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Building the Rule of Law: Security and Justice Sector Reform in Peace Operations

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Over the past decade, promoting the rule of law has emerged as a central function of peacekeeping.¹ To undertake it, missions are increasingly mandated to undertake security and justice sector reform (SSR and JSR). Every UN-mandated peacekeeping operation deployed since 2001 has been authorized to support—if not directly implement—such reforms, whether to extend state authority, bring to heel abusive security agencies, or reestablish law and order.

Beyond UN peacekeeping operations, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe, the World Bank, the International Criminal Police Organization, and a multitude of bilateral and nongovernmental organizations are all active in some aspect of building the rule of law. These activities—conducted by a global pool of some 16,000 police and civilian peacekeepers—include restructuring security agencies; vetting, training, and mentoring security and justice sector personnel; modernizing corrections systems; redrafting legal frameworks; rebuilding courthouses, police stations, barracks, and other infrastructure; reestablishing human resource, financial, and procurement systems; and strengthening civilian oversight mechanisms.

Despite this considerable attention and contribution of resources, it is acknowledged that these activities are still in their infancy,² with much to be learned at the strategic and tactical levels. As a consequence of the relatively rapid evolution of rule of law activities in peacekeeping contexts over the past decade, best practices and lessons learned reflect a record of engagement that is largely disorganized and often poorly conceived.³ Strategic coordination remains largely elusive. Security and justice

sector reform programs, to their detriment, remain overwhelmingly technical in approach, despite the fundamentally political nature of the task—yielding slow and often unsustainable progress.

Understanding of how peace operations can *successfully* contribute to the rule of law is still emerging. This stands in direct contrast to high and growing demand. As the large—and expensive—military peacekeeping deployments of the first half of the 2000s give way to greater stability (or increasing political and financial pressure for drawdown), the need for expertise in building the rule of law for a sustainable handover to national authorities will continue to increase. This is as true for Haiti, the Democratic Republic of Congo, Timor-Leste, and Kosovo as it is for Somalia and potentially for southern Sudan in the coming years. Meanwhile, building the rule of law has taken on a new global saliency where drug trafficking and organized crime threaten to overwhelm nascent state institutions and undermine stability, or where terrorist groups operate in lawless areas.

This thematic chapter identifies three sets of political, operational, and institutional challenges that may temper expectations of the reforms that peace operations can realistically deliver. At the strategic level, security and justice reform are fraught by concerns of national sovereignty among many recipient governments, as well as by an emphasis on developing state institutions despite widespread public reliance on nonstate and customary service providers. Operationally, poorly coordinated donor assistance has resulted in underaddressed areas, like corrections, that have diminished reforms in other areas, like the judiciary. Meanwhile, the relatively short time frame of peacekeeping

operations necessitates handover of reform efforts to partners, but with inadequate guarantees of sustained funding. Last, institutionally, the UN and other actors are unable to meet the growing demand for SSR and JSR due to a shortage of international expertise, as well as inadequate and insufficiently flexible financing.

Rule of Law and Security Sector Reform in Peacekeeping: Conceptual Framework

The concept of rule of law is the subject of seemingly endless definitional debates,⁴ but for the purposes of this chapter, we use a definition that is broad in its terms and technically inclusive. To quote former Secretary-General Kofi Annan:

[The rule of law] refers 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 rights norms and standards. It requires, as well, 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.⁵

Establishing the rule of law as so conceived is an ambitious goal, particularly for countries emerging from years of armed violence—societies where, even prior to conflict, these principles often had a weak hold if they existed at all. Building the rule of law is by necessity a multidimensional process, requiring a holistic approach across mutually reinforcing components of the security and judicial systems. In its fullest sense, establishing the rule of law includes political mediation, constitution-making, and good governance. However, with these challenges in mind, this chapter is purposely narrow in scope. Although it briefly addresses related issues of disarmament, demobilization, and reintegration (DDR), governance and public administrative

reform, and transitional justice, the focus is on the delivery of security and justice sector reform by multidimensional peace operations. The security and justice sectors, authorized to impose sanctions and use force, bear special responsibility for upholding—or undermining—the rule of law. The goal is neither to analyze the normative underpinnings of security and justice reform, nor to resolve conceptual boundaries—for example, between rule of law and good governance—but rather to analyze an emerging trend in peace operations.

The Organization for Economic Cooperation and Development (OECD) has led the emerging policy and implementation framework for security sector reform, and OECD members are among the leading providers of SSR assistance. The OECD's definition for SSR is “those activities seeking to increase partner countries' ability to meet the range of security needs within their society in a manner consistent with democratic norms and sound principles of governance, transparency and the rule of law.” Similarly, the UN defines SSR as “focus[ing] on building effective, accountable and sustainable security institutions that operate within a framework of the rule of law and respect for human rights.” No similarly concise definition for “justice sector reform” has gained widespread usage.⁶

Disarmament, demobilization, and reintegration in postconflict environments, where weapons are plentiful and are a means of securing livelihoods and power, is often a necessary first step in asserting the rule of law over the “rule of the gun.”⁷ How to deal with ex-combatants has immediate implications for both SSR and postconflict justice. Indeed, there is frequently a fundamental tension between the DDR process and SSR/JSR reforms: the need to win the trust and secure the commitment of ex-combatants to the peace process—for example, via integration into the security sector—and the need to establish accountability for past and ongoing violations in order to instill public trust in security and justice institutions, and in government more generally. Similarly, there may be contradictions between the political benefits of

initially maintaining oversized or officer-heavy security sectors and what the government can financially sustain.

