of public institutions, and lastly, the protection of their personnel from the risk of COVID contamination, either in stable or fragile countries. In this context, Stability Policing (SP), defined as “Police related activities intended to reinforce or temporarily replace Indigenous Police Forces in order to contribute to the restoration and/or upholding of public order and security, rule of law (RoL), and protection of human rights”. (NATO Allied Joint Publication 3.22) can play a fundamental role in enforcing the RoL in fragile states. Whenever deployed in unstable state, during emergency crises or in the normalcy, with the largest impact on the day-to-day lives of the population, LEAs fundamental role must remain to provide the feeling of security and justice by acting in favour to the populace, according to three principles: legality, accountability and transparency

**Research and practical limitations/implications:** Whenever a fragile/unstable country needs to overcome a crisis and re-build its institutions, RoL principle is an important facilitator in this process as long as it does not become “rule by law”, because of authoritarian drifts. Moreover, while in strong enforced RoL societies, the citizens can rely on effective, transparent, and accountable institutions, whenever crisis hits weak or fragile/unstable states that are unwilling or incapable to control the

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situation, the void that is left unattended allows crime to thrive and offers a bolthole for extremists to further destabilize an already weak country.

**Originality/value:** This article is of a review nature and can be the starting point for further discussion on the importance of Law Enforcement Agencies' transparent effective and accountable actions, in adherence with the rule of law.

**Paper type:** Review

**Keywords:** Rule of law, Stability Policing, NATO, fragile countries, comprehensive approach, COVID-19.

## 1. Introduction.

*"[...] the end of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law: and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?). But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own."(John Locke, 1690)*

With "rule of law" (RoL) we clearly refer to 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 right norms and standards (UN Report 2004).

The current pandemic, with its dramatic consequences on the population and the economy, requires a profound reflection on the organization and resilience of our societies. In this globalized world such emergencies can spread more quickly and recur much more frequently than in the past and provoke further pandemics, such as "hunger pandemic", "inequality pandemic" and a "pandemic of authoritarian rule" (Eisentraut S., Kabus J., Mieke L. 2020). The emergency constituted an unprecedented challenge with very severe socio-economic consequences and further exacerbated state fragility, acting as a multiplier of force for pre-existing vulnerability factors, not to mention threats to vulnerable groups, domestic violence, civil disturbances and riots, looting, cybercrime and – due to the deteriorating security environment – any form of trafficking and counterfeiting. The sum of these threats poses a number of challenges for the Law Enforcement (LE), in the entire world, based on the assumption that the concept of RoL is something to achieve for all states, without distinction from stable or fragile/unstable ones. Ultimately, Law Enforcement Agencies (LEAs), besides their daily routine tasks, are requested also to enforce sometime unpopular protective health restrictions, safeguard public institutions, and lastly, protect themselves from the risk of COVID contamination.

## **2. Rule of Law vs Rule by law.**

Generally, *“to counter this trend affecting the already precarious health situation and the perception of insecurity, some countries have introduced broad and sometimes draconian measures, namely emergency laws, curbing freedom of movement, speech and assembly in the name of public health, further heightening the risk of autocracy risking descent from rule of law to rule by law”*. (Luhmann A.& Rooney B., 2020).

To expand on this idea, rule by law is a method that governments and people in power use to shape the behaviour of people, and in terms of governing a country, mass groups of people. This usually has the end goal of psychologically or forcefully persuading people to agree with policy decisions they otherwise would not agree with. As quoted in the “Rule of Law and Covid-19 Policy Brief report, 2020” issued by International Development Law Organization (IDLO): *examples of backsliding include attacks on the independence of the judiciary, lawyers and court officials, as well as democratic society*. In these cases, where governments responded with an expanded role and the forceful presence of LEAs, challenges emerged, including perceptions of bias, disproportionate use of force, and other human rights issues, as reported by UN Org. COVID and the Rule of Law: A dangerous Balancing Act. It is therefore necessary that *“Under these circumstances, professional LEAs, trusted by and responsive to the needs of society are always critical to maintaining RoL, ensuring legal certainty and clarity in public communication, providing public safety, fostering an environment in which governance can flourish, and providing situational awareness and criminal intelligence (Allied Joint Doctrine for Stability Policing AJP 3.22)*. This could help *“to avoid aggravating social tensions, grievances and underlying causes of conflict – and preventing conflict is perhaps an imperative now more than ever, as prospects for large-scale investment in conflict-management and post-conflict recovery fall victim to scarce resources” (UN ORG. 2020 - Covid and the Rule of Law: A dangerous Balancing Act)*. In addition, restriction measures had negative impact on people’s mental well-being, put pressure on their relationships and caused stress, thus potentially contributing to an increase in domestic violence also called “Shadow Pandemic”, as the movement-limiting measures during the lockdown made it more difficult for victims to escape from aggression and receive assistance from healthcare service.

