



NEW YORK UNIVERSITY

CENTER ON INTERNATIONAL COOPERATION

SHAKY FOUNDATIONS

AN ASSESSMENT OF THE UN'S RULE OF LAW SUPPORT AGENDA

Camino Kavanagh and Bruce Jones

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The world faces old and new security challenges that are more complex than our multilateral and national institutions are currently capable of managing. International cooperation is ever more necessary in meeting these challenges. The NYU Center on International Cooperation (CIC) works to enhance international responses to conflict, insecurity, and scarcity through applied research and direct engagement with multilateral institutions and the wider policy community.

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Rule of Law Abbreviations

ADB	Asian Development Bank
BCPR	Bureau for Crisis Prevention and Recovery
BINUB	Bureau Intégré des Nations Unies au Burundi/United Nations Integrated Operation in Burundi
BNUB	Bureau des Nations Unies au Burundi/United Nations Office in Burundi
CICIG	Comisión Internacional Contra la Impunidad en Guatemala/Commission Against Impunity in Guatemala
CPA	Comprehensive Peace Agreement
CSO	Civil Society Organization
CTED	United Nations Counter-Terrorism Committee Executive Directorate
CTITF	Counter-Terrorism Implementation Task Force
DANIDA	Danish International Development Agency
DDRRR	Demobilization, Disarmament, Repatriation, Resettlement, and Reintegration
DFID	United Kingdom Department for International Development
DPA	United Nations Department of Political Affairs
DPKO	United Nations Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
ECOWAS	Economic Community of West African States
EOSG	Executive Office of the Secretary General
FARDC	Forces Armées de la République Démocratique du Congo/ Armed Forces of the Democratic Republic of Congo
GA	United Nations General Assembly
HC	Humanitarian Coordinator
HNP	Haitian National Police
I/4S	International Security and Stabilization Support Strategy
IADB	Inter-American Development Bank
ICJ	International Court of Justice
IATFSSR	Inter-Agency Task Force on Security Sector Reform
IDLO	International Development Law Organization
IFI	International Financial Institutions
ILAC	International Legal Assistance Consortium
IMPP	Integrated Mission Planning Process
INGO	International Nongovernmental Organization
ISF	Integrated Strategic Framework
LAPOP	Latin American Public Opinion Project
MINUGUA	Misión de Verificación de las Naciones Unidas en Guatemala/United Nations Verification Mission in Guatemala
MINUSTAH	Mission des Nations Unies pour la stabilisation en Haïti/United Nations Stabilization Mission in Haiti
MONUC	Mission des Nations Unies en République démocratique du Congo/United Nations Stabilization Mission in the Democratic Republic of Congo
MONUSCO	Mission de l'Organisation des Nations Unies pour la stabilisation en République démocratique du Congo/United Nations Organization Stabilization Mission in the Democratic Republic of Congo
MOU	Memorandum of Understanding
NGO	Non-governmental organization
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights

OLA	United Nations Office of Legal Affairs
ONUB	Operation des Nations Unies au Burundi/United Nations Operation in Burundi
OPT	Occupied Palestinian Territory
OROLSI	Office of Rule of Law and Security Institutions
PBC	United Nations Peacebuilding Commission
PBF	United Nations Peacebuilding Fund
PBSO	United Nations Peacebuilding Support Office
PDS	Peace and Development Strategy (Nepal)
PKO	Peacekeeping Operation
PRSP	Poverty Reduction and Strategy Paper
QIPs	Quick Impact Projects
RC	Resident Coordinator
RoLCRG	Rule of Law Coordination and Resource Group
SC	United Nations Security Council
SGBV	Sexual and Gender-based Violence
SPM	Special Political Mission
SRSR	Special Representative of the Secretary General
SSR	Security Sector Reform
STAREC	Stabilization and Reconstruction Plan for War-Affected Areas
TAM	Technical Assistance Mission
TOC	Transnational Organized Crime
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNCT	United Nations Country Team
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNICEF	United Nations Children's Fund
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNMIL	United Nations Mission in Liberia
UNMIN	United Nations Mission in Nepal
UNODC	United Nations Office on Drugs and Crime
UNOWA	United Nations Office for West Africa
UNSC P5	Permanent Members of the United Nations Security Council
UNSMIL	United Nations Support Mission in Libya
USAID	United States Agency for International Development
WACI	West Africa Coast Initiative
WB	World Bank
WDR	World Development Report

I. Introduction

1. As we began the process of drafting this review, citizens across the Middle East and North Africa took to the streets to demand an end to the abusive practices of the security services, more representative and responsive government institutions, the protection of their rights, greater access to economic opportunity, participation in decision-making, and access to justice. They began demanding, in short, the rule of law.

2. The political upheavals in the Arab region are of a different nature to those that have traditionally been the focus of UN peace operations and transition engagements. The end of the Cold War, followed by a broad wave of democratic transitions, contributed to new opportunities for engagement in conflict management and peace support. At the same time, however, long-simmering tensions within many states erupted into mass violence. National conflicts spilled over colonial-era borders to engulf broad regions in Africa, Central America, Southeast Asia and the Balkans. Attention to these internal conflicts, which had hitherto remained on the periphery, became a central focus of the UN in the early 1990s.

3. Evidence has mounted that despite major challenges, international peacekeeping has had a decisive effect on helping states bring an end to many of these civil wars.¹ However, the problem of relapse has remained. In the last decade, 90 percent of new wars were in countries that had experienced war within the previous decade.² At the same time, though, new sources of instability appear to be on the rise: the integration of global markets and increasing sophistication of communications technologies have facilitated the expansion of transnational organized crime and trafficking, while international terrorism has transformed and amplified instability in a number of pre-existing conflicts or proto-conflicts in north and eastern Africa, the greater Middle East, and south and southeast Asia.

4. As the international community has grappled with civil war relapse, the spread of organized crime, and extremism, it has increasingly focused on the rule of law as

the overarching objective for the response. This conceptual shift is reflected in the diversity of actors involved: within the UN alone, peacekeepers, peacebuilders, political and development experts, security experts, organized crime experts, and counterterrorism committees of the Security Council operate within a framework of establishing or strengthening the rule of law at the national and/or global level and implement policies or programs accordingly. This is an important conceptual shift, and one that has generated important new forms of engagement and opportunities for the UN. It has, however, also generated conceptual confusion and significant bureaucratic entanglement – and both have begun to erode confidence in the ability of the UN to fill this critical (and growing) gap in the international system.

5. This report explores these issues from several perspectives. It begins with a discussion on the historical and conceptual understanding of the concept of the rule of law, highlighting two distinct frameworks that exist within the UN – a ‘thick’ version that links to political institutions and processes, and a more technical, apolitical approach – and the confusions between them. The report suggests a set of core functions that can help identify which approach to take in different contexts, if underpinned by sound analysis and understanding of context. It then traces the substantive evolution within the UN of the concept of the rule of law, examining the congruence between policy and institutional arrangements at headquarters, and operational realities on the ground.

6. In doing so it draws on a literature review; a detailed analysis of UN policy and the institutional arrangements that have been established to support rule-of-law initiatives and activities; exhaustive interviews with HQ staff in New York, Vienna, and Geneva, and key UN field staff engaged in rule-of-law-related work; six more targeted studies, organized to highlight the differences between UN RoL support provided in i) low income, low institutional post-conflict settings (Haiti, and the Democratic Republic of the Congo); ii) low income, low institutional, fragile transition settings where the UN has or has recently had a political mandate (Burundi and Nepal); and iii) fragile, transition settings coping with

high levels of violence and where the UN does *not* have a political mandate (Guatemala, Jamaica). The report also draws on a series of consultative meetings that CIC held in 2011 with senior fellows and experts. It was undertaken in parallel with CIC support to the World Bank's 2011 WDR, the findings of which it also draws upon.

7. The essential conclusions of the Review are as follows:

- The UN's rule-of-law support agenda rests on shaky foundations: unstable political settlements; a weak empirical base; and a decision-making architecture and culture that has proved unable to clarify confusion, make decisions, or present member states with a roadmap toward more streamlined arrangements.
- In post-conflict settings, in cases where institutions are weak and resources are low, the UN should refrain from using the 'thick' version of the rule of law as an overarching planning framework for initial engagement. Rather, the focus should be on building confidence in legitimate political settlements; and on using the leverage that exists during a major UN presence to embed initial mechanisms that can, over time, foster the emergence and the deepening of rule-of-law functions.
- In follow-on peacebuilding missions or stand-alone political missions, especially in low-income settings, the central challenge of UN efforts aimed at supporting the emergence of the rule of law is often one of leverage; the challenge is forging links to more influential actors, such as regional powers and the IFIs.
- By contrast to most post-conflict settings, the 'thick' version of the rule of law can serve as a strong framework for engagement in post-authoritarian transitions, as well as in low- and middle-income countries coping with high levels of violence and fragility. It is particularly salient for the transitions currently under way in the Middle East and North Africa.

- As with many other areas of the UN's conflict-related work, limited analysis and weak and competing monitoring and assessment frameworks weaken each aspect of UN engagement in the rule of law field.

8. Finally, the report sets out some short- and medium-term steps to move rule-of-law efforts forward. The authors are fully cognizant of the fact that there is limited appetite within the UN or among member states for deeper changes to the current UN architecture. We nevertheless stress the importance of:

- Clarifying the underlying empirical and policy basis for the UN's work.
- Ensuring that rule-of-law support responds more effectively to the internal and external challenges that can stymie the emergence of the rule of law in different settings.
- Guaranteeing better collaboration or joint programming, especially on the ground, in the spirit of the Report of the Independent Panel on Civilian Capacity.
- Ensuring greater discipline in the Secretary-General's policy mechanisms.

Last, it calls on the UN to use its normative rule-of-law platforms as the basis for a sustained response to requests for support that emerge around the pending rule of law challenges in countries across the Middle East and North Africa.

Policy Summary

Disentangling the UN's Rule of-Law Engagements

1. As the UN has grappled with the recurrence of civil war, the spread of organized crime, and rise of extremism, it has placed an increasing focus on the rule of law as the overarching objective for its engagements. This is an important conceptual shift, and one that has generated new forms of engagement and opportunities for the UN. It could provide an important normative basis for the UN to help frame and support international engagement in one of the most important issues in contemporary international politics, the transformations away from authoritarian rule that are underway in the broader Middle East.

2. In the field, there are important instances where UN actors have been creative in blending political, security, and developmental approaches to provide suitable responses to rule-of-law challenges in post-conflict and other fragile settings. For example:

- UNOWA has partnered with DPKO, UNODC, BCPR, and other international organizations operating in West Africa to provide much-needed support to ECOWAS and national governments struggling to deal with organized crime and trafficking in the region.
- DPA has worked with UNODC and UNDP to provide support and/or advice to member states struggling to deal with impunity, organized crime, and drugs-related gang violence (Colombia, El Salvador, Guatemala, Jamaica, Kyrgyzstan) and establish investigative missions (e.g., Bhutto Commission, Hariri Commission).
- UNDP has worked with the UN Office for Disarmament Affairs, DPA, UNICEF, OHCHR, and UN Women while implementing its violence and arms reduction and citizen security programs (e.g., at the regional and country levels in the Caribbean).

- DPKO has worked with NGOs and sub-regional organizations to provide legal aid and implement community-based violence reduction programs (e.g., Haiti).

- OHCHR, OLA and DPKO have worked together to respond to human rights abuses committed during conflicts through the establishment of hybrid or national tribunals and reconciliation mechanisms (e.g., Bosnia, Sierra Leone, Timor Leste).

3. Despite these positive developments, the shift towards a rule-of-law framework has also generated bureaucratic entanglement, often rooted in conceptual confusion.³ Two distinct concepts of the rule of law are embedded in UN policy and practice. One version focuses on developing judicial, human rights, and security institutions, with the intent of binding political leaders to a set of formal decision-making processes, and thus constraining the state from potential abuses. A “thicker” version denies that mere procedural formality can protect individuals or groups from oppression and insists that effective rule of law requires a deeper set of constitutional and legal norms, ranging from guarantees of full citizen equality, recognition of alternative dispute resolution mechanisms, and political participation, to the panoply of contemporary international human rights and broader range of political institutions that can facilitate the provision of human security and development.

4. The latter, “thicker” concept of the rule of law has increasingly been encoded in UN policy statements, while the narrower version often characterizes the UN’s operational practices in the field. Neither seem entirely suitable for the contexts where the UN has its largest operational practice, i.e. in low-income, low-institutional countries that have emerged from civil conflict⁴ (“post-conflict settings”), nor do they fit into the timeframes that characterize UN engagements whether in post-conflict or traditional development settings. Adding to the confusion, the thicker concept of the rule of law has become almost indistinguishable from the broad concept of peacebuilding that has been adopted by the UN.

5. To better understand these issues, it is useful to break the thicker concept of the rule of law into a set of core functions. These include:

- i. Developing formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict.
- ii. Developing arrangements for the independent administration of justice (criminal, administrative, contractual), respect for human rights, and strengthening or supporting the emergence of alternative dispute resolution mechanisms.
- iii. Developing accountability tools and mechanisms to tether different functions and *fonctionnaires* of the state, particularly security and financial management, to civilian oversight.
- iv. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking, and terrorism.

6. We view the relationship between the first function and the others as critical. In many conflict-affected countries, the state is still dominated by clientelist, patrimonial, and neo-patrimonial regimes – with formal and informal elite networks operating at different levels of society. In these settings neither historical developments nor economic incentives have yet produced the conditions to support the emergence of a “thick” form of rule of law, and neither the government nor formal government institutions operate in an impartial manner to enforce laws equally for all citizens, allowing elites often to escape or manipulate police, courts, and legislatures to protect their interests.

7. The following findings and recommendations demonstrate the importance of looking at the rule of law from the perspective of these interrelated functions and

how they relate to the contexts in which the UN engages. They also demonstrate the urgency that the UN and the broader international community need to lend to developing more systematic modes of analysis and evaluation of the relevance and impact of rule of law-related support on immediate goals on the one hand, and on the broader goals of peacebuilding and statebuilding on the other. We write them cognizant of the broader effort to implement the findings of the Senior Advisory Group’s Independent Report on Civilian Capacity, particularly on human resources and financing reform, as well as of the broader discussions within the UN around the findings of the 2011 World Development Report – particularly on joint operations, support to political settlements, and support to judicial institutions. The recommendations in this report should be read as operating in tandem with progress on those broader recommendations – indeed, in many cases, progress on the broader recommendations (for example, on personnel recruitment) will be foundational to the viability of broader progress on rule-of-law activities.

In post-conflict settings, in cases where institutions are weak and resources are low, the UN should refrain from using the ‘thick’ version of the rule of law as an overarching framework for initial engagement, and ensure that support to specific rule-of-law functions is accompanied by confidence building measures and in tune with the political economy realities on the ground.

8. In most places where the UN has deployed peace operations (peacekeeping or political missions), the conditions do not exist for the “thick” approach to the rule of law. Indeed, it can be argued that the central objective of most UN peace operations is to “help countries establish order precisely in the *absence* of the rule of law.”⁵

9. Nor is a narrow approach that only considers capacity building and technical assistance to national judicial institutions adequate. While the UN evidently has a role, if not a responsibility to support member states strengthen the normative base of their institutions and practices, large investments in justice and accountability institutions will almost certainly fail in the absence of a viable and legitimate political settlement, in which support for some set of judicial or legal self-restraint is embedded.

10. Rather, in the low-institutional, low-income post-conflict settings that host the majority of UN peacekeeping operations, the focus should be on using the leverage that exists during a major UN presence to embed initial mechanisms that can, over time, foster the emergence and the deepening of rule-of-law functions. This requires the early identification of challenges, including competing elite interests.

11. The focus of rule-of-law engagement in post-conflict settings should therefore pivot on two axes:

Confidence-building measures: Research and experience increasingly suggest that a central objective of post-conflict engagement should be to build confidence in the political settlement, and engender some trust in prospects for moving towards co-existence and development. Early confidence-building measures aimed at gradually building trust in the justice and security institutions can contribute importantly to this goal. Tools such as citizen perception surveys can be used to understand the needs that underpin any relationship of trust between state and society. Victims of serious international crimes should be included in the surveys while early steps to respond to needs might include the removal of harsh or discriminatory practices and laws; disbanding particularly abusive units within the security services; laying the groundwork for the implementation of certain transitional justice measures such as truth telling; supporting the introduction of or strengthening existing alternative dispute resolution mechanisms (particularly for land and resource-related disputes); and developing community policing services focused on violence reduction. Mechanisms such as the UN's Integrated Mission Planning Policy (IMPP) or real-time monitoring tools can be tailored to jointly oversee implementation of these confidence-building measures with national counterparts and ensure they are linked to longer-term strategies aimed at promoting the emergence of a democratic rule of law. The development of these mechanisms and tools needs to be underpinned by a sound understanding of the political economy of the country.

Leverage points: The UN and its national and international partners should seek to identify entry points between the

interests of formal and informal elites on the one hand, and the emergence of a rule-of-law culture and strong institutions on the other. Potential entry points that can help build trust in the political settlement and maintain issues related to the rule of law on the agenda include: forging political consensus around the establishment of an independent human rights ombudsman, independent commissions of inquiry, or truth commissions; creating constituencies for reform through participatory consultative exercises; or involving private-sector actors who can benefit from predictable justice and security institutions. This will require both mission leadership with deep knowledge of local context and a form of political economy analysis capacity often missing in mission structures.

In the absence of elite buy-in, the Security Council, regional organizations, or a combination of international and regional actors and individuals can explore more of a carrot-and-stick approach by, for example, conditioning the routing of funds to the government on progress on structural reforms vital to the durability of the political settlement. In extreme cases, they may condition access to favorable trading regimes, impose travel restrictions, or similar measures – though for each of these we recognize that there are countervailing economic and humanitarian arguments. In the case of spoilers within parallel, illicit or elite groups, targeted anti-money-laundering initiatives may be appropriate.

12. Much of this requires creative **joint operational arrangements** on the ground with teams that not only integrate agency and peacekeeping or political mission staff, but also integrate rule-of-law expertise from these entities with political, security, and economic and financial expertise. Such initiatives exist (see above), but they tend to arise despite, not because of, existing institutional arrangements or policy guidance. These initiatives should be fostered, improved, and incentivized. In other cases, policy and turf fights have actively impeded the emergence of effective rule-of-law support arrangements in the field. For example, infighting between DPKO and UNDP in Sudan over who should lead in providing institution-building support to national justice system counterparts abounded

in the early years of UNMIS; similar infighting between the same entities has taken place in South Sudan, although a mechanism has since been established to contain and overcome these internal conflicts.

Short-/Medium-Term Recommendations

1	The UN Secretariat's Policy Committee proposal for a joint study of field evidence to better determine roles and responsibilities should focus on elucidating instances where Missions have used the leverage of another part of the system (particularly UNSC) to generate political space for critical rule-of-law initiatives; the perceived impact of this engagement; and the systems, analytical and learning tools needed to enable the use of leverage for rule-of-law initiatives. The study should also develop a more comprehensive catalog of the kinds of creative joint initiatives in the field that this report points to, as well as instances where collaboration has not been possible or has been delayed. This should in turn set the stage for a policy discussion on the funding or career incentives that can foster that kind of collaboration.
2	Joint operational arrangements could be incorporated into country-specific compacts, forged between the government, the UN Mission, and the broader UN system where relevant, IFIs and committed donors. These compacts could provide a country-specific division of labor and predictability that has eluded the international system at headquarters level. However, to be effective, they should include rigorous accountability and oversight mechanisms for both the providers and recipients of assistance.
3	<p>Before finalizing its "Early Peacebuilding Strategy," DPKO should consider a few additional but important steps. Since the Strategy hopes to cover critical early rule-of-law-related peacekeeping tasks, the Strategy should focus on developing initial baseline analysis and benchmarks through the use of tools such as citizen perception surveys to better understand what those critical tasks might be for citizens. Without prescribing what these might be and based on research conducted by the WDR group and others such as SaferWorld and USIP, initiatives such as community-level policing and violence reduction (particularly gender-based violence), land and other resource-related dispute resolution mechanisms, could be incorporated into the Strategy.</p> <p>In addition, since the Strategy is also aimed at creating the political space necessary to enable rule-of-law related mid- to longer-term peacebuilding and development efforts, the Strategy should ensure that political and civil affairs such as staff from UN agencies are engaged in planning from the outset and form part of integrated teams on the ground and not just at headquarters. It should build on the findings of the Independent Review of Civilian Capacities regarding sorely needed flexibility in hiring, especially in the nontraditional areas of policing and justice such as political economy, conflict and perception survey analysis, dialogue facilitation and mediation skills, and more specific management, finance, logistics, procurement, and personnel skills.</p>

13. It should be stressed that the recommendations laid out above set up a "second stage" challenge – that of protecting, sustaining, or adapting these arrangements once the short-term leverage provided by large-scale troop presences or an expansive Council mandate recedes.

In follow-on peacebuilding missions or stand-alone political missions, especially in low-income settings, the central challenge of UN efforts aimed at supporting the emergence of the rule of law is often one of leverage; the challenge is forging links to more influential actors, especially regional powers and international financial institutions (IFIs).

14. In settings where the UN has a limited political mandate rather than a peacekeeping one, or the Security Council's engagement is limited, the Organization has limited leverage at its disposal. Other actors, particularly regional powers, regional organizations, large donors, and the international financial institutions (IFIs) often have important leverage. In several recent cases, the participation or resistance of the regional power has been decisive in determining the scope available to the UN to engage in key rule-of-law functions. For example, Brazil is perceived to have played an important role in this regard in Haiti, while India's role in the Nepal peace process has been perceived as less constructive.

15. While the IFIs have not historically focused on questions such as protecting the independence of the judiciary, promoting human rights instruments, or ensuring the accountability of security services and at times their policies and practices have not necessarily been coherent with UN and other efforts to promote the emergence of the rule of law, they do focus on questions of state accountability, especially on corruption; this is an important connecting point. Moreover, the World Development Report 2011 opens up an opportunity to overcome earlier challenges, suggesting a pathway of reform for the IFIs placing greater stress on questions of the orientation and accountability of judicial and security services, including addressing past systemic abuses for which they are responsible. Similarly, the IFIs play essential global roles in responding to transnational organized

Short-/Medium-Term Recommendations

4	The UN should intensify its dialogue at global, regional, and country levels with the actors listed above (point 23) and seek to forge more effective strategic and operational ties with them. Special emphasis should be placed on developing these relations with the IFIs, as well as with major regional powers and regional organizations.
5	The recently established UN Special Task Force on Organized Crime and Trafficking together with the IFIs, could conduct a stock-taking exercise on connections between Special Political Missions and the IFIs, and where those connections have helped meet mandated objectives in responding to transnational threats.
6	In places where the Peacebuilding Commission has a country-specific follow-on role, the PBC and PBSO can also place a greater focus on monitoring developments related to the interaction between the evolving political settlements and the emergence (or not) of proto-institutions or arrangements that can help foster the rule of law.

crime. These provide an important additional entry point for the UN.

By contrast to most post-conflict settings, the “thick” version of the rule of law can serve as a strong framework for engagement in post-authoritarian transitions, including those currently under way in the Middle East and North Africa, as well as in low- and middle-income countries coping with high levels of violence and fragility.

16. In countries transitioning from authoritarian rule, including those in the Middle East and North Africa, many of the demands articulated by popular revolts can be usefully understood within a “thick” rule-of-law framework. The UN’s existing normative base bolstered by statements and initiatives by the current and former Secretary-Generals and UN agencies (including UNDP and OHCHR) provide important and legitimate entry points for the UN. The UN’s rule-of-law policy framework can help shift the divisive West/Arab discourse around democracy, and serve as a platform for sustained (and integrated) governance, security, and development support if underpinned by respect for and sound understanding and analysis of, the political, economic, social and cultural realities of the countries in the region.

17. This is not to deny that the UN faces challenges in fostering initiatives on the rule of law in the Arab world. It faces legitimacy challenges in the region as a legacy of earlier crises, and, with important exceptions, it has a dearth of officials with in-depth knowledge and understanding of the Arab world in its senior ranks. Its policy mechanisms do not have the regional expertise necessary to navigate the transitions underway. Notwithstanding, a concerted focus by the UN leadership could incorporate the requisite tools and capacity to enable the UN to serve, over the medium term, as an important reference point, normative guide, and source of operational support to the emergence of the rule of law in Middle East and North Africa. Such an approach would be more likely to enable the UN to make a constructive contribution over the medium term than the current search for mediation and crisis management roles.

18. In low- and middle-income fragile countries coping with high levels of violence, the UN has less leverage to affect outcomes. At the same time, however, in some cases, UN resident coordinators and UNDP’s Bureau for Crisis Prevention and Recovery have developed innovative tools and mechanisms to ensure that key challenges, including rule-of-law issues that are politically sensitive or hinge on the interests of national or local elites, are acknowledged and addressed. Conversely, observations on how these tools and mechanisms are implemented and how they can impact broader peacebuilding or statebuilding goals are neither collected nor analyzed in a systematic manner. In addition, limited knowledge exists on how effective agencies such as UNDP have been in partnering or liaising with domestic constituencies or other regional or international bodies including the IFIs to ensure that core rule-of-law functions critical to sustaining positive political arrangements in these settings are addressed. Beyond these shortcomings, the UNDP grapples with a broad range of additional challenges not least complex relations with national governments that hold limited legitimacy vis-à-vis the citizenry; a high dependency on donor funding, which given the continuously shifting priorities of donors, often means that important progress remains at the tactical level and fails to influence broader strategic outcomes; lack of capacity; mission creep; and an unwieldy internal

bureaucracy that continues to hamper implementation on the ground (including, for example, the lack of coherence between regional bureaux and global programs, groups, or clusters on rule-of-law-related support).

Short-/Medium-Term Recommendations

7	The Secretary-General should make a major policy speech, preferably in the region, drawing the connections between the demands of Arab populations and the different functions of the rule of law, in the “thick” sense of that concept. He could task his various political, peacekeeping, developmental, humanitarian, and technical field presences in the region to work with local counterparts to deepen analysis and identify needs for support to rule-of-law initiatives arising from the transition. The RoLCRG could serve as a “clearinghouse” for those ideas, highlighting the most important and helping the Secretary-General mobilize broader and sustained international and UN support where needs are greatest. It is important that such an initiative not be centered on increasing the UN’s operational presence on rule-of-law issues in the region, though that may be a medium-term byproduct; rather, the goal should be a normative and analytical one, using the platform of the UN to help shape a productive international environment on the basis of a sound understanding of perceptions, needs and political, economic and social realities across the countries in the region and ultimately support the democratic transitions underway.
8	Linked to an earlier recommendation, the UN Secretariat’s Policy Committee should focus on assessing how UNDP and other departments and agencies have used the leverage of another part of the UN or the broader international system (in this case, IFIs, INGOs, regional powers, regional organizations, private enterprise, philanthropists, etc.) to generate political space for critical rule-of-law initiatives in low- and middle-income countries coping with high levels of violence and fragility. The assessment should also cover the perceived impact of this engagement and the systemic changes and analytical and learning tools the Agency would require in order to be able to leverage rule-of-law initiatives. The study should also develop a more comprehensive catalog of the kinds of creative joint initiatives in the field that this report points to.
9	The UNDP should work with its core partners to develop a systematic analysis of the kinds of initiatives implemented (either alone or with others) to work around some of the more complex rule-of-law challenges encountered when supporting the emergence of the rule of law in low- and middle-income countries coping with high levels of violence and fragility. These examples should serve as a core aspect of policy discussions and innovation for the UN and its national and international partners. Case studies can be weaved into the annual training course for resident coordinators and other staff at the UN System Staff Training College and the UN-led Senior Leadership Training Course. Other agencies, such as UNODC and OHCHR, should consider adopting similar initiatives.

Medium-/Longer-Term Recommendations

10	The UNDP leadership and Governing Board should review the core findings of the WDR 2011, and assess the implications for UNDP’s structure – in particular, in terms of elevating support to the policy instruments housed within the Bureau for Conflict Prevention and Recovery, and making these more central to the Organization’s overall strategy.
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Cross-cutting Issues

19. **Transitional justice and investigative mandates:** On many occasions the UN has helped establish special *tribunals, fact-finding missions, commissions of inquiry, and truth commissions*. These mechanisms can serve as important confidence building measures and have an important impact on the legitimacy of a political settlement and the degree to which aspects of the political settlement are sustained or eroded (for example, Lebanon and Pakistan). Yet, like many of the UN’s core rule

Short-Term Recommendation

11	OHCHR, DPA, OLA, and, where relevant, DPKO should initiate a more systematic and strategic learning process on the range of tools that are being implemented. Such a process could be implemented with the support of external research or specialized organizations with extensive experience on the topic. Within this process, specific focus should be placed on how these mechanisms might have contributed to ensuring the legitimacy of political settlements and their sustainability in different contexts, including how they might have served to bolster or undermine citizen trust in state institutions and international organizations.
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of law intervention areas, the Organization has conducted limited analysis of impact and has only made small steps toward ensuring complementarity between these efforts and other related rule-of-law efforts on the ground.

20. **Transnational organized crime and trafficking:** Increasingly, transnational crime and trafficking are placing enormous stresses on the countries where the UN is engaged. The UN has acknowledged this trend and is developing new approaches such as the regionally based West Africa Coastal Initiative (WACI) and a recently established Secretariat-based Special Task Force on Organized Crime and Trafficking to provide support in response to these threats. However, the Task Force has yet to identify its modus operandi, and without the

strategic and substantive engagement of principals and analysts in Vienna and New York, it risks running aground before even taking flight. Meanwhile, UN initiatives on the ground aimed at strengthening the rule of law as a means to mitigate the impact of transnational organized crime in post-conflict and fragile settings tend to skim the surface. Support to member states, generally provided through UNODC, although increasingly involving the Organizations political and developmental arms, tends to be technical in nature and geared towards strengthening legal frameworks and building the capacity of justice and security institutions to respond to challenges on the ground. While this kind of support is definitely

Short-Term Recommendations

12	At headquarters, the Secretary-General should ensure that UN principals and operational staff from New York and Vienna are involved strategically and substantively in the work of the Task Force from the outset. The Task Force should report on progress to the RoLCRG principals on a regular basis.
13	The Task Force should develop an initial inventory of the range of (regular and extra-budgetary) organized crime and trafficking-related initiatives (political, security, developmental) that members of the Task Force currently engage in. Such an exercise should aim at identifying gaps, overlaps, and challenges, and would serve as a useful tool for senior leadership and operational colleagues in the field.
14	The UN should use the Task Force to develop a deeper analytical approach to the relationship between Transnational Organized Crime and Trafficking and political instability. In addition to strengthening core justice and security institutions, its work should consider how to better link up to efforts aimed at strengthening political parties and related regulatory frameworks (e.g., party campaign financing). It should also consider providing an analysis of different power relations in specific contexts, how different groups provide entry points for organized criminals and for what purpose (political/ideological, financial), and how best to combine these efforts with initiatives that raise the business costs of engaging in illicit activity, including through more effective anti-money-laundering initiatives. Again, close cooperation or joint operations with experts in IFIs that have specialized capacity on financial trafficking (but often limited political analysis capacity) would be productive.

warranted, oftentimes it is provided with limited regard for underlying political, cultural, and historical factors and the enabling role that different power structures (political, economic, etc.) within and beyond a state play in relation to transnational organized criminal activity.

21. **Counterterrorism:** The relationship of the UN's counterterrorism work to its broader rule-of-law support remains tenuous. Political pressure to promote rule of law through a counterterrorism lens remains strong, with some actors promoting UNODC's Terrorism Prevention Branch as the best UN mechanism for broader support to criminal justice reform and others availing of the Security Council's Counter-Terrorism Executive Directorate's convening power to broker dialogue at the national, regional, and international levels on judicial strategies for counterterrorism programs. Much of this support is implemented in the same settings where the UN system is already actively engaged in providing rule-of-law support against a peace and/or development mandate, which has the unintended effect of promoting conflicting approaches and competition for donor funds among UN bodies. Meanwhile, the broader counterterrorism universe has pivoted towards a specific focus on the rule of law –

Medium-Term Recommendations

15	In order to help reposition the UN's response to terrorism within the broader rule-of-law paradigm, increase the legitimacy of its counterterrorism programming, and bolster its ability to harness counterterrorism resources for broader rule-of-law building purposes, the UN Security Council should treat terrorism as one type of "transnational threat" (along with drug trafficking and organized crime). A Presidential Statement in February 2010 was an important step in this direction. ⁶
16	The UN Security Council should consider how to integrate terrorism prevention into its conflict prevention activities, including by promoting a closer relationship between CTED, the UN Secretariat (e.g., DPA), UN country teams, and UNODC on the ground. This may require consideration of more effective linkages between the conflict prevention and mediation machinery of the Secretariat.
17	The UN membership appears open to considering major revisions to the UN's counterterrorism architecture, particularly in the lead-up to the General Assembly's Strategy Review (April–June 2012). Some states are keen to streamline the myriad counterterrorism bodies within the UN by creating a senior position with a mandate to: (i) chair the CTITF, (ii) lead the development of system-wide UN strategy on CT capacity-building and (iii) advise the Secretary-General on implementation of that strategy in specific cases, potentially through convening consultations of interested UN entities to develop shared action plans. The Secretariat and membership could consider more far-reaching steps to improve coordination of the UN system in relation not only to counterterrorism but to other transnational threats. One option would be to create an ASG on transnational threats – with a mandate to chair both the CTITF and the new Task Force on Organized Crime and Drug Trafficking, and form part of the RoLCRG.

notable in this regard is the new Global Counterterrorism Forum, with its specific focus on rule-of-law initiatives in the Middle East.

As with many other areas of the UN's conflict-related work, limited analysis and weak and competing monitoring and assessment undermine each aspect of UN engagement in different settings.

22. Whether the UN takes a “thick” approach to supporting the emergence of a democratic rule of law in conflict, post-conflict, peacekeeping, peacebuilding, fragile, and developmental contexts, or a more issue specific approach, there is still little, if any, empirical evidence underpinning strategies. Despite more than three decades of assistance in this field, we (i.e. the international community in general and not just the UN) simply have very limited knowledge of what initiatives are perceived to have had a positive impact or to have contributed to meeting broader goals, and we have failed to develop the appropriate mechanisms and tools to facilitate that understanding.