Rule of Law in Peacekeeping Contexts: From Dearth to Ubiquity

Prior to the 1990s, the majority of peacekeeping operations were deployed to guarantee cease-fires and peace accords between states. As a result, between 1960 and 1990, UN peacekeeping missions undertook very few SSR and JSR activities.⁸ There were notable exceptions, however. The UN Operation in the Congo (ONUC), which deployed in 1960, was mandated with the authority to assist the Republic of Congo's government in establishing and maintaining an environment where law and order would prevail and to provide the government with support in strengthening its security forces.⁹ It would be nearly three decades before another mission was explicitly mandated to restructure the police.¹⁰ That reform of the judicial and security sectors of what is now the Democratic Republic of Congo (DRC) remains a central priority for both the UN and the European Union in the country today, demonstrating the immense challenges that establishing the rule of law poses in practice.

The Emergence of Security and Justice Sector Reform as Peacekeeping Activities: 1989–1999

At the end of the 1980s, explicit security and justice reform activities began to emerge in response to the changing nature of the conflicts in which UN missions were deployed. In contrast to traditional peacekeeping missions, the overwhelming majority of peace operations deployed since 1990 have followed internal conflicts. Most of these conflicts have occurred in weak states with minimally credible or effective state institutions. Consequently, comprehensive efforts to reestablish the rule of law rapidly expanded in scope and complexity.

During the 1990s, security and justice sector reform activities evolved from novelty to convention. The UN's Department of Peacekeeping

Operations (DPKO) deployed missions with SSR and JSR components of three types:

- *Passive*: continued “monitoring” of the police, similar to previous mandates to monitor the military;
- *Active*: more authoritative roles in training and restructuring police, as well as in establishing, refurbishing, and monitoring correctional systems;
- *Executive*: most authoritative role, in which the mission holds considerable if not total operational authority for the security and justice sectors.¹¹

In 1991, the United Nations authorized deployment of its police to *mentor* and *train* national police as part of the UN Observer Mission in El Salvador (ONUSAL)—the first such mandate since the early 1960s.¹² While anomalous at the time, the ONUSAL mandate set a precedent for structures and mandates that would become typical of peacekeeping missions from then on. As the decade continued, this more authoritative approach became the most common means by which the UN supported justice and security sectors.¹³

From 1995 to 1999, the Security Council authorized four missions in Haiti focused on police capacity building and reform.¹⁴ Recurrent efforts in Haiti demonstrated the need for holistic approaches to security and justice. Despite early UN success in recruiting, training, and mentoring the new Haitian National Police, its integrity and professionalism were gradually undermined by the absence of equivalent progress in the judiciary and correctional system. Senior police commanders were subjected to intense pressure by politicians and political elites, highlighting the risks of technical reform without concomitant political reform. By the time the UN Stabilization Mission in Haiti (MINUSTAH) deployed in 2004, most past progress had been lost.¹⁵

The late 1990s saw the most dramatic shifts in mandating trends, when the Security Council authorized peace operations with full executive authority, including for the provision of security and justice. It was under the two executive

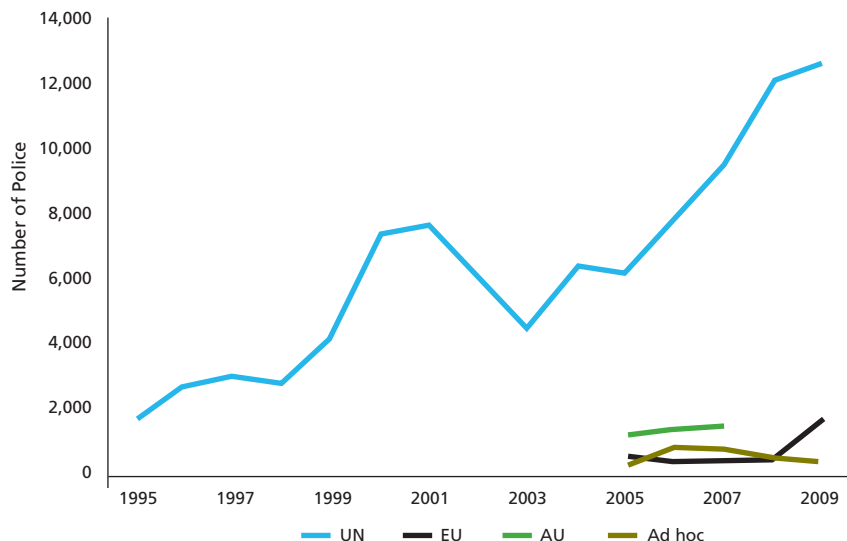
missions deployed to East Timor (UN Transitional Administration in East Timor [UNTAET]) and Kosovo (UN Interim Administration Mission in Kosovo [UNMIK]) in 1999 that the extent of international responsibility and intrusiveness for establishing the rule of law reached a new height.