## **3. The pandemic, a stress test for Law Enforcement.**

While fear leads government in taking restrictive measures to gain precious time for health systems to adapt to the new challenges, societal values are under public scrutiny, turning the pandemic in a genuine stress test for LE and its agencies around the globe. In case a fragile/unstable country needs to cross over a crisis and re-build its institutions, RoL is an important facilitator in this process. As matter of fact, while in strong enforced RoL societies, the citizens can rely on effective, transparent, and accountable institutions, whenever crisis hits weak or fragile/unstable states, unwilling or incapable to control the situation, the void that is left unattended allows crime to

thrive and offers a bolt hole for extremists to further destabilize an already weak country. Similarly, perceived inequalities in the administration of the law, and real or apparent injustices, are triggers for instability, with consequences also on military operations, which might support LE also in peacetime. One example of the latter is the case of “... *distribution of emergency aid, medical supplies, and economic stimuli provide ample opportunity for corruption and fraud. Without effective institutions that ensure transparency, accountability and oversight, much of it will not reach intended beneficiaries, deepening the social, medical and economic crisis and compromising and delaying recovery*” (UN ORG. 2020 – COVID-19 and the Rule of Law: A dangerous Balancing Act). It is then of paramount importance that, both in a weak and in a stable country, all actions taken by a government and its LE officers in attempting to restore stability are legal and perceived as legitimate. LE officers are more effectively able to carry out their duties and responsibilities if they are perceived as having legitimate authority by the citizenry that they serve as correctly pointed out in RAND “*Legitimacy Policing in Depth*” essay.

#### **4. Among other challenges posed by the pandemic.**

As the COVID-19 pandemic spread, LE had to take unprecedented steps to enforce restrictions and contain people’s anger and violent reaction, which may contribute to weaken institutions and government action, and to prevent organized crime to exploit the voids created by the crisis to expand its impact, build its legitimacy and spoil communities and governments alike. A large body of evidence shows that people do not riot as a spontaneous reaction when they are frustrated, or they do not get what they want. Even when people are starving, this does not necessarily generate food riots. Rather, people need to feel that the way the crisis is being handled appears unjust and that they share a collective grievance with others in the same boat as themselves (their in-group). Second, they need to identify a clear source (or outgroup) who is responsible for their plight and who they can target (NATO SP COE – COVID 19 LL Data Collection plan 2020). As experience showed, also prison riots started as consequence of the counter measures against the virus; new internal rules imposing to the inmate’s restrictions by cancelling the visits (hyper isolation of prisoners); lack of protective masks in the prison system which lead to a few deaths among the inmates. Actually, according to the Colvin’s “breakdown” perspective, riots occur when there is a breakdown of consensus between the prison administration and incarcerated people, which leads the administration to shift towards coercive methods of control, making prisoners feel that they have nothing to lose by rebelling. (Colvin M.1992). Among other hard challenges to the global community and to global governance, there is the degree to which organized crime may use the breach created by the political and social crises that the virus is bringing about to expand its impact, and build its legitimacy and reach with communities and governments alike. A number of organized criminal groups have traditionally attempted and succeeded in maintaining the monopoly of control of illegal activities at the local level, by imposing protection on all types of economic businesses and corrupting local political institutions. For some types of organized criminal groups that are traditionally linked

to a specific geographical area, the control of the territory remains their main strength and source of power. It is through territorial control that they will try to take advantage of the coronavirus crisis to infiltrate the medical supply chain, penetrate the legal economy, gain access to national resources and, in general, influence post-COVID-19 policies for their own benefit. To enforce this form of territorial control, these criminal groups often need to build the image of a sort of “*state within the state*”, able to provide aid and support to the local community and, at the same time, discourage any form of criticism and dissent through intimidation and violence (Musumeci M. & Marelli F.2020).