23. While the question of “effective” support was stressed in early UN reports, its relevance seems to have been gradually supplanted by process-related issues. The question of whether the UN's efforts in this area have had any sustainable impact remains. The UN does not have a coherent rule-of-law analysis, monitoring, and assessment or evaluation policy. This gap is linked, in part, to limitations in strategic thinking within the UN and the broader international community, and by extension, a limited understanding of the relationship between specific interventions and broader outcomes. An understanding of rule-of-law functions in specific contexts, as outlined above, requires analysis, monitoring, and assessment tools tailored to local and national contexts, and should include the perceptions of national and local actors. Current analytical frameworks and evaluation tools do not meet these requirements.

24. As it stands, each UN department and entity has its own tools and mechanisms to develop benchmarks and indicators and to monitor and measure progress, but

these tend to be superficially consultative, focus narrowly on program outputs rather than the attainment of broader goals, and are seldom based on a theory of change. In consequence, it becomes difficult to determine whether and how UN rule-of-law interventions contribute to broader objectives.

25. A myriad of efforts have been implemented to enhance the UN's analytical capacity for both peace operations and, more broadly, for country-specific political economy analysis, even prior to the publication of the Brahimi Report. These efforts, which need not be repeated here, have repeatedly foundered on member state opposition. On the other hand, the environment has changed in useful ways for the UN, in that there are far stronger outside research capacities that it can readily draw on for its peace operations and its rule-of-law programming. Most important are the deepening of

Short-/Medium-Term Recommendations

18	<p>Member states and the UN system should undertake strategic initiatives to fill the “empirical gap” in the field. This process should analyze shorter-term rule-of-law challenges in peacekeeping environments as well as in longer-term development and statebuilding contexts.</p> <p>In this regard, the UN should prioritize and foster learning within the Organization and between the UN and other international and regional actors on the short- and longer-term relationship between political stability, legitimacy and the rule of law. It is crucial that the UN reflect on the empirical gaps in the rule-of-law field, at both the strategic and operational levels. Member states can help, for example, through a more systematic collection of lessons and observations by their in-country offices in fragile states and in countries hosting peacekeeping operations, and sharing these with the UN.</p>
19	<p>In a related vein, recognition of the limited success of bilateral and multilateral initiatives and programs in contexts as different as Iraq and Afghanistan, Guatemala, Haiti, and countries in the Middle East and North Africa is driving governments to re-evaluate the nature and scope of rule-of-law support. Consequently, it is important that these discussions reflect the experiences and expertise of countries in the global south as they increasingly contribute to the Organization's rule-of-law efforts on the ground.</p>
20	<p>On issues relating to post-conflict programming, DPKO's OROLSI, PBSO, and BCPR should continue to deepen their engagement in the efforts of the World Bank and the OECD Secretariat to develop a set of measures and indicators of progress on the G7+'s Monrovia peace and statebuilding goals. DPKO should also join the World Bank's data congregation effort (“The Hive”) and help shape its strategy. Both provide ready (and resource-neutral) access to data, analysis, and ongoing research efforts.</p>

21	Further discussion on roles and responsibilities of the “designated leads” should be pegged to the need to enhance analytical, planning, monitoring, and assessment capabilities.
22	Beyond peacekeeping operation cases, the RoLCRG could commission an in-depth assessment of examples of joint rule-of-law operations in the field. The assessment could look into the analysis and programming tools and mechanisms, including monitoring and evaluation (M&E), being used to meet (i) mandated prerogatives and (ii) broader goals. The assessment should also focus on the institutional and bureaucratic opportunities and challenges to implementing joint programming or joint operations, including resource mobilization, and the steps necessary to overcome them.
23	Ongoing rule-of-law–related training for senior leadership either through the SLIP or the UN Staff System College (UNSSC) should be further developed to include specific modules on some of the implementation challenges highlighted in this review, with examples showing how different instruments of leverage might be used to maneuver around certain rule-of-law challenges. Beyond training, efforts should be made to ensure that senior leadership working on the ground is aware of the tools that can be used to better understand the political economy of the settings they are working in and citizens’ perceptions of needs. This understanding should underpin the mechanisms and tools they employ to respond to critical rule-of-law challenges.

research expertise on peace operations in the academic community, the emergence of important NGOs with sector-based and cross-cutting knowledge, and the renewed interest of the World Bank’s research group in fragile states issues. The UN should take advantage of the fact that all three are responsive (to a degree) to requests for research support and policy engagement.

These different approaches are embedded in a decision-making architecture unable to clarify confusion, make decisions, or present member states with a roadmap toward more streamlined arrangements.

26. Although this study focuses on the rule of law, both case and headquarters analysis point to the fact that the UN’s institutional arrangements for peace operations, and for support to fragile settings and transitions, reflect an accretion of prior, partial reforms, and are far from effective or efficient. We acknowledge that at this stage, there is little or no appetite for broader structural reforms. Yet we cannot avoid pointing out that many of the problematic issues identified in this report, such as important knowledge gaps, poor coordination across development, political, and security actors; continuous infighting over roles and responsibilities spurred by

weak leadership, a dearth in capacity to actually fulfill established mandates; knowledge gaps; lack of an in-depth relationship with the IFIs and other sources of leverage and legitimacy have dogged UN operations for more than a decade. Notwithstanding, there are a number of short-term steps that can be taken:

Short-Term Recommendations

24	As the Secretary-General considers senior appointments and new initiatives in preparation for his second term, he should examine the logic of maintaining three separate mechanisms for policy coordination in his office, each of which weighs in on the rule of law: the Policy Committee, the Peacebuilding Support Office, and the RoLCRG. The Policy Committee and RoLCRG’s Secretariat are understaffed, and while PBSO has sufficient personnel, it suffers from limited connection to the Secretary-General’s decision-making process, despite being located in his office. All three of these bodies report either directly to the Secretary-General or to his deputy. There is evident overlap here.
25	There are clear overlaps and tensions in the area of strengthening criminal justice systems in peacekeeping settings. The Policy Committee should transform the existing Inter-Agency Task Force on Security Sector Reform into an Inter-Agency Task Force on Criminal Justice and Security Sector Reform. Such an arrangement would be in line with current policy shifts, make more effective use of limited resources, both human and financial, and help overcome existing tensions regarding overlap and duplication in the two fields. The bolstered Task Force would continue to be co-chaired by DPKO and UNDP; however, on criminal justice-specific meetings and initiatives, UNODC would be included as a joint chair. OHCHR and other actors already participating in the existing IATFSSR would continue as members. DPKO, UNDP (BCPR), and UNODC would jointly prepare terms of reference for the bolstered Task Force’s criminal justice work, including the development of policy and operational guidance for peace operations, the enhancement of existing training material, and the rostering of personnel. The criminal justice terms of reference would become an integrated part of the existing Task Force’s work. This broader Task Force should report on progress to the RoLCRG on a regular basis.
26	In planning for peacekeeping operations or special political missions, planners should avoid assigning a “rule-of-law” cluster or sector to any given agency or department for planning purposes; it simply fuels confusion. Rather, the specific functions (or similar) set out in this report should be the basis for rule-of-law–related planning, strategically linked to the articulation of the political settlement.

Conclusion: Looking ahead

27. Finally and as noted above, it is important to note that while this study focuses on the rule of law, both the case and headquarters analysis point to the fact that the UN's institutional arrangements for peace operations and for support to fragile and transition settings are reflective of prior, partial reforms that are far from being effectively or efficiently arranged. Most obviously, the current practice of allowing a prior (and outdated) decision about which part of the bureaucracy should lead the UN's engagement to dictate the mechanisms and funding streams available for the response makes limited sense. The UN can do better, and member states should enable it to do so. More radical reforms than we detail here, aimed at reconciling two separate political departments, two separate operational budgets, and the arbitrary and ineffective dividing line between assessed political contributions and voluntary programmatic ones warrant serious consideration. We say this while acknowledging that at present, there is limited appetite among member states or the UN itself for broader structural reforms. Yet these points need to be made and discussed so that a process for far-reaching reforms can be initiated as soon as the political environment is conducive enough.

28. Within the reform process, attention should be afforded to restructuring the UN's existing rule-of-law support mechanisms, and particular attention should be placed on strengthening the evidentiary basis of the Organization's rule of law work through both internal and external/independent modes of analysis and evaluation. Over time however, the idea of a stand-alone capacity for rule-of-law support (along the lines of UN Women or the humanitarian Inter-Agency Steering Committee), which could draw in existing rule-of-law-related policy task forces and similar mechanisms from the humanitarian agencies, DPA, DPKO, OHCHR, OLA, UNDP, UNODC, UNICEF, and elsewhere, could have merit. So too does the idea of an Independent Judicial Service, a tool that member states could draw on (at their own choosing) when they want support on a range of executive and advisory rule-of-law functions, but are not the subject (voluntarily or otherwise) of a UN mission presence. As more and more states make

progress on resolving conflict and achieving genuine development, the importance of the UN's advisory role on rule-of-law functions (which should move toward a better integration of the political and the developmental), will grow commensurately.

29. This is all the more important now, as we are likely to enter a long period of transition in North Africa and the Middle East. Beyond Libya, it is unlikely that UN missions will be established in the region. Indeed, the hungry search by various UN actors for political roles in the early crisis management of the transitions in the region has largely misfired, and understandably so. Yet over the long haul the UN has the potential to make a vital analytical, normative, political, and perhaps even operational contribution to the different transition processes under way. Five to ten years from now, we will not look back and ask whether the UN's political tools were called upon to navigate the first phase of crisis management in Arab Spring countries. Rather, we will ask ourselves whether the UN was analytically, normatively and politically aligned with the aspirations of the people in the region as they sought their own pathways to democracy and the rule of law, and we will assess the contribution of the Organization to their achievements. If the answers are negative, we will query the relevance of the Organization. If the answers are positive, the experience will surely stand alongside other major contributions of the UN.

Annex 1: UN joint operations and lead planning arrangements for different settings

Setting	1. Low Institutional/ Low Income/ Post-Conflict Settings	2. Low-/Middle-Income Fragile Transition Settings Coping with Violence (where the UN has a political presence)	3. Low-/Middle-Income Fragile Settings Coping with Violence (where the UN does NOT have a political presence)	4. Special Initiative in Support of the Arab Spring
Degree of Leverage/ Influence of International Actors	UN Mission/UNSC P5 Bilaterals/IFIs Regional Powers UNDP/CT	Regional Powers/UNSC P-5 Bilaterals/IFIs SPM/PBC UNCT	Regional and Major Powers IFIs Regional Organizations UNCT	Regional and major powers UNCT/IFIs Regional Organizations

Relevance for UN RoL Architecture and Support

Main Functions of Rule of Law

- Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict.
- Developing arrangements for the independent provision and administration of justice (criminal, administrative, contractual), that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms.
- Developing accountability tools and mechanisms to tether different functions and fonctionnaires of the state, particularly security and financial management, to civilian oversight.
- Embedding the state in international law, including international criminal law, and international regulatory regimes that address organized crime, trafficking, and terrorism.

Core Confidence-Building Measures

- Early confidence-building measures aimed at gradually building trust in justice and security institutions can contribute importantly to sustaining the political settlement, which is the object of the first function. Tools such as citizen perception surveys can be used to understand the needs that underpin any relationship of trust between state and society. Victims of serious international crimes should be included in the surveys while early steps to respond to needs might include the removal of harsh or discriminatory practices and laws; disbanding particularly abusive units within the security services; laying the groundwork for the implementation of certain transitional justice measures such as truth telling; supporting the introduction of, or strengthening existing, alternative dispute resolution mechanisms (particularly in relation to land and resource-related disputes); and developing community policing services focused on violence reduction. In addition to citizen perception surveys, the UN should avail itself of sound and continuous political economy and conflict analysis and real-time monitoring tools to guide decisions on where leverage might be needed in support of the emergence of the other core rule-of-law functions.

Planning Arrangements

- The following tables outline a potential set of arrangements, covering the majority of settings, aimed at maximizing comparative advantage and minimizing confusion. There will, of course, be exceptions and countries that do not fit these categories, and decisions on roles will hence require judgment by the Secretary-General and the Policy Committee. Furthermore, the tables do not assert that listed agencies currently have the sufficient capacity to implement the functions ascribed: a roadmap similar to this, however, could clarify intent and provide a guide for agencies/donors as to where to concentrate capacity. These tables should be read within the context of a broader set of arguments that CIC and others (notably the Senior Advisory Groups's Independent Report on Civilian Capacity and the 2011 WDR) have made on the need to move to joint operations that link political, development, and security actors on the ground. What follows should be viewed as a starting point for rationalizing the question of who participates in joint operations (because not everyone should, at every stage), rather than a formulaic plan for a precise division of labor.

1. Low Institutional/Low Income/Conflict and Post-Conflict Settings

Lead Policy Level HQ	DPKO (for confidence building; mission planning in these sectors; short-to-medium-term delivery of international substitute or support capacity); UNDP on medium-to-long-term institution and capacity building, and access to justice initiatives. Both should foster a spirit of joint operations rather than a "division of labor."		
Lead Coordination/Planning HQ	While DPKO takes the lead on overall planning for peacekeeping missions, integrated teams involving agencies with capacity to provide support in the four core rule-of-law functions should be genuinely integrated into the planning process from the outset to ensure the essential links between support to the political settlement and necessary confidence-building measures; and support to the remaining three functions that will continue beyond the life-span of the mission. These functions should be seen not as separate, but as interdependent.		
Lead in Reporting	DPKO (SRSG)		
Lead in Knowledge Management	RoLCRG (Lead DPKO)		
Support to budgeting, support on resource mobilization	WB/PBF (or PBC in PBC country-specific settings)		
Breakdown of main support roles at country level in accordance with each of the rule-of-law functions (based on mandate and analysis of the situation and the range of available options for engagement)	<p>Confidence Building (SRSG)</p> <p style="text-align: center;">→</p> <p style="text-align: center;">→</p> <p style="text-align: center;">Confidence-building measures/links to political settlement</p> <p style="text-align: center;">→</p> <p style="text-align: center;">→</p> <p style="text-align: center;">→</p> <p style="text-align: center;">→</p>		UN (joined effort in support)
			Non-UN external support
	<ol style="list-style-type: none"> 1. Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict. 2. Developing arrangements for the independent administration of justice (criminal, administrative, contractual) that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms. 3. Developing accountability tools and mechanisms to tether different functions and <i>fonctionnaires</i> of the state, particularly security and financial management, to civilian oversight. 4. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking and terrorism. 	<p>DPA (elections; constitution building)</p> <p>DPKO (short-to-medium-term substitution/ international delivery). UNDP (RC/HC) for institution and capacity building over the medium term, but starting as soon as feasible; legal drafting and access to justice initiatives)OHCHR (for medium-to-long-term human rights/legal monitoring and transitional justice efforts)</p> <p>UNDP, UNODC, OHCHR</p> <p>UNDP, UNODC, OHCHR</p>	<p>Regional powers, Bilaterals, IFIs, INGOs</p> <p>Bilaterals, IFIs</p> <p>Bilaterals, IFIs INGOs, CSOs</p> <p>IFIs, Regional Organizations, Other International Arrangements</p>

2. Low-/Middle-Income Transition or Fragile Settings Coping with Violence (where the UN has a political presence)

Lead Policy Level HQ	DPA (with support from OROLSI as global service provider*); in liaison with regional actors			
Lead Coordination/Planning HQ	DPA (with support from OROLSI as global service provider*)			
Lead in Reporting	DPA			
Lead in Knowledge Management	RoLCRG (Lead depending on whether SPM, PB presence, fragile setting)			
Support to budgeting, support on resource mobilization	WB, PBF (including support to OROLSI as global service provider); PBC for CSIMs			
Breakdown of main support roles at country level in accordance with each of the rule-of-law functions (based on mandate and analysis of the situation and the range of available options for engagement)		Confidence Building (SRSG)	UN (joined effort in support)	
			Non-UN external support	
	1. Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict.	→	DPA (elections; constitution building)	Regional powers, Bilaterals, IFIs, INGOs
	2. Developing arrangements for the independent administration of justice (criminal, administrative, contractual) that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms.	→	DPKO (short-to-medium-term substitution/ international delivery). UNDP (RC/HC) (for institution and capacity building over the medium term, but starting as soon as feasible; legal drafting and access to justice initiatives)OHCHR (for medium-to-long-term human rights/legal monitoring and transitional justice efforts)	Bilaterals, IFIs
3. Developing accountability tools and mechanisms to tether different functions and functionaires of the state, particularly security and financial management, to civilian oversight.	→	UNDP, UNODC, OHCHR	Bilaterals, IFIs INGOs, CSOs	
4. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking and terrorism.	→	OHCHR, UNODC	IFIs, Regional Organizations, Other International Arrangements	

* Requires a combination of creativity with existing instruments and reform to funding arrangements, along the lines of the "global service provider" model and the kinds of joint, flexible operational arrangements envisaged by the Report of the Independent Panel on Civilian Capacities.

3. Low-/Middle-Income Settings Coping with High Levels of Violence (where the UN does NOT have a political presence)

	UNDP*		Confidence Building (SRSG)	UN (Joined effort in support)	Non-UN external support
Lead Policy Level HQ	UNDP				
Lead Coordination/Planning HQ	UNDP				
Lead in Reporting	UNDP				
Lead in Knowledge Management	UNDP				
Support to budgeting, support on resource mobilization	WB				
Breakdown of main support roles at country level in accordance with each of the rule-of-law functions (based on mandate and analysis of the situation and the range of available options for engagement)		1. Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict.	→	Resident Coordinator, with support from OROLSI/DPA*	Regional powers, Bilaterals, IFIs, INGOs
		Developing arrangements for the independent administration of justice (criminal, administrative, contractual) that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms.	→	UNDP, OHCHR, with DPKO/OROLSI, other UNCT agencies (requires use of PBF or new financing arrangements to draw in OROLSI as global service provider)	Bilaterals, IFIs
		3. Developing accountability tools and mechanisms to tether different functions and functionaries of the state, particularly security and financial management, to civilian oversight.	→	UNDP, OHCHR, UNODC	Bilaterals, IFIs INGOs, CSOs
		4. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking and terrorism.	→	OHCHR, UNODC	IFIs, Regional Organizations, Other International Arrangements

* Requires greater investment by UNDP at the corporate level in transitions, conflict-management, and the rule of law; requires important reforms to the training and selection process for resident coordinators for non-conflict fragile settings; recognizes the importance of conflict prevention as a critical means of protecting against development reversals.

4. Special Initiative on Arab Spring

Lead Policy Level	Secretary-General, supported by special advisor to the SG	[Would need to be established - Alternative: senior advisor established within OROLCRG]
Lead in Coordination	ROLGRG*	
Lead in Resource Mobilization	UNDP/WB	
Breakdown of main support roles in accordance with each of the rule-of-law functions (based on analysis of the situation and the range of available options for engagement)	1. Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/ mitigating political differences and/or resolving conflict.	UN (joined effort in support) UN likely to be sharply limited in these roles, except for short-term election and constitution-building support
	2. Developing arrangements for the independent administration of justice (criminal, administrative, contractual) that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms.	UNDP Bureau for Arab States**
	3. Developing accountability tools and mechanisms to tether different functions and functionaires' of the state, particularly security and financial management, to civilian oversight.	OHCHR, UNDP
	4. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking and terrorism.	OHCHR, UNODC, CTED
		Non-UN external support Regional powers, regional organizations, INGOs
		Bilaterals, INGOs
		IFIs, INGOs
		Global CT Forum.

* Requires deliberate effort to attract to the UN a number of senior figures with in-depth knowledge of specific Arab countries who could assist and advise the UN's effort.
 ** Requires internal reforms.

SHAKY FOUNDATIONS: AN ASSESSMENT OF THE UN'S RULE OF LAW SUPPORT AGENDA

I. Deconstructing the Rule of Law

Violence and the rule of law: historical and conceptual underpinnings

1. Historically, rule-of-law institutions and practices evolved as mechanisms to control violence and maintain political stability as political societies grew in size and complexity. In traditional polities, elites maintained control through family, tribal, or religious allies' dominance of key government posts and access to economic resources. Actors with militias or armies able to fight for control of the state and its resources were often enticed into a ruling coalition with promises of a fair share of state-facilitated economic rents. Over time, the threat of losing economic benefits if an elite actor resorted to violence became high, increasing the coalition's commitment to stable government. Order was maintained as long as the coalition members – linked to each other through family or other personal ties – accepted the allocation of economic rents and agreed to restrict access to economic and political power to coalition members. Over a period of several generations, elites in a small number of societies, responding to a complex set of historical pressures and incentives, moved beyond small inter-elite networks and created “impersonal” corporate vehicles, open to all, for economic activity protected by the state. These practices gradually expanded as elites extended access to politics and the economy to additional sectors of the population. With political and economic life open to all members of the society based upon citizenship status rather than personal identity, political stability depended upon the independent, neutral functioning of the security forces, administrative bodies, and courts.⁷

2. In modern usage, “rule of law” conceptually refers to a set of norms, social practices, and institutions developed by political societies to curb the arbitrary exercise of political power. One version subjects political leaders – kings, tyrants, presidents, and parliaments –

to a set of formal decision-making processes. It defines the entities that create and review laws, describes the procedures they must follow, and establishes independent mechanisms to assess whether procedures were followed in particular cases. This version, often described as “rule by law,” can structure many different forms of political order, including authoritarian regimes, as long as formal rules are honored. A “thicker” version denies that mere procedural formality can protect individuals or groups from oppression and insists that effective rule of law requires a clear set of constitutional and legal norms, ranging from guarantees of full citizen equality and political participation to the full range of contemporary international human rights and a broader range of political institutions to facilitate the provision of human security and development.

3. In UN practice, the normative foundation for the rule of law is immensely broad. It includes the UN Charter in addition to four of the main pillars of the international legal system: international human rights law, international humanitarian law, international criminal law and international refugee law. These standards form the normative parameters for UN engagement on rule of law and by extension, the parameters for most bi-lateral engagement.⁸ In 2004, the UN Secretary-General encoded this “thick” version of the rule of law, defining it as “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 the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”⁹ In relation to conflict-affected and fragile settings, the UN and its international partners have increasingly insisted that only the “thicker version” can adequately respond to serious human rights abuses and help mitigate the “heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees, and others” and respond to transnational phenomena such as organized crime, trafficking, and terrorism.¹⁰

4. The broadening of the concept has at times led to conceptual confusion and operational incoherence, arising from the fact that this “thick” version of the rule of law is oftentimes indistinguishable from the broad objectives of state-building in a democratic or developmental sense, or from peacebuilding as the term is currently used. On the other hand, while UN policy might have gradually developed to encompass this “thicker” version of the rule of law, the UN and broader international approach to strengthening or supporting the emergence of the rule of law at the country level is still largely centered on technical capacity-building of formal justice and security institutions, regardless of context.

International approaches to the rule of law

5. If the rule of law means different things to different people, it is useful to break it down into a set of core functions that can be understood distinctly or in relation to one another. These are:

- i. Developing formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict.
- ii. Respect for human rights and strengthening or supporting the emergence of alternative dispute resolution mechanisms.
- iii. Developing accountability tools and mechanisms to tether different functions and fonctionnaires of the state, particularly security and financial management, to civilian oversight.
- iv. Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking and terrorism.

5. The relationship between the first function – formal political institutions that operate in accordance

with the law – and the other functions is critical. In many conflict-affected countries, the state is still dominated by clientelist, patrimonial, and neo-patrimonial regimes – with formal and informal elite networks based on regional, family, tribal, and party connections controlling access to economic rents through state capture. These are manifestations of a logic where neither historical developments nor economic incentives have yet driven an open-access order – that is to say, have not as yet produced a “thick” form of rule of law. In many states, particularly those dealing with conflict and violence, the most powerful political and economic groups seek to maintain political stability through limiting access to economic and political resources to small elite networks. Consequently, neither the government nor formal government institutions operate in an impartial manner to enforce laws equally for all citizens – elites are able to escape or manipulate police, courts, and legislatures to protect their interests (or to wield them as weapons in inter-elite competition when the governing coalition is unstable).

7. The risk for such systems is that while they may be able to maintain stability in the short term, they have limited, if any, legitimacy and are vulnerable to violent contestation over the longer term – either from an internal coalition or from popular revolt. Weak institutions for accountability – i.e., for holding the state to account for citizen demands – are among the most powerful predictors of civil war and other forms of violence. Nowhere is this more evident today than in the Middle East and North Africa: after three decades of “stability” brought by oppressive state structures and patronage-based economic systems, regimes across the region are being challenged by popular uprisings, sometimes aligned with internal elite coalitions, that are demanding greater access to economic opportunity, greater participation in decision-making, and respect for their claims to justice.

8. Many international responses to conflict encounter governments that exhibit some or all of these characteristics. This presents two serious problems for rule-of-law-related support. First, for institutional approaches defined specifically as “rule-of-law support,” the current approach focusing predominantly on technical assistance to formal

institutions assumes that national institutions operate as if they were in an “open access” state, as if the thick form of rule of law were already established. But where this is not the case – in most states affected by conflict and violence – these same institutions are susceptible to capture and manipulation by political actors in the governing coalition, and often cannot respond to the assistance as hoped. The problem is not precisely one of lack of “political will”; rather, it is that the political system works in a different way and national actors are working in accordance with local culture and practice, not OECD best practices. The UN has captured this dilemma in its earlier reports on rule of law and in recent discussions within the Security Council, but the institutional response has failed to shift in tune with policy direction.¹¹

9. The relationship between political institutions that function in accordance with the rule of law on the one hand and the emergence of independent and legitimate judicial or human rights institutions on the other is not always so obvious. There are important instances where certain institutions have developed and retained their independence and/or legitimacy even when the conditions for an “open access” society were not obvious. Whether through traditional or imported legal traditions, functional cooperation, or historical accident, in countries as diverse as Chile, Colombia, Pakistan, Indonesia, and South Africa, judicial or quasi-judicial institutions have at times kept ahead of political developments, and have been important levers for opening up politics and political institutions to more inclusive approaches.¹²

10. Notwithstanding, the general point holds true that there is a critical relationship between the process of moving from informal, elitist political arrangements to arrangements that are more predictably oriented towards participation and the administration of justice, the accountability of the security services, and a state’s respect for international law. Here, unfortunately, we encounter a deep knowledge gap. Although Huntington, Fukuyama, North, et al. have outlined a historical path to a “thick” version of the rule of law for a handful of countries in the north, there is as yet only limited understanding about how this came about and even less understanding

about how to promote or support its emergence today. Given this dearth of knowledge, conventional technical assistance for formal institutions or legal reforms can be hopelessly misguided. It assumes that the norms, values, and objectives underlying the concept of the rule of law will take root in the wake of new laws and courts or through the capacity building of judges, and police, and pays scant attention to local culture and history, power relations, or practice.

11. The *World Development Report* (WDR) 2011 constitutes an important first step in filling this empirical gap. Three findings from the WDR are significant here. First and central is the recognition that building confidence in the political settlement is foundational for broader security and economic progress. Second is the recognition that “inclusive enough” political settlements have proven more stable than exclusive ones – while this formulation does not invoke the language of human rights or justice or the rule of law, it is nevertheless directly relevant to such concerns, as it suggests an underlying political rationale for leading elites to accept a degree of self-restraint. Third, on the basis of existing evidence (which admittedly remains somewhat slender), it suggests that reform to judicial institutions forms an important part of a trinity of initiatives (namely, reform of justice and security institutions, and job-focused reform of economic institutions) that can sustain progress away from the cycle of violence that has dogged many fragile states.

12. The WDR 2011 also acknowledges a core problem: even in states wracked by war, some groups and elites profit from the prevailing system and resist change, sometimes using violent strategies to oppose it. It also stresses the opposite point: that an examination of the contemporary record shows that it is rarely the case that all elites oppose change. In most societies, some set of actors will be agitating for change, especially as states that have succeeded in accessing global markets (which requires stable rule of law at least in the criminal and contractual realms) have prospered, while those that have remained closed have languished. It is no coincidence that states with weak institutions are simultaneously at highest risk of violence and are making the least progress towards the Millennium Development Goals.

13. On the basis of an examination of the historical development of OECD countries, the contemporary development of the new middle-income countries, and the track record of post-conflict states since the end of the Cold War, the WDR 2011 highlights multiple pathways towards more open, stable arrangements. The different pathways do not include a one-time, sudden embrace of the thick approach to democratic governance and the rule of law. Rather, progress has usually been gradual and nationally driven, tackling a limited set of issues at each step – mitigating corruption; reorienting the security services towards reducing violence and enhancing citizen protection; introducing or strengthening existing alternative dispute resolution mechanisms to mediate the resolution of local conflicts; ensuring that unfair or abusive laws and practices are removed or mitigated; or fostering the emergence of an independent judiciary. In some cases, such initiatives have accompanied the opening of political and economic systems, reinforcing each other over time. Sometimes, for example, the fostering of an independent judiciary has driven greater political accountability; in other cases, however, elites have successfully blunted the efforts of courts to challenge power-based privileges.

14. How, then, in the absence of effective knowledge about the emergence of rule-of-law cultures, might the UN and other actors approach the topic in the range of different contexts where support is needed or requested? Perhaps the most viable approach would be to ask a series of questions related to the fundamental functions of rule of law: how do particular societies (or social groups) control or manage violence and provide personal and group security, resolve disagreements, mitigate discrimination, and support the emergence of trustworthy and legitimate political processes and institutions? Rather than presupposing formal judicial and security institutions, as tends to be the practice, those seeking to provide assistance could look instead to the immediate self-defined needs of the citizenry as a guide. Perception surveys can replace or complement institutional diagnostics as an instrument for understanding these needs. Citizen perception surveys conducted within the framework of the WDR and by other groups such as SaferWorld, USIP and the Asia Foundation systematically identify providing security against violence

and building trust among groups and with political institutions as immediate priorities. The UN might then target early efforts towards enhancing citizen security, removing laws or practices perceived as harsh or abusive, removing discriminatory practices towards different groups (women, indigenous, ethnic, religious, etc.), or laying the groundwork for the implementation of certain transitional justice measures such as truth-telling.

15. The precise sequence and prioritization of these efforts should not be generalized and developed into boilerplate responses and they certainly need to be accompanied by sound political economy and other forms of analysis. Indeed, experience has clearly demonstrated that there is no single pathway to consolidating the rule of law and enhancing democratic governance in any given setting. Rather, the limited knowledge we have of these issues is revealing that where progress has been made it has been specific to national political, economic, and historical conditions over long periods of time with differing levels and forms of international involvement. In this regard, and given the dearth of knowledge and evidence currently underpinning strategic and operational responses, the international community has perhaps demonstrated a case of ‘trop de zèle’ in terms of rule-of-law expectations in highly complex and volatile settings coping with internal and external pressures.¹³ While the ‘thicker’ version of the rule of law and its normative underpinnings should always remain the ultimate objective of these efforts, the UN and its national counterparts can make progress in the shorter term by responding to the immediate needs of citizens, and ensuring a legitimate political settlement takes root. Combined with continuous analysis and a build up of support to the other, broader rule-of-law functions, these efforts, if monitored more effectively, can provide a more stable, or at least a more legitimate foundation for the emergence of the rule of law.

II. The Nature and Scope of UN Rule-of-Law Support in Practice

Identifying Lessons

In this section we outline the nature and scope of rule-of-law support in different settings, focusing principally on the type of assistance the UN provides in i) low income, low institutional post-conflict settings; ii) low income, low institutional, fragile transition settings where the UN has/ has recently had a political mandate; and iii) fragile, transition settings coping with high levels of violence where the UN does not have a political mandate. Key challenges underpinning each of the cases and the cross-cutting thematic areas include the recurring problems of conceptual confusion between the “thick” and “narrow” frameworks for engagement, regardless of the setting; narrow planning and implementation timeframes; limited human capacity and financial resources; untenable institutional arrangements at the system and individual entity level; limited capacity to gather and analyze the results of rule-of-law-related support provided at the country level against broader goals such as peacebuilding and development; limited capacity and flexibility to effectively consider context (local, regional, global); and, by extension, limitations in the Organization’s capacity and leverage to identify and effectively respond to the formal and informal political economy challenges and opportunities that continue to have an important impact on the emergence of the rule of law in any of these settings.

16. On the ground the UN engages in a broad range of rule-of-law activities in the hope of meeting the equally broad range of rule-of-law objectives set by member states and governing bodies, including challenges posed by transnational phenomena such as organized crime, trafficking, and terrorism. Most of these initiatives are implemented in extremely difficult conditions by UN staff with significant experience working in humanitarian, peacekeeping, peacebuilding, or development environments.

17. There are other challenges. Beyond the well-documented shortcomings of the civilian capacity available to respond to member state needs and the needs of nongovernmental constituencies such as civil

society¹⁴, more often than not, the UN and other actors have limited leverage to address the issues they, often along with their national counterparts, have identified as priority. Indeed, they are restricted in the nature of rule-of-law support they can provide in practice as national actors often use the shield of sovereignty to narrow the scope of rule-of-law support on certain fronts, hence preventing the emergence of strong institutions that, over time, can check economic and political elites and guarantee fundamental rights. Even when they do have leverage, through a peacekeeping or political mission mandate, UN practitioners and other international actors have rarely been able to connect institutional assistance with strategies to shift the interests of key national economic and political actors toward greater support for rule of law. As soon as reform efforts or specific mechanisms start to alter power relations, it is often the case that these efforts are met with serious resistance. In many other cases, though, the international community itself has turned a deaf ear to the needs and aspirations of citizens, backing authoritarian regimes for decades, supporting institutions that had limited or no legitimacy vis-à-vis the citizenry, and sustaining discriminatory and abusive policies.