The East Timor and Kosovo deployments alone caused a threefold increase in the total number of UN police deployed internationally, from 2,539 at the start of 1999 to nearly 8,000 at the start of 2001. In both instances, UN police were deployed not only to support local authorities and build local police forces, but also to maintain law and order. UNMIK, and later UNTAET, also deployed the first of the UN's formed police units—teams of 140 police officers who were trained, armed, and equipped for crowd control. With these units, the UN obtained a rapid response capability for a wide range of high-risk situations and threats to public order, where a police rather than a military response is more appropriate. These deployments demonstrated the utility of formed police units in future postconflict environments, but also suggested necessary improvements in standards and training.¹⁶

Yet despite the fact that these missions deployed for over a decade (in the case of Kosovo) and redeployed following a security crisis (in Timor-Leste), reforms resulting in effective and legitimate security and justice institutions continue to face significant challenges in both mission environments. While the Kosovo Police Force is regarded by many as one of the UN's few SSR success stories, the experience in Timor has been much less positive. As the UN handed over more responsibility to Timorese authorities in 2009, long-standing divisions among military and police security providers still remained, and police capacity was well below standard.¹⁷

These two missions, regardless of their mixed operational performance, secured the building of rule of law systems as a core peacekeeping task. Their eventual withdrawal (Kosovo) and drawdown (Timor-Leste) also underscored the need to develop the capacity of national state institutions before handing over responsibility to them, which requires additional expertise beyond the administration of security and justice, as well as the challenges of simultaneously managing both.¹⁸ These experiences formed case studies for the central message of the UN's 2000 report on peace operations

Police Deployed in Global Peace Operations: 1995–2009



(the Brahimi Report), which made a number of recommendations aimed at evolving the doctrinal focus of UN peace operations toward building the rule of law and suggested creating the requisite coordination and resource elements to support these goals.¹⁹

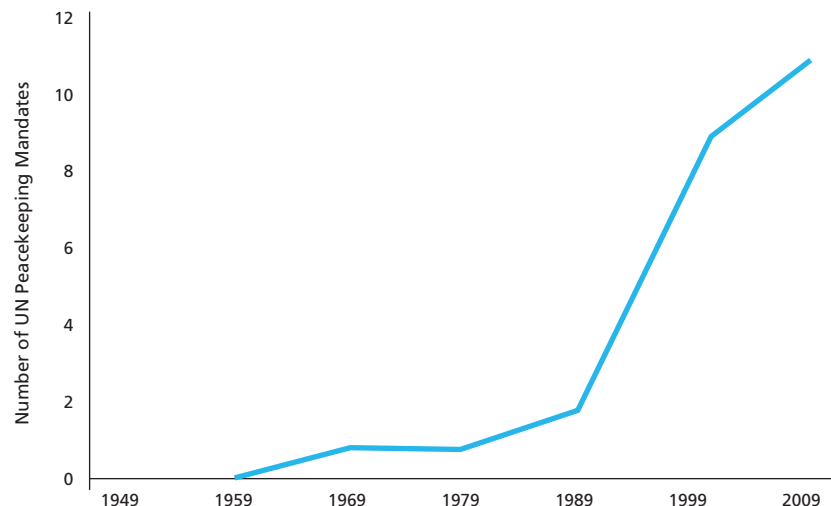
Comprehensive Security and Justice Reform Mandates, and Their Limits: 2000–Present

In the 2000s, the rule of law increasingly became an explicit goal of—and organizing principle for—peacekeeping. Among extant UN peacekeeping missions, all of those established since 2000 are mandated (some explicitly, others implicitly) with security and justice sector reform activities, compared with only 25 percent of those established between 1948 and 1999.²⁰ But the past decade also has underscored the complexity—if not the limits—of UN and other international efforts to undertake security and justice reform in unstable environments. Multiple, extended peacekeeping engagements in Timor-Leste have failed to address tensions between security forces, while reform initiatives have been gradually marginalized by the government. In Afghanistan and the DRC, where strengthening rule of law is urgently needed to

improve protection of civilians from violence and instill confidence in the state, costly security and justice reform programs have at best achieved mixed results, and have at worst contributed to insecurity.

There have been some notable successes, of course. In Sierra Leone, for instance, the government of the United Kingdom initiated a far-reaching security sector reform program, with operational support from the Economic Community of West African States (ECOWAS) and in parallel with the UN Mission in Sierra Leone (UNAMSIL) in 2002.²¹ While conflict remains a threat, a high level of engagement helped stabilize Sierra Leone and, in part, facilitated the withdrawal of UNAMSIL by the end of 2005, allowing for the insertion of a significantly lighter UN operation concentrated on longer-term peacebuilding. The Sierra Leone intervention has informed subsequent rule of law–related mission mandates elsewhere in West Africa, including Côte d’Ivoire and Liberia. Evaluations, however, suggest that its successes are due more to long-term, high-level UK political and financial commitment and the absence of conflicting donor agendas, than to an overarching strategy.²² The UK effort, despite being widely held as a model of effective support, is atypical.

Appearance of Security and Justice Sector Reform in UN Peacekeeping Mandates: 1949–2009



Box 1.1 West Africa Coast Initiative

The West Africa Coast Initiative (WACI) was launched on 9 July 2009 as part of a broader initiative by the Economic Community of West African States (ECOWAS), the “Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crime, and Drug Abuse in West Africa for 2008–2011.” WACI coincided with the release of a UN Office of Drugs and Crime (UNODC) report, “Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment,” which identified the numerous areas of illicit activities in the region and their broader impact. The report revealed that progress toward regional stability was severely undermined by smuggling of oil, arms, toxic waste, diamonds, people, and drugs, combined with rampant corruption and weak state institutions.