*“The financial crisis and the potential bankruptcy of several enterprises, shops and economic activities, may represent further opportunities for organized crime to penetrate and infiltrate the legal economy”; “...organized crime has been able to exercise direct or indirect control over key economic activities in fragile sectors, including the food distribution chain and the food processing and manufacture”; “Criminal groups will try to profit at the maximum from these prospects, infiltrating sectors that have a high potential of becoming strategic after the pandemic by responding to potential food or other commodities’ shortages created by lockdowns and economic crisis in different parts of the world”.* (Musumeci M. & Marelli F.2020).

As matter of fact, in the local governance space, there are categories of actors operating interdependently: the state with its institutions, local authorities and LE; the civil society; and the local-strongmen that challenge legitimate authority, often in the form of organized crime. In places where state institutions are strong, the latter category is kept under control and distant from people’s everyday lives, though never entirely absent, whilst in weak states, there are fewer barriers and greater opportunities for criminal strongmen, who see the pandemic more as an opportunity rather than as an ordeal. The same applies to terrorists, who have always used the aftermath of humanitarian emergencies to strengthen their ties in the communities and to leverage national governments for greater influence, as also demonstrated during the current pandemic.

## **5. Stability Policing plays a fundamental role in enforcing the RoL in fragile states.**

According to the 2010 NATO Strategic Concept, NATO will actively employ an appropriate combination of capabilities “to help manage developing crises before they escalate into conflicts, to stop on-going conflicts and to help consolidate stability in post-conflict situations where that contributes to Euro-Atlantic security”. (NATO summit in Lisbon 2010). The above-mentioned concept is also highlighted in the NATO Allied Joint Doctrine for Stability Policing - AJP 3.22, which states “*Stability Policing operations can be performed across the full spectrum of operations, and could start when the environment is still unstable*”. Indeed, in “*unstable states*”, the previous list of threats will likely deteriorate the rule of law and spoil the Peace Process; consequently, the Judiciary and LE structures could progressively lose their effectiveness. To this regard, one of the conclusions assessed in the Spoiler threats Assessment - summary report”, issued by NATO SP COE, was indeed, “*Stability Policing can play an important role in the early spoiler assessment and identification*

*phase and in putting in place effective mitigating measures against them, especially if the spoilers belong to categories such as Criminalized Power structures". The last sentence implies that the stability of these states depends, above all, on the commitment of their institutions to promote an acceptable standard of governance. The conditions may span from a failing to recovering state. In the "Failing States", the condition is still viable but it is characterized by a reduced capability and capacity to protect and govern the population. Based on the situation, a failing state may transition to a recovering or a failed state (AJP 3.22). The latter could more easily appear if the cause of threats are left unaddressed and lead to civil war or other conflict while institutions are unable to effectively govern and protect the population. In contrast, it will turn into a recovering state when general situation of the country is moving toward normalcy but may have an imperfect level of viability. To this regard, a key consideration is whether the population considers the level of protection and governance acceptable normal and legitimate. As NATO Allied Joint Doctrine for Stability Policing - AJP 3.22, quoted: "The prospect of long-term stable governance only occurs when influence is exercised over a population and territory by methods viewed as broadly legitimate by the majority of the governed. The rule of law, based on three pillars (LE, judicial, and correctional) must be addressed concurrently, is fundamental to legitimate governance, and may be institutionalized in varying forms dependent upon the social, cultural, and political characteristics of the particular society. Legitimacy is ultimately defined by the local population rather than by the externally imposed criteria.*