While Secretary-General reports and policy documents set out a very “thick” concept of the rule of law, this is not reflective of UN field practice. Rather, UN rule-of-law support on the ground tends to follow a very narrow interpretation of the rule of law, often front-loading support to legal drafting or the training of police, justice, and prison personnel and other common institution-building initiatives. Despite calls by the Secretary-General to ensure that political context is considered when providing this form of institutional support, it is seldom connected to the political and social dynamics underpinning the institutions.¹⁵ When the underlying political conditions are not conducive to change, these efforts, which in some cases represent hundreds of millions of dollars, can continue for years with modest or indeterminate impact on the quality or predictability of justice and security services provided to citizens.¹⁶

18. More recently, in an attempt to adapt to emerging challenges, some rule-of-law support efforts have targeted

violence reduction at the community level, including through support to alternative dispute resolution mechanisms or community-based policing. In the cases we have reviewed, these bottom-up efforts were rarely part of a coherent strategy that linked them to mid- or longer-term top-down support to national institutions; and other key reform constituencies such as parliamentarians, political parties, civil society organizations, or the private sector. Instead, grass-root efforts tend to be viewed as marginal to the political process, even if actors at the center of the political process are actively manipulating grievances at the community level for political or personal gain. In some contexts, dialogue processes between government, political opposition, the private sector, and civil society on specific reform needs or initiatives have been facilitated by UN Country Teams, but when agreement was reached there was limited leverage to ensure further steps were taken to implement these same reforms or initiatives.

19. Compounding the fact that many of these initiatives tend to be short term in scope and underfunded and under-resourced, many are implemented with little understanding of political, economic, cultural, and historical context or citizen's self-perceived needs; seldom is this kind of assistance underpinned by a theory of change that articulates how it can lead or contribute to the broader objectives that have been set. These shortcomings often lead to a disconnection between rule-of-law efforts and the political process as well as the development of faulty benchmarks upon which rule-of-law support programming is developed and adapted over time. This in turn points to recurrent weaknesses in the analysis and monitoring tools used to inform, guide, and assess the UN system's efforts in the field.

UN rule-of-law support in post-conflict settings (especially low-income, low-institutional cases)

20. Currently some eight UN peace operations are specifically mandated to provide rule-of-law-related support to countries emerging from conflict. These mandates range from human rights monitoring and vetting activities to supporting institutional strengthening initiatives, primarily through capacity building and

supporting the extension of state (security and justice) services throughout the country. Of course, virtually all peacekeeping operations and special political missions perform tasks related to the first rule-of-law function, regarding the political settlement and political institutions.

See Table 1 *UN Peacekeeping Operations with Rule of Law-related Mandates* on pages 29-31

21. In peacekeeping settings, the primary role of UN peace operations can be characterized as maintaining order in the absence of the rule of law, and using the leverage brought by its presence and the attention of the Security Council (and its individual members) to influence and incentivize domestic political actors to adopt a pathway towards more stable politics and development, and to deter potential spoilers. The Organization can use that moment of leverage to muster the support of coalitions in response to immediate needs, agree on mid- to longer-term rule-of-law reform priorities, and, of prime importance, ensure that rule-of-law support is not just approached from a narrow, technical perspective but is instead embedded in the political and cultural realities of a given setting. This acknowledgement was captured in the Secretary-General's 2004 report on *Rule of Law and Transitional Justice in Post-Conflict Settings*, in which he highlighted that "[i]n some cases, State authorities have been more concerned with consolidation of power than with strengthening the rule of law, with the latter often perceived as a threat to the former," and he requested senior representatives in the field to give dedicated attention to supporting the political aspects of justice and rule-of-law reforms since "[t]heir good offices can be crucial to securing political space for reformers, insulating law enforcement from political abuse and mobilizing resources for the strengthening of the justice sector."¹⁷

22. In addition, UN PKOs have seldom used the leverage of a Chapter VII mandate to open up the political space needed to discuss and potentially mediate competing interests around strengthening the rule of law. When attention finally shifts to deeper rule-of-law issues and reforms, including issues such as political or elite manipulation of rule-of-law institutions, it is often

Text continues on page 32

Table 1 : UN Peacekeeping Operations with Rule of Law-related Mandates

Acronym	Area of Operation	Years in Operation	RoL Mandate & Priorities
Active UN Missions			
UNMIK	Kosovo	1999-pres.	<p>UNSC Resolution 1244 (1999) established mission. Secretary-General's report of 24 November 2008 (S/2008/692) enhanced operational role in rule of law.</p> <ul style="list-style-type: none"> Monitors appointment process for legal positions in Kosovo justice system and provides technical assistance. Promotes human rights. Rule of Law Liaison Office monitors activities in the area of rule of law, assists in missing persons initiatives, and facilitates relations between Kosovo institutions and member states that do not recognize Kosovo.
UNMIL	Liberia	2003-pres.	<p>Mandated by Security Council resolution 1509 (2003).</p> <ul style="list-style-type: none"> Recording LNP abuses PR campaign to improve public confidence in LNP Training for LNP. Backed government efforts to address backlogs in the justice system and harmonize the relationship between police and prosecutors. Training for AEL, striving for independent operability by 2012.
MINUSTAH	Haiti	2004-pres.	<p>Resolution 1542 (2004) S/RES/1542 (2004)</p> <ul style="list-style-type: none"> Assist in monitoring, restructuring, and reforming the HNP. Assist restoration and maintenance of the RoL, public safety, and public order. Human rights promotion and monitoring. After 2010 earthquake, mission was encouraged to provide assistance to government to continue RoL capacity building, police and judicial reform, development of credible judicial and penal institutions. After quake, worked on issues of resettlement and land titles to achieve clear, uniformly applied laws. Community Violence Reduction program includes initiatives to strengthen national police capacities to enforce law and order, including through community policing. Also supports re-orientation/reinsertion of police officers decommissioned through the Police Reform vetting process. Also a focus on strengthening the justice system to deal with criminal elements and to stave off impunity. (http://unddr.org/docs/MINUSTAH_CVR_strategy.pdf)
UNAMA	Afghan.	2006-pres.	<p>Mission established by Security Council Resolution 1401 (2002). Mandate laid out in Secretary General's report A/56/875-S/2002/278</p> <ul style="list-style-type: none"> Human Rights unit works to end impunity and facilitate transitional justice. Also provides technical assistance to the Afghan judicial sector, monitors detention facilities, and supports other actors involved in RoL. Mission established by Security Council Resolution 1401 (2002). Mandate laid out in Secretary General's report A/56/875-S/2002/278 Human Rights unit works to end impunity and facilitate transitional justice. Also provides technical assistance to the Afghan judicial sector, monitors detention facilities, and supports other actors involved in RoL.
UNMIT	Timor Leste	2006-pres.	<p>Mission established by Security Council Resolution 1704 (2006). Judiciary and police reform mandate expanded by Resolution 1802 (2008).</p> <ul style="list-style-type: none"> Training, mentoring, and institutional development of the national police. Assistance in conducting a comprehensive review of the role and needs of the security sector, and enhancing effectiveness of the judiciary system. Also mandated to conduct human rights monitoring, promotion, and protection.

UN Peacekeeping Operations with Rule of Law-related Mandates

UNOCI	Cote d'Ivoire	2008-pres.	<p>Mandate originally stipulated by Security Council Resolution 1528 (2004) and subsequently further developed first by Resolution 1609 (2005) and most recently by Resolution 1739 (2007).</p> <ul style="list-style-type: none"> Formulating a plan on restructuring defense and security forces and preparing possible SSR training for AU and ECOWAS. Facilitating re-establishment of government authority throughout the country. Assist government in conjunction with international organizations in restoring civilian policing presence throughout Cote d'Ivoire and advises government on the restructuring of internal security services. Assist government in re-establishing the authority of the judiciary and rule of law throughout Cote d'Ivoire.
MONUSCO	D.R. Congo	2008-pres.	<p>Mandated by Security Council Resolution 1925 (2010).</p> <ul style="list-style-type: none"> Support strengthening of democratic institutions and rule of law. Promote good governance and respect for the principle of accountability. Support to government in strengthening capacity of judicial and correctional systems, including military justice system. Activities include a variety of training programs for various parts of the security sector and judiciary and corrections system. Training program for military personnel on ending sexual violence.
UNIFSA	Sudan	2011-pres.	<p>Mandated by Security Council Resolution 1990 (2011).</p> <ul style="list-style-type: none"> Strengthening the capacity of Abyei Police Service by providing support, including the training of personnel, and coordinate with the Abyei Police Service on matters of law and order.
Former UN Missions			
UNMIH	Haiti	1993-1996	<p>Mission established by Resolution 867 (1993). Mandate revised by Resolutions 940 (1994) and 975 (1995), which included military and police reform.</p> <ul style="list-style-type: none"> Assist in modernizing the armed forces and establishing a new police force. Military authorities did not cooperate initially, so mandate could not be carried out until late 1994. Mandate then revised to enable mission to assist government in fulfilling responsibilities including the professionalization of armed forces and creation of separate police force.
UNMIBH	BIH	1995-2002	<p>Mandated by Security Council Resolution 1035 (1995).</p> <ul style="list-style-type: none"> Monitoring, observing, and inspecting law enforcement activities and facilities, including associated judicial organizations, structures, and proceedings. Advising and training law enforcement personnel and forces. Assessing threats to public order and advising on the capability of law enforcement agencies to deal with such threats. Advising government authorities on organization of effective civilian law enforcement agencies. Assisting by accompanying law enforcement personnel as they carry out responsibilities. In December 1997, mandate was expanded to include the creation of specialized IPTF training units to address key public security issues, such as refugee returns, organized crime, drugs, corruption, and terrorism, and public security crisis management, as well as the detection of financial crime and smuggling. Also included cooperation with Council of Europe and OSCE in judicial and legal reform program, including court system assessment and monitoring, development and training of legal professionals and restructuring of institutions within the judicial system.
UNSMIH	Haiti	1996-1997	<p>Mandated by Security Council Resolution 1063 (1996).</p> <ul style="list-style-type: none"> Assistance to authorities in professionalization of HNP Maintenance of secure and stable environment for training police force Coordination of activities by UN system to promote institution-building.

UN Peacekeeping Operations with Rule of Law-related Mandates

UNTAES	Croatia	1996-1998	<p>Mandated by Security Council Resolution 1037 (1996).</p> <ul style="list-style-type: none"> Establish and train a temporary police force to build professionalism among the police and confidence among all ethnic communities.
UNTMIH	Haiti	1997	<p>Mandated by Security Council Resolution 1123 (1997)</p> <ul style="list-style-type: none"> Training HNP specialized units in crowd control. Mission and UNDP continued preparation of an assistance program to provide HNP with law enforcement expertise.
MIPONUH	Haiti	1997-2000	<p>Mandated by Security Council Resolution 1141 (1997).</p> <ul style="list-style-type: none"> Trained specialized police units. Mentored police performance, guided police agents in day-to-day duties, and maintained close coordination with technical advisors to HNP.
UNOMSIL	Sierra Leone	1998-1999	<p>Mandated by Security Council Resolution 1181 (1998).</p> <ul style="list-style-type: none"> Advise the government and local police officials on police practice, training, re-equipment, and recruitment. Focus on the need to respect international policing standards. Advise on reform and restructuring of the police force Monitor progress of reforms.
MINURCA	C.A.R.	1998-2000	<p>Mandated by Security Council Resolution 1159 (1998)</p> <ul style="list-style-type: none"> Assist in coordination with other international efforts in a short-term police trainers program and in other capacity-building efforts of the national police Provide advice on restructuring the national police and special police forces.
UNAMSIL	Sierra Leone	1999-2005	<p>Mandated by Security Council Resolution 1270 (1999)</p> <ul style="list-style-type: none"> UNAMSIL civilian police supported development of the national police force. A UK-led advisory team under UNAMSIL provided for the army.
MONUC	D.R. Congo	1999-2010	<p>Mission authorized by Security Council Resolution 1291 (2000) / SSR/RoL mandate initiated by Resolution 1565 (2004).</p> <ul style="list-style-type: none"> Included integration of national defense and internal security forces together with DDR and training and monitoring of the police, while ensuring that they are democratic and respect human rights and fundamental freedoms. Also provide military training, including in human rights, international humanitarian law, child protection and prevention of gender-based violence, to various members of FARDC deployed in eastern DRC. With EUSEC and EUPOL, contribute to efforts to assist government in initial SSR planning, building credible, cohesive armed forces, and develop capacities of national police and related law enforcement agencies.
UNMISSET	Timor Leste	2002-2005	<p>Security Council Resolution 1410 (2002) established mission.</p> <ul style="list-style-type: none"> In 2004, mandate expanded by Resolution 1543 to include support to the development of law enforcement.
ONUB	Burundi	2004-2006	<p>Mandated by Security Council Resolution 1545 (2004).</p> <ul style="list-style-type: none"> Carry out institutional reforms, form integrated national defense and internal security forces; train and monitor police, and ensure that police are democratic and respect human rights and fundamental freedoms. Also mandated to support implementation of substantial judicial and correction system reforms.
UNMIS	Sudan	2005-2011	<p>Mandated by Security Council Resolution 1590 (2005).</p> <ul style="list-style-type: none"> Promote rule of law, including combating impunity. Support implementation of peace agreement that included Rule of Law and an independent judiciary, developing a national legal framework that enshrines basic international standards, protecting human rights. Where requested, supporting creation of new institutions and/or reform of existing RoL bodies.
MINURCAT	Chad & C.A.R.	2007-2010	<p>Mandated by Security Council Resolution (2007).</p> <ul style="list-style-type: none"> Strengthen capacity of the governments of Chad and C.A.R. and civil society through training in international human rights standards. To support both governments in promotion of rule of law, including through support for an independent judiciary and a strengthened legal system.

just before the peace operation withdraws, leaving a very narrow space within which traditional development actors can work.¹⁸ In some cases, that small window of opportunity has not been sufficient to move towards, let alone go beyond, responding to immediate needs (such as providing basic security or eliminating abusive practices) and anchoring the backing of elites to meet the broader objectives of rule-of-law reform. The UN and its international partners have often been slow to admit failure in this regard and even slower to initiate new combined efforts to leverage that support.¹⁹ Haiti and other countries plagued by weak, corrupt, and flawed institutions tends to focus on operational/organizational activities that can be completed quickly and rarely tries to focus on transforming the values of institutions.²⁰

23. Serge Rumin illustrates these challenges across three dimensions: time needed to see change, the nature of the activity, and the impact on the institution. By looking at 12 post-conflict settings and the actions of 19 actors, including the UN, in police reform activities between 2001–10, Rumin found that of the 140 police reform projects identified, 95 occurred in the “operating/ managing” domain; some 14 other actions were indirectly related to this same sector. Another 24 projects fell under the “supply” domain relating to logistical, financial, and concrete support, while another two activities fell under the “codifying and structural” sector. Only one activity fell into the “creating/transforming” sector aimed at building institutions that are transformative and anchored in values.²¹

24. In a similar vein, institution-building assistance tends to be conceptualized and implemented with limited regard for the strategic value of these institutions vis-à-vis formal and informal elites and power structures or local dynamics and needs, particularly in areas where citizens rarely come into contact with formal institutions and/ or where it will take years if not decades to extend an effective and democratic presence of the state.

The UN, Haiti and the rule of law²²

25. In an address to the range of international actors (“Friends of Haiti”) that pledged support to Haiti in the aftermath of the 2010 earthquake, former SRSR Edward Mulet highlighted the complete absence of rule of law as *the* critical factor driving underdevelopment, chronic political instability, corruption, organized crime, and vulnerability to natural disasters in the country.²³

26. The earthquake added new challenges to old ones²⁴, and critical rule-of-law reforms were put on hold because of physical destruction and loss of personnel.²⁵ Legal protection has been considerably undermined by the loss of property, birth, marriage, and death records. Prior to the quake, only five percent of land was registered. An increasing number of cases of forced evictions by landowners who wish to recover their property are now being reported.²⁶ These unresolved land and property disputes and the absence of a national relocation strategy continue to hamper resettlement efforts.²⁷ Furthermore, gangsters, many of whom have escaped Haiti’s dilapidated prisons,²⁸ have regrouped, re-armed, and moved into traditional strongholds.²⁹ Meanwhile, sexual and gender-based violence (particularly in IDP camps) and organized crime are on the rise since the earthquake, although accurate data on rape, drug and child trafficking, and kidnapping is difficult to obtain.³⁰

27. The United Nations has been engaged in Haiti through peace operations and development assistance for more than four decades. In 1993, the UN and the Organization of American States (OAS) established the first human rights field operations in both organizations’ history. Through the next 18 years, with breaks for evacuations, expulsions, and an end to the first round of peacekeeping operations (2011–2004), the UN has consistently tried to address the failings of the Haitian justice system and security services.³¹ So too have the international financial institutions and bilateral donors, principally the U.S., Canada, and France. These efforts have yielded sparse results for a range of reasons.³² One principal failing was that early efforts neglected to appreciate the deeply political nature of the police and

judiciary. Viewing reform primarily as a “technical fix” to codes, constitutions, and regulations with a healthy dash of training and logistical support added for good measure, the UN and its international partners neglected to garner support from both key Haitian political and economic elites and their own headquarters and capitals.³³ As soon as reform efforts threatened to alter power relations or impinge on the predatory nature of the state, they were met with immediate resistance and sabotage. As in Guatemala, those who benefited from the absence of law, accountability, and oversight did not welcome changes that would diminish their power or access to state-facilitated resources. When progress was made in one area, continued delays on the government side impeded progress in others.³⁴

28. The Security Council also proved to be an important stumbling block to reform. It was not until 2006 that it authorized the recruitment and deployment of corrections specialists despite reiterated reports on the urgency of the prison situation in the country and the importance of developing corrections capacity alongside that of law enforcement and judiciary personnel and institutions. It also took the Organization several years to fully understand that the type of resources and frameworks applied in countries emerging from conflict were not applicable to Haiti. The original MINUSTAH mandate called for a comprehensive DDR program, notwithstanding the absence of rebel groups or militia armies. To the extent that there had been armed violence, it was very brief and involved, at most, a few hundred fighters. After investing several million dollars and significant time and energy, the UN finally recognized its error; Security Council Resolution 1702 belatedly noted that “conditions for conventional DDR do not currently exist in Haiti and alternative programs are required to address local conditions, and to further the goal of disarmament, demobilization and reintegration.”³⁵ The real threat was from armed gangs in urban areas that resembled mafia-style organized criminal networks and engaged in transnational drug trafficking and arms smuggling. They had become increasingly dangerous, even for heavily-armed UN peacekeepers operating under a Chapter VII mandate. This situation gradually led the Security Council to authorize MINUSTAH to work with

national counterparts to “undertake coordinated deterrent actions to decrease the level of violence.” The belated Resolution finally enabled the mission to respond to local prerogatives on the ground. For example, the mission could now concentrate on violence reduction at the community level in coordination with nongovernmental actors while working to develop the foundations for strengthening national-level justice and security institutions. Combined with context-specific policing and military operations, this approach has reaped notable benefits.

29. Prolonged pre-trial detention has been a problem in Haiti for decades; various efforts to reform the system have failed, leaving prisons badly overcrowded.³⁶ Acknowledging that an increase in corrections advisers was an insufficient response to the challenge, MINUSTAH’s Justice Section, in cooperation with the International Legal Assistance Consortium (ILAC), created a legal aid program called *Bureaux d’Assistance Légale* (BAL) that has registered tangible success in securing the release of more than 3,000 pre-trial detainees since the program’s inception in 2008.³⁷ The BAL are staffed with young Haitian lawyers who receive training, logistical support, and a salary from the joint UN/ILAC program.³⁸ The approach provides an interesting example of early support to institution building from without, and an effective means to engage the citizenry to demand performance and accountability from public servants.³⁹

30. With these experiences under its belt, and drawing in part from the national experience of its leading troop contributor, Brazil, MINUSTAH acknowledged that community-level programs must be part of a broader rule-of-law strategy, and proposed replacing its earlier narrow institution-focused programs with a “Rule of Law Compact.” The “compact” is an agreement between national political leaders and international donors to enforce mutual accountability of the Haitian government and international stakeholders for results and to allow tracking of progress towards agreed targets. MINUSTAH proposed to commit mission personnel not usually associated with rule-of-law support (Political Affairs, Civil Affairs, Border Management, Public Information, and the Mission Leadership) and resources (QIPs, community violence reduction projects)⁴⁰

to work towards “high-value results in the broadest sense – governance, peacebuilding in addition to the strengthening of the criminal justice system.”⁴¹ Enhanced integrated analysis and monitoring of progress would also tie into a recent (broader) request by the Security Council for the Secretary-General to include more detailed political economy analysis in his reporting of challenges encountered during mandate implementation.

31. Much effort was expended in ensuring ownership of the process through the engagement of all parties on rule-of-law issues ahead of the 2011 elections, and agreement coalesced around the immediate priorities of the new administration on rule of law. These include taking immediate or progressive action towards:

- Naming a president of the Cour de Cassation.
- Naming the members of the Conseil Supérieur du Pouvoir Judiciaire and guaranteeing that it will begin operating immediately and have the resources and capacity to operate effectively to improve the quality of justice and ensure the integrity of those dispensing justice.
- Supporting the National Assembly’s immediate ratification of the International Covenant on Economic, Social, and Cultural Rights (creating legal obligations on the government of Haiti to achieve “progressive realization” of core rights such as education, food, access to health care, adequate shelter, and social security) and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (important for the prosecution of Duvalier and others suspected of having committed such crimes).
- Publishing all national budgets, ministry by ministry.
- Supporting efforts to provide citizens with information about the state and local budgets and equipping them with the capacity to analyze budgets to ensure the state is dedicating “maximum available resources” to realize access to education, health care, food, clean water, shelter, a healthy environment, and education.
- Expanding the legal aid program that guarantees that everyone in detention has legal representation.
- Guaranteeing that members of the Haitian National Police (HNP) are deployed according to the Five Year Development Plan and that they have the type of training and equipment to serve and protect the population.

- Creating an effective HNP Inspector General’s Office to ensure that any police misconduct or criminal behavior is investigated and punished after fair and transparent proceedings.
- Registering at birth every child born in Haiti.
- Opening the new prisons in Croix des Bouquets and Hinche and ensuring that all Haitian detention centers maintain accurate registers and meet minimal humane conditions as set out in the UN Standard Minimum Rules on the Treatment of Prisoners.

32. It is much too early to determine whether the new administration in Haiti will adopt these core issues as strategic priorities and whether donors will stay the course. Despite lessons from earlier experiences in Haiti, international actors’ efforts to use other strategic entry points as leverage to anchor sustained leadership and elite buy-in to the compact have been limited.

33. The first 130 days of the Martelly administration (inaugurated in September 2011) were not promising. The president took several months to appoint a minister of justice. He failed to name a chief justice to the *Cour de Cassation* or to fill posts on the crucial *Conseil Supérieur du Pouvoir Judiciaire*, steps he promised to take during the campaign. A resurgence of kidnappings and crime has plagued the country since the beginning of the year. Police reform is slow, and Haiti will have only half the number of police it needs even if everything goes as planned (which rarely happens in Haiti). The Duvalier prosecution remains stalled, and the Martelly administration appears to forging deepening ties with individuals from the former Duvalier regime.⁴² Equally daunting is the fact that Duvalier’s lawyers disrupted a press conference on September 22, 2011, in Port-au-Prince held by Amnesty International to launch its report on the human rights violations of the Duvalier era. The officers of the court prevented Amnesty from exercising its fundamental right of freedom of expression, and the president failed to condemn the assault. Neither response augurs well for the rule of law in Haiti and raises further questions about the reach of the UN and the broader international community’s influence on rule of law and other developments in the country.⁴³

The UN, the DRC and the rule of law⁴⁴

34. In May 2010, the UN Security Council called on the government of the DRC to make “urgent progress, with regard to governance and institution building, on judicial reform and support to domestic courts, in order to ensure the rule of law and strengthen the fight against impunity.”⁴⁵ It also called upon MONUSCO and other relevant international actors “to support the efforts of the Congolese government in these fields, and to assist in the restoration of basic services, including access to justice, road access, priority health and education infrastructures, and security infrastructures, throughout the country, and especially in conflict-affected areas.” Particular focus was placed on “persistent high levels of violence, especially sexual violence, and human rights abuses against civilians, mostly affecting women and children, including the use and recruitment of children by parties to the conflict, in particular in the eastern part of the country.”

35. The UN and international donors have been engaged for decades and continue to be engaged in rule-of-law support initiatives (see Table 1 for Peakkeeping Operations with Rule of Law-related Mandates). But for the UN, the situation in DRC would undoubtedly be markedly worse. MONUC/MONUSCO and the UN country team are regarded as having exercised a comparative strength in rule of law, justice, and security.⁴⁶ The Mission and UNCT have provided support through early recovery and stabilization initiatives in wide areas of DRC; the re-establishment of core rule-of-law institutions at the national level (including courts, police, and prisons); a broad DDRRR program; the elections of 2006; limited but high-profile ICC warrants, arrests, and prosecutions of perpetrators of human rights violations; a MONUC “conditionality policy” (that vets Congolese armed forces commanders before utilizing them for UN joint military operations); and the attempts by UN and international donors to bring stability to Eastern Congo under several funding frameworks. The establishment of the DPKO-OHCHR Joint Human Rights and Joint Protection Offices, and increased coordination within a Joint Mission framework represent attempts by the UN to further rule of law and human rights in the DRC.

36. Efforts to provide more strategic support culminated in the development of an International Security and Stabilization Support Strategy (I/4S) as a coherent framework for political stability and security in eastern Democratic Republic of the Congo.⁴⁷ The I/4S provides support to the Democratic Republic of Congo’s Stabilization and Reconstruction Plan for War-Affected Areas (STAREC), launched in June 2009. It is aimed at supporting the Government’s Stabilization and Reconstruction Plan for the East (STAREC), and the achievement of SC Resolution 1925 (2010) S/RES/1925 (2010). Also in 2009 the UN conducted a Technical Assistance Mission (TAM) to DRC recommending among other things that the newly configured mission “build the capacity of national security and rule of law institutions to a level at which they could be sustained and built upon.”

37. While I/4S has shown tangible successes in Eastern Congo – bringing donors together through a common funding facility and working as closely as possible with government – serious questions remain about the nature of the assistance provided, as the majority of support is aimed at establishing or strengthening core justice and security institutions at the national or regional level. UNDP’s BCPR (as well as other national and international actors) has gone deeper into the community level to attempt to respond to horrific levels of rape and abuse.⁴⁸ This support, whether provided by the UN or other actors, is implemented in harsh and dangerous conditions and therefore comes up against serious implementation challenges. At the same time, however, the overall UN and broader international response does not seem to address the grassroots level sources of conflict and social disarray in the region, despite the amount of analysis penned on these issues.

38. The UN’s comparative strength in supporting the emergence of the rule of law in the DRC has been lauded by some actors, yet there is limited empirical evidence or even perception surveys to support these claims. Despite decades of programming in the justice and security sectors in DRC and its huge military presence, the UN has remained unable to effectively protect civilians in the eastern DRC; end gross violations of human rights and/or humanitarian law; or develop effective conflict resolution,

legal empowerment, and access to justice, particularly at the local level. Land disputes and interethnic tensions continue to proliferate throughout DRC. As in Burundi, land disputes have been historical sources of conflict between different groups and individuals in many parts of the DRC, particularly the Kivus. The exploitation of mining sites, appointment to local administrative and traditional positions of authority, the collection of local taxes, and even the social status of specific groups and individuals have all been sources of antagonism between different power groups in the region for decades. While very different in nature, these sources of conflict have consistently shared one commonality – their resolution depends just as much on bottom-up conflict resolution processes as on top-down military operations and peacebuilding efforts.⁴⁹ It is difficult, therefore, to understand how in the short term, formal criminal justice institutions, where the UN, and particularly DPKO, has placed most of its focus, can mitigate the violence ignited by these power, land, and ethnic-based local-level conflicts.

39. Meanwhile, there is a largely “unmapped” nexus between the illicit exploitation of Congo’s natural resources, organized crime, armed gangs, the armed forces, and justice and political structures in DRC. To date the UN’s efforts at SSR have not resulted in a democratically accountable security sector or reformed military justice system; and the FARDC remain the main perpetrators of sexual and gender-based violence SGBV and other abuses committed against rural and remote populations – especially in Eastern DRC. The decentralization process is stalled, while the civilian justice sector and courts remain under-resourced, inaccessible, inefficient, and in many instances corrupt.

40. A review of UN integrated rule-of-law planning documents provides some insights into how the UN gradually adapted its approach to focus on mitigating abusive practices such as rape and other forms of sexual and gender-based violence. However, these documents provide less insight into why, after some eleven years and reams of analysis, the Organization continues to focus the thrust of its rule-of-law activities on supporting formal criminal and military justice institutions, rather than developing an approach that focuses on strengthening existing or emerging alternative formal and informal

mechanisms to resolve conflict at the local level, while simultaneously working with the broader international system to provide a more coherent basis for longer-term rule-of-law and state-building efforts. This is especially true when one considers the relative lack of UN pro-poor legal empowerment and access to justice programming in DRC. The same can be said of the comparatively small amount of attention afforded to the interface between the formal statutory justice system and the traditional, customary legal system. The trend of favoring support to criminal and military justice institutions is also evident in the failure of the UN to map out the nexus between illicit armed groups/ criminal gangs and the state and DRC’s mineral resources and its failure to explore the root causes of the continued human rights abuses in Eastern DRC other than through a “top down” traditional rule-of-law approach.

Beyond Peacekeeping

UN rule-of-law support in low-/middle-income transition or fragile settings coping with violence (where the UN has a political presence)

41. While much has been penned on the UN’s approach to rule of law in peacekeeping settings, less is known about how the UN’s Special Political Missions approach rule-of-law support in low-income, low-institutional post-conflict settings.

See Table 2 UN Special Political Missions with Rule of Law-related Mandates on page 37

42. DPA provides strategic support to special political missions. It does not have dedicated expertise on rule-of-law issues and therefore depends significantly on its relations with UN country teams on the ground and increasingly on DPKO (particularly regarding law enforcement issues) and UNODC for specialized expertise.⁵⁰ Current political analysis tools rarely consider rule-of-law issues, particularly the manner in which formal or informal elite groups might capture rule-of-law institutions to advance their own goals, and the impact of such situations on the sustainability of a political process or a political settlement or agreement.

Text continues on page 38

Table 2 : UN Special Political Missions with Rule of Law-related Mandates

Acronym	Area of Operation	Years in Operation	RoL Mandate & Priorities
Active UN Missions			
UNIOGBIS	Guinea-Bissau	2010-pres.	<p>UNSC Res. 1876 (2009)</p> <ul style="list-style-type: none"> Strategic and technical support to the government for implementing SSR Combating drug trafficking, human trafficking, and organized crime. Supporting the institutionalization of respect for the rule of law Effective and efficient law enforcement and criminal justice systems Human rights and rule of law promotion
UNPOS	Somalia	1995-pres.	<p>UNSC Res. 1863 (2009)</p> <ul style="list-style-type: none"> Build expertise in police and military training Political support for efforts on peace and stability Work with transitional government to support Justice and Reconciliation Working Group “to counter impunity”
BNUB	Burundi	2011-pres.	<p>UNSC Res. 1959 (2010)</p> <ul style="list-style-type: none"> Strengthening the independence, capacities and legal frameworks of key national institutions, in particular judicial and parliamentary institutions, in line with international standards and principles Promoting and facilitating dialogue between national actors and supporting mechanisms for broad-based participation in political life, including for the implementation of development strategies and programmes in Burundi Supporting efforts to fight impunity, particularly through the establishment of transitional justice mechanisms to strengthen national unity, promote justice and promote reconciliation within Burundi’s society, and providing operational support to the functioning of these bodies Promoting and protecting human rights, including strengthening national capacities in that area, as well as national civil society Ensuring that all strategies and policies with respect to public finance and the economic sector, in particular the next Poverty Reduction Strategy Paper (PRSP), have a focus on peacebuilding and equitable growth, addressing specifically the needs of the most vulnerable population, and advocating for resource mobilization for Burundi.
UNAMA	Afghan.	2002-pres.	<p>UNSC Res. 1401 (2002)</p> <ul style="list-style-type: none"> Human Rights unit works to end impunity and facilitate transitional justice. Also provides technical assistance to the Afghan judicial sector, monitors detention facilities, and supports other actors involved in RoL Supports establishment of fair and transparent judicial system and strengthen rule of law Work with Afghan government to identify individuals financing or supporting Al-Qaida and the Taliban using the proceeds from the cultivation, production and trafficking of narcotic drugs Promote the local implementation of the National Drugs Control Strategy Combat corruption at the local and national level
BINUCA	C.A.R.	2009-pres.	<p>UNSC Letter S/2009/128</p> <ul style="list-style-type: none"> Assist national and local efforts to reform electoral processes and governance Promote respect for rule of law Promote respect for justice and accountability Support efforts to restore State authority
UNAMI	Iraq	2003-pres.	<p>UNSC Res. 1500 (2003)</p> <ul style="list-style-type: none"> Assist Government of Iraq to develop processes to resolve internal border disputes Assist Government of Iraq to facilitate dialogue on border security Promote...judicial and legal reform in order to strengthen the rule of law Promote national reconciliation Reform of correctional systems

Former UN Missions	
UNOGBIS	<p>Guinea-Bissau</p> <p>1999-2009</p> <p>UNSC Res. 1233 (1999)</p> <ul style="list-style-type: none"> Strengthening the capacities of national institutions, including law enforcement and criminal justice systems, in order to maintain constitutional order Supporting and facilitating the implementation of security sector reform Extending cooperation to national authorities in their efforts to combat drug trafficking and organized crime Assisting with the promotion and institutionalization of respect for the rule of law and human rights
BINUB	<p>Burundi</p> <p>2006-2010</p> <p>UNSC Res. 1719 (2006)</p> <ul style="list-style-type: none"> Strengthen independence of judiciary Technical assistance for SSR Help professionalize the army Support national programme for “the demobilization and reintegration of former combatants” Assisting with the design and implementation of a human rights action plan and an independent national human rights commission children’s rights and “other vulnerable groups” Human rights training for Burundi National Police Support transitional justice mechanisms such as truth and reconciliation commission and a special tribunal to combat impunity

43. In countries where the UN has a presence in the form of a Security Council authorized special political mission, the Organization might still be able to capitalize on its leverage to press for progress on fundamental rule-of-law reforms, particularly through the good offices mandate that most special political missions have at their disposal. In addition, some mechanisms, such as the country configurations of the Peacebuilding Commission or conflict-sensitive PRSPs, have provided national actors, the UN, and its international partners greater space to sustain focus on politically sensitive rule-of-law objectives in these contexts, such as the resolution of land and other resource-related conflicts; creating the conditions for the emergence of an independent judiciary; and mediating political differences around justice and security reform issues. The relatively rapid disbursement of Peacebuilding Funds has also enabled the facilitation of dialogue between political parties, the short-term resolution of land and other resource-related conflicts, and awareness campaigns around organized crime-related or sexual and gender-based violence. However, without the real commitment of formal and informal elites that is vital to establishing trust both internally and externally, these efforts are hardly sustainable over the longer term.