WACI is a joint technical assistance program aimed at helping states address criminal networks and illicit activities by strengthening national and regional

capacities in rule of law. It incorporates the collective expertise of regional actors and contributing partners with the expertise of national actors as a way of mitigating and diminishing the threat of organized crime in the region and globally. The initiative is a unique collaboration between ECOWAS, UNODC, the UN Office for West Africa (UNOWA), the UN Department of Peacekeeping Operations (DPKO) through its peacekeeping operations in the region (UN Operation in Côte d’Ivoire [UNOCI], UN Mission in Liberia [UNMIL]), the UN Department of Political Affairs (DPA), and the International Criminal Police Organization (INTERPOL).

The broad initiative proposes to strengthen national rule of law capacities by implementing capacity-building programs in four postconflict countries—Guinea-Bissau, Sierra Leone, Liberia, and Côte d’Ivoire—with the possibility of adding Guinea as a fifth. In these countries, WACI teams will establish

transnational crime units (TCUs), a model based on previous successes and lessons learned from the UNODC’s activities in other regions. TCUs will help build and develop national intelligence bodies, international coordination, surveillance, and investigation with five other programs operating separately yet in coordination with the TCUs. These programs will focus on specific components of the rule of law system: judiciary and prosecution, forensics, law enforcement and capacity building, border management, and money laundering.

Ultimately, WACI’s effectiveness will be measured by its ability to adequately enhance state institutions in practice. The initiative is ambitious in terms of the level of coordination required from the multitude of actors involved. Nevertheless, the implications for leaving these threats to regional stability unaddressed could have severe global impacts.

Indeed, it is in the Democratic Republic of Congo that the ability of the United Nations to assist reform, together with its many partners—Congolesse authorities, the European Union, the World Bank, and an array of bilateral actors (including South Africa, the United States, France, Belgium, Angola, and China)—has been most severely tested. In October 2004, the revised mandate of the UN Organization Mission in the Democratic Republic of Congo (MONUC) included establishing a joint SSR commission with the Congolesse government. The 2008 mandate, moreover, clearly articulated the mentoring and training of the national police and the Forces Armées du République Démocratique du Congo (FARDC) by MONUC, thus reinforcing norms of international humanitarian law, and stressed the need for coordination with the two EU security sector reform operations in the DRC.²³ This enhanced mandate

established MONUC, with nearly 30,000 military and police personnel, as not only the main provider of public security in the country, but also a primary component of the effort to build the DRC’s security forces. It also called for MONUC to support the strengthening of democratic institutions and the rule of law in coordination with the UN’s Country Team and Congolesse authorities. But coordination among disparate international justice and security sector actors in the DRC remains limited without a common strategic vision to drive donor engagement.

The SSR process in the Democratic Republic of Congo (covered in more detail in this year’s DRC Mission Review) has lacked genuine engagement by national political and military leadership, for whom reform of the security and justice sectors threatens their power and encroaches on sources of income. The result has

been an ad hoc development of the FARDC force.²⁴ Nor was MONUC provided with resources commensurate with its mandate; while the Security Council's response to the 2008 Kivu crisis included authorizing an additional 2,750 troops for MONUC and 300 new members for its formed police units, there was no mention of augmenting civilian expertise.²⁵ Furthermore, the decision authorizing MONUC to conduct joint operations with the FARDC—which continues to pose a significant threat to local populations and has served to prolong the conflict—has eroded public perceptions of the mission, and of UN peacekeeping more broadly.

Political, Operational, and Institutional Challenges

Gathering best practices and lessons learned on establishing the rule of law in peacekeeping contexts is a difficult task. On the one hand, time militates against establishing a functioning rule of law system within the life-span of a peacekeeping operation. Furthermore, the majority of peace operations mandated to support the rule of law still remain in the field. On the other hand, the *sui generis* contexts of peacekeeping operations militate against readily transferable practices. Nevertheless, this review of the evolving role of peace operations in building the rule of law does point to a series of recurrent political, operational, and institutional challenges that may be instructive to future efforts, particularly as demand is likely to increase.

Political Challenges: Sovereignty, Consent, and the Nature of the State

As described at the outset, building the rule of law involves much more than training judges and police, updating legal codes and statutes, or downsizing the military. It involves changing how power is exercised and distributed in society, as well as the relationship that elites and the broader population have with the state and its security and justice systems. In this respect, obtaining and maintaining the consent and cooperation of stakeholders—whether ministers, judges, commanding officers, rank-and-file

soldiers or police, or citizens—is a central political challenge for peace operations engaged in building the rule of law, and complicated by the frequent presence of elites responsible for instability in transitional governments.

Acquiring the consent of the host country to operate is one of the founding principles of peacekeeping. In missions where building the rule of law is the stated goal, there are two potential contextual extremes: weak states with dysfunctional—or nonexistent—formal justice and security sectors—such as Afghanistan, the DRC, Haiti, Timor-Leste, Liberia, and Sierra Leone; and on the other hand, strong states, such as Sudan and Chad, where governments have been unwilling to acquiesce to international intervention and rule of law operations have been rebuffed as an infringement of sovereignty. Across this continuum, SSR and JSR are resisted by—or manipulated to serve the needs of—relevant national elites where they are perceived to threaten core interests.