## **6. The security gap.**

One of the conclusions of the "Brahimi Report" (2000), which introduced the concept of the "security gap" and the requirement for a new peacekeeping structure, was that the lack of qualified and rapidly deployable police capacities resulted in a serious deficiency in several international peacekeeping and peace building missions. The policing gap illustrates the lack of indigenous police capability to provide a Safe and Secure Environment (SASE), public security and the RoL. Stability Policing is intended to close the policing gap. Indeed, the purpose of RoL operations is to foster security and stability for the civilian population by restoring and enhancing the effective and fair administration and enforcement of justice. To reach these targets there must be synchronization and synergy between efforts to restore, reform, and assist the court and legal system and efforts to restore, reform and assist the public safety system. A judicial system is powerless without an effective public safety system, while a public safety system is not legitimate without a fair and efficient judicial system. Here, SP assets conduct LE missions with the aim of establishing a SASE, come as support indeed, to better train and equip professional local LEAs as part of NATO's contribution to a comprehensive approach, which means a combination of military and non-military actors, such as NGOs, IOs, and local agencies along indigenous and international police forces. That implies a respected legal framework is essential to gain the support of the local population as a key element for the success of the mission. Indeed, "Throughout the spectrum of conflict the initial goal of stability policing is to re-establish and maintain sufficient security for the local populace. Secondly, stability policing re-establishes law and order and strengthens the rule of law through reinforcing local security institutions. In this view, lasting stability can be achieved, under the policing perspective, by preventing violence, protecting borders, personnel, key institutions, tackling organised crime, countering terrorism. Overall stability may only be achieved

*through a broad range of initiatives extending beyond policing activities. (NATO Allied Joint Doctrine for Stability Policing - AJP 3.22)*

Is it not the same case in the midst of a harsh pandemic? Developing sustainable good and sincere relations with the local population within the area of responsibility is a strategic goal that the Stability Policing assets must achieve. This will help insulate adversaries like criminals, terrorists or insurgents from the sane population. This last concept relies on the Peelian principles, which define policing by consent as base of the LE. In fact, according to Robert Peel's policing vision, "*Policing by consent*" indicates that the legitimacy of policing in the eyes of the public relies upon a consensus of support that follows from transparency about their powers, their integrity in exercising those powers and their accountability for doing so.

Also in NATO operations, RoL activities aim to foster security and stability for the civilian population and require a comprehensive approach, involving not only the Alliance but the whole international community and the Host Nation. Indeed, the Allied armed forces are playing a vital role in supporting national civilian responses. "*This support includes logistics and planning, field hospitals, the transport of patients, disinfection of public areas, and at border crossings. Moreover, NATO Comprehensive response plan includes all NATO capabilities in which Stability Policing might play a relevant role in collaborating with the LEAs of the Allies and Partners when they are affected by the pandemic outbreak. Through such a capability within the Alliance, the NATO members and partners might request the Alliance's support in terms of Stability Policing expertise for assisting in identifying ways that NATO might provide any support within their Nations, focusing mainly on a possible support to military and police forces involved in countering the pandemic challenges*". (NATO SP COE – COVID 19 LL Data Collection plan). Finally yet importantly, the primary responsibility for enforcing domestic criminal and public order law rests with police forces and GTFs, the latter are armed forces established to enforce the law and that, on its national territory, permanently and primarily conducts its activities for the benefit of the civilian population. This is why, in fragile/unstable states, the GTFs represent the suitable robust tool to ensure SASE and to strengthen the RoL by reinforcing local security institutions. In fact, "the rule of law, based on three pillars (law enforcement, judicial, and correctional) must be addressed concurrently. It is indeed fundamental to legitimate governance and may be institutionalized in various forms dependent upon the social, cultural, and political characteristics of the particular society. Legitimacy is ultimately defined by the local population rather than by externally imposed criteria (NATO Allied Joint Doctrine for Stability Policing - AJP 3.22).

## **7. Conclusions.**

As we said, the concept of RoL is something to achieve for all states, not just for fragile/unstable ones. It can play, at the same time, the fundamental role of enabler of peace, justice, and inclusion being able to provide a perimeter of legitimacy of the restrictive measures taken in response to the pandemic that hit every country in the world, ultimately bolstering their effectiveness through increased compliance. This implies that RoL also requires that law be understood as a cooperation of institutions. The same applies to NATO Stability Policing when deployed. Indeed, *just like a cooperative enterprise, the legislator, the officials and citizens have each one a specific role: to dictate general and practicable rules, to interpret them and apply them in a suitable way, and take them as a guide for his or her own behaviour.* (Viola F.

1997). In this regard, the effectiveness of government measures to contain the virus and Build Back Better depends, above all, upon the capacity of the LEAs, to provide transparent effective and accountable actions, in adherence with the rule of law. In fact, the latter nurtures trust in institutions and underpins a social contract among citizens, both indispensable to solving a public health crisis like the COVID-19 pandemic in which a collective approach is the only way to contain and control the disease. Whenever deployed in unstable state, during emergency crises or in the normalcy, with the largest impact on the day-to-day lives of the population, LEAs fundamental role must remain to provide the feeling of security and justice by acting in favour to the populace, according to three principles: legality, accountability and transparency. With the same assumptions, Stability Policing plays an active role in fragile states whenever given an executive mandate bestowed by the UN Security Council Resolution through the Alliance. In the stormy sea created by huge emergencies, the RoL must remain the beacon that orients navigators and offers law based responses to the crisis.