The UN, Burundi and the rule of law⁵¹

44. The UN has been present in Burundi since the mid-1990s and is now operating under the framework of a special political mission. Its most recent presence dates back to 2004, when an existing peacekeeping operation under the African Union was re-hatted as a UN peacekeeping operation – ONUB. In 2006, following a relatively smooth political transition, troops were withdrawn and the mission was transformed into an integrated peacebuilding office – BINUB. The mandate of the office has since been further downscaled into a smaller political mission called BNUB. The Peacebuilding Commission (PBC) has also been engaged in the country since 2006, attempting to galvanize the attention of the international community around critical peacebuilding gaps and challenges. Once the peacekeeping operation withdrew, BINUB was mandated to provide support to the consolidation of peace and democratic governance

with a specific focus on the consolidation of the rule of law, DDR, SSR, human rights, transitional justice, and providing political support to national dialogue processes. The follow-on mission, BNUB, is mandated to continue providing support in most of these areas, with the exception of SSR, which, following the insistence of the government, will now be provided on a bilateral basis (see Table 3 for BNUB mandate).

Table 3 : BNUB mandate

Governance and justice	Strengthening the independence, capacities, and legal frameworks of key national institutions, in particular judicial and parliamentary institutions, in line with international standards and principles.
Transitional Justice	Supporting efforts to fight impunity, particularly through the establishment of transitional justice mechanisms to strengthen national unity, promote justice and promote reconciliation within Burundi's society, and providing operational support to the functioning of these bodies.
Human Rights	Promoting and protecting human rights, including strengthening national capacities in that area, as well as national civil society
Strategic Planning	Ensuring that all strategies and policies with respect to public finance and the economic sector, in particular the next PRSP have a focus on peacebuilding and equitable growth
Political support	Promoting and facilitating dialogue between national actors and supporting mechanisms for broad based participation on political life, including for the implementation of development strategies and programmes in Burundi.

45. There is general consensus among certain members of the government, the UN, and the broader international community active in Burundi that rule of law is one area where needs are greatest, especially at the local level and in relation to resource-related disputes. However, it is also an area where the least progress has been achieved, and despite years of focus on strengthening formal institutions, the impact of UN assistance on overall justice provision has been limited. Among the main reasons that have been cited for lack of progress are active resistance on the part of some members of the government to undertake substantial reforms as well as poor programming and faulty sequencing of interventions on the part of the UN and other international actors. Also problematic was the

fact that technical assistance and advice to formal rule-of-law institutions was not accompanied by a strategy to deal with the needs of citizens at the local level.

46. Both internal and non-UN experts have repeatedly criticized the Organization for its failure to respond to critical rule-of-law challenges outside those pertaining to formal justice and security institutions.⁵² One area repeatedly cited as an example is land and property-related disputes, the resolution of which is fundamentally linked to the self-defined needs of citizens across the globe.⁵³ In 2009, a UNEP report concluded that 40 percent of internal conflicts over a 60-year period have been associated with land and natural resources, and that this link doubles the risk of conflict relapse.⁵⁴ Dealing with land- or natural resource-related conflicts is politically sensitive, however, and the UN has been slow to develop strategic responses. Its limited and fragmented support has been resourced largely through humanitarian channels or Peacebuilding Funds.

47. In Burundi, for example, the Arusha Accords placed land issues at the center of the peace process;⁵⁵ in 2003, the International Crisis Group called for an urgent response to the land issue;⁵⁶ in 2006, ONUB included support to resolution of land conflicts as a pivotal dimension of its rule-of-law strategy. Nonetheless, the mission made limited progress in ensuring these issues received priority attention due to a combination of political resistance, delay, and a lack of strategic foresight on the part of the mission's leadership. Land issues were not included as part of the follow-on political mission's broader rule-of-law strategy. Notwithstanding, the UN Integrated Office in Burundi (BINUB), through UNHCR, managed to mobilize Peacebuilding Fund monies to support an innovative project with the National Land Commission (CNTB) to resolve some 2,000 disputes involving IDPs and returnees. While the decisions of the CNTB are not binding and can be overturned by the justice institutions, none have yet been appealed, thus mitigating tensions in a number of localities and providing the CNTB with some degree of legitimacy.⁵⁷

48. Despite the measured success of this innovative initiative, land disputes remain a serious problem and, as noted by the IMF, Burundi still lacks “measures aimed at resolving complicated land ownership issues that dominate the agenda of formal and informal jurisdictions.”⁵⁸ Former BINUB rule-of-law staff interviewed for this review admitted that they had not deemed land issues a priority and the latest configuration of the UN’s special political mission in Burundi, BNUB, does not have a mandate to cover land issues. Cases like this abound in the system, leading the Secretary-General to call on member states and the United Nations system in July 2010 “to make questions of natural resource allocation, ownership, and access an integral part of peacebuilding strategies.”⁵⁹ While this call is merited, as with other areas of support discussed in this report, establishing a framework to resolve these issues requires a much longer-term approach than the two-year window of the current peacebuilding architecture and a much stronger assertion and use of alternative means of leverage on the part of DPA and senior leadership on the ground.

The UN, Nepal and the rule of law

49. In 1951, the Nepalese monarch ended the century-old system of rule by hereditary leaders and instituted a cabinet system of government. Reforms in 1990 established a multiparty democracy within the framework of a constitutional monarchy. An insurgency led by Maoist extremists broke out in 1996. The ensuing ten-year civil war between insurgents and government forces led to the dissolution of the cabinet and parliament and assumption of absolute power by the king. Mass protests in April 2006 were followed by several months of peace negotiations between the Maoists and government officials, and culminated in a November 2006 peace accord and the adoption of an interim constitution. Following a nationwide election in April 2008, the newly formed Constituent Assembly declared Nepal a federal democratic republic and abolished the monarchy, electing the country’s first president in July. The Maoists, who received a plurality of votes in the Constituent Assembly election, formed a coalition government in August 2008, but resigned in May 2009 after the president overruled a

decision to fire the chief of the army staff. The Communist Party of Nepal (United Marxist-Leninist) and the Nepali Congress party then formed a new coalition government with several smaller parties. In June 2010, the prime minister resigned, and a new government was finally formed in February 2011. Disagreements among the political parties over issues such as the future of former Maoist combatants continues to hinder the drafting of a new constitution, and the formal conclusion of the peace process.

50. Failure to make progress implementing a number of the core provisions of the CPA and the entrenchment of positions around key political decisions continue to affect the manner in which the state at all levels is functioning.⁶⁰ Impunity remains widespread⁶¹ and public security remains tenuous; and while serious incidents such as killings, explosions, and shutdowns have decreased, there is little sense of stability.⁶² Perceptions of insecurity, particularly at the local level had increased in 2009 and 2010 and have not yet been resolved. These perceptions were exacerbated by the proliferation of armed groups and organized youth groups of the major parties, some of which had intensified militant activity during the same period. Formal legal rules continue to be disregarded due, in part, to the failure of the government to address the issue of grave abuses committed during the conflict and, in part, to the degree of political interference in the work of public institutions, for political or financial gain.⁶³

51. According to recent citizen perception surveys and interviews conducted on the ground with civil society and government representatives, political interference in the daily work of the police and the courts is highly prevalent both at the central and district levels.⁶⁴ In addition, the practices of officials in the key institutions responsible for ensuring public security and the rule of law have exacerbated existing problems and have seriously undermined limited institutional legitimacy. Indeed, a complex web of illicit interactions centered on political and financial interests has taken hold in both the center and the periphery and *between* the center and the periphery. Many of these practices have deep historical, social, and cultural roots.⁶⁵ They have, however, been exacerbated

by a decade of political turmoil, economic stagnation, and unbridled impunity, allowing many in positions of authority to abuse their power for financial and political gain with no traditional or institutional checks. The government of Nepal, political parties, civil society, and international actors recognize these and other problems affecting the justice system (both formal and informal), army, police, and quasi-judicial bodies.

52. The UN has been present in Nepal for decades; however, its role was expanded in 2005 when parties to the conflict requested the UN to establish a human rights monitoring mission under the auspices of OHCHR. The Security Council then approved the establishment of a Special Political Mission – UNMIN – that withdrew from Nepal in January 2011. Despite a number of rule-of-law-related commitments in the CPA, UNMIN did not have a specific mandate on rule of law or narrower justice and security reform. The UN sought a wider role, but critical member states, especially India, strongly resisted an expansion of the UN's mandate. Rather, much like MINUGUA, the mission was restricted to monitoring – in this case, to overseeing the constitution building and demobilization and disarmament processes.⁶⁶ The peace process has since been hampered by the absence of an impartial third party with the power to censure noncompliance and actions that contravene the letter and spirit of the Comprehensive Peace Agreement.⁶⁷

53. While RoL support was not part of UNMIN's official mandate, fitful attempts were made to approach justice and security issues through the good offices of the SRSG. These attempts had limited impact. OHCHR also carried out advocacy on many fronts, but its voice gradually grew weaker, in parallel with requests made by the government for the office to reduce its presence outside the capital. UNDP and other agencies (mainly UNICEF and UN Women) implemented a range of projects on RoL (institution strengthening and legislative drafting), but the work is acknowledged to have been piecemeal and disconnected from other related UNDP initiatives, particularly in legislative drafting. The entity was also criticized for supporting the drafting of key pieces of legislation (civil and criminal codes and codes of procedure) that, in final drafts, ran counter to Nepal's human rights obligations.⁶⁸

54. On a more positive note, a recent evaluation of UNDP's access to justice and rule-of-law work commended UNDP and UNICEF for progress made at the community level, particularly on community mediation and support for the establishment of paralegal services for cases of gender-based violence.⁶⁹ However, the evaluation lamented the fragmented nature of the work. In fact, most UN rule-of-law efforts have been conducted solely at the community level, principally due to lack of entry points at the national level, including during the lifespan of UNMIN. In addition, for inexplicable reasons, UNDP's work on rule of law and access to justice has remained separate from BCPR's "peacebuilding" stream of work, particularly in relation to national dialogue and the constitution-building process. This lack of coherence and coordination led the evaluation team to recommend that UNDP-supported legislative initiatives should be "better aligned with the process of drafting a new Constitution for Nepal and take into account the views of a wider spectrum of stakeholders and civil society in the drafting stage."⁷⁰

55. Until very recently, no formal UN or donor coordination mechanisms on rule-of-law, justice, and security efforts existed. International Alert leads a small coordination body comprised of INGOs, NGOs, donors, and some UN entities. In recognition of this problem, in early 2010 the RoLCRG designated Nepal as a pilot country for joint programming. A series of teleconversations ensued, but the RoLCRG was never very clear in discussions with the UNCT about the objective of the pilot initiative. Notwithstanding, the resident coordinator took the initiative to pull together the UNCT to map, identify and "assess" RoL work carried out by the UN and donors, and the broader INGO/NGO community. An initial mapping exercise was conducted and Terms of Reference developed for a broader assessment. Despite limited feedback from the RoLCRG, a small working group was established (UNCT, Dfid, USAID, DANIDA) to develop the basis for a broader "Security, Justice, and the Rule of Law Donor Coordination Group" that will coordinate support around the rule-of-law initiatives outlined in the Peace and Development Strategy (PDS).⁷¹ It is unclear where the international financial institutions stand on any of this work.

Table 4: Rule-of-law related provisions in the 2006 Comprehensive Peace Agreement (Nepal)

Preamble	Reiterated commitments to competitive multiparty democratic system, civil liberties, fundamental rights, human rights, complete press freedom, rule of law, and all other norms and values of democratic system.
Section 3 Political, social, economic transformation and conflict management	3.1 Guarantees progressive political, economic and social transformation 3.4 Promulgates the political system that fully comprehends with the concepts of universally adopted principles of fundamental human rights, multiparty and competitive democratic system, sovereign rights inherent in the people and supremacy of the citizens, constitutional balance and control, rule of law , social justice and equality, independent judiciary , periodic elections, monitoring by the civil society, complete press freedom, right to information of the citizens, transparency and accountability of the activities of the political parties , people's participation , fair, able and uncorrupted administrative mechanism .
Section 5 Ceasefire	5.2.5 Both parties agree to form a high level Truth and Reconciliation Commission on mutual understanding to conduct investigation about those who were involved in gross violation of human rights at the time of the conflict and those who committed crimes against humanity and to create a situation of reconciliation in the country.
Section 7 Human Rights	Inter alia, focus on dealing with corruption; formation of the National Peace and Rehabilitation Commission; Truth Commission and a high-level Commission for state restructuring.
Section 8 Dispute Settlement and Implementation Mechanisms	8.2 National T&R Commission – working modalities to be determined by interim CoM idem NPRC and High-level State Restructuring Recommendation Commission
Section 9 Implementation and Follow-Up	OHCHR Nepal to monitor the human rights situation; UNMIN to monitor and supervise PLA cantonments and Nepal Army barracks.

56. Meanwhile, with the support of UNDP/BCPR, the UN country team has since developed a more comprehensive analytical framework,⁷² and is attempting to move towards more coherent programmatic links between national-level initiatives aimed at strengthening institutions and local confidence-building initiatives (such as enhancing access to justice and citizen security).⁷³ Some donors are also trying to provide innovative support to political parties to tackle the political interference challenges repeatedly voiced by national and international actors.⁷⁴ Many of these initiatives are taking place within the framework of the aforementioned Peace and Development Strategy developed by the UNCT and supported in varying degrees by the international community.⁷⁵ However, without a political voice, and confronted with the presence and influence of a strong regional power that works to the tune of different priorities, the UNCT and many of its international partners lack the leverage (and at times are perceived to lack the legitimacy) to push through key reforms.

57. The UN's capacity to support the emergence of the rule of law in Nepal is significantly limited by the absence of a political mechanism to accompany implementation of outstanding CPA commitments, a lack of resources and limited scope of action, a highly volatile political setting, and a perceived resistance to change on the part of elites.⁷⁶ The Secretary-General has pledged "continuing long-term support of the UN" to the peace process in Nepal as well as continued support to the constitution-drafting process and the many medium- and longer-term elements of peacebuilding." The UN in-country staff did not know, however, which entity at headquarters will be responsible for providing ongoing strategic guidance and support to the UN Country Team on challenges that arise when the emergence of the rule-of-law hinges not just on technical assistance but on sensitive political decisions and action involving a broad range of constituencies. And despite the Secretary-General insisting on the need for headquarters to "provide more robust rule of law policy and operational guidance to field leadership (including to Special Representatives, Deputy Special Representatives and United Nations resident coordinators)," it remains unclear where this responsibility lies, especially in settings

where the Organization does not have a peacekeeping or political mandate.⁷⁷

Low-/Middle-Income Settings Coping with High Levels of Violence (where the UN does NOT have a political presence)

58. Over the past decade, the UN system has increasingly found itself immersed in fragile development settings where a complex set of political, security, and developmental issues converge with high levels of violence, as well as weak governance systems and manipulative formal and informal political and economic elites. In most of these settings, the UN does not have a specific political mandate, and support is provided on the basis of requests tabled by member states. Much of this support is highly technical and focused on specific areas of rule-of-law assistance. For example, UNODC helps states meet transnational organized crime treaty obligations or provides specialized training, such as forensics or investigative techniques, to criminal justice institutions. OHCHR also supports member states in meeting their international human rights obligations and provides capacity-building support to state and civil society institutions alike, while UNDP provides technical assistance and capacity-building support to justice and related institutions and significant support in access to justice.

59. More recently, UNDP has combined some of these long-term efforts with community-level violence reduction initiatives. Responding to rule-of-law challenges beyond the provision of direct and indirect technical assistance in these settings can, however, be quite complex. Indeed, as suggested by the head of one UN Country Team, in post-conflict settings the actual conflict provides an entry point for the UN and other actors to work on more sensitive rule-of-law issues; in fragile settings, including countries that are burdened with pockets of fragility and extreme violence, the entry points are not so evident, and even less so if that country enjoys middle-income status. Valuable attempts by UNDP to introduce dialogue frameworks to navigate around the more sensitive aspects of rule-of-law reform, including the links between political corruption

and organized crime, have had some effect.⁷⁸ In general, though, there is limited political space for UN agencies to maneuver, not least because in many of these countries, UN agencies are almost entirely dependent on the host government for office space and a range of other resources. Much more effective integration with the international financial institutions and other regional actors is therefore required, particularly as the number of countries in this category continues to increase.

The UN, Guatemala and the rule of law⁷⁹

60. The 1996 Guatemalan Comprehensive Peace Accords brought an end to an internal conflict that had lasted 36 years. The objective of the peace agreements was not just to bring an end to a long civil war but also to transform a largely authoritarian, exclusionary state into a modern liberal democracy. The success of the transformation would depend upon “the capacity of Guatemalan reformers to dismantle the systems of state dominance that had been constructed and sustained by predatory economic and military elites.”⁸⁰ These systems had left national institutions with “little capacity and limited geographical reach in a state whose poor and excluded majority lived in rural areas, subject to a culture of violence left by the war and the growing pressures of organized crime cartels.”⁸¹

61. In the Accords, the government committed to adopt a broad series of measures spanning constitutional reforms (free and equal access to justice and related state services; respect for the multiethnic, multicultural, and multilingual character of the country); legal reforms (independent judiciary and the creation of a Public Defender Service), administrative reforms (more resources for the judiciary, the public prosecutor’s office, and public defenders); the establishment of a new agenda for public safety; the introduction of sound accountability and oversight mechanisms; and sweeping land and labor reforms. The Accords also created an *ad hoc* commission to produce a set of recommendations for criminal justice reform.⁸²

62. The UN played a significant role in Guatemala throughout the peace process and in the decade that followed the signing of the last agreement. The main thrust of its support came first through a relatively small human rights operation and subsequently through a large verification mission – MINUGUA – mandated to oversee the implementation of the peace accords. The Accords did not grant the mission an operational role in the reform process or include formal compliance mechanisms. Traditional agencies such as UNDP continued to provide support principally in the form of technical assistance and capacity building to national institutions.

63. MINUGUA coordinated the support of the international community (broader UN system, OAS, EU, embassies, aid agencies, the IFIs) to the peace process and related rule-of-law commitments under the umbrella of a “Consultative Group.” As early as 1997, the Consultative Group agreed to condition the disbursement of almost USD two billion on the ability of the government to increase tax collections to fund implementation of the Accords and related reforms.⁸³ Donors provided direct and indirect technical assistance to justice and security institutions, academic research institutes, universities, and indigenous and human rights organizations. Substantial resources were also invested in reforming the labor code, strengthening social institutions, and developing a framework to reform a structurally discriminatory land management system and resolve land disputes.⁸⁴ Support from external sources gradually snowballed into hundreds of millions of dollars, and hundreds, if not thousands, of projects and programs, a large percentage of which were focused on strengthening the rule of law.

64. Despite this degree of donor enthusiasm and support, it became evident early on that the international community had overestimated both the capacity and commitment of the parties to implement the Accords.⁸⁵ While the abusive practices of the military and intelligence services gradually ended, economic and political elites repeatedly undermined other reform programs, particularly the important commitment to increase taxes. Police reform failed, indigenous and other marginalized groups remained excluded from political and economic

life, land reform moved slowly, and elites freely interfered in the work of the judiciary and manipulated political parties and the legislative process.⁸⁶ Nonetheless, external support to justice, security, and other state institutions kept flowing despite the government’s failure to comply with conditionality clauses and implement other key aspects of the peace agreements, seriously undermining the leverage of the UN, the IFIs, and other international partners.⁸⁷ And despite the extensive reform machinery established to accompany judicial and security sector reforms, by 2006 the criminal justice system produced convictions in only two percent of all homicide cases.

65. The institutional and fiscal weaknesses of the Guatemalan state facilitated the transformation of old security services and criminal networks into political-criminal organizations engaged in local and international organized crime. Mexican drug trafficking cartels moved into the country in force.⁸⁸ By developing and maintaining tight relations with officials within the system, these actors easily manipulated parliamentarians and justice and security officials to block anti-organized crime legislation and avoid arrest and prosecution.⁸⁹

66. The failures of the reform process grew out of the inability of the Accords to alter the structural power relations between the Guatemalan military, economic elites, and organized crime, or to anticipate the potential emergence of illicit power structures as a consequence of the dismantling of clandestine intelligence networks. The Accords did pose a threat to those structures, but the UN and its international partners failed to identify how existing structural issues, new threats and challenges, and the indifference of consecutive governments would converge to weaken rule of law and other state-building efforts. When it did become evident,⁹⁰ the UN mission (and the broader international community) had limited leverage to push the government to reinvigorate its reform commitments. Successive governments abandoned the letter and, gradually, the spirit of the Accords after 2000, and MINUGUA began a lengthy drawdown.⁹¹ Meanwhile, the UN and its international counterparts continued to invest in narrow institution-building efforts.

67. Notwithstanding these shortcomings, the UN's continued engagement did lead to the establishment of a UN-backed independent commission in 2008 to investigate political-criminal networks. The Commission Against Impunity in Guatemala (CICIG) was viewed as a mechanism to help the judicial sector overcome some of the structural power issues undermining the rule-of-law institutions; it has been recommended as a model for other Central American countries.⁹² CICIG has carried out some 27 high-profile investigations, a number of which have helped dismantle organized crime networks. It has also contributed to the prosecution of high-profile individuals, including former President Portillo, for corruption and other crimes. However, the recent acquittal of Portillo and the decision by the Guatemalan government not to pursue the extradition of a former security minister, conceding that the judiciary was not capable of trying him, raise serious questions about CICIG's impact.⁹³ The police reform commissioner, Helen Mack, has decried the state's failure to learn from the work of the CICIG and invest in pending reforms, including the outstanding fiscal reforms required to enable the government to continue the work of the CICIG once its mandate expires in 2013. Meanwhile, other outstanding social justice issues remain unresolved and off the political agenda, and violence continues to escalate.⁹⁴

The UN, Jamaica and the rule of law

68. Fragility in the Caribbean manifests itself in a number of ways, posing a constant threat to the rule of law. Many states in the region register high levels of crime and violence, and some of the highest murder rates in the world. The region also has to contend with entrenched organized criminal groups, which in some states are closely linked to political parties and processes. Geography also plays an important role. Indeed, because of their location and the difficulties inherent in policing borders in the region, many small Caribbean states have served as key staging areas for transnational trafficking, particularly in narcotics and firearms, representing major challenges to security and justice systems and exacerbating citizen insecurity. Public confidence in the police across the region is low, and public confidence in political parties even

lower.⁹⁵ Perceptions of structural corruption within state institutions remain high, as do perceptions that traditional elite remain above the law. The Caribbean also boasts some of the highest murder rates in the world – 62 per 100,000 in Jamaica and 29.2 per 100,000 in Trinidad and Tobago – and “the problem is worsening,”⁹⁶ to the extent that one expert calculated it would take some thirty years “of consistent effort to reduce the current homicide rate to single digit figures, i.e., a figure that would approximate the outer limit for advanced country status.”⁹⁷ Violent crime tends to be concentrated in poor urban areas; youths constituting the membership base of violent gangs are the primary perpetrators and victims.⁹⁸

69. The historical roots of gangs in Jamaica lie in politics. Since the 1960s, political elites in Jamaica have used gangs “to dominate poor areas and obtain votes while, in many ways, not responding to the demands and aspirations of the poor and working-class population.”⁹⁹ Area “dons” have tended to control these neighborhoods and receive government contracts and similar benefits in exchange for delivering the support of the neighborhood during elections. These garrison communities have been called a “state within a state” because the gangs maintain control through violence but provide protection as well as services to citizens.¹⁰⁰ Over the past decade, these entrenched relations between political parties and gangs began to slowly change with the increase in transnational criminal activity, such as drug and arms trafficking.¹⁰¹ Access to new forms of income and instruments of violence meant that some of the more important “dons,” such as Dudas Coke, no longer had to rely on political parties for protection or funding and were in a stronger position to negotiate more preferential arrangements with the governing elite.¹⁰² Such situations allowed Dudas Coke and others to develop legitimate business interests in Jamaica while simultaneously continuing illicit operations.¹⁰³ These continuing links between armed gangs and the political and economic elite present a central challenge to the Jamaican political settlement.¹⁰⁴ They also limit the impact of important rule-of-law-related initiatives, including violence-reduction efforts and the citizen security framework the government is working within, as results will be hard to sustain without severing these links.¹⁰⁵

70. Beyond structural problems in the political system, Jamaica has had to contend with extreme levels of poverty, underdevelopment, mismanagement of resources, and corruption. In 2009, towering debt and the impact of the global recession compelled the government to seek assistance from the IMF in developing a much-contested debt restructuring plan and access to \$1.27 billion in standby credits. Regarding corruption, a recent Latin American Public Opinion Project (LAPOP) survey noted that “cross-national research initiatives examining the problem of corruption have been consistent in categorizing Jamaica in the ranks of the highly corrupt nations of the world;”¹⁰⁶ and several significant cases of political corruption and large-scale fraud have come to light over the past decade.¹⁰⁷

71. Institutions remain weak and, apart from the military, most institutions have been unable to foster trust among the population: the police are viewed “with great distrust and [often] perceived as instigators of violence.”¹⁰⁸ This distrust reduces the incentives to report crimes, and it is estimated that only 20 to 30 percent of crimes are reported and that murder rates may be five percent higher than official data.¹⁰⁹ In Trinidad and Tobago, where murder rates have also escalated, the widespread sense that the police do not effectively respond to crime heightens feelings of insecurity.¹¹⁰ Equally weak is the Jamaican justice system. The courts are backlogged, while poor infrastructure and outdated practices add to the challenges. Laws are enforced inconsistently, and there is a sense that individuals are not treated equally by the justice system.¹¹¹ Jamaica’s eight prisons and four juvenile facilities are overcrowded, with little segregation for high needs groups.¹¹² These conditions have created a lack of trust in the justice system, increased incidents of “mob justice,” and fostered a turn to community justice mechanisms to resolve crime.¹¹³

72. In the region, many Commonwealth country constitutions were based on the British parliamentary system, concentrating power within the office of the prime minister with few checks and balances.¹¹⁴ Such systems lack oversight and transparency mechanisms to hold public officials accountable. In response, all Commonwealth

countries in the Caribbean are engaged in constitutional reform processes, either formally or informally. However, countries that have established constitutional reform committees have rarely implemented the recommended changes. For instance, the 1991 Stone Committee Report in Jamaica recommended the adoption of a presidential model with effective checks and balances on executive power. The report’s recommendations were rejected in favor of a limit on the number of legislative members who could be appointed to the prime minister’s Cabinet.¹¹⁵

73. The UN has been present in Jamaica for some time, providing assistance to the government and civil society organizations on a range of development issues, including good governance and strengthening the rule of law. Some of UNDP’s more recent work in these areas is perceived to be hitting the right target.¹¹⁶ For example, the Civic Dialogue and Democratic Governance (2002–2007) and, more specifically, the Violence Prevention, Peace, and Sustainable Development (VPPSD) programs (2008–2010) had an important impact on government security policy and helped bring to light the corroding links between organized crime, corruption, and political governance.¹¹⁷ UNDP teams also joined national and international partners to implement innovative programs aimed at mitigating violence by working with communities most affected by decades of neglect and political manipulation. However, in practice, the UN and its international partners have been unable to strategically link these lower-level initiatives in a manner that confronts the deeper political arrangements that exist between gangs and the political elite, on the one hand, and other structural reforms related to the political system and financial management, on the other.¹¹⁸ Reform in these areas is crucial for the emergence of the “thicker” version of the rule of law in Jamaica and requires substantive structural reform of the political, economic, and social systems. Progress also depends significantly on the will of the government to confront the issues.

74. Conversely, even if UNDP had wanted to support government initiatives in this direction with its national counterparts, its programming framework did not allow for any immediate follow-on, so the innovative three-

year VPPSD was wrapped up in mid-2010. The program, which married support to national security and justice institutions aimed at reducing armed violence to citizen security and community development initiatives, ended at a strategic moment: the well-covered Tivoli incursion and the extradition of renowned drug and arms trafficker Dudas Coke.¹¹⁹ To date, an external evaluation of UNDP's program has yet to be finalized, and a follow-up program on arms reduction was still being discussed and negotiated at the interagency level a year later.¹²⁰ In this regard, UNDP appears to have lost an excellent opportunity to provide much-needed support to a member state and to key national reform constituencies at a crucial time in the country's history. UNDP had demonstrated the capacity to adapt strategy and programming to new challenges; it did not, however, have the ability to ensure the delivery of donor funding in a timely and strategic manner. This is not just an internal capacity problem. Indeed, more often than not, the shifting priorities of donors funding UNDP's rule-of-law initiatives can seriously undermine the Organization's efforts at innovation.

75. Meanwhile, bilateral agencies have stepped up their support to justice and security institutions and violence reduction efforts over the past twelve months. The Tivoli incursion provided an excellent entry point for pushing the government to implement crucial reforms, especially those it espoused after the extradition showdown. Initiatives such as IADB's citizen security program, focused on developing the minister of the interior's policy and operational capacity in this area, are appreciated.¹²¹ Conversely, international rule-of-law efforts have remained fragmented and appear either too deaf or too acquiescent to politics to have any lasting impact, leading one civil society representative to suggest, in a tone of desperation, a "suspension of politics in Jamaica" to allow the country to advance from its current state of economic, political, and social fragility.¹²²

76. The government adopted a hardline security response in the wake of the Tivoli incursion. Supported by members of the international community, the response has led to a "concomitant disruption to criminal networks, and a negotiated end to violence with leading criminal

groups."¹²³ Combined, these efforts, many of which included the arbitrary use of force, have contributed to a decline in crime over the past year.¹²⁴ They also inadvertently bolstered the legitimacy of the Bruce Golding administration, despite the fact that Golding himself was clearly implicated in attempting to disrupt the course of justice and providing protection to Dudas.¹²⁵ The U.S. did not hesitate to use its leverage to implement travel restrictions as a means to pressure Golding to implement the Dudas extradition request.¹²⁶ In the absence of a strong UN role, many are asking why the U.S. and its international partners cannot do the same in relation to core rule-of-law issues that prevent Jamaica from moving forward.

The UN, crosscutting issues and the rule of law

Transitional Justice and other related mechanisms¹²⁷

77. An important crosscutting issue is transitional justice, as many of the peacebuilding settings receiving UN support are affected by a legacy of massive human rights violations. Although for at least a decade many UN peace operations and political missions had either been directly engaged in or operated alongside transitional justice efforts, these had not been the subject of collective and dedicated attention until fairly recently. This matter was first addressed by the Security Council in response to the Secretary-General's 2004 report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,"¹²⁸ which laid out for the first time a UN system-wide definition of the closely interconnected concepts of the "rule of law," "justice," and "transitional justice." The Security Council had never used the phrase "transitional justice" in any decision prior to its consideration of this report;¹²⁹ since then, there has been a dramatic increase in the attention paid to transitional justice issues by the Council, although not always in connection with rule of law debates.¹³⁰

78. Transitional justice is now a well-established concept. Increasingly a component of the UN system's rule-of-law work, it has been the subject of regular resolutions by the UN Human Rights Council¹³¹ and

was addressed by the Sixth Committee of the General Assembly for the first time in 2011. In October 2011, at the Security Council's request, the Secretary-General prepared a report taking stock of the progress made in implementing the recommendations of the 2004 report, as well as considering further steps to promote of the rule of law in conflict and post-conflict situations. The 2011 report described considerable advances made in the attention paid to transitional justice and its incorporation into the UN system, but called for greater support for the ICJ and better integration of transitional justice measures into Security Council mandates, along with a number of other recommendations.¹³² The international community's increasing focus on transitional justice is reflected in the WDR 2011, which deemed transitional justice a 'core program tool' in helping to break cycles of violence.¹³³

79. The dramatic increase in Security Council attention has not always been reflected in the mandates the Council issues. Only three current peacekeeping mission mandates (MONUSCO, UNMIT and UNMIL) and five political missions (UNIOSIL, UNAMI, UNAMA, BNUB, and now UNSMIL) include explicit references to transitional justice. Of the more than a dozen remaining active missions, at least half are operating in contexts with transitional justice processes underway or where UN country teams are confronted with demands for accountability for past abuses that they are not formally mandated (or adequately resourced) to support.¹³⁴ With the notable exception of OHCHR field presences and some programming by funds and programs (particularly UNDP and UN Women) that have supported accountability mechanisms, transitional justice issues are rarely taken up as either the subject of high level political support by UN representatives on the ground or fully integrated into security and justice reform priorities.

80. Since 2006, OHCHR has been designated the lead UN entity on transitional justice. UNDP has also incorporated transitional justice into its rule of law programming, particularly in fragile states. In 2005-6 the UN guidelines for mediators in peace negotiations were substantially revised and expanded to reflect significant international legal developments.¹³⁵ The DPA Mediation

Support Unit's standby team has drawn upon transitional justice expertise in its provision of support in several recent instances. OHCHR, UNDP, and UN Women have carried out advisory and programmatic work, training, and advocacy, and feed into broader training programs for human rights and justice officers working on these issues in the field. In addition, OLA has provided technical and legal advice on the establishment of tribunals and commissions of inquiry.

81. UN Women and UNDP have contributed significantly to the Organization's work on reparations and on issues pertaining to accountability for sexual violence in armed conflict under Security Council Resolution (SCR) 1888. The UN Special Representative appointed to implement SCR 1888, the Office for the Coordination of Humanitarian Affairs (OCHA) and the SRSG for Children and Armed Conflict have led advocacy efforts to promote implementation of Resolution 1888. However, there is still limited coherence between these different efforts, and discussions on progress and challenges in implementation are generally disconnected from broader rule-of-law discussions, despite the important role these mechanisms can play in fostering legitimacy as a key component of institution-building, particularly in post-conflict settings. In addition, no systematic learning process has stemmed from the range of transitional justice, fact-finding missions, truth commissions, and commissions of inquiry that have been implemented during the period under review, particularly those that have been implemented by the Secretariat (DPA).¹³⁶ OHCHR, as designated lead, has focused on deepening understanding of non-judicial transitional justice processes as a means to provide more holistic and integrated policy and operational responses to post-conflict reconciliation challenges. However, these efforts are also disconnected from the Organization's criminal justice efforts in similar settings since DPKO was designated the lead agency in this area and both agencies have led work in their respective areas in silo.