Even where consent is granted, there is no guarantee that it will endure through the life-span of a peace operation. Declining consent, combined with the weariness of local authorities that have experienced lengthy or repeated international intervention by UN operations, as in Kosovo, the DRC, and Timor-Leste, have resulted in a gradual erosion of the influence and legitimacy of peace operations. More dramatically, in the case of MONUC, these factors have led to a deterioration of the security situation.

Closely related to consent is the principle of “local ownership” over a reform process. Engaging local stakeholders is a core tenet of SSR as elaborated by both the OECD and the UN. But the precise nature of this ownership has sparked considerable debate. Laurie Nathan, for one, has argued that security reform must be designed, managed, and implemented by actors from within the host society rather than from outside.²⁶ Where elites implicated in violence remain in positions of power, however, limited channels for citizens to voice their needs and concerns may be further constrained by fear of reprisal. In such environments, there is often pressure for peace operations to bypass broad

local ownership in order to achieve politically expedient reforms deemed necessary for short-term stability and the withdrawal of foreign forces.²⁷

Despite the political underpinnings of reform, the UN and other actors have demonstrated an overemphasis on the technical aspects of rule of law interventions. While strengthening the capacity of justice and security institutions allows for tangible and thus quantifiable progress—as Haiti and Timor-Leste have demonstrated—such capacity will remain superficial without commensurate political progress, strategic vision, and adequate resources.

Nor are politics confined to the field; protection of sovereignty is a contentious political issue at UN headquarters, as well. As the 2008 debates by the UN Special Committee on Peacekeeping Operations demonstrated, many states remain wary of external, predominantly Western involvement in security and justice reform. The UN Secretary-General's report on SSR, which provided a framework for UN missions, identified local ownership as a core tenet (as also identified by the OECD), but also underscored these political sensitivities.²⁸ The challenge that SSR presents to the sovereignty of a nation should not be overstated, however. Quite deliberately, the majority of peace operations are designed to extend, rather than limit, the authority of states.

Support to nonstate security and justice provision. Perhaps the greatest conceptual and operational weakness of existing reform efforts is that they tend to be informed by donors' own institutional and administrative experiences, rather than by the political, economic, and social realities of recipient countries. Bilateral and multilateral security sector reform efforts have focused overwhelmingly on *state* institutions. This is not surprising given the emphasis on states in the international order. Yet at least 80 percent of security and justice provision in postconflict countries occurs through nonstate actors and traditional institutions.²⁹ Strengthening customary or nonstatutory institutions can often provide accessible,

predictable, fair justice where states have historically had a weak hold over their territory. International support for customary or nonstatutory security and justice systems may be a step toward rectifying weak state legitimacy by explicitly enabling citizens to choose their own forms of security, but some governments, like that of the DRC, are resistant to efforts that may appear to undermine consolidation of state authority. Whether and how to approach nonstatutory systems—particularly in the context of statebuilding—is a major challenge for the UN and other actors.

Operational Challenges: Coherence and Time Frame

Coherence and coordination. That multiple actors will be working in the same operational theater on mutually reinforcing elements of a given rule of law system is not a novel concept for peace operations.³⁰ But despite heightened engagement and the development of frameworks for delivery, the operational capability of the international community to both coordinate and deliver on these ambitious goals within the time constraints of a peacekeeping context is far from certain, if not severely in question. This remains true of nearly every major operation covered in this volume, from Somalia and Afghanistan to the DRC and Kosovo. The planning process for the joint, multidimensional presence of the EU Force in the Republic of Chad and the Central African Republic (EUFOR TCHAD/RCA) and the UN Mission in the Central African Republic and Chad (MINURCAT) is instructive, as separate planning processes yielded different points of concern and challenges to creating shared objectives.³¹

The establishment of the Justice and Security Sector Advisory Coordination Cell (JSSACC) for the UN Mission in Sudan (UNMIS) during 2009 showed some progression toward more formalized coherence of donor security and justice assistance delivery. Through the JSSACC structure, UNMIS (together with

the UN Development Programme [UNDP]) serves as the coordinator for multiple bilateral and institutional assistance programs aimed at developing southern Sudan's justice and security sectors. While this may create heightened alignment among diverse actors, offering a potential model for remedying a recurrent challenge, its immediate operational impact is yet to be seen.

Time frame. Reestablishing the rule of law is not a quick process. It exists in direct tension with the time-bound character of peacekeeping operations. It is improbable that a comprehensive rule of law system will be developed within the duration of a peacekeeping operation. Recent rule of law–focused missions have nonetheless demonstrated the importance of initiating security and justice reform as early as possible during the immediate postconflict phase in order to gain the confidence and trust of the population and elites, to mitigate the emergence of organized crime, and to capitalize on donor attention, financing, and political will, which are greatest immediately after the signing of a peace agreement and deployment of a peace operation. This period does not last long, however, jeopardizing the sustained attention required for success.³² Inadequate time and uncertain sustained funding require missions to prioritize handing over elements of their work to more specialized groups, like European police missions, or to host governments, which will ostensibly carry on reform after a mission departs. Moreover, the absence of meaningful benchmarks and indicators has hindered transition and evaluation of progress alike.

*Institutional Challenges:
Integration, Expertise, and Financing*

Integration. The range of the DPKO's civilian expertise at "statebuilding" tasks has grown over the past decade, bringing significant resources to bear in postconflict environments. But its mission remains confined to such environments, and under short-term mandates.