## References

- Colvin M. 1992 in “The penitentiary in crisis: from Accommodation to Riot in New Mexico” Albany N.Y. State University of New York press.
- Eisentraut S., Kabus J., Mieke L. (2020) “A World Ill-Prepared”, retrieved from “Poly pandemic” edited by Munich Security Report Special Edition on Development, Fragility, and Conflict in the Era of Covid-19
- European Council – Council of the European Union 2020 Report on the comprehensive economic policy response to the COVID-19 pandemic retrieved from <https://www.consilium.europa.eu/it/press/press-releases/2020/04/09/report-on-the-comprehensive-economic-policy-response-to-the-covid-19-pandemic/>
- International Development Law Organization (IDLO) 2020 in “Rule of Law and Covid-19 Policy Brief
- Locke J. (1690) The Second Treatise of Government, C.B. McPherson ed. (Cambridge 1980) chapter 6, paragraph 57
- Luhrmann A. & Rooney B. (2020) ‘Autocratization by Decree: States of Emergency and Democratic Decline’, 2020, pages 1 and 11, retrieved from [https://www.v-dem.net/media/filer\\_public/31/1d/311d5d45-8747-45a4-b46f-37aa7ad8a7e8/wp\\_85.pdf](https://www.v-dem.net/media/filer_public/31/1d/311d5d45-8747-45a4-b46f-37aa7ad8a7e8/wp_85.pdf).
- <https://globalinitiative.net/analysis/covid-19-strengthen-civil-society-in-a-time-of-unprecedented-change-and-undermine-criminal-governance/>
- MUSUMECI M.& MARELLI F. 2020 How organized crime is expanding during the covid-19 crisis – United Nations Interregional Crime and Justice UNICRI)
- NATO Allied Joint Doctrine for Stability Policing, AJP 3.22
- NATO summit in Lisbon, 19-20 Nov 2010 Active Engagement, Modern Defence: Strategic concept for the defence and security of the members of the NATO, adopted by heads of state and government
- NATO SP COE Assessment of Spoiler Threats 2020 LL Branch - Summary Report <https://nllp.jallc.nato.int/Pages/HomePage.aspx>

- NATO SP COE – COVID 19 LL Data Collection plan  
<https://nllp.jallc.nato.int/Pages/HomePage.aspx>
- RAND ORG – “Legitimacy Policing in Depth” retrieved from [better-policing-toolkit/all-strategies/legitimacy-policing/in-depth.html](https://www.rand.org/pubs/tools/2019/04/legitimacy-policing-in-depth.html)).
- United Nations, Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies (2004)
- United Nations, COVID and the Rule of Law: A dangerous Balancing Act.  
<https://www.un.org/fr/node/80635>)
- United Nations Violence Against women during Covid 19 (2020)  
[www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19](https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19)
- Viola F. 1997 – The rule of law in legal pluralism retrieved from Law and Legal culture in the 21<sup>st</sup> Century, Diversity and Unity, ed.by T.Gizbert-Studnicki and J.Stelmach , 23<sup>rd</sup> Iv World Congress (1-6,2007, Cracow) Ofcyna, Warsawa, pag.106
- Youngs R.& Panchulidze E. 2020, ‘Global Democracy & COVID-19: Upgrading International Support’, retrieved from: [http://carnegieendowment.org/files/Global\\_democracy\\_covid-19\\_report\\_FINAL\\_WEB](http://carnegieendowment.org/files/Global_democracy_covid-19_report_FINAL_WEB)

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During his 37 years long career in the Carabinieri Corps, he was deployed with different operational national assignments and overseas. Cap. CODISPOTI also served four years at Eurogendfor HQ as Intel Assistant (2008-2012). In 2018 he graduated with the rank of Second lieutenant at the Carabinieri Officers School in Rome and in 2021 he holds the rank of Captain. Since 2018 Cap. CODISPOTI holds the position of Lessons Learned Staff Officer at the NATO SP COE in Vicenza.

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