82. 2005 saw the updating of a set of principles on combating impunity by an Independent Expert appointed by the Commission on Human Rights.¹³⁷ These principles, however, have still not been adopted or endorsed by the General Assembly. Clearer progress is evident in the GA's

2006 adoption of basic principles confirming existing international legal obligations upon states to investigate and prosecute serious violations of human rights law and international humanitarian law, as well as a duty to provide reparations.¹³⁸

83. The institutional embedding of transitional justice within the rule-of-law architecture can, however, obscure the crosscutting dimensions of transitional justice responses in peacebuilding settings by reducing it to a subset of rule of law programming. An ICTJ review of projects that have received support from the PBF since its creation in 2005 shows almost half were either directly or indirectly related to efforts to respond to the legacy of massive human rights violations. Some are classic rule-of-law projects, but many are not. Although at an operational level transitional justice is generally translated into a sub-topic of rule of law, such a categorization risks obscuring the extent to which ensuring accountability for past mass atrocities relates to a broad spectrum of subjects on the Council's agenda. These may go beyond the realm of technical assistance that continues to be the focus of the bulk of rule-of-law programming.

84. The UN system would be well served by initiating a more systematic and strategic learning process on tools such as transitional justice mechanisms, fact-finding missions, truth commissions, and commissions of inquiry to better understand their relationship with the broader concept of the rule of law and how these can be better supported by and contribute to the UN's political leverage, and to more effectively bolster citizen trust in state institutions by holding those who committed past crimes accountable to the rule of law.

Transnational organized crime and trafficking

85. Since time immemorial both legitimate and illegitimate business has attempted to distort or displace the state for its own gain. In many contexts, organized criminal groups have become major contenders in these efforts, engaging significantly at the intellectual, political, and institutional level with state and social actors. Until relatively recently, organized criminal activity was

constrained within a state's borders or limited to a small number of global cartels and mafia groups. However, the end of Communism, coupled with the expansion of global markets, and the rising sophistication of information communications technology, have enabled the unfettered movement of goods and people and served as a channel for all manner of illicit activity. In the course of expanding their operations, transnational organized crime groups and networks have sought to gradually weaken, co-opt, disable, privatize, or usurp the functions of governmental agencies, political and judicial institutions, and the state itself, regardless of the setting.¹³⁹

86. At the same time, there are manifold examples in weak and strong states alike where political and other state and non-state actors have co-opted organized criminal groups as a means to meet their own political and financial interests. Political actors are often protected by parliamentary immunity and other related privileges, so it is almost impossible to unravel the links with organized criminal activity. In some countries, such broad definition of immunity has even allowed criminals to run for elected office, only to enjoy protection from investigation and sanctions through the very laws they promulgate to protect themselves and their illicit business. This nexus continues to deepen, assisted on the one hand by the dynamic and adaptive nature of criminal networks and their ability to operate and manoeuvre between physical and cyber space, and on the other by limited capacity and the waning legitimacy of state and political institutions across the globe.

87. Particularly affected by transnational organized crime and trafficking are states immersed in or emerging from violent conflict. Political and state institutions have limited resilience and capacity to counter transnational organized criminal activity; even fewer resources to provide basic and essential services; and due to low salaries and high unemployment and poverty levels, officials and citizens are perceived to be easier to 'corrupt.' In some contexts, transnational criminal activity has spilled over into political violence; in others it has only served to exacerbate local organized violence; and in yet others, armed political groups have depended on

organized criminal groups for funding, or have engaged in organized criminal activities themselves to generate income and fund their wartime activities.¹⁴⁰ Failure to dismantle war-funding mechanisms and structures in peacemaking and peacebuilding processes has permitted the emergence of criminal/political networks and the transformation of armed political groups into criminal groups in peacetime.¹⁴¹ All threaten political stability and stymie economic development.¹⁴²

88. In other settings such as El Salvador, Guatemala, and South Africa, the number of deaths from criminal activities today is significantly higher than during each country's armed conflict or in the case of South Africa, under Apartheid, and organized criminal groups have since penetrated the political and economic arenas. Each conflict ended with a broad peace accord; and all were viewed as successful examples of peacemaking. In these cases and others such as Afghanistan, Bosnia, Guinea-Bissau, Haiti, Kosovo, and Somalia, organized crime has not been treated as a strategic matter, but "rather as a secondary, technical issue during and after conflict."¹⁴³

89. Traditionally, UNODC has been the designated UN agency responsible for supporting Member States' responses to the challenges posed by organized crime, particularly from a normative perspective. It is currently attempting to shift its approach from national assistance to regional frameworks to ensure greater coherence for inherently transnational phenomena and has developed some valuable threat assessment tools for analyzing trends at the regional and global levels.¹⁴⁴ It is also working closely with other agencies in some contexts and in deepening knowledge in specialized areas of transnational organized crime, including cyber crime. However, given the spread and depth of the phenomena, a more strategic response is also required. Indeed, following a first Security Council Presidential Statement on the growing threat of organized crime in 2009, in February 2010, the UN Security Council issued a stronger Statement registering its "growing concern" that "drug trafficking, transnational organized crime, cyber crime, arms trafficking and the financing of terrorism pose threats to international security" – and expressing "its intention to consider

such threats as appropriate."¹⁴⁵ The Council invited the Secretary-General "to consider these threats as a factor in conflict prevention strategies, conflict analysis, integrated missions' assessment and planning," and to report "on the role played by these threats in situations on its agenda."

90. In response, the Secretary-General created a Special Task Force on Organized Crime and Drug Trafficking in May 2011. The task force, co-chaired by DPA and UNODC, has a mandate to "develop an effective and comprehensive approach to the challenge of transnational organized crime as threats to peace and security." It is expected to backstop a concerted effort by the Secretary-General to raise awareness and mobilize collective action against these threats, and to improve the UN's capacity to respond. Much of this work will be implemented in conjunction with the Rule of Law Coordination and Resource Group (RoLCRG), many of whose members will also sit on the Task Force, as well as staff in the field.¹⁴⁶ Yet despite the momentum created back in May, six months on, it is still unclear which direction the Task Force will take and whether the body will become mired by the recurring internal turf wars and capacity and resource dilemmas that affect similar bodies.

91. Beyond headquarters, the UN is developing innovative mechanisms to respond to the growing threats posed by transnational organized crime and trafficking. These initiatives are often propelled by astute UN leadership in the field who are using their covering authority and political leverage to raise the profile of the issues.¹⁴⁷ For example, the SRSG for the United Nations Office in West Africa (UNOWA) has helped broker support from the international community for responses designed to mitigate the threat of transnational organized crime and trafficking and other transnational threats in West Africa, including through the establishment of the West Africa Coastal Initiative (WACI). The main thrust of the WACI – a joint venture between UNODC, DPKO, UNDP, UNODC and INTERPOL is support to countries in the region to establish Transnational Crime Units (TCUs).¹⁴⁸ The partnership underpinning the program and its regional scope marks an important shift in the UN's approach to meeting the intersection of national, regional, and global

rule-of-law-related challenges. Notwithstanding these developments, the WACI faces important capacity and resource challenges, and it is not clear how initiatives conducted within this framework will differ from earlier initiatives to build a similar regional capacity.¹⁴⁹ Nor is it clear how these efforts relate to other rule-of-law support being provided by other UN actors and their partners.

92. Generally, UN initiatives on the ground aimed at mitigating the impact of transnational organized crime in post-conflict and fragile settings tend to skim the surface. As in many areas, support to Member States in this area is generally technical in nature and mainly geared towards strengthening legal frameworks and building the capacity of security institutions (and at times justice institutions) to respond to the challenges at hand. While this kind of support to formal institutions is warranted, oftentimes it is provided with limited regard for underlying political, cultural, and historical factors, and the enabling role that different power structures (political, economic, formal, informal, etc.) within and beyond a state play in relation to organized criminal activity.¹⁵⁰ This would require a much more sophisticated approach than that currently implemented by the UN and its partners. In addition to strengthening core justice and security institutions, such an approach would need to consider an analysis of different power relations in specific contexts; how different groups provide entry points for organized criminals and for what purpose (political/ideological, financial); and how best to combine these efforts with initiatives that raise the business costs of engaging in illicit activity, including through anti-money-laundering initiatives that are more strategically connected to efforts aimed at countering organized criminal activity and political corruption. The newly established Task Force could initiate some of this work.

93. Finally, such an approach would also require a much stronger political investment on the part of UN leadership and Member States and a much more strategic investment in resources to support the work of UN staff at headquarters and in the field on these issues.

Counterterrorism¹⁵¹

94. While most member states are in broad agreement on the evolving approaches towards transnational organized crime and are taking steps to ensure integration of effort, the UN counterterrorism agenda has been, and continues to be, controversial. After the September 2001 attacks, the U.S. made counterterrorism a top strategic priority, persuading the Security Council to shift international counterterrorism norms from legal cooperation to legal implementation and compliance.¹⁵² This shift had three important ramifications for the UN's role in strengthening the rule of law in conflict-affected and fragile settings. First, the Council imposed new criminal justice norms on sovereign states in a manner that antagonized many of them. It failed to engage in consultations or provide time for comment before imposing these norms, and the Counter-Terrorism Committee it created to oversee compliance was perceived as threatening state sovereignty, potentially undermining the credibility of broader rule-of-law work.¹⁵³ The committee now relies heavily on expert groups established to implement these norms, which have developed a more consultative approach, but concerns remain.

95. Second, UN credibility was undermined by the Council's failure to utilize judicial review and other aspects of procedural fairness when listing and delisting suspected al-Qaeda terrorists and their Taliban supporters under Resolution 1267.¹⁵⁴ Adverse national and regional court decisions undermined the credibility of claims by the Security Council that it saw respect for human rights and rule of law as integral to effective counterterrorism.¹⁵⁵ Misappropriation of counterterrorism norms by repressive regimes to quash political dissent exacerbated these misgivings.¹⁵⁶ An ombudsperson now provides input into these processes but cannot conduct a binding review.¹⁵⁷

96. Third, Security Council efforts to create a dedicated bureaucracy to oversee and enforce compliance with these norms, most notably the Counter-Terrorism Executive Directorate, created tensions with member states. Some governments resisted Council pressure to reform their legal codes and law enforcement institutions. Those states

thought most prone to terrorist activities struggled the most with these reforms, due to a deficit either of will or capacity.¹⁵⁸ Many states saw these efforts as privileging the national security interests of Western powers over their own humanitarian and peacebuilding concerns, and overburdening already stretched government institutions.

97. This last concern prompted two important shifts in the UN's counterterrorism role. First, in 2006, the General Assembly adopted a Global Counter Terrorism Strategy,¹⁵⁹ which reaffirms the UN's role in promoting rule of law, human rights, and effective criminal justice systems, and presents these as essential to combating terrorism. The strategy shifts the emphasis from compliance to capacity building, but it provides little guidance on how to integrate counterterrorism efforts with other initiatives that impact rule-of-law support. This absence of strategic guidance has had significant institutional repercussions. Second, the Secretary-General established a Counter-Terrorism Implementation Task Force (CTITF) intended to ensure coordination and coherence in the UN's counterterrorism efforts,¹⁶⁰ but it has had limited visible impact. Members of RoLCRG and CTITF sit on each other's committees, but their work agendas are not integrated. The Council's efforts to harmonize counterterrorism policies with broader rule-of-law norms and approaches may also have contributed to the U.S.-led development of a Global Counter-Terrorism Forum, outside the UN. This forum, established in September 2011, brings together more than thirty countries plus the EU to mobilize political will and material resources for coordinated counterterrorism capacity building and collaborative learning among national-level counterterrorism practitioners. How these efforts will connect with other rule-of-law areas financially supported by the same states is unclear.

98. The relationship of the UN's counterterrorism work to its broader rule-of-law support remains tenuous. Political pressure to promote rule of law through a counterterrorism lens remains strong, with some actors promoting UNODC's Terrorism Prevention Branch as the best UN mechanism for broader support to criminal justice reform. Others look to the Security Council's Counter-Terrorism Executive Directorate's convening power to broker dialogue at the

national, regional, and international levels on judicial strategies for counterterrorism programs.¹⁶¹ However, much of this work happens in the same settings where the UN system is already actively engaged in providing rule-of-law support against a peacebuilding and/or development mandate, which has the unintended effect of promoting conflicting approaches and competition for donor funds among UN bodies.

99. Nor is it clear that the UN's counterterrorism bodies are equipped with the expertise and guidance required to undertake such efforts. Neither strategic nor operational engagement between the UN's counterterrorism bodies, based in New York, and UN country teams, peace operations, and political missions in the field is habitual, even in those countries where terrorism is clearly a major obstacle to rule of law (such as Somalia, Afghanistan, Pakistan, OPT). There is no strategic guidance within the system (for example, a Secretary-General's guidance note) that might explain to UN leadership how to integrate the UN's broader peacemaking, developmental, and rule-of-law objectives with its commitment to international norms against terrorism. This may create significant operational challenges in places where the promotion of rule of law requires engagement with groups that are engaged in sponsoring or supporting activities that violate these international norms. It also risks leaving UN operational actors reliant on UN privileges and immunities as a defense against charges that their activities have violated legal norms.

III. The UN Rule-of-Law Policy Framework and Supporting Architecture

In this section we provide an overview of the main policy and architectural framework within which the work outlined in the previous section is implemented. We assess the difficulties that the UN's "thick" rule-of-law agenda poses, focusing on the limited congruence between policy intent, institutional arrangements at headquarters, and capacity and reality on the ground. We identify two broad sets of challenges. The first of these includes (i) fragmentation within the Organization and between member states; (ii) poorly supported, weakly mandated, and largely ineffective coordination mechanisms at headquarters; (iii) limited congruence between architectural arrangements at headquarters and those established at the country and regional level; (iv) weak integration and coordination mechanisms in the field. A second set of challenges relates to the alarming dearth of knowledge and understanding of what forms of rule-of-law support have been effective, principally due to the lack of mechanisms to analyze, assess, and monitor progress on the ground, and limited mechanisms to ensure that experience on the ground is not only captured in pro forma reports, but also serves as the main driver of policy and strategic and operational responses.

Policy and Architecture in Theory

100. Over the past two decades, international actors have committed increasing attention and resources to enhancing, strengthening, promoting, or reestablishing the rule of law in developing and post-conflict states. Modern efforts began with U.S.-driven "law and development" programs in Latin American in the 1960s and 1970s seeking to encourage social change through law and formal legal systems. The approach failed, but was followed by a growing interest in legal systems to protect human rights and a new emphasis by the World Bank and other development institutions on the role of legal predictability and security in stimulating economic growth. Legal and judicial reform came to play significant roles in

anchoring a new focus on the relationship between "good governance" and development during the Washington Consensus-era of support to market economies in the post-Soviet bloc during the 1980s and 1990s.¹⁶² Similarly, rule of law became an increasingly important element of the post-Cold War democratic transitions in Latin America, Eastern Europe, the former Soviet Union, Africa, and Asia. As the UN and other international peace and security organizations grappled with the post-1989 civil wars, rule of law increasingly became the foundation for stable democratic states emerging from conflict. Thus, by 2010, rule of law had become central to many complex and worthy ends: promoting economic development and poverty reduction; building and consolidating peace in the aftermath of conflict; protecting human rights; establishing stable democratic states; and, more recently, combating organized crime and terrorism.¹⁶³

101. The strategic importance of the rule of law within the UN grew in parallel with these broader international developments, and significant progress has been made in ensuring that rule-of-law support is central to the system's peace, development, and security agendas. Since the signing of the 1948 Universal Declaration of Human Rights, human rights treaties have advocated the rule of law as the foundation of a rights-respecting state. The General Assembly has considered rule of law as an agenda item since 1992. Over the past decade, the UN Security Council has made reference to the rule of law in over 160 resolutions in the context of women, peace and security, children in armed conflict, and the protection of civilians in armed conflict. It has mandated the inclusion of rule-of-law components in twenty-two peacekeeping operations and in eight special political missions (both past and current), and held a number of thematic debates on the topic. The Security Council has created international *ad hoc* tribunals for trials related to the violent conflicts in the former Yugoslavia and Rwanda, and hybrid tribunals for crimes committed in Sierra Leone and Lebanon.¹⁶⁴ The Human Rights and Economic and Social Councils regularly consider rule-of-law-related issues in member states. The Peacebuilding Commission increasingly addresses rule-of-law issues with respect to countries on its agenda. And in extreme cases, such as Kosovo and Timor Leste,

the UN has been directly responsible for the transitional administration of territory, including administration of the judiciary and control of the police and prison services.

102. While rule of law had been an increasingly important element of the UN human rights and development agendas in the 1980s and 1990s, the Organization's peace operations in conflict-affected states spurred the rapid growth of policy and practice over the past decade. In 2000, the "Report of the Panel on United Nations Peace Operations" (the Brahimi Report) recommended "a doctrinal shift in the use of civilian police, other rule-of-law elements, and human rights experts in complex peace operations to reflect an increased focus on strengthening rule-of-law institutions and improving respect for human rights in post-conflict environments." The panel also called for an enhancement of system-wide capacities in each of these areas.¹⁶⁵

103. In 2004, the Secretary-General presented his first report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" to the Security Council.¹⁶⁶ In 2005, the "World Summit Outcome Report" took stock of the changing nature of threats and challenges across the globe, including transnational organized crime and terrorism, and proposed a comprehensive strategy that "addresses root causes and strengthens responsible States and the rule of law and fundamental human rights;" the Report also recommended establishing a robust capacity-building mechanism for rule-of-law assistance jointly with regional organizations and multinational financial institutions.¹⁶⁷ This was followed by a second Secretary-General report on the rule of law to the Council (2006),¹⁶⁸ a Secretary-General report on security sector reform (2008), Guidance Notes on the UN approach to rule of law assistance (2008),¹⁶⁹ transitional justice (2008), and strengthening the rule of law at the international level (2011),¹⁷⁰ four annual rule-of-law assistance update reports (2008–2011), the first of which called on UN leadership at the country level to place "rule of law at the centre, rather than the periphery, of UN initiatives in the field,"¹⁷¹ and a stocktaking report on UN rule-of-law efforts (2011).¹⁷² The UN's Peacekeeping Capstone Doctrine, completed in 2008, also included as core peace operations

functions "[c]reating a secure and stable environment while strengthening the State's ability to provide security, with full respect for the rule of law and human rights" and "supporting the establishment of legitimate and effective institutions of governance."¹⁷³ And as noted in the preceding section, strengthening the rule of law as a means to counter transnational threats such as organized crime and terrorism has also been deemed a priority for the Organization over the past decade.

104. Strengthening the rule of law was repeatedly highlighted in the Secretary-General's 2009 "Report on Peacebuilding in the Immediate Aftermath of Conflict" and in subsequent Peace Building Commission (PBC) reports and actions.¹⁷⁴ The documents emphasized rule-of-law and security-sector reform as immediate post-conflict priorities, and insisted on the need for a "holistic and coordinated approach to strengthening rule of law that results in the equally rapid deployment of justice and corrections capacities."¹⁷⁵ The Secretary-General's 2010 "Report to the Special Committee on Peacekeeping Operations" reemphasized the importance of cooperation, clarity of roles, and capacity to deliver in peacebuilding contexts,¹⁷⁶ while the Secretary-General's 2011 rule of law stocktaking report to the Security Council noted that "greater efforts are needed to ensure a unified approach to the rule of law, address gaps in evidence-based programming and integrate security sector reform into the wider rule of law framework."¹⁷⁷ A Security Council Presidential Statement in February 2011 also reiterated the "need for a comprehensive and integrated approach (to support countries emerging from conflict) that incorporates and strengthens coherence between political, security, development, human rights, and rule-of-law activities."¹⁷⁸

See Table 5 UN Rule-of-law Architecture and Support: A Decade of Developments on page 55

Policy and Architecture in Practice

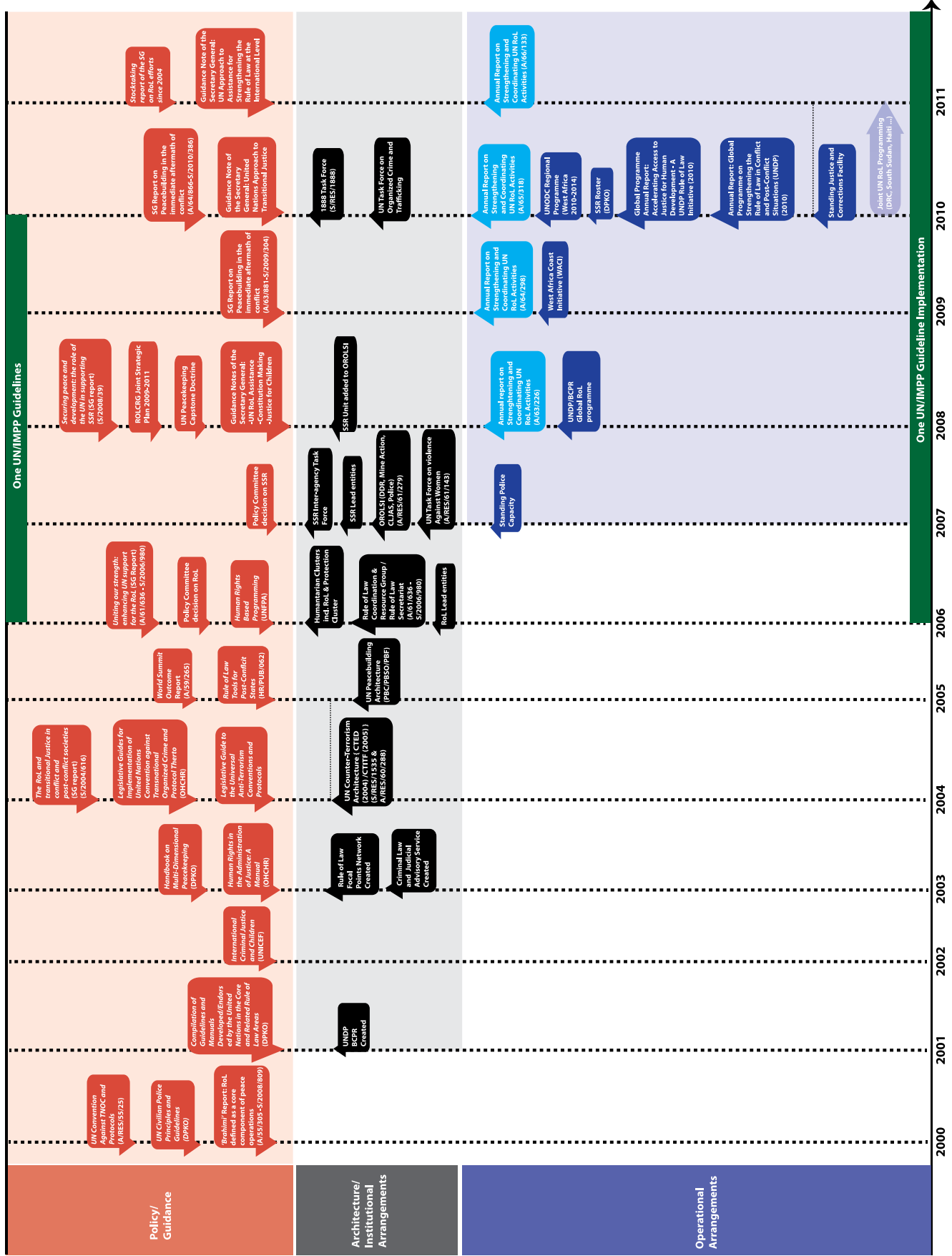
UN Member States and the UN Rule of Law Arrangements

105. The UN working agendas on rule-of-law-related

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Table 5

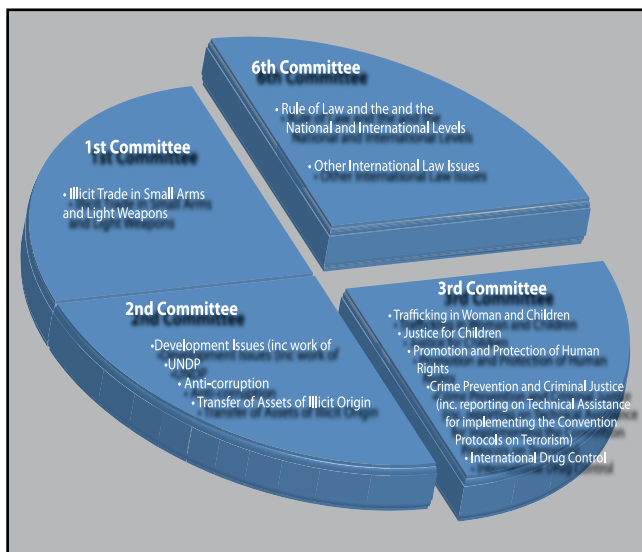
UN Rule of Law Architecture and Support: A Decade of Developments



issues currently range from dedicated rule-of-law–related thematic meetings of the Security Council to Chapter VII peace operations, special political missions, rule-of-law support to fragile states, commissions of inquiry, and the establishment of international or hybrid tribunals to deal with crimes committed during conflict.¹⁷⁹ As noted earlier, currently some thirteen Security Council–mandated peace operations and seven special political missions include broad-ranging rule-of-law initiatives. Beyond the Security Council, rule-of-law issues are also discussed in the Human Rights and Social and Economic Councils and within the framework of the UN peacebuilding architecture.

106. The General Assembly's Sixth Committee is the primary forum for the UN's rule-of-law agenda in the General Assembly. However, much rule-of-law work falls outside its scope, as the Sixth Committee focuses predominantly on international law and much less on country, regional, and transnational issues.¹⁸⁰ The GA's substantive work is in fact spread across four separate committees: the First (Disarmament and International Security), Second (Economic and Financial), Third (Social, Humanitarian, and Cultural), and Sixth (Legal). Interviews suggest that the dispersal of rule-of-law issues across the four GA committees reinforces the "siloeing" consistently criticized by internal and external experts, leading to a concomitant loss of coherence and coordination in the rule-of-law work of UN departments and agencies in New York and the field.

Table 6: UN General Assembly



107. The Secretary-General's office also suffers from significant overlap, particularly between the RoLCRG and its support unit, the work of the Peacebuilding Committee and its support unit, and the work of the Secretary-General's Policy Committee. The conceptual confusion between the peacebuilding agenda and the "thicker" version of the rule of law noted in Section II underlies some of the turf battles and prevents the Organization from concentrating on what matters: understanding context and maintaining the flexibility to respond to existing and emerging challenges at multiple levels – local, national, regional, transnational, and global. A discussion or debate on these overlaps is urgently required.

108. Member state approaches to rule-of-law issues in the UN often mirror the challenges evident in the Council and the General Assembly rule-of-law agendas. Many UN officials and INGOs lament the difficulty of identifying rule-of-law focal points in the Permanent Missions in New York and in capitals. Many also bemoan the lack of coherence between the positions of Permanent Missions and the rule-of-law–related work of ministries of foreign affairs, interior, and development in capitals and the field. Since the *de facto* home of rule of law is the Sixth Committee, Permanent Missions generally assign legal advisers as focal points. While appropriate for international law issues (and smaller missions with limited resources), legal advisors often lack backgrounds suited to the complex challenges in conflict-affected and fragile states, the skills and experience for understanding how societies contend with stresses posed by power struggles between formal and informal elite structures, transnational organized crime, trafficking and terrorism, and weak rule-of-law institutions. Some Permanent Missions are beginning to take a different approach, such as making rule of law a crosscutting issue across political, security, economic, development, and trade agendas, or a key component of broader peacebuilding portfolios. However, these are still small steps in an increasingly complex area of work; much more analysis is needed at the Permanent Representative level and between Permanent Missions and capitals on improving approaches to rule of law at the policy level.

109. An informal group of some thirty Member States, “the Friends of Rule of Law,” led largely by Austria, Mexico, and Liechtenstein, has helped sustain a focus on rule of law within the Security Council and General Assembly in the past. Austria’s four-year initiative, The UN Security Council and the Rule of Law (2004-2008), culminated in a report outlining the main Security Council initiatives in this area, including a section on rule of law at the national level.¹⁸¹ Support provided through this channel, however, is very much based on the dedication of individuals within permanent missions based in New York, rather than a coordinated policy effort on the part of member states. The “Friends” group has also failed to keep up with current and emerging challenges and like the Sixth Committee, has tended to be dominated by legal experts.

110. At the same time, member states’ development and political/security arms continue to face criticism for a lack of coherence on overlapping agendas. Adding to the confusion is the presence of well-financed multilaterals and bilaterals – such as the EU, USAID, DiFD – and IFIs – the WB, IADB, ADB – in the field, dwarfing the UN’s resources and complicating coordination problems, which have remained serious despite decades of criticism. For example, in its 2010 Annual Report on Legal and Judicial Development Assistance, IDLO noted that in 2008 alone, DAC donors made a total investment of USD 2.6 billion in this sector, representing a significant increase from 2006 and 2007. The report also noted that only a fraction of this amount is channeled through multilateral institutions, thereby enhancing fragmentation in this field. The international counterterrorism agenda offers a prime example of overlap and duplication, particularly in law-related capacity building. Limited attempts to effectively deal with this overlap have not been successful; coordination efforts, when undertaken, are implemented within narrow rather than overarching rule-of-law frameworks.

111. Underpinning all the aforementioned challenges lie two deeper interconnected problems: the usual conceptual and bureaucratic overlaps that emerge around different UN thematic agendas, on the one hand, and deep political divides among member states and

groups of member states on the rule of law agenda on the other. These divides have typically emerged around the degree of acceptable engagement on rule-of-law challenges tied to domestic and regional political and economic issues. However, in addition to the core group of Western nations that have traditionally supported rule-of-law efforts in different countries, many countries in the global south have added their expertise, advice, and resources to the more progressive policy frameworks and forms of engagement emerging over the past decade. There is also a growing acknowledgement across member states and regions that rule-of-law–related assistance can be pivotal to reducing violence and the risk of conflict violence, and that dealing with enabling factors requires a shared responsibility. In these cases, reform constituencies should be supported if such assistance is requested and not imposed, and when ties to geostrategic interests are limited. Nonetheless, it has proved impossible to move beyond existing antagonisms to ensure a more coherent and responsible rule-of-law agenda.

Coordination and coherence between UN departments and entities

112. In 2006 the Secretary-General established a rule-of-law coordination body – the Rule of Law Coordination and Resource Group (RoLCRG) - that would “act as Headquarters focal point for coordinating system-wide attention on the rule of law so as to ensure quality, policy coherence and coordination.”¹⁸² It would increase and deepen required capacity in priority areas of three main “baskets” of rule of law activity¹⁸³ and minimize fragmentation across all rule-of-law areas including justice, security, prison and penal reform, constitution-making, transitional justice, and land/resource-related conflicts. While much of the day-to-day and field-level coordination would be within baskets as part of a decentralized process, the RoLCRG was ultimately established with the aim of focusing on overall coordination and policy issues and helping “ensure that lead entities fulfil their responsibilities.” It would also help identify priority gaps, and ensure an effective and coherent response to Member State requests. The body is chaired by the Deputy Secretary General (DSG) and comprised of the nine principal UN entities involved

in rule-of-law assistance.¹⁸⁴ A dedicated Rule of Law Unit was established in the Executive Office of the Secretary General (EOSG) to support the work of RoLCRG, including the implementation of its three-year Strategic Plan.¹⁸⁵

113. Five years on, the RoLCRG and its support secretariat have drafted a number of policy guidance documents.¹⁸⁶ They have established a General Assembly process to maintain a strategic focus on the rule-of-law policy coherence and coordination agenda. As a result, in 2012 the sixty-seventh session of the General Assembly will include a high-level meeting on the rule of law at the national and international levels.¹⁸⁷ The RoLCRG has organized important conferences and seminars addressing a number of the gaps identified in the early and more recent rule-of-law and transitional justice reports;¹⁸⁸ and the body has organized regular meetings to keep UN rule-of-law actors briefed on each others' work.¹⁸⁹ The RoLCRG's annual Secretary-General reports on Coordinating and Strengthening UN Rule-of-Law Activities have provided an overview of the Organization's rule-of-law efforts in the field.

114. Yet despite these developments, a broad range of interviews with RoLCRG members and other UN staff suggest that the entity lacks the legitimacy and authority needed to be able to work effectively, raising serious questions as to whether the body has added value.¹⁹⁰ The 2006 Report called on the RoLCRG to exercise oversight to ensure entities fulfill their respective responsibilities yet no mechanism has been put in place to implement this obligation. And while the coordination mechanism's nine members (and the broader Secretariat leadership) have used the RoLCRG as a forum to discuss and develop common policy guidance, they have been reluctant to use it strategically to raise much-needed resources, or as a platform to hold strategic discussions, or potentially help reconcile implementation challenges that emerge at the country or regional levels. Nor have they taken advantage of strategic opportunities to discuss new and emerging rule-of-law-related challenges such as those member states in the Middle East and North Africa are currently facing, or the impact that transnational organized crime and trafficking are having on already burdened states. In the absence of such a platform, the preference has been

to establish new or competing bodies adding to existing fragmentation at headquarters.