In 2007, the DPKO established the Office for Rule of Law and Security Institutions (OROLSI), which brought together its police division with DDR, SSR, criminal justice and corrections, and de-mining under one Assistant Secretary-General.³³ Since the establishment of OROLSI, the DPKO has been the UN lead for security sector reform. The UNDP, with its long-term country presence and development mandate, has comparatively less capacity and fewer resources. Coordination between the two at UN headquarters, and with other agencies and departments (including the UN Office on Drugs and Crime [UNODC], the Office of the High Commissioner for Human Rights [OHCHR], and the UN Development Fund for Women [UNIFEM]), has gradually improved through the establishment of an interagency working group.

The extent of the DPKO's own coherence and its staffing resources should not be overstated, however. Within OROLSI, overlapping mandates, at times, have strained coordination. The extent to which OROLSI's SSR team (professional staff of six) and criminal justice and corrections office (five) are able to provide direct support to fifteen UN peacekeeping missions (let alone a growing number of peacebuilding and special political missions) is also constrained. In the field, the extent of actual integration both within the UN, and among itself, international financial institutions, and lead donors, remains inadequate, as neither the DPKO nor any other UN entity has sufficient bureaucratic leverage—or control of financial resources—to coherently orchestrate the various actors within the UN and beyond. This problem is without ready solution, and significantly weakens the leverage of the international community in a fragile environment.

Expertise. As Security Council mandates for peacekeeping have grown increasingly multidimensional, the requirement for qualified civilian expertise has grown apace. Yet the dearth of qualified personnel poses a serious challenge to mounting security and justice reform–oriented missions. Moreover, the UN,

EU, NATO, and bilateral organizations are all competing for the same limited pool of experts. In Afghanistan, for instance, a shortage of police trainers for the EU's police mission there has resulted in an overreliance on military trainers. Some countries, including Australia, Canada, and Norway, have established models for international police deployment. Others, like the United States and United Kingdom, are in the process of developing them. The UN has begun to address rapidly deployable rule of law capacity through the development of a small standing police team, established in May 2007. OROLSI is also exploring the creation of a similar rapidly deployable team, comprising justice, corrections, and other rule of law–related expertise.

A further challenge is the rule of law capacity of the South, which donors have generally failed to support, strengthen, and utilize. Expertise in SSR is not the monopoly of Northern experts. The number of countries that have undertaken different elements of rule of law is growing. Many, like Indonesia and the Philippines in Southeast Asia, or Ghana, South Africa, and Nigeria in anglophone Africa, have expertise within government and civil society that could be offered to other countries in their respective regions that have similar historical experiences and face similar problems.

Financing. There are two issues regarding financing of security and justice sector reform in peace operations. First, such reform is historically underfunded, posing a fundamental challenge to the operational impact of building the rule of law. Second, the mechanisms for delivery of funds are outdated. In DPKO operations, justice and security sector assistance is funded through the assessed budget for peacekeeping—but without the flexible funds needed to deliver field-level programs. As a result, mission staff cannot quickly launch capacity-building exercises or build infrastructure without depending on unpredictable

voluntary contributions. One logical division would be to fund mission-critical tasks from assessed funds, and noncritical tasks from voluntary funds, but defining what is critical depends on an agreed definition of success—something that is still lacking.

Conclusion

Security and justice sector reform is at a crossroads. The current demand for activities to enhance the rule of law is set to expand in environments afflicted by conflict and serious crime alike. Yet despite the accumulated experience of international rule of law assistance over the past two decades, the UN, other multilateral organizations, and bilateral donors still have insufficient knowledge, capacity, and resources to deliver consistently effective and sustainable reform.

The global economic downturn, moreover, will limit available donor resources for supporting security and justice sector reform, even while heightening their importance as declining citizen incomes fuel criminality and instability and declining government revenues undercut safety nets, services, and security agencies. More efficient and more effective methods and modalities—including alternatives to heavy peace operations and reliance on Western expertise—will be required if security and justice reform is to prove sustainable.

At the same time, states do have legitimate security objectives beyond guaranteeing the safety of their citizens. In several regions, the threat of conflict spillover or of external aggression is real. Organized crime and terrorism pose significant challenges, particularly to weak states in which they may find a foothold. Helping states address these threats through more effective security and justice institutions, while maintaining (if not improving) their responsiveness to local needs and other competing security and fiscal priorities, is a delicate but critical balance.

Notes

1. Since 2000, the discourse within the UN on the primacy of establishing the rule of law, including reform of the security sector in immediate postconflict settings, has been the subject of multiple landmark UN documents and reports broadly related to peacekeeping and peace operations. See generally, *Report of the Panel on United Nations Peace Operations*, UN Doc. A/55/305-S/2000/809, 21 August 2000; *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, August 2004; *2005 World Summit Outcome*, UN Doc. A/RES/60/1, 24 October 2005; *Report of the Secretary-General—Uniting Our Strengths: Enhancing United Nations Support For the Rule of Law*, UN Doc. S/2006/980, 14 December 2008; *Report of the Secretary-General—Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform*, UN Doc. S/2008/39, 23 January 2008; *United Nations Peacekeeping Operations: Principles and Guidelines* (Capstone Doctrine), 2008, http://pbpu.unlb.org/pbpps/library/capstone_doctrine_eng.pdf; *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict*, UN Doc. S/2009/304, 11 June 2009; *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, 2009, <http://www.un.org/depts/dpko/dpko/newhorizon.pdf>.

2. For sixty years the UN has engaged in developing international norms and standards in regard to the rule of law, and demand continues to grow. Despite this history, and the significant progress made in operationalizing rule of law activities, engagement at the country level remains ad hoc. United Nations, *Title*, UN Doc. A/63/226, 6 August 2008, pp. 5–7.

3. See, for example, Scott Carlson, *Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons Learned Study* (New York: United Nations, DPKO, Peacekeeping Best Practices Section, March 2006); Heiner Hänggi and Vincenza Scherrer, *Recent Experience of UN Integrated Missions in Security Sector Reform (SSR): Review and Recommendations (Final Report)* (Geneva: Centre for the Democratic Control of Armed Forces, November 2007), p. 1.

4. T. Carothers, “Rule of Law Temptations,” *Fletcher Forum of World Affairs* 33, no. 1 (Winter–Spring 2009): 52.

5. United Nations, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, p. 4, para. 6.

6. In fact, there is a tendency—particularly within the UN—to conflate “rule of law” with “justice reform,” as evidenced by both substantive “rule of law” units and occupational categories.

7. DDR emerged as an element of UN peacekeeping in 1989 within the UN Observer Group in Central America (ONUCA). United Nations, *Report of the Secretary General—The Role of the United Nations Peacekeeping in Disarmament, Demobilization, and Reintegration*, UN Doc. S/2000/101, February 2000, p. 3.

8. UN Police, Peace and Security Section of the Department of Public Information, Department of Peacekeeping Operations, <http://www.un.org/depts/dpko/police/index.shtml>. There are, however, some early examples. The UN Peacekeeping Force in Cyprus (UNFICYP), established in 1964, was “to contribute to the maintenance and restoration of law and order” (UN Security Council Resolution 186 [1964]). Similarly, in 1978, the UN Interim Force in Lebanon (UNIFIL) was established with a mandate of “assisting the Government of Lebanon in ensuring the return of its effective authority in the area” (UN Security Council Resolution 425 [1978]). These missions remained the exception until the end of the Cold War.

9. “The Secretary-General [is authorized] to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as might be necessary until, through that Government’s efforts with United Nations technical assistance, the national security forces might be able, in the opinion of the Government, to meet fully their tasks.” UN Security Council Resolution 143 (1960).

10. In 1991, the UN Observer Mission in El Salvador (ONUSAL) authorized training and mentoring of police.

11. Of the thirty-four missions established during the decade, sixteen included SSR and JSR components: four were asked to “verify the neutrality of the police” or “monitor” the implementation of agreed reforms (passive mandates), eight included security sector or justice sector reform activities such as capacity building and restructuring (active mandates), and four were given transitional authority to establish and lead national police forces (executive mandates). The four passive missions were: UN Angola Verification Mission (UNAVEM) II, UN Operation in Mozambique (ONUMOZ), UNAVEM III, and UN Observer Mission in Angola (MONUA). The eight active missions were: UN Observer Mission in El Salvador (ONUSAL), UN Mission in Haiti (UNMIH), UN Mission in Bosnia and Herzegovina (UNMIBH), UN Support Mission in Haiti (UNSMIH), UN Transition Mission in Haiti (UNTMIH), UN Civilian Police Mission in Haiti (MIPONUH), UN Mission in the Central African Republic (MINURCA), and UN Organization Mission in

the Democratic Republic of Congo (MONUC). The four executive missions were: UN Transitional Authority in Cambodia (UNTAC), UN Transitional Authority in Eastern Slavonia, Baranja, and Western Sirmium (UNTAES), UN Transitional Administration in East Timor (UNTAET), and UN Interim Administration Mission in Kosovo (UNMIK).

12. UN Security Council Resolution 693 (1991); UN Security Council Resolution 729 (1992).

13. The UN Mission in Bosnia and Herzegovina, for example, established in 1995, included the International Police Task Force (IPTF), which was responsible for the reform and restructuring of the local police, as well as monitoring the police and other security sector agencies. See <http://www.un.org/depts/dpko/missions/unmibh/background.html>.

14. UN Security Council Resolution 975 (1995); UNMIH was originally authorized in 1993 by Resolution 867; however, the mission never deployed. Other missions were UNSMIH (Res. 1063 [1996]), UNTMIH (Res. 1123 [1997]), and MIPONUH (Res. 1141 [1997]).

15. Stromseth, p. 215.

16. A recent survey conducted by the UN found that only a third of its formed police units are fully operational, an indictment of the processes used to select and deploy them. An UNMIK formed police unit figured largely in the survey: investigations into events surrounding riots in Pristina revealed that the unit was ill equipped and poorly trained to address large-scale civil unrest. But the UN has taken steps to address rapidly deployable capacity in the areas of police and rule of law. Internal UN review of formed police units, February 2009.

17. See generally, International Crisis Group, *Handing Back Responsibility to Timor-Leste's Police*, Asia Report no. 180 (Brussels, 3 December 2009).