See Table 7 Different Rule-of-Law related Task Forces currently operating out of the Secretariat on page 59

115. In addition, there is no formal link between the RoLCRG and UN implementation efforts in the area of rule of law on the ground, even from a knowledge management perspective. This is largely due to departments and agencies protecting mandates and resources in the absence of strong Security Council, General Assembly, and Executive Office support for the coordination mechanism. The perception of limited added value is further intensified by a perceived lack of effective leadership and resource incentives.¹⁹¹

116. More specifically, the RoLCRG has not been able to move beyond *pro forma* drafting and meeting exercises. The annual reports titled "Strengthening and Coordination of UN Rule of Law Efforts" produced by the coordination body's secretariat seldom tie into broader policy developments, offer limited analysis of the nature of support provided and few details of implementation challenges, and provide no overall assessment of the impact and effectiveness of UN assistance vis-à-vis stated goals in the different contexts where the UN is supporting rule-of-law efforts.¹⁹² Similarly, while many interesting Guidance Notes have been developed, their dissemination as part of a deeper policy process has been sporadic.¹⁹³ Insightful conferences on critical gaps such as the ones organized by the RoLCRG on national perspectives, land issues, and statelessness have filled some space in terms of understanding challenges related to these issues.¹⁹⁴ Yet it is unclear if or how the issues identified during these thematic conferences are further analyzed by the RoLCRG and woven into policy and, by extension, operational responses in the different contexts in which the UN is working. To the contrary, evidence gathered through this review points to a continued fragmentation of response when it comes to the manner in which rule-of-law support is conceptualized, with a predominant focus on supporting formal criminal justice institutions, even when analysis and field experience points to the importance of combining

Text continues on page 60

Table 7: Different Rule-of-Law related Task Forces currently operating out of the Secretariat

	UNCTITF (2005) UN Counter Terrorism Integrated Task Force	UNRoLCRG (2006) UN Rule of Law Coordination & Resource Group + Secretariat	Humanitarian RoL & Justice Sub Working Group - Protection Cluster (2006)	UNIASSTF (2007) UN Inter-Agency Security Sector Reform Task Force	UNIATFVAW (2009) UN Inter-Agency Task Force on Violence Against Women	UN SC Resolution 1888 Team of Experts (2011)	UNTFOCCT (2011) UN Task Force on Organized Crime and Trafficking
Membership	Working Group on Preventing & Resolving Conflict DPA (lead) CTED DPKO EOSG OHCHR OLA UNDP UNESCO UNODC	DSG (Chair) DPKO DPA UNDP UNODC OHCHR UN Women UNHCR UNICEF OLA	UNDP (focal point) OHCHR (focal point) + NGOs, the Red Cross and Red Crescent Movement, and the UN and related regional organizations	DPKO (co-chair) UNDP (co-chair) DPA IDA OHCHR OSAA PBSO UNICEF UNIFEM UNODC UNFPA	UNFPA (co-chair) UN Women (co-chair) UNIFEM UNICEF UNDP UNODC UNFPA	UNDP (co-lead) DPKO (co-lead) OHCHR (co-lead)	DPKO (co-chair) UNODC (co-chair) DPKO UNDP DPI PBSO OHCHR UNICEF UN Women World Bank
Mandate	Technical Assistance Advisory Services Capacity Building	Coordination Coherence Policy and Operational Guidance Internal Capacity Building	Coordination/ Reporting, Development of Guidance Tools Technical Support Missions Joint Assessment Missions Ensure connectivity with the field Internal capacity building Mainstreaming RoL in other Protection areas Ensure complementarity with other RoL fora, inc. RoLCRG and Early Recovery Humanitarian Cluster	Coordination Coherence Policy & Operational Guidance Internal Capacity Building	Coordination Coherence Policy Guidance Technical Assistance Advisory Services	Capacity Building Strategic, programmatic and technical guidance to Member States	Analysis Advisory Services Policy Recommendations
Scope	Global	Global	Global	Global	Global	Global	Global

such an approach with more targeted bottom-up initiatives that respond to local needs and circumstances. These shortcomings have been identified in a broad range of UN reports and by UN leadership, yet the system as a whole has been incapable of adapting policy formulation to meet them, particularly in peacekeeping contexts.

117. Most entities interviewed in the field and outside the Secretariat in New York are not familiar with the RoLCRG or its work, while others are challenged by the linguistic barrier posed by the use of English as the main language for the documents it produces. Interviews in the field and in capitals with non-UN actors also revealed that few, if any, have any knowledge of the RoLCRG or the division of rule-of-law-related responsibilities among UN entities. Indeed, out of the UN field offices interviewed for this review, only those in Nepal and Liberia were familiar with the RoLCRG, mainly because they had been designated as pilot countries for a RoLCRG initiative on joint programming, sparking much resistance in some quarters.

In Nepal, the “threat” of a RoLCRG visit sparked questioning of the relevance of the visit, given that the RoLCRG does not have an operational mandate. Nonetheless, it also spurred a flurry of activity to map UN and donor rule-of-law activities. This fed into a broader discussion already being led by the resident coordinator on the need for a more strategic, coordinated, and coherent rule-of-law focus linked to the broader development agenda. The experience also highlighted major gaps in RoLCRG’s capacity to assist with resource mobilization or strategic advice on sensitive issues, in particular how to address the critical problem of political interference in the work of the judiciary, the police, and branches of government.

118. Lack of systematic policy analysis within the UN system remains an important challenge. As mentioned, no body is currently responsible for analyzing global, regional, and national developments or assessing the relevance and implementation challenges of current UN rule-of-law policy, guidance, and programs against these developments. This vacuum was raised during interviews with staff in numerous UN entities and with member states conducted during the course of this review, shedding light on the need for a dedicated platform where lessons from the UN system’s broad range of rule-of-law experiences in the field could be shared and analyzed as a means

to enhance effectiveness of UN response efforts. More important, such a platform could be used to hold frank discussions with the World Bank, member states, donors, and other parties whose decisions have an impact on how assistance is provided in the field. Some agencies, such as BCPR, now conduct this kind of meeting annually with its national and international partners; however, they are limited in detail and scope, and frankness is often muted by BCPR’s dependence on the voluntary funding provided by its “partners” or by its relations with national counterparts. This same dynamic affects many UN entities working in this field.

119. The gaps in the RoLCRG’s performance and its incapacity to adapt to needs are not just the result of a weak vision and mandate and limited buy-in from its members. Resources or the lack thereof, also play an important role. Some RoLCRG entities that make up the coordination body are reluctant to allow the support secretariat – the Rule of Law Unit – to conduct fundraising exercises, even if in the name of the RoLCRG, as they believe that this would mean fewer resources for the individual entities. In this sense, member states fail to provide the right incentives to overcome this form of false competition. Unsurprisingly, the Rule of Law Unit established to support the coordination group has faced a broad range of problems. The approved budget for 2012–2013 is a mere USD 1.5 million, which covers the funding of five regular posts, and a paltry sum of USD 20,500 to cover operational costs (restricted to travel). These amounts can hardly allow it to provide the substantive and administrative support needed for the RoLCRG to effectively implement its original or an invigorated mandate.¹⁹⁵ In addition, member states have supported the unit and the RoLCRG in the past through a Rule of Law Trust Fund. The monies in the fund are limited (approx. USD 160,000 for 2011), with some member states also reneging on former commitments. Similarly, the Secretariat has been slow to adequately staff the unit, which has had to rely on the ad hoc support of temporary staff, Junior Professional Officers (JPOs), and interns since it was established.¹⁹⁶

Roles and Responsibilities

120. As noted above, different UN entities were designated lead roles in different subsectors or fields of rule-of-law assistance and tasked to implement a range of initiatives to enhance coordination and coherence within the system on these specific areas, as well as deepen required capacity. Most of these tasks are process-related – e.g., developing policy and operational guidance; toolkits and training manuals; establishing deployable capacity functions; and improving the quality of program frameworks. In some areas, progress has been made in meeting these obligations. For example, UNODC, the designated lead on organized crime and trafficking, has developed a number of useful criminal justice toolkits and threat mapping tools, and is now developing expertise in the emerging field of cybercrime, which can add to the stresses post-conflict countries have to contend with. The OHCHR also has an extensive set of Rule of Law Tools for Post-Conflict States, developed in 2006. In addition to a range of operational guidance and training manuals for justice, corrections, and security-sector reform staff, DPKO's OROLSI has also developed training courses for justice officials deployed in the field and a criminal justice mapping toolkit – the Rule of Law Indicators Project – which is currently being piloted in Liberia. UNICEF has developed tools such as the Child Protection System Mapping and Assessment Toolkit for protecting children from violence and conflict, many of which are perceived by HQ staff to have had an impact on national policy in different contexts. UNDP has developed a dedicated program and guidance to support rule-of-law efforts in conflict and post-conflict settings, and DPKO is developing an Early Peacebuilding Strategy for peacekeepers. The EOSG's Rule of Law Unit has developed a web-based repository of some of these tools.

121. Notwithstanding these developments, there does not appear to be any systematic understanding or knowledge of *how* these tools have been implemented and if they have been *effective* in helping member states or constituencies within member states achieve different goals. The entities rarely use the meetings of the rule-of-law coordination mechanism – the RoLCRG – to discuss or

analyze some of the overlaps between these tools or the merits of applying them in different settings, including the baskets referred to in the Secretary-General's 2006 report,¹⁹⁷ a process that would enable a better understanding of their relevance and impact and the challenges staff face in implementing them.

122. A key challenge of the lead designation decision is that the original 2006 decision that sets out which entity should lead on what specific rule-of-law area was based on existing institutional capacity mainly in the Secretariat, rather than realities in the field. It was based on an assessment of the capacities that existed at the time, and no effective mechanism has been established to continuously assess the nature of this designation and the applicability of existing tools and mechanisms to new forms of conflict or external pressures that states have to contend with. In addition, the 2006 decision failed to consider the interdependent nature of many of the core rule of law functions identified. It was explicit however, in stating that while global leads would maintain rule-of-law policy prerogatives at headquarters, decisions on who should lead a specific subsector of rule of law would be taken at the country level. While the latter is coherent with the UN's integration policy on the ground, it is unclear what the actual policy cycle is in practice, as no mechanism or entity is held responsible for ensuring the effectiveness of policy on the ground, particularly as it relates to rule-of-law support.

123. The consequence has been a sustained turf battle, albeit one well characterized by the words of a former senior UN official: "The UN fights vicious turf battles over turf it can't actually fill." A debilitating and sustained inability to clarify either a division of labor or a set of arrangements for sustained cooperation has weakened the reputation of the UN's rule-of-law activities, particularly among donors. Although there are other reasons why donors prefer to finance bilateral rather than UN activities, the ongoing turf struggles between UN entities do not help. The responsibility for resolving these issues lies squarely with the Secretary-General and the Deputy Secretary-General, though the top leadership of DPKO and UNDP also bear important responsibility.

Congruence between coordination and coherence at headquarters and the field

124. While UN coordination mechanisms may not be working well at headquarters, cooperation mechanisms in the field are growing due both to limited resources and a grudging acknowledgement that combined efforts can produce a greater impact. Some of these initiatives are implemented with other regional, multilateral, or bilateral agencies and organizations.¹⁹⁸ Some of these initiatives are framed within a Security Council mandate or the UN's "Delivering as One" agenda. Others are now being implemented within the narrower peace operations Integrated Mission Planning Process (IMPP) framework. And a few are the product of savvy leaders and practitioners on the ground leveraging each other's capacity and resources outside of complicated agency structures. In addition, UN entities in Chad, DRC, Haiti, South Sudan, Timor Leste, and West Africa and those responsible for implementing Security Council Resolution 1888 have shifted towards joint programming for rule-of-law-related support. This is broadly perceived as a positive development, as it allows for a more practical division of labor based on comparative advantage and national and local context, and allows for raising funds collectively to meet critical gaps.

125. Notwithstanding these positive examples, and setting aside the point that we don't yet really know whether these joint approaches are effective in attaining goals, joint programming has also faced major challenges, from slow individual agency internal strategy and program approval processes to criticism of the quality of joint programs, particularly the overly technical nature of proposed support and unrealistically short timeframes. These disincentives undermine the dynamism and flexibility that should be inherent in these partnerships.

126. In peacekeeping mission environments, the UN integration process bolstered by a revised policy – the Integrated Mission Policy (2011) – is perceived to have some impact on coordination and cooperation around rule-of-law support.¹⁹⁹ The process remains challenging, though, not least because operationalizing integration

also requires structural changes in the management, personnel, and budget policies of peace operations and the agencies. Stiff bureaucratic obstacles continue to prevent flexibility in the use of budgets, sharing of resources, or development of common services, despite the fact that an implementation plan addressing the most constraining factors (e.g., administrative, personnel, finance rules, template MoUs for specific assets and services, etc.) is in place.²⁰⁰

127. Increased cooperation and integration efforts have been insufficient to overcome some of the major tensions that persist among UN actors at the global, regional, and country levels over roles and responsibilities, despite the decisions made in 2006. Nowhere is this tension more acute than between DPKO and UNDP/BCPR over rule-of-law institution building in countries emerging from conflict. There are many reasons for the competition and turf wars between UN entities. For example, requests for support from member states or field operations are rarely centrally coordinated – they are sent to individual entities with limited transparency about how decisions are made in response to requests.

128. In addition, UN governing bodies and donors provide few incentives for better cooperation between entities. The Security Council and member states continue to stress the importance of clarifying roles and responsibilities, recommending again in February 2011 that "particular focus be given to improved integration of effort where peacekeeping missions are operating together with peacebuilding activities of other actors, such as in the DRC and Sudan."²⁰¹ It would be a serious exaggeration, however, to suggest that donors in particular have aligned their funding to support such clarity; rather, donors tend to push UN departments and agencies to collaborate and then undermine their own intent by financing separate and competing programs.

129. The UN has attempted, with mixed results, to reconcile some competing thematic mandates, for example through Security Council Resolutions, an internal review process driven by the Secretary-General's Policy Committee or, more recently, a series of suggestions

tabled during the UN's review of civilian capacities. DPKO OROLSI's development of a field implementation strategy may help resolve existing problems if finalized and if it receives the necessary backing internally and from member states. The strategy is meant to reduce the scope of DPKO's rule-of-law and SSR work in particular, and to cover critical early peacekeeping tasks aimed at creating the political space necessary to enable mid- to longer-term rule-of-law efforts. In line with the Secretary-General's first report on "Rule of Law and Transitional Justice," there is a tacit recognition that these earlier tasks should be implemented in full collaboration with relevant UN entities, particularly DPA and UNDP, and national counterparts from the outset. In addition, implementation of such a strategy would require further analysis to identify appropriate tasks in light of the issues raised in Section II of this report; it would clearly require additional skill sets in the areas of political economy, conflict, and perception survey analysis; dialogue facilitation and mediation; and community policing and alternative dispute resolution mechanisms. Some of these capabilities can be pulled from or developed within existing UN standing capacities and rosters; others would have to be sought from outside the UN.²⁰² In order to ensure a smooth transition to longer-term rule-of-law and security-sector reform support, implementation of such a strategy would require a move towards more effective and responsive business models, such as the full integration of agency colleagues into missions from the pre-deployment phase until withdrawal, or in line with the joint operation concept suggested in the 2011 WDR.²⁰³

Analysis and Planning, Monitoring and Evaluation²⁰⁴

130. As noted in previous sections, UN departments and entities providing rule-of-law-related support in conflict-affected and fragile settings have been repeatedly challenged to improve coherence, coordination, predictability of response, and programmatic frameworks. While the question of "effective" support was stressed in early UN reports, its relevance seems to have been supplanted by process-related issues. More recently, emphasis on effectiveness has been used as a tool to

resolve the question of roles and responsibilities,²⁰⁵ shifting attention away from the question of whether the UN's concerted efforts in this area have had any sustainable impact, and if not, why this is the case.

131. The Secretary-General's 2004 report identified the need for the UN system to strengthen its ability to assess the situation on the ground in conflict and post-conflict environments and plan its field activities and operations. To do so effectively, the 2004 report observed that the UN would need to assess a series of issues, including the underlying conflict; the will of the parties; the history of human rights violations; vulnerable and marginalized groups; gender and the role of women; the situation of children; and the condition and nature of the country's legal system, traditions, and institutions.²⁰⁶

132. The Secretary-General's 2006 report praised the UN system's assessment and planning achievements and the 2010 Secretary-General's report *Peacebuilding in the Immediate Aftermath of Conflict* claimed that the UN had "system-wide standards for strategy and planning in mission settings."²⁰⁷ However, it would appear that serious problems persist regarding the capacity of the system to effectively analyze and respond to rule-of-law-related challenges.²⁰⁸ While the Integrated Missions Planning Process (IMPP) has been introduced as a new planning tool for peace operations, there is a general acknowledgement that analysis and planning tools remain weak. For example, in 2009, DPKO surveyed selected staff to evaluate its assessment and planning capabilities, with findings suggesting that very little has been accomplished, despite the assurances laid down in the 2010 report.²⁰⁹

133. The lack of effective analysis tools is particularly noteworthy with respect to the IMPP. The IMPP, based upon "field experience since 2006 and emerging best practices," is proposed as a methodology with which Integrated Strategic Frameworks (ISF) are drafted.²¹⁰ Time and care have been expended to ensure that the IMPP process producing an ISF is a coordinated and cohesive whole, in which the whole UN system can contribute and participate. Additionally, the process is integrated into other UN planning tools and methods. Challenges, however, arise

with respect to what appears to be the substance of the process, which begins with a conflict analysis.²¹¹ While the analysis examines the “key factors... driving the conflict situation,” the enumeration of “key factors” does not include reference to politics, political structure, power relationships, leadership, legal structures, delivery of justice and security (other than to selected vulnerable groups), or socio-economics/political economy. Regional influences and their ripple effects do not appear in the catalogue; basic rule-of-law considerations are similarly absent, as are transnational phenomena, such as organized crime and its wide-ranging potential repercussions. Instead, the “key factors” seem to be a checklist of grievances without an accompanying analysis of how or why the constellation of grievances coalesced into the outbreak of conflict.

134. The challenge is not for the UN family to enunciate a single theory of conflict or choose one among the various competing alternatives. Rather, the issue is that a set of grievances does not add up to an analysis of a conflict’s dynamics and that a checklist cannot be the foundation upon which a coherent strategy is built.²¹² The result is typified by the Haiti ISF, which does not offer a coherent strategy, but rather presents an inventory of activities and a wish list of desired outcomes. It lacks cogently argued and defended priorities directly related to the country’s realities. Redact the country’s name and the ISF could refer to any one of a number of post-conflict nations where the UN has a field operation. Conversely, on a more positive note, earlier this year the Security Council requested the Secretary-General to report on conflict analysis and contextual issues including social and economic matters that “represent a challenge to the implementation of Council mandates or endanger the process of consolidation of peace.”²¹³ The UNDP is moving to include the use of political economy analysis tools on the ground. Indeed, its Oslo Governance Centre has initiated a project with other parts of UNDP aimed at analyzing current trends in usage of political economy analysis in the context of international development to determine how UNDP can engage with actors undertaking analyses and adapt these practices to its own mandate.²¹⁴ These tools, if properly resourced and shared at the country level, could prove useful for the kind of rule-of-law support we are discussing.

135. The first clear statements on the need for the UN system to account for its performance came in the Secretary-General’s first report on Rule of Law and Transitional Justice in Post-Conflict Settings (2004). Since then, consecutive reports have called on the Organization to ensure more effective oversight of its work in this area, promote more “meaningful learning about the effectiveness of assistance in order to keep pace with the amount of rule of law activity on the ground,” improve its knowledge of “sound methodologies for supporting the development of vibrant rule of law institutions,”²¹⁵ provide “practical guidance and assistance in the establishment of benchmarks and other evaluation processes.”²¹⁶ Despite these acknowledgements and recommendations however, more recent reports still lament the absence of tools to effectively assess, monitor and evaluate the UN system’s rule of law work. Indeed, the Secretary-General’s 2011 update report to the Security Council on the Rule of Law and Transitional Justice in Post-Conflict Settings noted that “[t]o date, attempts to measure the Organization’s effectiveness have been hampered by incomplete baseline data, weak and competing monitoring and evaluation frameworks, and a lack of incentives to share results between entities.”²¹⁷

136. Earlier reports suggested that the RoLCRG was pursuing UN system-wide “agreement on baseline data” and the development of “a common tool” for measuring the effectiveness of UN rule-of-law assistance.²¹⁸ While this study found limited evidence that substantive work has been conducted that could lead to a “common tool” to effectively monitor and evaluate the Organization’s rule-of-law work, important attempts are being made to develop “joint monitoring mechanisms” at the national level that bring together the State, civil society, donors and United Nations entities “around common indicators (...) to ensure coordinated efforts and the sector-wide evaluation of impact.”²¹⁹ In this regard, the Secretary-General’s 2011 report highlighted “the development, system-wide endorsement and implementation of the United Nations Rule of Law Indicators to monitor changes in the performance of criminal justice institutions [as] a welcome achievement.”²²⁰ At the same time however, it is unclear how such initiatives will help tackle some of

the more politically sensitive issues such as elite capture or manipulation of these same institutions if they are not underpinned by sound political economy analysis and form part of a broader strategic approach to supporting the emergence of the rule of law.

137. The difficulty in evaluating the effectiveness of rule-of-law support cannot be underestimated. The immediate challenge, according to the 2009 Report, is the effectiveness of UN rule-of-law programmatic support to member states and their citizens. As already suggested and recognized by the UN itself,²²¹ the tendency of the UN system continues to be the use of outputs, rather than outcomes, as indicators of achievement and effectiveness. It also coincides with a general acceptance that there is, across the board, a limited understanding of the relationship between specific policy and program interventions and broader outcomes.²²² As noted in Section II, this relates to a poor understanding of rule-of-law functions in a given setting. An understanding of these functions would necessarily stem from a better grasp of the political economy and the cultural and historical dynamics of a particular state, as well as the regional and transnational issues or threats that impact it. Monitoring and assessment tools can then be tailored to local and national contexts and incorporate the perceptions of national and local actors. None of the existing analytical frameworks, monitoring and evaluation tools, Mandate Implementation Plans, or results-based budgeting tools currently fulfill these requirements.

138. As it stands, each UN entity has its own tools and mechanisms to develop benchmarks and indicators, and to monitor and measure progress. These, however, tend to be superficially consultative, focus narrowly on program outputs rather than the attainment of broader goals, and are seldom based on a theory of change. This is not always the fault of practitioners or mission leadership, though. Monitoring and evaluation tools are often developed to suit the institutional requirements and political prerogatives of donors, who are increasingly prioritizing simplified numerical data as a means to report on results. Since donors have to report on progress to their domestic constituencies, numbers are easier to

explain and manipulate than complex processes of social change in foreign countries, especially in the shadow of the global financial crisis. This dynamic often leads to the establishment of forced monitoring and evaluation baseline indicators, making it more difficult to determine whether and how UN rule-of-law interventions contribute to political stability, security, and development.

139. Some agencies, such as UNDP's BCPR, have attempted to develop tools and mechanisms to more effectively monitor and evaluate programmatic work on rule of law in conflict and post-conflict settings. A recent mid-term external evaluation of its five-year program noted that joint country office and BCPR Rule of Law Program needs assessments aimed at supporting the design and development of country-level projects have strengthened the programmatic response to rule-of-law challenges on the ground. However, the mid-term evaluation of the program also highlighted the absence of basic benchmarks as an impediment to developing effective monitoring and evaluation mechanisms. While it was too early to determine program impact against the broader strategic goals set out in each country where it is actively engaged in supporting rule-of-law reform efforts, BCPR has been refreshingly open in acknowledging its monitoring and evaluation capacity shortcomings, but is still grappling with how to overcome them.²²³ Meanwhile, DPKO and its UN partners are attempting to address this problem in UN peace operations, hoping that the new Integrated Strategic Frameworks will produce better structures for developing clearer benchmarks, and for monitoring, analyzing, assessing, and learning from rule-of-law experiences in the field.

140. It is too early to tell, however, whether these tools will be effective, especially in terms of guiding context-specific support efforts. However, real-time monitoring and assessment of implementation challenges as they relate to the overall strategic context – i.e., that help deepen analysis of the political economy in which the UN is operating – could help identify alternative points of leverage and engagement and determine why particular approaches are not having the expected outcome.

IV. Conclusions

141. As noted at the outset of this report, UN rule-of-law activities have increased over the past two decades. The Security, Economic, and Social Councils, the General Assembly, and the Secretariat have embraced the rule of law concept as the foundation for the protection of human rights, democracy, economic growth, poverty reduction, post-conflict recovery and peacebuilding, and efforts to reduce terrorism and organized crime. In response to challenges identified in the 1990s and early 2000s, the Secretariat and member states moved to create centralized rule-of-law policy and coordination mechanisms in an attempt to produce a unified UN rule-of-law approach in peacekeeping and development contexts. Nonetheless, with the three main Councils, all four General Assembly substantive committees, nine departments and agencies, and scores of smaller UN offices, task forces, emergency response teams, and other entities working on rule-of-law policy and operational activities, competition and fragmentation has continued to undermine UN system coherence and the potential for an effective response.

142. While the current rule-of-law “policy creep” might have emerged from an earlier acknowledgement that the “thicker” version of rule of law is the ultimate (though not necessarily immediate) goal of different interventions, the current practice of pegging the rule of law to every UN intervention prevents the UN and its partners from focusing on the core functions of the rule of law and determining which of them might be achievable, under what circumstances, and by what means in a given context.

143. An examination of headquarters dynamics and interviews with UN staff working at the country level have demonstrated that the current coordination arrangements have proven too frail to ensure coherence among agencies and the Secretariat in New York, let alone oversight, and they have limited relevance to colleagues in the field. At the country level, the weak integration of political, technical (criminal and/or administrative justice/legal, economic and development), and program management expertise when implementing rule-of-law support exacerbates these challenges. The UN’s Integrated Mission

Planning tool has marked a shift in the right direction, particularly through its Strategic Assessment dimension. However, the UN still lacks the mechanisms to properly apply these new integration tools to specific areas of work such as rule of law, which is still broadly considered as a narrow technical field of justice and legal support, thereby stifling innovation and much-needed integration of the conflict, political, development, and security agendas.²²⁴ In addition, despite policy projections, the IMPP framework has not helped break down bureaucratic barriers to allow staff from different entities to work together in a more flexible manner. Finally, the UN’s many governing bodies and donors provide limited incentives for better collaboration and coordination.

144. Outside the peacekeeping framework, UN agencies continue to compete for financial resources scattered across donor security, governance, human rights, state-building, and development programs. Fragmentation continues to mark General Assembly and member states’ management of rule-of-law issues. And while the UN remains the central actor for rule-of-law normative development, its work and resources are dwarfed in the field by bilateral and multilateral assistance and the international financial institutions. Internal spats over roles and responsibilities continue, with each entity and department staking its claim to a specific area of rule-of-law support, without actually having the capacity to execute the responsibilities they assume. Neither the Secretary-General nor the Deputy Secretary-General have used their sway to resolve these core issues.

145. A recurrent issue raised by this report is the Organization’s failure to produce a coherent understanding and common approach to rule of law. In the absence of an evidence-based theory describing how the rule of law can help reduce violence and promote stability, development, and democracy, the Organization is flying blind on its rule-of-law work. The absence of knowledge of what has and has not worked in the field of rule-of-law assistance is one of the core structural challenges encountered during the course of this review. A lack of sound analytical tools and capacity (including political economy, conflict and perception survey analysis) as well as consistent

monitoring and assessment by the UN and its partners leaves the UN unable to reach any conclusions about results. Yet we continue to develop strategic narratives and operational responses on the shaky assumption that certain functions of rule-of-law support can produce certain outcomes. Rarely are these assumptions based on a deep understanding of the purpose or the functions of rule of law in a given setting, whether in meeting the immediate needs of citizens or the longer-term responsibilities of the state. Recognition of the limited success of bilateral and multilateral programs in contexts as different as Iraq, Afghanistan, Guatemala, Haiti, Jamaica, and countries in the Middle East and North Africa is driving governments to re-evaluate the nature and scope of rule-of-law support. Consequently, it is crucial for the UN to reflect on these fundamental substantive issues as it focuses on measures to strengthen its rule-of-law organizational architecture and the nature of the support it provides to member states and other reform constituencies within states. This can provide the UN with a stronger empirical and conceptual foundation for its rule-of-law support work - itself an important foundation for state legitimacy and stability.

Looking ahead

146. Finally, it is important to note that while this study focuses on the rule of law, both the case and headquarters analysis point to the fact that the UN's institutional arrangements for peace operations and for support to fragile and transition settings reflect an accretion of prior, partial reforms that are far from being effectively or efficiently arranged. The current practice of allowing a prior decision about which part of the bureaucracy leads the UN's engagement to dictate the mechanisms and funding streams available for the response makes limited sense. The UN can do better, and member states should enable it to do so. More radical reforms than we detail here, aimed at reconciling two separate political departments, two separate operational budgets, and the arbitrary and ineffective dividing line between assessed political contributions and voluntary programmatic ones warrant serious consideration. We say this while acknowledging that at present, there is limited appetite among member states or the UN itself for broader structural reforms. Yet

these points need to be made and discussed so that a process for far-reaching reforms can be initiated as soon as the political environment is conducive enough.

147. Within the reform process, attention should be afforded to restructuring the UN's rule-of-law support mechanisms. Over time, the idea of a stand-alone capacity for rule-of-law support (along the lines of UN Women or the humanitarian Inter-Agency Steering Committee), which would draw in capacities from the humanitarian agencies, DPA, DPKO, UNDP, UNODC, UNICEF and elsewhere, could have merit. So too does the idea of an Independent Judicial Service, a tool that member states could draw on (at their own choosing) when they want support on a range of executive and advisory rule-of-law functions, but are not the subject (voluntarily or otherwise) of a UN mission presence. As more states make progress on resolving conflict and achieving genuine development, the importance of the UN's advisory role on rule-of-law functions (which should move toward better integration of the political and the developmental), will grow commensurately.

148. This is all the more important now, as we are likely to enter a long period of transition in the Arab region. Beyond Libya, it is unlikely that UN missions will be established in the region. Indeed, the hungry search by various UN actors for political roles in the early crisis management of the Arab Spring has largely misfired, and understandably so. Yet over the long haul the UN has the potential to make a vital normative, political, and even an operational contribution to the Arab Spring. Five to ten years from now, we will not look back and ask whether the UN's political tools were called upon to navigate the first phase of crisis management in Arab Spring countries; rather, we will ask ourselves whether the UN was normatively and politically aligned with the aspirations of the people in the region as they sought their own pathways to democracy and the rule of law, and what the contribution of the Organization actually was. If the answer is negative, we will wonder about the relevance of the Organization. If the answer is positive, the experience will surely be considered one of the great contributions in the history of the Organization.

Core Recommendations

<p>General</p>	<p>Rule-of-law conceptual framework</p> <p>The concept of the rule of law needs to be broken down in order to better understand how to prioritize support to Member States and reform constituencies within states. We propose the following breakdown and view the relationship between the first function and the others as critical.</p> <ul style="list-style-type: none"> • Developing/strengthening formal or semi-formal representative political institutions and participatory processes for managing/mitigating political differences and/or resolving conflict. • Developing arrangements for the independent provision and administration of justice (criminal, administrative, contractual), that is predictable and accessible to all, respect for human rights, and the strengthening or emergence of alternative dispute resolution mechanisms. • Developing accountability tools and mechanisms to tether different functions and fonctionnaires of the state, particularly security and financial management, to civilian oversight. • Embedding the state in international law, both recognized norms of customary international law and conventional or other international regulatory regimes, including those that address serious violations of international humanitarian and human rights law, organized crime, trafficking, and terrorism.
	<p>Analysis, Assessment, Monitoring and Evaluation</p> <ul style="list-style-type: none"> • Member states and the UN system should undertake strategic initiatives to fill the “empirical gap” in the field. This process should analyze shorter-term rule-of-law challenges in peacekeeping environments as well as in longer-term development and statebuilding contexts. • In this regard, the UN should foster learning within the Organization and between the UN and other international and regional actors on the short- and longer-term relationship between political stability, legitimacy and the rule of law. It is crucial that the UN reflect on the empirical gaps in the rule-of-law field, at both the strategic and operational levels. Member states can help, for example, through a more systematic collection of lessons and observations by their in-country offices in fragile states and in countries hosting peacekeeping operations, and sharing these with the UN. • In a related vein, recognition of the limited success of bilateral and multilateral initiatives and programs in contexts as different as Iraq and Afghanistan, Guatemala, Haiti, and countries in the Middle East and North Africa is driving governments to re-evaluate the nature and scope of rule-of-law support. Consequently, it is important that these discussions reflect the experiences and expertise of countries in the global south as they increasingly contribute to the Organization’s rule-of-law efforts on the ground. • On issues relating to post-conflict programming, DPKO’s OROLSI, PBSO, and BCPR should continue to deepen their engagement in the efforts of the World Bank and the OECD Secretariat to develop a set of measures and indicators of progress on the G7+’s Monrovia peace and statebuilding goals. DPKO should also join the World Bank’s data congregation effort (“The Hive”) and help shape its strategy. Both provide ready (and resource-neutral) access to data, analysis, and ongoing research efforts. • Further discussion on roles and responsibilities of the “designated leads” should be pegged to the need to enhance analytical, planning, monitoring, and assessment capabilities. • Beyond peacekeeping operation cases, the RoLCRG could commission an in-depth assessment of examples of joint rule-of-law operations in the field. The assessment could look into the analysis and programming tools and mechanisms, including monitoring and evaluation (M&E), being used to meet (i) mandated prerogatives and (ii) broader goals. The assessment should also focus on the institutional and bureaucratic opportunities and challenges to implementing joint programming or joint operations, including resource mobilization, and the steps necessary to overcome them. • Ongoing rule-of-law-related training for senior leadership either through the SLIP or the UN Staff System College (UNSSC) should be further developed to include specific modules on some of the implementation challenges highlighted in this review, with examples showing how different instruments of leverage might be used to maneuver around certain rule-of-law challenges. Beyond training, efforts should be made to ensure that senior leadership working on the ground is aware of the tools that can be used to better understand the political economy of the settings they are working in and citizen’s perceptions of needs. This understanding should underpin the mechanisms and tools they employ to respond to critical rule-of-law challenges.

Core Recommendations

	<p>Decision-making</p> <ul style="list-style-type: none"> As the Secretary-General considers senior appointments and new initiatives in preparation for his second term, he should examine the logic of maintaining three separate mechanisms for policy coordination in his office, each of which weighs in on the rule of law: the Policy Committee, the Peacebuilding Support Office, and the RoLCRG. The Policy Committee and RoLCRG's Secretariat are understaffed, and while PBSO has sufficient personnel, it suffers from limited connection to the Secretary-General's decision-making process, despite being located in his office. All three of these bodies report either directly to the Secretary-General or to his deputy. There is evident overlap here. In relation to coordination and roles and responsibilities, we propose a framework (see Annex 1) that can facilitate the determination of which department or entity should take the lead on policy coordination at headquarters and implementation at the operational level around specific rule-of-law functions. The framework was developed from the perspective of which entity or department actually has the leverage to support the emergence or strengthening of different functions of the rule of law in certain contexts (rather than from the perspective of who claims to be doing what), and where alternative sources of leverage can be sought. Such a focus could also help the Organization develop more effective tools for providing support to member states. It would also help determine a more effective role for the RoLCRG, including in terms of providing a normative platform for the UN to discuss emerging challenges and opportunities such as those related to the transition countries in the Middle East and North Africa. Where there are clear overlaps and tension, such as in the area of strengthening criminal justice systems in peacekeeping settings, the Policy Committee should transform the existing Inter-Agency Task Force on Security Sector Reform into an Inter-Agency Task Force on Criminal Justice and Security Sector Reform. There are significant overlaps between the two, particularly in law enforcement and military justice reform. Such an arrangement would be in line with current policy shifts, make more effective use of limited resources, both human and financial, and help overcome existing tensions regarding overlap and duplication in the two fields. The bolstered Task Force would continue to be co-chaired by DPKO and UNDP; however, on criminal justice-specific meetings and initiatives, UNODC would be included as a joint chair. OHCHR and other actors already participating in the existing ATFSSR would continue as members. DPKO, UNDP (BCPR), and UNODC would jointly prepare terms of reference for the bolstered Task Force's criminal justice work, including the development of policy and operational guidance for peace operations, the enhancement of existing training material, and the rostering of personnel. The criminal justice terms of reference would become an integrated part of the existing Task Force's work. This broader Task Force should report on progress to the RoLCRG on a regular basis. In planning for peacekeeping operations or special political missions, planners should avoid assigning a "rule-of-law" cluster or sector to any given agency or department for planning purposes; it simply fuels confusion. Rather, the specific functions (or similar) set out in this report should be the basis for rule-of-law-related planning, strategically linked to the articulation of the political settlement.
<p>Post-conflict settings</p>	<p>Strategic Framework</p> <ul style="list-style-type: none"> The UN should refrain from using the 'thick' version of the rule of law as an overarching framework for initial engagement, and ensure that support to specific and prioritized rule-of-law functions is accompanied by confidence building measures and is in tune with the political economy realities on the ground.
	<p>Confidence Building Measures</p> <ul style="list-style-type: none"> Research and experience increasingly suggest that a central objective of post-conflict engagement should be to build confidence in the political settlement, and engender some trust in prospects for moving towards co-existence and development. Early confidence-building measures aimed at gradually building trust in the justice and security institutions can contribute importantly to this goal. Tools such as citizen perception surveys can be used to understand the needs that underpin any relationship of trust between state and society. Victims of serious international crimes should be included in the surveys while early steps to respond to needs might include the removal of harsh or discriminatory practices and laws; disbanding particularly abusive units within the security services; laying the groundwork for the implementation of certain transitional justice measures such as truth telling; supporting the introduction of or strengthening existing alternative dispute resolution mechanisms (particularly for land and resource-related disputes); and developing community policing services focused on violence reduction. Mechanisms such as the UN's integrated Mission Planning Policy (IMPP) or real-time monitoring tools can be tailored to jointly oversee implementation of these confidence-building measures with national counterparts and ensure they are linked to longer-term strategies aimed at promoting the emergence of a democratic rule of law. The development of these mechanisms and tools needs to be underpinned by a sound understanding of the political economy of the country.
	<p>Leverage</p> <ul style="list-style-type: none"> The UN Secretariat's Policy Committee proposal for a joint study of field evidence to better determine roles and responsibilities should focus on assessing how DPO has used the leverage of another part of the system to generate political space for critical rule-of-law initiatives; the perceived impact of this engagement; and the systems, analytical and learning tools needed to enable the use of leverage for rule-of-law initiatives. The study should also develop a more comprehensive catalog of the kinds of creative joint initiatives in the field that this report points to, as well as instances where collaboration has not been possible or has been delayed. This should in turn set the stage for a policy discussion on the funding or career incentives that can foster that kind of collaboration.

Core Recommendations

	<p>Operational framework</p> <ul style="list-style-type: none"> Before finalizing its “Early Peacebuilding Strategy,” DPKO should consider a few additional but important steps. Since the Strategy hopes to cover critical early rule-of-law–related peacekeeping tasks, the Strategy should focus on developing initial baseline analysis and benchmarks through the use of tools such as citizen perception surveys to better understand what those critical tasks might be for citizens. Without prescribing what these might be and based on research conducted by the WDR group and others such as SaferWorld and USIP, initiatives such as community-level policing and violence reduction (particularly gender-based violence), land and other resource-related dispute resolution mechanisms, could be incorporated into the Strategy. In addition, since the Strategy is also aimed at creating the political space necessary to enable rule-of-law related mid- to longer-term peacebuilding and development efforts, the Strategy should ensure that political and civil affairs as well as staff from UN agencies are engaged in planning from the outset and form part of integrated teams on the ground and not just at headquarters. It should build on the findings of the Independent Review of Civilian Capacities regarding solely needed flexibility in hiring, especially in the nontraditional areas of policing and justice such as political economy, conflict and perception survey analysis, dialogue facilitation and mediation skills, and more specific management, finance, logistics, procurement, and personnel skills. <p>Joint Operations</p> <ul style="list-style-type: none"> Joint operational arrangements could be incorporated into country-specific compacts, forged between the government, the UN Mission, and the broader UN system where relevant, IFIs and committed donors. These compacts could provide a country-specific division of labor and predictability that has eluded the international system at headquarters level. However, to be effective, they should include rigorous accountability and oversight mechanisms for both the providers and recipients of assistance.
<p>Peacebuilding missions or stand-alone political missions, especially in low-income settings,</p>	<p>Leverage</p> <ul style="list-style-type: none"> The UN should intensify its dialogue at global, regional, and country levels with regional and international actors and seek to forge more effective strategic and operational ties with them. Special emphasis should be placed on developing these relations with the IFIs, as well as with major regional powers and regional organizations. In places where the Peacebuilding Commission has a country-specific follow-on role, the PBC and PBSO can also place a greater focus on monitoring developments related to the interaction between the evolving political settlements and the emergence (or not) of proto-institutions or arrangements that can help foster the rule of law.
<p>Transition settings, including those currently under way in the Middle East and North Africa/ low- and middle-income countries coping with high levels of violence and fragility.</p>	<ul style="list-style-type: none"> The Secretary-General should make a major policy speech, preferably in the region, drawing the connections between the demands of Arab populations and the different functions of the rule of law, in the “thick” sense of that concept. He could task his various political, peacekeeping, developmental, humanitarian, and technical field presences in the region to work with local counterparts to deepen analysis and identify needs for support to rule-of-law initiatives arising from the transition. The RoLCRG could serve as a “clearinghouse” for those ideas, highlighting the most important and helping the Secretary-General mobilize broader and sustained international and UN support where needs are greatest. It is important that such an initiative not be centered on increasing the UN’s operational presence on rule-of-law issues in the region, though that may be a medium-term byproduct; rather, the goal should be a normative and analytical one, using the platform of the UN to help shape a productive international environment for response, on a case-by-case basis to the democratic transitions underway across the region. Linked to an earlier recommendation, the UN Secretariat’s Policy Committee should focus on assessing how UNDP and other departments and agencies have used the leverage of another part of the UN or the broader international system (in this case, IFIs, INGOs, regional powers, regional organizations, private enterprise, philanthropists, etc.) to generate political space for critical rule-of-law initiatives in low- and middle-income countries coping with high levels of violence and fragility. The assessment should also cover the perceived impact of this engagement and the systemic changes, analytical and learning tools the Agency would require in order to be able to leverage rule-of-law initiatives. The study should also develop a more comprehensive catalog of the kinds of creative joint initiatives in the field that this report points to. The UNDP should work with its core partners to develop a systematic analysis of the kinds of initiatives implemented (either alone or with others) to work around some of the more complex rule-of-law challenges encountered when supporting the emergence of the rule of law in low- and middle-income countries coping with high levels of violence and fragility. These examples should serve as a core aspect of policy discussions and innovation for the UN and its national and international partners. Case studies can be weaved into the annual training course for resident coordinators and other staff at the UN System Staff Training College and the UN-led Senior Leadership Training Course. Other agencies, such as UNODC and OHCHR, should consider adopting similar initiatives. The UNDP leadership and Governing Board should review the core findings of the WDR 2011, and assess the implications for UNDP’s structure – in particular, in terms of elevating support to the policy instruments housed within the Bureau for Conflict Prevention and Recovery, and making these more central to the Organization’s overall strategy.

Core Recommendations

<p>Cross-cutting issues</p>	<p>Transitional justice and investigative mandates</p> <ul style="list-style-type: none"> OHCHR, DPA, OLA, and, where relevant, DPKO should initiate a more systematic and strategic learning process on the range of tools that are being implemented. Such a process could be implemented with the support of external research or specialized organizations that have been conducting more substantive research on the topic. Within this process, specific focus should be placed on how these mechanisms might have contributed to ensuring the legitimacy of political settlements and their sustainability in different contexts, including how they might have served to bolster or undermine citizen trust in state institutions and international organizations. <p>Transnational organized crime and trafficking</p> <ul style="list-style-type: none"> At headquarters, the Secretary-General should ensure that UN principals and operational staff from New York and Vienna are involved strategically and substantively in the work of the Task Force from the outset. The Task Force should report on progress to the RoLCRG principals on a regular basis. As a first step, the Task Force should develop an initial inventory of the range of (regular and extra-budgetary) organized crime and trafficking-related initiatives (political, security, developmental) that members of the Task Force currently engage in. Such an exercise should aim at identifying gaps, overlaps, and challenges, and would serve as a useful tool for senior leadership and operational colleagues in the field. The UN should use the Task Force to develop a deeper analytical approach to the relationship between Transnational Organized Crime and Trafficking and political instability. In addition to strengthening core justice and security institutions, its work should consider how to better link up to efforts aimed at strengthening political parties and related regulatory frameworks (e.g., party campaign financing). The Task Force should also consider providing an analysis of different power relations in specific contexts, how different groups provide entry points for organized criminals and for what purpose (political/ideological, financial), and how best to combine these efforts with initiatives that raise the business costs of engaging in illicit activity, including through more effective anti-money-laundering initiatives. Again, close cooperation or joint operations with experts in IFIs that have specialized capacity on financial trafficking (but often limited political analysis capacity) would be productive. Together with the IFIs, the Task Force could conduct a stock-taking exercise on connections between Special Political Missions and the IFIs, and where those connections have helped meet mandated objectives in responding to transnational threats. <p>Counter-Terrorism</p> <ul style="list-style-type: none"> In order to help reposition the UN's response to terrorism within the broader rule-of-law paradigm, increase the legitimacy of its counterterrorism programming, and bolster its ability to harness counterterrorism resources for broader rule-of-law building purposes, the UN Security Council should treat terrorism as one type of "transnational threat" (along with drug trafficking and organized crime). A Presidential Statement in February 2010 was an important step in this direction.¹ The UN Security Council should consider how to integrate terrorism prevention into its conflict prevention activities, including by promoting a closer relationship between CTED, the UN Secretariat (e.g., DPA), UN country teams, and UNODC on the ground. This may require consideration of more effective linkages between the conflict prevention and mediation machinery of the Secretariat. The UN membership appears open to considering major revisions to the UN's counterterrorism architecture, particularly in the lead-up to the General Assembly's Strategy Review (April–June 2012). Some states are keen to streamline the myriad counterterrorism bodies within the UN by creating a senior position with a mandate to: (i) chair the CTTF, (ii) lead the development of system-wide UN strategy on CT capacity-building and (iii) advise the Secretary-General on implementation of that strategy in specific cases, potentially through convening consultations of interested UN entities to develop shared action plans. The Secretariat and membership could consider more far-reaching steps to improve coordination of the UN system in relation not only to counterterrorism but to other transnational threats. One option would be to create an ASG on transnational threats – with a mandate to chair both the CTTF and the new Task Force on Organized Crime and Drug Trafficking, and form part of the RoLCRG.
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¹UN Doc. S/PRST/2010/4, 24 February 2010.

Endnotes

¹Fortna, Walters, Collier etc.

²2011 WDR

³It is important to note that this conceptual confusion is not necessarily the fault of the UN and at times there might even be an advantage to the ambiguity that has emerged around the concept, particularly with regards to the historical trajectory of institutional transformations.

⁴There are, of course, exceptions, where the UN has deployed peacekeeping or political missions to post-conflict settings in lower middle-income countries and/or countries with more developed institutions.

⁵Comment from reviewer, CIC expert discussion on the draft report, July 2011

⁶UN Doc. S/PRST/2010/4, 24 February 2010.

⁷North, Douglass, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, Cambridge University Press, 2009 (with John Joseph Wallis and Barry R. Weingast).

⁸S/2004/616 (\$9)

⁹S/2004/616 of August 2004

¹⁰Idem (p. 3)

¹¹See SG Reports on Rule of Law 2004 (S/2004/616) and 2006 (A/61/636–S/2006/980) in particular, and S/PRST/2010/4.

¹²The role of courts and the legal profession in South Africa's move to end apartheid is a prominent case in point, as is the role the Supreme Court of Justice has played in Colombia in protecting politics from the infiltration and influence of illicit groups.

¹³In reference to Talleyrand's advice to diplomats: 'Surtout pas trop de zèle'. See Krygier, Martin, *The Rule of Law: An Abuser's Guide*. A paper presented at a 2006 LAPA conference.

¹⁴*Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group*, March 2011

¹⁵Recognizing the Political Context, \$19, SG 2004 Report on Rule of Law and Transitional Justice (S/2004/616)

¹⁶For example, in 2002–2003 and in support of the Guatemalan institutional reform process, the Danish Institute for Human Rights conducted a review of progress on the justice and security elements of the peace accords (particularly efforts to strengthen the criminal justice system, deal with impunity, and ensure access to justice), which included a review of international support in the form of loans or bilateral assistance. Based on material collected during the review process, the study estimated that approximately USD 250 million had been invested in such reforms between 1996 and 2003. Despite this level of investment and other investments made after 2003, the quality and predictability of the justice system in Guatemala hardly improved, and most of the related provisions of the peace accords have not been met.

¹⁷Secretary-General's 2004 Report on Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616 of August 2004)

¹⁸CIC, Annual Review of Peace Operations (2010); CIC Rule of Law expert group meeting, July 2011.

¹⁹For example, the UN system and the IFIs will need to work together more closely to ensure that strategic entry points that can be used for leverage are not missed. William O'Neill, CIC expert meeting, New York, January 2011.

²⁰William O'Neill, Background Paper for CIC Rule of Law Review (2011), in reference to research conducted by independent consultant Serge Rumin.

²¹Five of the activities could not be categorized.

²²The following material draws heavily from a background study conducted for CIC in 2011 by William O'Neill, Director of the SSR's Conflict Prevention and Peace Forum, <http://www.ssrc.org/programs/cppf/>

²³Address by former SRS Edmond Mulet to the Friends of Haiti, New York, October 26, 2010.

²⁴Rule-of-law challenges including weaknesses in the rule-of-law institutions are well documented, notably by the International Crisis Group, whose 2007–08 reports provide detailed assessments of the justice, police, and corrections sectors. In 2010, RAND published a report on the state of state-building in Haiti, including an assessment of the justice and security sectors.

²⁵UN ISF 2010: 4

²⁶Address by former SRS Edmond Mulet to the Friends of Haiti, New York, October 26, 2010.

²⁷According to the UN, in October 2011, over 600,000 people were still said to be living in IDP camps. See UN Security Council meeting on MINUSTAH mandate renewal. <http://www.un.org/apps/news/story.asp?NewsID=40059&Cr=haiti&Cr1=>

²⁸Some 60 percent of the prison population escaped in the wake of the earthquake. Some of the escapees included gang leaders arrested in 2007. On sexual violence, see Amnesty International, *Aftershocks: Women Speak Out against Sexual Violence in Camps*, January 6, 2011.

²⁹ICG no 32, 2010

³⁰SG Report S/2010/446. The report also noted that illegal airstrips were purportedly being used for drug trafficking.

³¹In contrast to Guatemala, though, UN operations in Haiti did have an operational mandate and became increasingly well positioned to provide support and advice to reform and reconstruction efforts and to recommend shifts in mandate to the Security Council.

³²"Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community," OAS (2006); William O'Neill, Haiti Background Paper for CIC (2011)

³³William O'Neill, Haiti Background Paper for CIC (2011)

³⁴For example, in 2006 lawyers from MINUSTAH's judicial affairs unit worked with the Minister of Justice to produce a five-year judicial reform package in support of the Haitian National Plan. The police launched its reform project on time, while the justice plan remained largely stillborn. This was largely due to former President Preval's failure to take a few basic steps to unlock the judicial reform process. Without a willing government partner, MINUSTAH was stymied, as were pro-reform constituencies within Haiti.

³⁵SC Resolution of 15 August 2006

³⁶The ICG has aptly described the situation of prolonged pre-trial detention in Haiti as "the open sore of Haitian justice." (2006) Despite the increase in UN and bilateral attention, 83 percent of people held in Haitian prisons before the earthquake were pre-trial detainees.

³⁷In areas where BAL offices operate, the pre-trial detention rate has generally fallen from 82 percent to about 50 percent. For example, in 2009 in Port-de-Paix, BAL saw 381 detainees and succeeded in freeing 295, while in Saint Marc 187 out of 482 were freed.

³⁸The program was originally funded by the government of Sweden, and is currently supported by the Union of South American States.

³⁹Lawyers appear in court and demand that the judges and prosecutors fulfill their responsibilities to either offer evidence justifying an arrest and detention or, failing that, to release the detainee. Judges and prosecutors are forced to show up and do their jobs because the BAL lawyers are constantly pressing the cases forward.

⁴⁰UN staff interviewed in Haiti had frequently bemoaned the institutional impediments that negated the integration of national-level institution building (rule-of-law) efforts with more innovative approaches at the local or community level. Conversely, the creative Community Violence Reduction Strategy implemented by MINUSTAH with the NGO Viva Rio is making significant progress in achieving some of its goals, including a perceived increase in citizen security and the provision of employment opportunities to former gang leaders. The CVR program was not part of a broader rule-of-law strategy.

⁴¹Internal note to the SRS, Ref. Strategic Planning Retreat, March 2011

⁴²On 13 October, a former minister and ambassador under the Duvalier regime who has been a close adviser to Martelly was nominated to the Cabinet. At least five high-ranking members of the administration, including the new prime minister, are the children of senior dictatorship

officials. Trenton Daniel, Associated Press, 14 October 2011.

⁴³*Ibid*

⁴⁴This material draws heavily from a background paper prepared for CIC in 2011 by independent consultant, Richard Langan II.

⁴⁵S/PRST/2011/11.

⁴⁶Interviews with UN staff and non-UN experts, Spring 2011.

⁴⁷The I/4S delivers targeted program support in five areas: security; political dialogue; state authority; return, reintegration and recovery; and sexual violence. Programs under the I/4S are funded by voluntary bilateral contributions. Implementing partners include UN agencies, funds, and programs; local and international nongovernmental organizations; private contractors; and the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The prioritization of interventions under the I/4S takes place through STAREC coordination committees, which are co-chaired by the GoDRC and MONUSCO at provincial, regional, and national levels. The STAREC Technical Secretariat, comprising the government's Inter-Provincial Coordination Team and the Stabilization Support Unit in the Office of the DSRSG/RC/HC, provides coordination support.

⁴⁸Alongside these initiatives, UNDP with BCPR support is supporting access to justice, legal, and judicial protection of victims of SGBV in Eastern DRC. BCPR has provided technical and financial support to three mutually reinforcing projects: Access to Justice and Legal Protection for Women Victims of Sexual and Gender-Based Violence in North and South Kivu; Security, Empowerment and Reintegration of Women in North and South Kivu; and Community Security and Social Cohesion in Ituri. UNDP has recently implemented a mobile court initiative that, as of 2011, had resulted in the convictions of several FARDC officers and soldiers on charges of crimes against humanity for rape and other inhumane acts perpetrated against civilians. It has also supported the holding of public hearings and capacitated local-NGOs in the establishment of legal aid clinics in South Kivu.

⁴⁹Severine Autesserre, *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*, Cambridge University Press, 2010.

⁵⁰See Secretary-General Bulletins on The Organization of the Secretariat of the United Nations, and more specifically Secretary-General Bulletins on the Organization of the Department of Political Affairs (ST/SGB/2009/13 Corr.1) and the Organization of the Department of Peacekeeping Operations (ST/SGB/2010/1).

⁵¹This case draws heavily from a background paper on Burundi that Gigja Sorensen, former program officer at CIC, prepared for CIC (2011).

⁵²Interviews with UN agency staff in New York, Geneva, and Vienna, October–December 2010; lit. references.

⁵³Sen, Amartya, *The Idea of Justice*, The Belknap Press, Harvard University Press, Cambridge, Massachusetts, 2009.

⁵⁴UNEP, "From Conflict to Peacebuilding: The Role of Environment and Natural Resources," 2009.

⁵⁵Land issues have been at the center of people's lives for centuries; land disputes were exacerbated by the three-decades-long conflict.

⁵⁶Reference ICG report; Autesserre, Severine (2010), *The Trouble with the Congo*, p. 7

⁵⁷Campbell, Susanna and Nkurunziza, Justine (2010), Independent External Evaluation of Peacebuilding Fund Projects in Burundi

⁵⁸IMF Annual Progress Report on the implementation of the PRSP. In 2010, the Secretary-General's Seventh Report on Burundi highlighted land disputes as a challenge to longer-term peace consolidation in the country. S/2010/608 of 30 November 2010.

⁵⁹<http://sustainablesecurity.org/article/ban-ki-moon-natural-resources-should-be-part-peacebuilding>

⁶⁰According to ICG, by April 2011 "no empirical survey on the state of land-holdings and no land reform measures had been implemented. The Disappearance and Truth & Reconciliation Commissions have not yet been formed. Limited progress has been made on [CPA] provision for the democratization of the Nepal Army. State restructuring, though broadly agreed to be essential or unavoidable, plays out in public as a binary debate on the Maoists' contested definition of federalism, rather

than what it is Nepalis want out of the change and how best to go about it." *Nepal's Fitful Peace Process*, ICG, Asia Report no. 120, April 2011.

⁶¹The Asia Foundation series on Impunity in Nepal, 2010, 2005 and 1999 (An Exploratory Study).

⁶²Political Economy Analysis of Public Security in Nepal, The Asia Foundation, forthcoming (2011).

⁶³*Ibid*.

⁶⁴Calling for Security and Justice in Nepal: Citizens' Perspectives on the Rule of Law and the Role of the Nepal Police, USIP (2011); Security and Justice in Nepal: District Assessment Findings, SaferWorld (2010).

⁶⁵Political Economy Analysis of Public Security in Nepal, The Asia Foundation, forthcoming (2011).

⁶⁶The outgoing SRS in Nepal lamented the narrow aspect of the mandate, noting that the UN mission would have benefitted from a review of its role after the elections (...) adding that stronger support for the peace process overall – possibly including monitoring of the peace agreements more broadly (...) should have been considered more seriously. Address of outgoing SRS to Nepal to Security Council, January 2011.

⁶⁷Joshua Gross, *Spoiler Management in Nepal: A Case Study of the United Nations Mission in Nepal and the Unified Communist Party of Nepal (Maoist)*, Center for Complex Operations (2009).

⁶⁸Outcome Evaluation of UNDP Nepal, Access to Justice and Human Rights 2001 – 2010 by Richard Langan II, Indu Tulhadhar, Roshani Poydal, Final Report 29 November 2010

⁶⁹*Ibid*

⁷⁰*Ibid*

⁷¹ROL is one of the 8 long-term issues covered under chapter 4 of the PDS – long term root-causes to the conflict

⁷²Strategic Partnership Framework, BCPR and UNDP Nepal Country Office, 2009-2011

⁷³Interviews with UNDP staff at HQ and in Nepal, February 2011

⁷⁴Interviews with DANIDA and Dfid staff in Nepal, February 2011

⁷⁵The Nepal Peace and Development Strategy 2010-2015, was prepared by Nepal's principal development partners – the UN, EU and nine bilateral agencies.

⁷⁶Interviews with a broad range of government officials, civil society representatives, bi-lateral agency staff and UN staff in Nepal August 2010 and February 2011. See also ICG reports from 2010 and 2011.

⁷⁷S/2011/634 (S)

⁷⁸For example, in Jamaica and Trinidad & Tobago. A tool that has resulted quite useful for these efforts in many countries is the Democratic Dialogue Handbook: a Handbook for Practitioners (2008), a joint effort by CIDA, International IDEA, the OAS and UNDP.

⁷⁹We are grateful to Jean Arnault (CIC Non-Resident Fellow) for making himself available for extensive discussions of the Guatemala experience, in which he was so deeply involved as mediator and then as SRS of MINUGUA. Mr. Arnault's insights on the processes in Guatemala, Burundi, Afghanistan, Georgia, Pakistan, and his broader involvement in the UN's efforts to mediate political settlements after conflict were invaluable to this report.

⁸⁰Gavigan, Patrick, "Organized Crime, Illicit Power Structures and Threatened Peace Processes: The Case of Guatemala," in Cockayne, J., and Lupell A., *Peace Operations and Organized Crime* (2011), p. 99.

⁸¹*Ibid*

⁸²To accompany implementation of the justice- and security-related accords, a body was created to improve interagency coordination and to support the modernization process. The Coordinating Body for the Modernization of the Justice Sector brought together the political heads of four institutions of criminal justice (the Ministries of Justice and the Interior, the judiciary, the Public Prosecutor's Office, and the public defense institute) to improve interagency coordination and support the criminal justice modernization process. This body began its work in 1997 with little financial support from the central government but was then tasked with implementing a portion of a USD 25 million loan from the InterAmerican Development Bank aimed at reforming the justice sector.

The judiciary also benefitted from a substantial loan for the period covering 1997–2002 to cover modernization processes and costs.

⁸³Solvensen, Hilde. *Guatemala: Five Years after the Peace Accords*, Norwegian Peace Research Institute, Oslo, 2002 (pp. 29–30).

⁸⁴See the Framework Agreement and the Socio Economic and Indigenous Accords.

⁸⁵Solvensen, Hilde (2002). In addition, see report of the Special Rapporteur on the Right to Food, Jean Ziegler (Addendum Mission to Guatemala) to ECOSOC, (E/CN.4/2006/44/Add.1 of January 2006); Final Report of the Secretary-General on The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development: United Nations Verification Mission in Guatemala (A/59/307 of August 2004).

⁸⁶Gavigan P. in Cockayne and Lupell (2010); Briscoe, Ivan and Pellecer Rodriguez, Martin, “A State Under Siege: Elites, Criminal Networks and Institutional Reform in Guatemala,” 2010.

⁸⁷*Ibid.*

⁸⁸During the conflict, political-criminal groups loosely organized around military leadership with ties to intelligence and counterinsurgency structures gained significant strength. These groups colluded with elements of the business elite, corrupt police officers, judiciary and customs officials, and political actors to benefit from the international drugs trans-shipment business, and, to a lesser extent, human trafficking networks.

⁸⁹Lopez, Julie, “Guatemala’s Crossroads,” Working Paper, Woodrow Wilson Center, 2011.

⁹⁰MINUGUA proved unable to influence these developments in spite of solid analytical work and recommendations on both institutions. HR monitors flagged the problem as the reform process began and followed the expansion of illicit groups into OC. Gavigan (2011)

⁹¹The drawdown took four years, with MINUGUA’s mandate extended twice to maintain a presence during periods of increasing political instability.

⁹²Detail of positive and negative developments around the CICIG and role of UNDP/BCPR

⁹³Accused of conspiring to create a criminal structure within his ministry and Guatemala’s national police during the mandate of former President Oscar Berger (2004–2008), Vielman was arrested in Madrid in October 2010. He is known to be a member of the traditional elite in Guatemala.

⁹⁴Already in 2006, the Special Rapporteur on the Right to Food had noted that the framework for deep political, economic, social, and cultural change has been difficult to implement given resistance from powerful groups. Despite important recent progress, the question of land remains a serious source of social conflict, and the continued lack of an effective land registry system (catastro), an agrarian code, and legal recognition of indigenous forms of land ownership are serious obstacles to the realization of the right to food, as is the failure to implement a progressive tax reform. Discrimination against indigenous peoples and against women, especially in labor rights, is also a serious obstacle. He also made reference to the continuing practice of forced evictions, ongoing expropriation of land from indigenous peoples, violations of labor rights, the repression and criminalization of peaceful protest, and the climate of impunity in which violations occur. (E/CN.4/2006/44/Add.1 of January 2006). For a more recent overview of violence in Guatemala, see Briscoe, Ivan and Pellecer Rodriguez, Martin (2010), “A State Under Seige: Elites, Criminal Networks, and Institutional Reform in Guatemala.”

⁹⁵LAPOP, *The Political Culture of Democracy in Jamaica, 2008: The Impact of Governance*, University of the West Indies/Americas Barometer/LAPOP/Vanderbilt University, 2009.

⁹⁶In Jamaica, the rate is 121 per 100,000 for males between the ages of 15 and 44. Abuelafia, Emmanuel and Sedlacek, Guilherme (2010) *The Impact of Jamaica’s CSJP Program*, Inter-American Development Bank, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35572724>

⁹⁷Harriott, Anthony, “Charting the Way Forward for the Preparation of the

Caribbean Regional Human Development Report on Citizen Security,” Discussion Paper, 2010.

⁹⁸Abuelafia and Sedlacek, 2010

⁹⁹Arias, Desmond Enrique, paper prepared for a CIC workshop on the impact of organized crime on governance (New York, September 2010); and a forthcoming publication on the same topic (December 2011).

¹⁰⁰Sullivan, Mark P. “Jamaica: Background and U.S. Relations,” Congressional Research Service, July 2010.

¹⁰¹Arias, Desmond Enrique, CIC forthcoming paper (February 2012).

¹⁰²*Ibid.* Dudas Coke is the renowned “don” of Tivoli Gardens, and the head of the infamous Shower Posse. The Shower Posse has maintained control of sizable portions of organized crime activity on the island and was accused by the United States government of drugs and narcotics trafficking. Coke was included by the U.S. Department of Justice on the list of Consolidated Priority Organization Targets (CPOTs), which includes the world’s most dangerous narcotics kingpins, and was charged with “conspiracy to distribute cocaine and marijuana and conspiracy to illegally traffic in firearms.” <http://www.justice.gov/dea/pubs/states/newsrel/2009/nyc082809.html>

¹⁰³Arias, 2010.

¹⁰⁴Sullivan, 2010.

¹⁰⁵Glaister Leslie (2010), “Confronting the Don: The Political Economy of Gang Violence in Jamaica,” Small Arms Survey. For the government of Jamaica’s Citizen Security framework, see the National Citizen Security Plan.

¹⁰⁶Most notable are Transparency International’s (TI) surveys, which have accorded Jamaica a “highly corrupt” designation every year since it was first included in these TI series of surveys in 2002. LAPOP, “The Political Culture of Democracy in Jamaica,” 2010.

¹⁰⁷Two particular cases created a major storm in Jamaica – the OLINT and Trafigura scandals. According to Arias, “the OLINT scandal was a pyramid scheme in which a foreign currency trading corporation operating in Jamaica promised investors high rates of return. Evidence emerged suggesting that OLINT leadership had provided significant funding to the Jamaica Labor Party in its winning 2007 election campaign. There have been some indications that OLINT also provided more limited funds to the People’s National Party. Similarly, the People’s National Party, during its 18 years in government between 1989 and 2007, engaged in a large-scale kickback scheme with Trafigura Beheer, a Dutch company, that traded Jamaican petroleum on the international market. Prior to the People’s National Party Conference in 2006, the company deposited \$31 million in the account of a senior party official who later stepped down from his post.” Desmond Enrique Arias, CIC forthcoming paper (February 2012).

¹⁰⁸Abuelafia and Sedlacek, 2010.

¹⁰⁹Leslie, 2010.

¹¹⁰*Ibid.* Also, in February 2010, the recovery of more than 10,000 rounds of illegal ammunition from one inner-city community – more than has been recovered in any single year since 2004 – and the discovery that the stash came entirely from the national police armory only served to bolster residents’ claims of police corruption and complicity in Jamaica’s spiraling murder rate.

¹¹¹Government of Jamaica, Jamaican Justice System Reform Task Force Final Report, http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf, June 2007.

¹¹²UNODC/World Bank, 2007.

¹¹³UNODC/World Bank, 2007; and Leslie, 2010.

¹¹⁴Cynthia Barrows-Giles, “Regional Trends in Constitutional Developments in the Commonwealth Caribbean,” Paper Prepared for the Conflict Prevention and Peace Forum, January 2010.

¹¹⁵Barrows-Giles, 2010.

¹¹⁶Interviews with a range of stakeholders in Kingston, Jamaica, April 2011.

¹¹⁷Interviews conducted in Kingston, Jamaica, 5–10, March 2011.

¹¹⁸*Ibid.*

¹¹⁹May 28, 2010, marked a potential watershed moment in Jamaican

history as Prime Minister Bruce Golding ordered security forces into the neighborhoods of Denham Town and Tivoli Gardens to enforce a warrant for the arrest of Christopher “Dudus” Coke so that the Jamaican government could extradite him for trial in the United States. Jamaica experienced considerable instability in the days leading up to the security actions in the Kingston Western Constituency as residents of the neighborhoods in the region held protests to support Coke and vent their dissatisfaction with government policy, and men set fire to a police station located in the constituency. Gangsters from around the city reportedly descended on the community, responding to financial incentives from Coke, to defend him against potential state action. The military actions in Kingston Western led to the deaths of more than seventy Jamaicans, many of whom were not involved in illegal activities, and the abuse of many residents of Denham Town and Tivoli Gardens by security forces. While Coke escaped, he was arrested about a month later fleeing to the United States Embassy in order to avoid falling into the hands of Jamaican Security forces (at least in part because his adoptive father, Lester Lloyd “Jim Brown” Coke, died under mysterious circumstances in 1992 while in a Jamaican jail). Desmond Enrique Arias, CIC forthcoming paper, December 2011.