18. UN Security Council Resolution 1244 (1999).

19. United Nations, *Report of the Panel on United Nations Peace Operations*, S/2000/809 (2000).

20. Of the fifteen current missions operating at the end of 2009, seven were established from 2000 onward (UN Mission in Liberia [UNMIL], UN Operation in Côte d'Ivoire [UNOCI], UN Stabilization Mission in Haiti [MINUSTAH], UN Mission in Sudan [UNMIS], UN Integrated Mission in Timor-Leste [UNMIT], UN Mission in the Central African Republic and Chad [MINURCAT], UN-AU Hybrid Mission in Darfur [UNAMID]). Of the two current political missions administrated by the DPKO that were established during the same period, the UN Assistance Mission in Afghanistan (UNAMA) is mandated implicitly rather than explicitly to undertake rule of law work, and the other, the UN Integrated Office in Burundi (BINUB), is mandated explicitly to undertake both SSR and rule of law activities. Of current missions established before 2000, only the UN Interim Administration Mission in Kosovo (UNMIK) and the UN Organization Mission in the Democratic Republic of Congo (MONUC) are mandated to undertake SSR activities.

21. A first round of UK-led reforms was initiated in 1997. See UN Security Council Resolutions 1270 (1999), 1289 (2000), 1346 (2001).

22. Paul Jackson, "SSR and Post-Conflict Reconstruction: Armed Wing of Statebuilding?" paper prepared for the e-conference "The Future of Security Sector Reform," 4–8 May 2009, <http://www.ssrnetwork.net/documents/publications/e-conf-may09/ssr%20and%20post%20conflict%20-%20paul%20jackson.pdf>.

23. MONUC's activities, through Security Council Resolution 1565 of 1 October 2004, were expanded significantly from its original mandate in 1999. In response to the security and humanitarian situation in the Kivus region during 2008, the Security Council, through Resolution 1856, issued a sweeping mandate for MONUC, enhancing the operation's military components and significantly broadening its activities aimed at establishing the rule of law, especially reform of the security sector. The European Union's two SSR operations in the DRC are the EU Police Mission in the Democratic Republic of Congo (EUPOL RD Congo) and the EU Security Reform Mission in the Democratic Republic of Congo (EUSEC RD Congo).

24. The FARDC has been cobbled together from various former rebel groups as they demobilize; disputes over representation at the command level are prevalent. Payments for FARDC soldiers have been inconsistent and are often misappropriated by commanders. The FARDC is not accountable to civilian oversight, which is largely nonexistent, and in instances where it is to pursue violations, the requisite justice and correctional systems are lacking.

25. UN Security Council Resolution 1856 (2008).

26. Laurie Nathan, *No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform*, rev. 2nd ed. (Birmingham: University of Birmingham, 2007), p. 4.

27. See Eric Scheye and Gordon Peake, "To Arrest Insecurity: Time for a Revised Security Sector Reform," *Conflict, Security and Development* 5, no. 3 (2005): 295–326.

28. As the presidential statement referring to the report states: "It is the sovereign right and primary responsibility of the country concerned to determine its national approach and priorities for security sector reform." United Nations, UN Doc. S/PRST/2008/14, 12 May 2008. But the precise nature of this ownership has sparked considerable discussion and debate. See, for example, Laurie Nathan, *No Ownership, No Commitment*.

The notion that “reform” is required, and that external, largely Western actors can deliver it, is no less contentious—leading many to prefer the term “security and justice sector development.”

29. OECD, *Enhancing the Delivery of Security and Justice* (Paris, 2007).

30. See S. Bah and B. Jones, “Peace Operations Partnerships: Lessons and Issues from Coordination to Hybrid Arrangements,” in *Annual Review of Global Peace Operations, 2008* (Boulder: Lynne Rienner, 2008); United Nations, *Report of the Secretary-General—Strengthening and Coordinating United Nations Rule of Law Activities*, UN Doc. A/63/226, 6 August 2008.

31. Internal UN document, *After Action Review: UN-EU Planning for EUFOR TCHAD/RCA*, 29 April 2008.

32. A. Potter, *Rule of Law as Measure of Peace*, paper submitted for UNU-Wider conference on “Making Peace Work,” Helsinki, Finland, 4–5 May 2004, p. 7.

33. Within the broader UN system, the Rule of Law Coordination and Resource Group has an overall *coordinating* function, but individual departments, agencies, funds, and programs retain operational responsibility.

Re-establishing the rule of law is foundational to protect women's rights and security, prevent relapse into conflict, and, ultimately, to achieve sustainable peace. Gender-responsive security sector reform: Achieving security. Security sector reform (SSR) is an integral part of UN assistance to countries and regions affected by conflict, a key component of UN peacekeeping operations, and is increasingly recognized as an essential element in post-conflict peacebuilding. SSR helps build more accountable, effective, and efficient defence and security institutions; it is also key to prevention of violence, as security and justice institutions provide the foundations for resilient societies based on the rule of law and respect for human rights. Chapter 5 - planning for rule of law operations. Chapter 6 - fiscal considerations for rule of law activities. This is the sixth edition of the Rule of Law Handbook published by the Center for Law and Military Operations (CLAMO) at The Judge Advocate General's Legal Center and School (TJAGLCS). Since the last edition in 2011, the operational environment has changed significantly requiring reconsideration of what Rule of Law (RoL) practice means to judge advocates (JAs). Against this backdrop, the Rule of Law Handbook evolved with a view to providing practical guidance to JAs seeking to advance a somewhat vague and undeveloped RoL mission in challenging circumstances. The concepts of security sector governance and reform (SSG/R, or SSG and SSR) generally refer to a process in Western-based international development and democratization to amend the security sector of a state towards good governance and its principles, such as freedom of information and the rule of law. The objective of security sector reform (SSR) is to achieve good security sector governance (SSG) where security actors are effective and accountable to their people. For example, SSR might guide...