¹²⁰Interviews with current and former UNDP staff, March-April 2011

¹²¹LAPOP Survey (2010), Following the Tivoli Gardens incursion, both major political parties (JLP and PNP) tabled an agreement in the House of Representatives on a general approach “aimed at sustaining the advance against criminality.” At a later sitting, the House debated and passed six bills including amendments to the Firearms, Offences against the Person, Bail, and Parole Acts geared at strengthening the power of the security forces to reduce the country’s high crime rate.

¹²²Interviews in Kingston, Jamaica, March-April 2011

¹²³Desmond Enrique Arias (2010)

¹²⁴Rights groups and individual civilians complained that the government had used excessive force during and after the Tivoli incursion. These groups and individuals were joined by the public defender in initiating calls for inquiries into the operations of the security forces during and after the Tivoli incursion. LAPOP (2010), *The Political Culture of Democracy in Jamaica*

¹²⁵Having initially denied it in parliamentary session, Golding himself admitted that he had covertly retained a U.S. law firm in Washington, D.C. to help negotiate a political settlement to the Dudus affair, namely to avoid extradition. Golding has since stepped down as Prime Minister.

¹²⁶Golding acted only after major public embarrassment and the United States taking the extraordinary action of revoking the visas of prominent JLP supporters.

¹²⁷This section draws heavily on discussions with and written in-pup from Pablo de Greiff and Caitlin Reiger at the International Center on Transitional Justice (ICTJ) <http://ictj.org/>

¹²⁸S/2004/616

¹²⁹ICTJ has conducted a preliminary analysis of Security Council practice on transitional justice, based on a review of both presidential statements and resolutions since 1994.

¹³⁰ICTJ’s review found that of the Security Council’s decisions on thematic agenda items, with the exception of those relating to the management of the ad hoc international tribunals, the vast majority of transitional justice-related references arose in the context of protection issues such as children affected by armed conflict, women, peace and security, and protection of civilians – rather than in explicit relation to rule of law discussions .

¹³¹See *Transitional Justice in the UN Human Rights Council*, ICTJ, June 2011, at <http://ictj.org/sites/default/files/ICTJ-Global-TJ-In-HRC-2011-English.pdf>.

¹³²S/PRST/2010/11, S/2011/634.

¹³³See WDR Overview, and Parts 1.2, and 2.3-5. See the ICTJ’s WDR factsheet at <http://ictj.org/sites/default/files/ICTJ-Global-World-Development-Report-2011.pdf> and Pablo de Greiff’s background paper *Transitional Justice, Security, and Development*, at <http://wdr2011.worldbank.org/transitional%20justice>

¹³⁴Examples include UNAMID, UNOCI, UNMIK, MINUSTAH and UNSCOL.

¹³⁵These included the commencement of operations of the International Criminal Court and the updating of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

¹³⁶DPA initiated an internal process for this purpose in 2010, but limited resources were dedicated to the exercise, resulting in numerous delays. CIC consultation meeting, April 2011. For further insights into the links between the transitional justice field and other key policy areas, such as security and development, see Pablo de Greiff’s (ICTJ) background paper for the 2011 WDR.

¹³⁷E/CN.4/2005/102/Add.1

¹³⁸A/RES/60/147

¹³⁹Oleksiy Omelyanchuk (2001), *Explaining State Capture and State Capture Modes*, Central European University; Edgardo Buscaglia, Samuel Gonzalez-Ruifiz, and William Ratliff (2005) *Undermining the Foundations of Organized Crime and Public Sector Corruption*, Hoover Institution.

¹⁴⁰As noted in the 2011 World Development Report, in West Africa, the political conflict that began in Liberia and spread to Sierra Leone and Cote d’Ivoire, gave way later to “more organized crime across the region, as warring factions pillaged natural resources, drug trafficking networks entered the region, and the rule of law weakened,” even in the more resilient states World Development Report 2011 (pp.67)

¹⁴¹Douglas Farah, Background paper on transnational organized crime for forthcoming CIC publication (Feb. 2012)

¹⁴²Camino Kavanagh, Background paper on Organized Crime: Gaining from War for the Oslo Forum’s annual meeting for mediators, 2011.

¹⁴³James Cockayne (2011), *State fragility, organised crime and peacebuilding: towards a more strategic approach*, NOREF Report

¹⁴⁴See <http://www.unodc.org/unodc/en/data-and-analysis/TOC-threat-assessments.html>

¹⁴⁵See S/PRST/2009/32, S/PRST/2010/4 and S/2011/634. See also CIC, 2011 Review of Political Missions. Thematic paper 2:2, Flying Bling? Political Mission Responses to Transnational Threats. Cockayne, James and Kavanagh, Camino

¹⁴⁶Many have questioned the efficacy of establishing yet another Task Force outside the RoLCRG when its members also sit on the RoLCRG and the new body does not have a supporting Secretariat. Interviews NY, August-September, 2011

¹⁴⁷Cockayne and Kavanagh (2011)

¹⁴⁸The WACI was established to support the implementation of the “ECOWAS Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crime, and Drug Abuse in West Africa.”

¹⁴⁹According to one ECOWAS official, an earlier project aimed at developing regional capacity to deal with organized crime through the establishment of joint operation units only served to produce highly sophisticated criminals in the sense that a large number of those trained later left the police for a more lucrative life of crime. Similar situations have emerged with elite trained units in Latin America and elsewhere. Interviews, July 2011.

¹⁵⁰Cockayne and Kavanagh (2011)

¹⁵¹This section draws heavily on a background paper prepared for CIC by James Cockayne, Co-Director of the Center on Global Counter-Terrorism Cooperation <http://www.globalct.org>

¹⁵²For example, Security Council Resolution 1373 (2001) required states to use their criminal justice systems to tackle terrorism, and created a Counter-Terrorism Committee to monitor states’ compliance with these obligations. Subsequent resolutions have expanded these obligations – notably Resolution 1624 (2005), adopted in the wake of the 7/7 bombings in London, which requires states to criminalize and combat incitement to terrorism, and Resolution 1540 (2004), which relates to proliferation of WMDs and creates another monitoring committee.

¹⁵³See Eric Rosand, “The Security Council as ‘Global Legislator’: Ultra Vires or Ultra Innovative?” 28 *Fordham Int’l L.J.* 542 (2004); S. Chesterman, “I’ll Take Manhattan: The International Rule of Law and the United Nations Security Council,” 1 *HJRL* 67 (2009).

¹⁵⁴Under Resolution 1267 (1999), they were subject to travel bans, asset freezes, and other international measures resembling “control orders” at the national level.

¹⁵⁵See G. de Burca, “The European Court of Justice and the International Legal Order After Kadi,” 15 *Harv.Int’l L.J.* 1 (2010); D. Cortright and E. de Wet, “Human Rights Standards for Targeted Sanctions,” Report by the Sanctions and Security Research Program, Policy Brief SSRP 1001–01 (2010); T. Biersteker and S. Eckert, “Strengthening Targeted Sanctions through Fair and Clear Procedures,” White Paper, Report for the Watson Institute for International Studies at Brown University, 2006.

¹⁵⁶International Commission of Jurists, “Assessing the Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights,” 2009.

¹⁵⁷UNSCR 1904 (2009), 17 December 2009.

¹⁵⁸Eric Rosand, “From Adoption to Action: The UN’s Role in Implementing Its Global Counter-Terrorism Strategy,” Center on Global Counterterrorism Cooperation, Policy Brief, April 2009, available at www.globalct.org.

¹⁵⁹UN Doc. A/RES/60/288 of 8 September 2006.

¹⁶⁰*Ibid.*

¹⁶¹Beyond conflict-affected and fragile states, CTED provides increasing support to rule-of-law efforts in South Asia, among prosecutors and police; in East Africa, on border control issues; around the world, on the regulation of nonprofit organizations; and in New York, among prosecutors involved in terrorism cases.

¹⁶²Armytage, Livingston (Ed.) (2009) “Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience,” Oxford University Press, New Delhi; Samuels, Kirsti (2007), “Political Violence and the International Community: Developments in International Law and Policy,” Martinus Nijhoff Publishers.

¹⁶³A/59/565, World Summit Outcome Report, 2004.

¹⁶⁴Special Court for Sierra Leone; Extraordinary Chambers in the Courts of Cambodia; and Special Tribunal for Lebanon. The Special Court for Sierra Leone was set up at the “request” of the Council in resolution 1315 (2000), while the Special Tribunal for Lebanon was established with Council authority substituting for agreement of one of the parties.

¹⁶⁵A/55/305–S/2000/809.

¹⁶⁶S/2004/616

¹⁶⁷A/59/565.

¹⁶⁸A/61-636-S/2006/980. Report of the Secretary-General. “Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law.”

¹⁶⁹S/2008/39 of 23 January 2008 Report of the Secretary-General.

“Securing Peace and Development: The Tole of the United Nations in Supporting Security Sector Reform.”

¹⁷⁰A/64/298, A/65/318 and A/66/133

¹⁷¹A/64/298 - 2009

¹⁷²S/2011/634

¹⁷³UN Peacekeeping Operations: Principles & Guidelines (2008).

¹⁷⁴Reports and PB contexts in which rule of law has been identified as a priority.

¹⁷⁵In addition to support to basic safety and security, including mine action, protection of civilians, disarmament, demobilization, and reintegration.

¹⁷⁶A/64/19, Report of the Special Committee on Peacekeeping Operations, 2010 Substantive session (22 February–19 March 2010).

¹⁷⁷S/2011/634 (S4).

¹⁷⁸S/PRST/2011/4.

¹⁷⁹The Council first used the words “rule of law” in resolution 1040 (1996), where it expressed its support for the Secretary-General’s efforts to promote “national reconciliation, democracy, security and the rule of law in Burundi.”

¹⁸⁰See A/C.6/65/L.17 (S3), which stresses “the importance of adherence to the rule of law at the national level, and the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building, based on greater

coordination and coherence within the United Nations system and among donors, and reiterates its call for greater evaluation of the effectiveness of such activities.”

¹⁸¹The Role of the Security Council in Strengthening a Rules-based International System: Final Report and Recommendations from the Austrian Initiative, 2004–2008.

¹⁸²§38, Report of the Secretary-General, “Uniting our strengths: Enhancing United Nations support for the rule of law.” (S/2006/980 of December 2006)

¹⁸³The three baskets refer to rule of law at the international level; rule of law in the context of conflict and post-conflict situations; and rule of law in the context of long-term development.

¹⁸⁴DPKO/OROLSI, UNDP/BCPR, DPA, UNODC, OHCHR, OLA, UN Women, UNHCR and UNICEF.

¹⁸⁵The RoLCRG was tasked to convene meetings of the lead entities; maintain a clearinghouse of information on all UN agency rule-of-law activities for actors inside and outside the system; establish and manage web resources; help the UN system respond to requests from states for assistance; provide policy direction; mediate disagreements among UN rule-of-law assistance providers at sector and country levels; develop strategies; act as a repository for UN rule-of-law materials and best practices; facilitate contact between UN entities working on rule-of-law issues and member states, regional organizations, donors and NGOs; maintain rosters of rule-of-law professionals as required; support the promotion of rule-of-law in international relations; and assist in the mobilization of resources.

¹⁸⁶For the list of guidance see http://www.unrol.org/document_browse.aspx

¹⁸⁷S/2011/635 (S3)

¹⁸⁸Consultations led by RoL Unit, January–March 2011; interviews with UN HQ staff in New York, Geneva, and Vienna, October 2010–March 2011.

¹⁸⁹Guidance produced by RoLCRG.

¹⁹⁰Interviews with RoLCRG representatives and UN HQ staff in New York, Geneva, and Vienna, October 2010–February 2011.

¹⁹¹Interviews with broad base of RoLCRG members and other UN staff at HQ in New York, Geneva, and Vienna, October 2010–March 2011.

¹⁹²Interviews with UN HQ staff in New York, Geneva, and Vienna, October 2010–May 2011.

¹⁹³A broad number of the entities interviewed noted that while the guidance might be useful, due to lack of resources, there is no formal system to follow up on how guidance and other tools are being implemented.

¹⁹⁴For more details on these meetings, see http://www.unrol.org/document_browse.aspx

¹⁹⁵The original amount requested to cover non-staff costs for activities was USD 946,300; the amount approved was USD 498,000. Other costs approved include USD 21,000 for internal contractual services (central support from OICT); USD 13,700 to cover internal communications costs; USD 4,000 to cover supplies and material; and USD 4,200 to cover furniture and equipment.

¹⁹⁶The Rule of Law Unit is currently working with one temporary D-1 level staff member on loan from OLA; a fixed-term P-4 staff member, a fixed-term P-3 staff member, a temporary P-3 staff member working against a P-4 post under recruitment; and an Associate Expert at the P-2 level. The vacant P-5 is proposed for reclassification to accommodate a Head of the Unit.

¹⁹⁷The three baskets are i) rule of law at the international level; ii) rule of law in conflict and post-conflict settings; and iii) rule of law in the context of long-term development. A/61/636- S/2006/980 §38)

¹⁹⁸For example, UNODC has partnered with DPKO, BCPR, and other international organizations operating in West Africa to provide much-needed support to ECOWAS and national governments struggling to deal with organized crime and trafficking in the region; the recently established UN Women has developed a detailed action plan for joint programming aimed at reducing violence against women and has

piloted the plan in ten countries; several agencies have partnered in Afghanistan, Timor Leste, and Sudan to address land and natural resource management issues; the Security Council has worked with DPKO, DPA, ODA, OHCHR, and CTED to stem the transfer of assets of illicit origin and trafficking in people and arms; UNICEF and UNODC have worked together to develop a policy-relevant manual and indicators aimed at protecting child witnesses and victims and are working with national experts and policymakers across regions to ensure implementation; UN's DPA has worked with UNODC and UNDP to provide support and/or advice to member states struggling to deal with impunity, organized crime, and drugs-related gang violence (Colombia, El Salvador, Guatemala, Jamaica, Kyrgyzstan) and establish investigative missions (e.g., Bhutto Commission, Hariri Commission); UNDP has worked with the UN Office for Disarmament Affairs, DPA, UNICEF, OHCHR, and UN Women while implementing its violence and arms reduction and citizen security programs (e.g., at the regional and country levels in the Caribbean); UNIFEM has worked with UNDP to implement community mediation programs and support the establishment of paralegal services that also focus on gender-based violence (e.g., Nepal); DPKO has worked with NGOs to provide legal aid and implement community-based violence reduction programs (e.g., Haiti); CTED has worked with UNODC, IOM, IMO, and UNHCR to implement its capacity-building mandate in West, East, and Central Africa. A human rights function, in the form of an official seconded from OHCHR, is embedded in CTED at HQ; OHCHR has worked with OLA and DPKO on the establishment of hybrid or national tribunals to deal with human rights abuses committed during conflicts (e.g., Sierra Leone, Timor Leste).

¹⁹⁹New *Guidelines for the Integrated Missions Planning Process* were adopted in 2010 and formally circulated in June of that year. The guidelines provide global standards for integrated field coordination and integrated strategic frameworks (ISFs) in 18 missions/UN country team environments. Since then, missions have been tasked to develop Integrated Strategic Frameworks that should guide planning and implementation. The new guidance package includes guidelines for UN Strategic Assessments and the IMPP at the HQ level.

²⁰⁰Interviews with staff at HQ in New York, Vienna, Burundi, Haiti and Liberia (January - August 2011).

²⁰¹S/PRST/2011/4 of 11 February 2011.

²⁰²S/2004/616 (§21) notes the "importance of recognizing that UN peace operations, with some notable exceptions, are planned as short-term interventions, while accounting for the past, building the rule of law, and fostering democracy are long-term processes. As such, strategic planning should, from the beginning, take account of the need for phasing and for post-mission international support in these areas, including long-term development assistance."

²⁰³See Chapter 9, Track 2, of the 2011 WDR – Reforming Internal Agency Procedures (p. 276).

²⁰⁴This section draws heavily from a baseline study conducted by Eric Scheye for the purpose of this review.

²⁰⁵The Secretary-General's reports on Peacebuilding in the Immediate Aftermath of Conflict led to an internal process aimed at clarifying roles and responsibilities in the field of rule-of-law support, as several disagreements have emerged, principally between DPKO and UNDP, as to who should be the designated lead on specific rule-of-law topics, despite the designated leads that were decided on in 2006. An option to resolve the situation included the implementation of a "ground-truthing" exercise of the work of these entities.

²⁰⁶SG, S/2004/616 (§6).

²⁰⁷SG, A/64/866, S/2010/386 (§17).

²⁰⁸The 2010 report did call for enhancement of certain elements that comprise a good assessment and planning process, such as common UN family frameworks, financial arrangements, and planning cycles, SG, A/64/866, S/2010/386: 5.

²⁰⁹*Planning Needs Assessment – 2010*. Among the findings are:

"Inconsistent consultation and coordination amongst ROLSI components when developing strategic-level plans or Mission-wide

plans"; "lack of national ownership/buy-in to Mission's plans"; "weak linkages between different levels within a plan (e.g., between objectives and expected accomplishments, and outputs) and between different levels of plans (i.e., between national government strategies, the ISF, Mission-level plans and component workplans)"; "planning is based on poor assessment information"; and "multiplicity of planning documents is overwhelming and time-consuming," (pp. 1-2).

²¹⁰*IMPP Guidelines for the Field*, 18 June 2010 Cable, p. 2.

²¹¹*IMPP Guidelines for the Field*, 18 June 2010 Cable, IMPP Guidelines, p. 12.

²¹²The other challenges of the IMPP and ISF include how (if at all) they are regularly updated to take into account shifting dynamics and progress and how or whether they are to be shared with national counterparts. This latter lacuna undermines the directive of the RoL Guidance Note, which insisted that assessments were to be conducted "with the full and meaningful participation of national stakeholders to determine rule of law needs and challenges" (p. 4). Once again, this raises the issue of managerial capacity and discipline, in that policy documents do not seem to be either consistent or coherent from one to another.

²¹³6479th meeting of the Security Council - Maintenance of international peace and security: the interdependence between security and development.

²¹⁴See Oslo Governance Center http://www.undp.org/governance/political_economy_analysis.shtml

²¹⁵A/63/226 (§16).

²¹⁶A/62/659-S/2008/39 (§14). Also, DPKO's *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* (2009) asserts that there is a need to improve frameworks for monitoring mandate implementation; DPKO and DFS will develop benchmarks, once a mission is deployed and operational, for the Security Council's endorsement and subsequent assessment of progress." (p. 16).

²¹⁷S/2011/634 (§59)

²¹⁸A/64/298 (§17).

²¹⁹S/2011/634 (§ 59).

²²⁰*Ibid.*

²²¹See A/63/226 (§16) "Rule of law practitioners have yet to move away from emphasizing quantitative data, such as the number of personnel trained, to understanding the actual impact of United Nations initiatives."

²²²WDR 2011 (p. 289).

²²³Positive program-level developments noted in the evaluation included restoration of local judicial services in Eastern Chad and Sierra Leone; positive relations between UNDP and government ministries in CAR and Sri Lanka; strengthened MoJ through a QIP in the oPt; mobile legal clinics for civil registration in Sri Lanka; and catalytic work with CSOs in the provision of services in numerous countries. Technical support has had a positive impact on UNDP CO staff, enabling them to engage in SS support as part of an overall response to strengthening the RoL.

²²⁴The 2011 World Development Report on Conflict, Security and Development has underlined the need for greater efficiency and coherence of international efforts in support of conflict affected and fragile settings, particularly around justice, citizen security and the rapid creation of employment opportunities. It has also emphasized the interconnectedness of conflict, security and development on the one hand and national and transnational rule of law issues on the other. In confronting these realities, the World Development Report calls for international agencies and partners to adapt their procedures "to be able to respond with agility and speed, a longer term perspective and greater staying power" and that assistance must be "integrated and coordinated."

Bibliography

Books

1. Armytage, Livingston (Ed.) (2009). *Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience*. New Delhi: Oxford University Press
2. Auteserre, Severine (2010). *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*. Cambridge, UK and New York, NY: Cambridge University Press
3. North, Douglass; Wallis, John J.; and Weingast, Barry R. (2009). *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge, UK: Cambridge University Press
4. Samuels, Kirsti (2007). *Political Violence and the International Community: Developments in International Law and Policy*. Leiden, Netherlands: Martinus Nijhoff Publishers
5. Sen, Amartya (2009). *The Idea of Justice*. Cambridge, MA: The Belknap Press of Harvard University Press
6. World Bank (2011). "2011 World Development Report, Conflict, Security, and Development," The International Bank for Reconstruction and Development/ The World Bank

Articles, policy papers and reports

7. Abuelafia, Emmanuel and Sedlacek, Guilherme (2010). "The Impact of Jamaica's CSJP Program." Inter-American Development Bank, Washington, DC
8. Amnesty International (2011). "Haiti Aftershocks: Women Speak Out Against Sexual Violence in Camps." Amnesty International, London.
9. Atena Foundation, Equal Access, Forum for Women, Law and Development, International Alert, and SaferWorld (2010). "Security and Justice in Nepal: District Assessment Findings."
10. Biersteker, T. and Eckert, S (2006). "Strengthening Targeted Sanctions through Fair and Clear Procedures." White Paper: Report for the Watson Institute for International Studies at Brown University.
11. Briscoe, Ivan and Pellecer Rodriguez, Martin (2010). "A State Under Siege: Elites, Criminal Networks, and Institutional Reform in Guatemala." Netherlands Institute of International Relations, The Hague.
12. Buscaglia, Edgardo; Gonzalez-Ruiz, Samuel; and Ratliff, William (2005). "Undermining the Foundations of Organized Crime and Public Sector Corruption: An Essay on Best International Practices." Hoover Press, EPP 114
13. Burca de, Grainne (2010). "The European Court of Justice and the International Legal Order After Kadi." *Harvard International Law Journal*, 51 (1)
14. Campbell, Susanna; Kayobera, Leonard; and Nkurunziza, Justine (2010). "Independent External Evaluation of Peacebuilding Fund Projects in Burundi." Available at <http://graduateinstitute.ch/webdav/site/ccdp/shared/6305/Evaluation%20Burundi.pdf>
15. Chesterman, Simon (2009). "I'll Take Manhattan: The International Rule of Law and the United Nations Security Council." *The Hague Journal on Rule of Law*, Forthcoming; NYU School of Law Research Paper No 08-67
16. Cockayne, James and Kavanagh, Camino and (2011). "Flying Blind? Political Mission Responses to Transnational Threats." in Centre on International Cooperation (2011), *Annual Review of Political Missions*. Centre on International Cooperation, New York. Available at <http://www.cic.nyu.edu/politicalmissions/index.html>
17. Cockayne, James (2011). "State Fragility, Organized Crime and Peacebuilding: Towards a More Strategic Approach." Norwegian

- Peacebuilding Resource Centre, Oslo.
18. Cortright, David and Wet de, Erika (2010). "Human Rights Standards for Targeted Sanctions." Policy Brief SSRP 1001-01
19. Gavigan, Patrick (2009). "Organized Crime, Illicit Power Structures and Guatemala's Threatened Peace Process." *International Peacekeeping*, 16:1, 62-76
20. Gross, Joshua (2009). "Spoiler Management in Nepal: A Case Study of the United Nations Mission in Nepal and the Unified Communist Party of Nepal (Maoist)." Centre for Complex Operations, Washington, DC.
21. International Commission of Jurists (2009). "Assessing the Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights." International Commission of Jurists, Geneva, Switzerland.
22. International Crisis Group (2010). *Haiti: Stabilization and Reconstruction after the Quake*, Latin America/Caribbean Report No. 32. New York.
23. International Crisis Group (2011). "Nepal's Fitful Peace Process." Asia Briefing No. 120, International Crisis Group, Brussels.
24. International Centre for Transitional Justice (2011). "Transitional Justice in the UN Human Rights Council." ICTJ Policy Briefing, International Centre for Transitional Justice, New York.
25. Government of Jamaica (2007). *Jamaican Justice System Reform Task Force Final Report*. Available at http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf
26. Krygier, Martin (2006). *The Rule of Law: An Abuser's Guide*. A Paper Presented at an LAPA Conference. Available at http://iis-db.stanford.edu/evnts/4387/Abusing_the_rule_of_law2.pdf
27. LAPOP (2009). "The Political Culture of Democracy in Jamaica, 2008: The Impact of Governance." University of the West Indies/ Americas Barometer/LAPOP/Vanderbilt University
28. LAPOP (2011). "The Political Culture of Democracy in Jamaica, 2010: Democratic Consolidation in the Americas in Hard Times." TI series of surveys in 2002, University of the West Indies/ Americas Barometer/LAPOP/Vanderbilt University.
29. Leslie, Glaister (2010). "Confronting the Don: The Political Economy of Gang Violence in Jamaica." Small Arms Survey, Geneva.
30. Omelyanchuk, Oleksiy (2001). "Explaining State Capture and State Capture Modes: The Cases of Russia and Ukraine." Central European University, Budapest.
31. Organization of American States (2006). "Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community." Organization of American States, Washington, DC.
32. RAND Corporation (2010). "Building a More Resilient Haitian State." RAND Corporation, Washington, D.C.
33. Rosand, Eric (2009). "From Adoption to Action: The UN's Role in Implementing Its Global Counter-Terrorism Strategy." Policy Brief, Centre on Global Counterterrorism Cooperation, New York.
34. Rosand, Eric (2004). "The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?" *Fordham International Law Journal* 28 (3): 542-590
35. Solvensen, Hilde (2002). "Guatemala: Five Years after the Peace Accords." Norwegian Peace Research Institute, Oslo.
36. Sullivan, Mark P (2010). "Jamaica: Background and U.S. Relations." Congressional Research Service, Washington, D.C.
37. United States Institute of Peace (2011). "Calling for Security and Justice in Nepal: Citizens' Perspectives on the Rule of Law and the Role of the Nepal Police." United States Institute of Peace, Kathmandu, Nepal.

Unpublished Papers

38. Arias, Desmond Enrique (2011), Paper on Transnational Organized Crime, Background Paper for forthcoming CIC Publication (February 2012).

39. Asia Foundation (2011). Political Economy Analysis of Public Security in Nepal (Forthcoming 2012).
40. Farah, Douglas (2011). Paper on Transnational Organized Crime, Background Paper for forthcoming CIC Publication (February 2012).
41. Harriott, Anthony (2010). "Charting the Way Forward for the Preparation of the Caribbean Regional Human Development Report on Citizen Security." Discussion Paper.
42. Kavanagh, Camino (2011). Organized Crime: Gaining from War, Background Paper for the Oslo Forum's Annual Meeting for Mediators, Unpublished.
43. Langan II, Richard; Tulhadhar, Indu; and Poydal, Roshani (2010). Outcome Evaluation of UNDP Nepal, Access to Justice and Human Rights 2001 – 2010. Unpublished

UN Security Council Resolutions and Presidential Statements

44. United Nations (2011), Statement by the President of the Security Council S/PRST/2011/4, 11 February 2011. Available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PBC%20S%20PRST%202011%204.pdf>
45. United Nations (2010), Statement by the President of the Security Council S/PRST/2010/4, 24 February 2010. Available at http://www.unic.or.jp/security_co/pdf/prst_2010_4.pdf
46. United Nations (2010), Statement by the President of the Security Council S/PRST/2010/11, 29 June 2010. Available at <http://www.unrol.org/files/PRST%20final.pdf>
47. United Nations (2010), Statement by the President of the Security Council S/PRST/2011/11, 18 May 2011. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/347/62/PDF/N1134762.pdf>
48. United Nations (2009), Security Council Resolution 1904, 17 December 2009. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/656/62/PDF/N0965662.pdf>
49. United Nations (2009), Statement by the President of the Security Council S/PRST/2009/32, 7 April 2009. Available at http://www.unic.or.jp/security_co/pdf/prst_2009_5.pdf
50. United Nations (2006), Security Council Resolution 1702, 15 August 2006. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/468/77/PDF/N0646877.pdf>
51. United Nations (2005), Security Council Resolution 1624, 14 September 2005. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf>
52. United Nations (2004), Security Council Resolution 1540, 28 April 2004. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf>
53. United Nations (2001), Security Council Resolution 1373, 28 September 2001. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf>
54. United Nations (2000), Security Council in resolution 1315, 14 August 2000. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf>
55. United Nations (1999), Security Council Resolution 1267, 15 October 1999. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/300/44/PDF/N9930044.pdf>
56. United Nations (1996), Security Council Resolution 1040, 26 January 1996. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N96/018/43/PDF/N9601843.pdf>

UN General Assembly Resolutions

57. United Nations (2010), General Assembly Draft Resolution: *The Rule of Law at the National and International Levels*, 4 November 2010. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/>

N10/621/16/PDF/N1062116.pdf

58. United Nations (2006). Resolution Adopted by the General Assembly, 21 March 2006. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf>
59. United Nations (2006). Resolution Adopted by the General, 20 septembre 2006. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf>

UN Secretary-General Reports

60. United Nations (2011), *Strengthening and Coordinating United Nations Rule of Law Activities*, 8 August 2011. Available at <http://www.unrol.org/doc.aspx?d=3074>
61. United Nations (2011), *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, 12 October 2011. Available at http://www.unrol.org/files/S_2011_634EN.pdf
62. United Nations (2010), *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict*, 16 July 2010. Available at <http://ochanet.unocha.org/p/Documents/SG%20Report%20PeacebuildingImmediateAftermathConflict%2022%2007%2010.pdf>
63. United Nations (2010), *Strengthening and Coordinating United Nations Rule of Law Activities*, 20 August 2010. Available at <http://www.unrol.org/doc.aspx?d=2994>
64. United Nations (2010), *Report of the Secretary General on the United Nations Stabilization Mission in Haiti*, 1 September 2010. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/494/00/PDF/N1049400.pdf>
65. United Nations (2010), *Seventh Report of the Secretary-General on the United Nations Integrated Office in Burundi*, 30 November 2010. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/654/02/PDF/N1065402.pdf>
66. United Nations (2009), *Annual Report on Strengthening and Coordinating UN Rule of Law Activities*, 17 August 2009. Available at <http://www.unrol.org/files/A-64-298%20Annual%20SG%20report%20on%20strengthening%20and%20coordinating%20UN%20RoL%20act.pdf>
67. United Nations (2008), *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform*, 23 January 2008. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/216/06/PDF/N0821606.pdf>
68. United Nations (2006), *Uniting our strengths: Enhancing United Nations Support for the Rule of Law*, 14 December 2006. Available at <http://www.unrol.org/files/2006%20Report.pdf>
69. United Nations (2004), *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, 23 August 2004. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf>
70. United Nations (2004), United Nations Verification Mission in Guatemala, 30 August 2004. Available at <http://www.unhcr.org/refworld/country,,UNGA,,GTM,,4268f7f54,0.html>

Other UN Documents and Reports

71. United Nations (2011). Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group, 22 February 2011. Available at http://reliefweb.int/sites/reliefweb.int/files/resources/96189F76941B24D38525784C00751F4B-Full_Report.pdf
72. United Nations (2011). 6479th Meeting of the Security Council: Maintenance of international peace and security; The interdependence between security and development, 11 February 2011. Available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/>

- Sec&Dev%20SPV%206479.pdf
73. United Nations Integrated Strategic Framework for Haiti 2010-2011. Available at http://www.ht.undp.org/_assets/fichier/publication/pubdoc62.pdf
 74. United Nations (2011). *Nepal Peace and Development Strategy 2010-2015*
 75. United Nations (2011). Internal Note to the SRS, Ref. Strategic Planning Retreat
 76. United Nations (2010). Secretary-General Bulletins on the Organization of the Department of Peacekeeping Operations (ST/SGB/2010/1). Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/593/82/PDF/N0959382.pdf>
 77. United Nations (2010), *Report of the Special Committee on Peacekeeping Operations*, 2010 Substantive session, 22 February – 10 March 2011. Available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20A%2064%2019.pdf>
 78. United Nations Department of Peacekeeping Operations and Department of Field Support (2009). "A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping." United Nations, New York.
 79. United Nations (2009). Secretary-General Bulletin: Organization of the Department of Political Affairs, 5 November 2009. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/593/82/PDF/N0959382.pdf>
 80. United Nations Environment Program (2009), *From Conflict to Peacebuilding: The Role of Environment and Natural Resources*. United Nations Environment Program, Nairobi, Kenya.
 81. United Nations (2008). "United Nations Peacekeeping Operations: Principles & Guidelines." United Nations, New York.
 82. United Nations Economic and Social Council (2006). Report of the Special Rapporteur on the Right to Food, Jean Ziegler Addendum, 18 January 2006. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/16/PDF/G0610316.pdf?>
 83. United Nations Economic and Social Council (2005). Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher, 8 February 2005. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf>
 84. United Nations (2004). Follow-up to the Outcome of the Millennium Summit, 2 December 2004. Available at <http://www.un.org/secureworld/report.pdf>
 85. United Nations (2000). Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects, 21 August 2000. Available at http://www.unic.or.jp/security_co/pdf/a_55_305_e.pdf
 - Analysis. Available at http://www.undp.org/governance/political_economy_analysis.shtml
 90. United Nations Office of Drugs and Crime. Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crime, and Drug Abuse in West Africa, Available at <http://www.unodc.org/westandcentralafrica/en/ecowasresponseactionplan.html>
 91. United Nations Office of Drugs and Crime. Transnational Organized Crime Threat Assessments. Available at <http://www.unodc.org/unodc/en/data-and-analysis/TOC-threat-assessments.html>

News Articles

86. UN News Centre, Extending UN Peacekeeping Force in Haiti, Security Council Cuts Troops, UN News Centre, October 14, 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=40059&Cr=haiti&Cr1=>
87. Haiti's Gov't Links to Old Regime Prompts Scrutiny, Associated Press, 14 October 2011. Available at <http://www.cbsnews.com/stories/2011/10/13/ap/latinamerica/main20120290.shtml>

Internet Sources

88. Austrian Initiative (2004-2008). The Role of the Security Council in Strengthening a Rules-based International System. Available at <http://www.iilj.org/research/documents/AustrianInitiative-IILJCalendarofPanels2004-07.pdf>
89. United Nations Development Program. Political Economy

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